



**Australian Government**  
**Department of Foreign Affairs and Trade**

**DEED OF STANDING OFFER**  
**FOR THE PROVISION OF EDUCATION SERVICES FOR AUSTRALIA AWARDS**  
**SCHOLARSHIPS**

**BETWEEN**

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

**AND**

XXXX XXXXXX (ABN XXXXXXXXXXXXXXXXXX)  
(**'Contractor'**)

DFAT AGREEMENT NUMBER: XXXXXXXX

DETAILS SCHEDULE

**PARTIES**

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

**DFAT Representative:** [insert]

**Notice details:**

Address:

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

Email:[insert]

**DFAT Escalation Representative:** [insert]

**Notice details:**

Address:

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

Email: [insert]

**Contractor Representative:** [insert]

**Notice details:**

Address: [insert]

Email:[insert]

**Contractor Escalation Representative:** [insert]

**Notice details:**

Address:[insert]

Email[insert]

**INITIAL TERM**

**Initial Term:** Six years from the Commencement Date

**Commencement Date:** [1 July 2027]

**OPTION TERM**

**Option Periods:** Up to a further four years from the end of the Initial Term. Options can be taken in one or multiple periods at DFAT’s discretion.

**RECITALS:**

- A. DFAT administers the Australia Awards Scholarships Program. This program provides opportunities for successful eligible applicants from developing countries to undertake study at participating Australian tertiary education institutions.
- B. DFAT seeks to engage the Contractor to provide Services in relation to Scholars under the Australia Awards Scholarship Program.
- C. DFAT has agreed to appoint the Contractor on the terms and conditions of this Deed for the Term to provide, upon the acceptance of a Quotation in the Scholarships Management System or the execution of a Services Order, the Services to DFAT or as may be requested from time to time by another Agency.
- D. DFAT's engagement of the Contractor for Services under this Deed is subject to potential Scholars submitting an application to DFAT for a scholarship, and DFAT agreeing to award a scholarship to them.

**EXECUTED AS A DEED**

**SIGNED, SEALED AND DELIVERED BY**

**THE COMMONWEALTH OF AUSTRALIA**  
represented by the Department of  
Foreign Affairs and Trade by its  
authorised delegate:

\_\_\_\_\_  
Signature of Delegate

\_\_\_\_\_  
Name of Delegate

in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

Date: \_\_\_\_\_

**SIGNED, SEALED AND DELIVERED BY**  
[Insert] in accordance  
with section 127 of the *Corporations*  
*Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director (*Print*)

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Name of Director/Company Secretary (*Print*)

Date: \_\_\_\_\_

## CONTENTS

### AGREED TERMS

|     |                                                   |    |
|-----|---------------------------------------------------|----|
| 1.  | DEFINITIONS AND INTERPRETATION .....              | 7  |
| 2.  | PRIORITY OF DEED DOCUMENTS.....                   | 11 |
| 3.  | TERM .....                                        | 12 |
| 4.  | GENERAL OBLIGATIONS OF CONTRACTOR.....            | 12 |
| 5.  | STANDING OFFER .....                              | 12 |
| 6.  | MONITORING PERFORMANCE.....                       | 14 |
| 7.  | NOTICE OF MATTERS IMPACTING ON THE SERVICES ..... | 14 |
| 8.  | INTELLECTUAL PROPERTY RIGHTS.....                 | 15 |
| 9.  | MORAL RIGHTS.....                                 | 16 |
| 10. | INDEMNITY .....                                   | 16 |
| 11. | LIABILITY .....                                   | 17 |
| 12. | INSURANCE .....                                   | 17 |
| 13. | CONFIDENTIALITY .....                             | 18 |
| 14. | PRIVACY AND NOTIFIABLE DATA BREACHES .....        | 19 |
| 15. | DFAT DATA.....                                    | 20 |
| 16. | SECURITY.....                                     | 20 |
| 17. | CONFLICT OF INTEREST.....                         | 22 |
| 18. | RESOLUTION OF DISPUTES.....                       | 22 |
| 19. | TERMINATION .....                                 | 23 |
| 20. | NOTICES .....                                     | 25 |
| 21. | NOT USED .....                                    | 25 |

22. SCHOLARSHIPS MANAGEMENT SYSTEM..... 25

23. MISCELLANEOUS ..... 26

SCHEDULE 1 – STATEMENT OF REQUIREMENTS ..... 28

SCHEDULE 2 – PRICING SCHEDULE..... 45

SCHEDULE 3 – SERVICES ORDER TEMPLATE ..... 52

SCHEDULE 4 - INSTRUMENT OF ACCEPTANCE ..... 56

SCHEDULE 5 – PARTNER PERFORMANCE ASSESSMENT ..... 59

SCHEDULE 6 – DEED OF CONFIDENTIALITY ..... 60

SCHEDULE 7 – CONFIDENTIAL INFORMATION ..... 65

SCHEDULE 8 – COMMONWEALTH POLICIES ..... 66

SCHEDULE 9 – STANDARD CONTRACT CONDITIONS ..... 78

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Deed, unless the context otherwise requires, capitalised terms used in the Handbook are used here and:

**Agency** means any Commonwealth department or agency, which may require the provision of Services under this Deed.

**Agreed Terms** means **clauses 1 to 23** of this Deed, which set out the terms and conditions agreed by the Parties.

**Attachment** means an attachment to a Services Order.

**Australian Privacy Principle(s)** has the same meaning as it has in the Privacy Act.

**Background IP** means Material (whether owned by the Contractor or a third party) that is in existence at the Commencement Date or is subsequently brought into existence other than as a result of the performance of this Deed, and is embodied in, or attaches to, Deed Material or the Services or is otherwise necessarily related to the performance, functioning or operation of the Services.

**Business Day** means a day (not being a Saturday, Sunday or public holiday in the Australian Capital Territory) on which banks are open for general banking business in the Australian Capital Territory.

**Change in Control** means, in relation to a body corporate, where the power (whether formal or informal, whether or not having legal or equitable force, whether or not based on legal or equitable rights and whether direct or indirect, including through one or more entities):

- (a) to control more than half of the voting power of the body;
- (b) to control the composition of the board of directors of the body; or
- (c) to control more than half of the issued share capital of the body, excluding any part of it which carries no right to participate beyond a specified amount in the distribution of either profit or capital,

resides with persons other than those holding that power on the Commencement Date.

**CLE** means Contribution to Living Expenses

**Commencement Date** means the date of commencement of the Initial Term, as specified in the **Details Schedule**

**Confidential Information** means:

- (a) any information that is identified in **Schedule 7** (Confidential Information);
- (b) any information that is 'Confidential Information' within the meaning of the Standard Contract Conditions under any given Contract; and
- (c) any other information that:
  - (i) is by its nature confidential; or
  - (ii) is designated by a Party as confidential; or
  - (ii) a Party knows or ought to know is confidential,

but does not include information that:

- (d) is or becomes public knowledge other than by breach of this Deed; or
- (e) is in the possession of a Party without restriction in relation to disclosure before the date of receipt; or
- (f) has been independently developed or acquired by the receiving Party.

**Contract** means a contract formed under **clause 5.4**.

**Contractor Personnel** means an employee, officer or agent of the Contractor, and for avoidance of doubt, includes, where the context requires, Subcontractors and Subcontractor Personnel.

**Contractor Escalation Representative** means the person identified in the Details Schedule, or as may be notified in writing to DFAT from time to time.

**Contractor Representative** means the person identified in the Details Schedule, or as may be notified in writing to DFAT from time to time.

**Contribution to Living Expenses (also referred to as Stipend)** means the fortnightly payment made to Scholars by the Contractor on behalf of DFAT, during the scholarship, at a rate determined by DFAT.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**CRICOS** means the Commonwealth Register of Institutions and Course for Overseas Students.

**Criminal Code Act List** means the list of organisations that are specified as a 'terrorist organisation' through regulations made under the *Criminal Code Act 1995* as publicised on the [Australian National Security](#) website from time to time.

**Critical Incident** means an event or circumstance that happens to a Scholar while they are on-Scholarship that DFAT reasonably considers adversely affects, or has the potential to adversely affect, a Scholar's ability to successfully complete their scholarship and otherwise as described in the Handbook.

**Deed of Standing Offer** or **Deed** means this Deed of Standing Offer, between DFAT and the Contractor, as varied from time to time in accordance with **clause 23.1**, and includes the Deed Details, the Schedules, the attachments and any other document expressly incorporated as part of the Deed.

**Deed Material** means any Material created by the Contractor or any Contractor Personnel on or following the Commencement Date, for the purposes of or as a result of performing the Contractor's obligations under this Deed.

**Deed Period** means the Initial Term, plus any extension agreed in accordance with **clause 3**.

**Deliverable** means any item or element of a Service to be provided by the Contractor under a Contract.

**DFAT Consolidated List** means the list of all persons and entities subject to targeted financial sanctions or travel bans under Australian sanctions laws available on DFAT's website: <https://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx>.

**DFAT Data** means any data and information relating to or concerning DFAT, and its operations, facilities, customers, DFAT Personnel, assets and programs (including Personal Information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of DFAT.

**DFAT Escalation Representative** means the person identified in the Details Schedule, or as may be notified in writing to the Contractor from time to time.

**DFAT Material** means any Material provided by DFAT to the Contractor for the purposes of this Deed, or which is copied or derived from Material so provided.

**DFAT Personnel** means DFAT's officers, employees and agents.

**DFAT Representative** means the person identified in the Details Schedule, or as may be notified in writing to the Contractor from time to time.

**Disability Administration Supplement** means an additional payment made by DFAT to the Contractor, calculated on a per-Scholar, per-semester basis, to facilitate support for Scholars with active Disability Support Agreements.

**Disability Adviser** means the consultant contracted by Australia Awards Section to ensure in Australia disability inclusive support is provided to scholars with disability.

**Disability Support Agreement (DSA)** means a formal agreement between the relevant Scholar and DFAT that outlines the approved non-academic reasonable accommodations and associated funding required to support a Scholar with disability throughout their scholarship.

**Disability Support Person** means an individual from the Scholar's home country, approved by DFAT to provide essential, non-academic care and support to a Scholar with disability to enable their safe participation in the scholarship.



**Disability Support Person Agreement (DSPA)** means a formal agreement between DFAT and the relevant Scholar that defines the roles, responsibilities and DFAT funded supports for a Disability Support Person providing care to a Scholar with disability.

**Document** includes:

- (a) any paper or other material on which there is writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and
- (b) any article or material from which sound, images, or writing is capable of being reproduced with or without the aid of any other article or device.

**Eligible Data Breach** has the same meaning it has under the Privacy Act.

**ESOS Framework** means the Education Services for Overseas Students Framework which is comprised of the *Education Services for Overseas Students Act 2000* and *Education Services for Overseas Students Regulations 2019*.

**Fees** means the amount payable for the Services set out in the relevant Contract and calculated and determined by reference to **Schedule 2** (Pricing Schedule).

**Goods** means the goods described in **Schedule 1** (Statement of Requirements).

**Handbook** means the Australia Awards Scholarship Policy Handbook and any related Handbook issued by DFAT found at [www.dfat.gov.au](http://www.dfat.gov.au) which contains instructions to the Contractor relating to the Program, as updated and/or amended by DFAT from time to time.

**IAP** means Introductory Academic Program.

**Initial Term** means the period for which this Deed is intended to continue, as specified in the **Details Schedule**.

**Instrument of Acceptance** means the form set out in **Schedule 4** (Instrument of Acceptance).

**Intellectual Property** or **IP** means all present and future rights conferred by law in or in relation to any copyright (other than Moral Rights), trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and Confidential Information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable.

These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, excluding Moral Rights

**Key Performance Measure** or **KPM** means a key performance measure identified in item 7.2 of Schedule 1.

**Law** means (as the context requires):

- (a) any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.); and
- (b) the applicable laws of any jurisdiction in which any part of the Services are performed.

**Material** includes documents, equipment, property, information, software, goods, data stored by any means, and the subject matter of any category of Intellectual Property.

**Moral Rights** means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute in any jurisdiction in the world that may now exist or that may come to exist in relation to the work.

**National Code** means the National Code of Practice for Providers of Education and Training to Overseas Students 2018, as updated and/or amended from time to time.

**Notice** means a notice, demand, consent, approval or communication issued under this Deed.

**Option Term** means the period of any extension to the Initial Term of this Deed under **clause 3.2**, as specified in the **Details Schedule**.

**OSHC** means Overseas Student Health Cover.

**Partner Country** has the same meaning as in clause 1.1 of the Standard Contract Conditions.

**Party** means DFAT or the Contractor.

**PCE** means Pre-Course English.

**Performance Assessment** means the review to be conducted under **clause 6.2**.

**Personal Information** has the same meaning it has under the Privacy Act.

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

**Professional Adviser** means:

- (a) the financial or legal advisers of a Party; and
- (b) the respective officers and employees of those financial or legal advisers.

**Program** means the Australia Awards Scholarships Program established and overseen by DFAT in accordance with the Handbook.

**Project** means an activity to be undertaken by the Contractor pursuant to a Contract.

**Quotation** means a response from the Contractor to a Request for Quotation.

**Reasonable Accommodation** means DFAT funded provision of non-academic support, modifications and/or adjustments that meet the individual needs of people with disabilities to ensure they enjoy and exercise all human rights and fundamental freedoms on an equal basis to others.

**Reasonable Adjustment** means measures which an education provider is legislatively required to make that ensures students with a disability can meet the academic standards of their course of study and participate on the same basis as students without a disability.

**Relevant List** means any similar list to the World Bank List maintained by any other similar multilateral institution.

**Request for Quotation** means a request issued by DFAT to the Contractor in accordance with **clause 5** (Standing Offer).

**SAS** means Supplementary Academic Support.

**SEAH** means sexual exploitation, abuse and harassment.

**Schedule** means a schedule to this Deed.

**Scholar** means an Australian Award Scholarship holder who is enrolled and studying at the Contractor's institution, including during pre-departure, study and post-completion periods.

**Scholarship** means a long-term award (Australia Awards Scholarship) funded by DFAT.

**Scholarship End Date** means the date specified in the Scholar's Scholarship Contract and reflected in DFAT's Scholarship Management System.

**Scholarships Management System** means the centralised information management system administered by DFAT to support the administration of Australia Awards Scholarships, from application through to completion. The Scholarships Management System facilitates the submission and processing of scholarship applications, management of Scholar placements, tracking of academic progress, administration of Scholarship variations, and recording of financial transactions associated with Scholarship delivery.

**Services** means the services described in **Schedule 1** (Statement of Requirements) and which are to be provided under a Services Order (including the provision of the Deliverables and any Goods).

**Services Order** means any order for Services substantially in the form of **Schedule 3** (Services Order Template).

**Specified Personnel** means Contractor Personnel specified in **item 12** of a Services Order, as replaced (temporarily or permanently) from time to time.

**Standard Contract Conditions** means the contract conditions set out in **Schedule 9** (Standard Contract Conditions) of this Deed that will be incorporated into any Contract.

**Standard Scholarship Placement** refers to a Contract that is formed when DFAT accepts a Quotation submitted by the Contractor through the Scholarships Management System in accordance with clause 5 without a Service Order being issued.

**Subcontractor** means any person, other than the Commonwealth, that for the purposes of a Contract, furnishes goods or services to the Contractor or indirectly to the Contractor through another person; and "Subcontract" has a corresponding meaning.

**Subcontractor Personnel** means any officers, employees or agents of a Subcontractor.

**TEQSA** means the Tertiary Education Quality and Standards Agency.

**Warranted Materials** has the meaning given in **clause 8.3**.

**Welfare Incident** means any event or situation in relation to a Scholar's welfare or well-being that DFAT reasonably considers adversely affects, or has the potential to adversely effect, a Scholar's ability to successfully complete their scholarship (as otherwise described in the Handbook), but which does not include a Critical Incident.

**World Bank List** means the list of organisations maintained by the World Bank in its "Listing of Ineligible Firms and Individuals" of firms and individuals who are ineligible to be awarded a World Bank-financed contract because they have been sanctioned under the Bank's fraud and corruption policy (this list is currently available at <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>).

## 1.2 Interpretation

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

- (a) headings are for the purpose of convenient reference only and do not form part of this Deed;
- (b) a word denoting the singular number includes the plural number and vice versa;
- (c) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;
- (d) a word denoting a gender includes all genders;
- (e) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Deed.
- (f) where the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day the action will be done no later than the first Business Day following that day;
- (g) a reference to an Act is a reference to an Act of the Commonwealth or a State or Territory of Australia as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- (h) a reference to a clause includes a reference to a sub-clause of that clause;
- (i) a reference to a "dollar" or "\$" means the Australian dollar unless otherwise stated;
- (j) a reference to a specification, publication, Commonwealth or DFAT policy or other document in relation to standards of work to be achieved during the performance of this Deed or a Contract will be construed as a reference to that specification, publication, Commonwealth or DFAT policy or document, as the case requires, in effect on the Commencement Date, or alternatively, a reference to another version of the document if agreed in writing between the Parties;
- (k) the word "includes" in any form is not a form of limitation;
- (l) a reference to a Party includes that Party's administrators, successors, and permitted assigns, including any person to whom that Party novates any part of this Deed; and
- (m) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Deed or any part of it.

## 2. PRIORITY OF DEED DOCUMENTS

2.1 If there is inconsistency between any of the documents forming part of this Deed, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Agreed Terms;

- (b) Schedule 1 (Statement of Requirements);
- (c) Schedule 2 (Pricing Schedule);
- (d) Fraud, Welfare Incidents, and Critical Incidents sections of the Handbook;
- (e) any other Schedule to this Deed; and
- (d) documents incorporated by reference in this Deed.

### **3. TERM**

- 3.1 This Deed commences on the Commencement Date and continues for the Initial Term, unless terminated earlier in accordance with clause 19.
- 3.2 DFAT may, in its absolute discretion, extend the Initial Term for the Option Terms by notifying the Contractor at least sixty (60) days before the end of the current Deed Period.
- 3.3 DFAT may, at its absolute discretion, once in every two years from the Commencement Date, review, by 30 Business Days' notice to the Contractor, the operation of the arrangements under this Deed for the purposes of adding or removing, or otherwise amending the scope of the Services in Schedule 1.
- 3.4 Any previous contract between DFAT and the Contractor relating to the Program is terminated and is replaced by this Deed with effect from the Commencement Date. Termination of the previous contract does not affect the Contractor's obligation to ensure continuity of support to existing Scholars.

### **4. GENERAL OBLIGATIONS OF CONTRACTOR**

- 4.1 The Contractor will, at all times:
  - (a) act reasonably in performing its obligations and exercising its rights under this Deed; and
  - (b) diligently perform its obligations under this Deed.
- 4.2 The Contractor will comply with its obligations under the Handbook, as varied from time to time.

### **5. STANDING OFFER**

#### **5.1 Standing Offer**

By this Deed, the Contractor makes an irrevocable standing offer to supply the Services as detailed in **Schedule 1** (Statement of Requirements) to DFAT on the terms and conditions set out in this Deed.

#### **5.2 Issue of a Request for Quotation using the Scholarships Management System**

- (a) DFAT may, during the Deed Period, require the Contractor to provide a Quotation for Services by issuing a Request for Quotation through the Scholarships Management System.
- (b) For the purposes of this Deed, a placement request issued by DFAT through the Scholarships Management System in accordance with the Scholarships Management System Operating Guide (as updated by DFAT from time to time) constitutes a Request for Quotation (RFQ). An RFQ may also be submitted to the Contractor by DFAT outside the Scholarships Management System under this Deed in accordance with clause 5.3.
- (c) If DFAT issues the Contractor a (RFQ under clause 5.2(a), the Contractor must, within the timeframe specified in the RFQ, provide a Quotation, or provide DFAT with a notice declining the invitation.
- (d) If the Contractor responds to RFQ issued through the Scholarships Management System, it must base its quoted Contract price on the agreed Fees specified in Schedule 2 (Pricing Schedule). A placement offer submitted by the Contractor through the Scholarships Management System constitutes a Quotation for the purposes of this clause.
- (e) DFAT may, in its absolute discretion, withdraw an RFQ at any time prior to providing placement approval.
- (f) The Contractor must use the Scholarships Management System to provide any Quotation in response to a RFQ issued through that system.
- (g) The Scholarships Management System is an authoritative record of RFQs, Quotations, and placement approvals for the purposes of Contract formation under this clause 5. A Contract for a Standard

Scholarship Placement is formed when DFAT accepts a Quotation submitted by the Contractor through the Scholarships Management System.

- (h) DFAT and the Contractor acknowledge that the Scholarships Management System provides a complete and accurate record of the Contract.
- (i) To the extent that the Contractor wishes to obtain a record of the Contract from the Scholarships Management System, the Contractor must notify DFAT as soon as possible and request a record of the Contract.

### 5.3 Issue of Services Orders outside of the Scholarships Management System

- (a) DFAT may complete and send to the Contractor a Services Order without issuing an RFQ under clause 5.2.
- (b) A Services Order will not be issued in relation to Standard Scholarship Placements and these should only be handled through the Scholarships Management System.
- (c) DFAT may, at its discretion, issue a Services Order in circumstances where it considers that:
  - (i) the Services to be provided differ from a Standard Scholarship Placement;
  - (ii) additional or bespoke terms are required, including co-contribution arrangements, offshore delivery of services, or alternative funding structures; or
  - (iii) further documentation is required in relation to the particular scholarship arrangements.
- (d) A Services Order is formed when it is executed by both the Contractor and DFAT. Once formed, the Services Order will be recorded in the Scholarships Management System unless otherwise agreed with DFAT.

### 5.4 Terms and Conditions

- (a) The terms and conditions of a Standard Scholarship Placement are:
  - (i) the content of a Quotation which has been approved by DFAT and recorded in the Scholarships Management System; and
  - (ii) the Standard Contract Conditions (**Schedule 9**).
- (b) The terms and conditions of a Service Order are:
  - (i) the terms and conditions specified in any Services Order; and
  - (ii) the Standard Contract Conditions (**Schedule 9**).

### 5.5 Priority of Contract documents

To the extent of any inconsistency between two or more documents which form part of a Contract, those documents will be interpreted in the following (descending) order of priority:

- (a) the Agreed Terms of this Deed (to the extent incorporated by reference into the Contract);
- (b) **Schedule 9** – Standard Contract Conditions;
- (c) the Services Order or DFAT's placement approval recorded in the Scholarships Management System;
- (d) any other Schedule or attachment to this Deed of Standing Offer (to the extent incorporated by reference into the Contract); and
- (e) any other document incorporated by express reference as part of the Contract.

### 5.6 Completion of Services Order

To the extent that items in a Services Order are not completed, unless otherwise stated in the Services Order, those items will be taken to be 'not applicable' for the purpose of this Deed and the relevant Contract.

### 5.7 Non-exclusivity and cooperation

- (a) The Contractor acknowledges and agrees that nothing in this Deed will operate to constitute the Contractor as the exclusive provider of the Services to DFAT, and DFAT may at its absolute discretion obtain the Services from any source it chooses.

- (b) Notwithstanding any other provision of this Deed, DFAT does not guarantee or make any assurance that any Services or any particular volume of Services or other business will be ordered from the Contractor under this Deed.
- (c) The Contractor must, within the Fees, cooperate with any other service provider or contractor appointed by DFAT to ensure the integrated and efficient provision of all Services and must provide reasonable assistance to other service providers / contractors as DFAT may request.

## 5.8 Services to another Agency

- (a) The Contractor may, subject to DFAT's prior agreement in writing, provide Services to another Agency during the Deed Period in accordance with the provisions of this Deed. [The Fees will accord with Schedule 2 (**Pricing Schedule**), and other arrangements may be negotiated by the other Agency.]
- (b) To accept the offer made by the Contractor pursuant to **clause 5.8(a)**, an Agency will issue an Instrument of Acceptance (**Schedule 4**) to the Contractor.
- (c) Upon execution of the Instrument of Acceptance by both the Contractor and the Agency, a separate deed of standing offer will be created between the Contractor and the Agency on the terms of this Deed with the exception that:
  - (i) references to the Commonwealth of Australia as represented by the Department of Foreign Affairs and Trade as the contracting party and to DFAT will be references to the Agency as detailed in the Instrument of Acceptance;
  - (ii) any Services Order issued by DFAT pursuant to this Deed does not form part of the standing offer; and
  - (iii) references to relevant information in this Deed as set out in the Instrument of Acceptance will be varied as set out in the Instrument of Acceptance.
- (d) At no cost to DFAT, the Contractor must provide DFAT at the end of every six (6) months (starting from the Commencement Date) a report on all Services Order placed by DFAT and any other Agency as well as the status of each Services Order. The report must be provided in a form acceptable to DFAT within 10 Business Days of the end of the six (6) month period.

## 6. MONITORING PERFORMANCE

### 6.1 Performance meetings

The Parties will meet at the times and manner set out in **Schedule 1** (or otherwise as agreed in writing between the Parties) to discuss any issues in relation to this Deed or the provision of the Services. The Contractor must ensure that the Contractor Representative, and DFAT must ensure the DFAT Representative, is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either Party.

### 6.2 Performance Assessment

- (a) DFAT may, at any time or times during the Deed Period, conduct a partner performance assessment of the Contractor, or adviser performance assessment of an individual of Contractor Personnel (collectively, 'performance assessments'). Performance assessments will be substantially in accordance with the Partner Performance Assessment template in **Schedule 5** or the Adviser Performance Assessment template both on the DFAT website at <https://dfat.gov.au/about-us/business-opportunities/Pages/resources.aspx>
- (b) DFAT may instigate a performance assessment by giving the Contractor fifteen (15) Business Days written notice. Within fifteen (15) Business Days of receiving a performance assessment from DFAT, the Contractor must:
  - (i) sign and return to DFAT the relevant performance assessment together with any response; and
  - (ii) ensure that all other performance assessments the Contractor wishes to include are signed and returned to DFAT.

## 7. Notice of Matters Impacting on the Services

### 7.1 Notification to DFAT

If the Contractor becomes aware of any matter involving a Scholar, it or any of its Subcontractors which:

- (a) adversely changes or could adversely change the scope or timing of the Services;
- (b) adversely changes a Scholar's circumstance which has an impact on the Scholar's academic progress, welfare, visa or Scholarship (including Critical Incidents or Welfare Incidents in connection with the Scholar); or
- (c) adversely affects or could adversely affect the Contractor's provision of the Services in accordance with the requirements of this Contract or DFAT's reputation,

the Contractor must give written notice of that matter to the DFAT Representative within a reasonable timeframe (and in any event, within three (3) Business Days for matters that are not Critical Incidents or Welfare Incidents), or 24 hours for Critical Incidents after the Contractor becomes aware of the matter) containing:

- (d) particulars of the matter;
- (e) its likely impact; and
- (f) the Contractor's recommendation as to how to minimise its impact upon the scope, timing or provision generally of the Services.

## 7.2 DFAT rights following notification

If the Contractor gives notice under clause 7.1, DFAT may, without limitation:

- (a) approve the Contractor's recommendation referred to in clause 7.1(f), in which case DFAT must implement the Contractor's recommendation;
- (b) direct the Contractor to take all reasonable steps to minimise the impact of the matter upon the scope, timing or provision generally of the Services; and/or
- (c) take any other reasonable actions as DFAT considers appropriate.

## 7.3 Key Performance Measures

- (a) The Contractor will comply with DFAT's performance framework in accordance with item 7 of Schedule 1.
- (b) To the extent that DFAT requires that there be an assessment of the Key Performance Measures in item 7.1 of Schedule 1 and requests in writing that the Contractor provides it with a remediation plan in accordance with Schedule 1, the Contractor will provide a remediation plan in a form approved by DFAT within [20] Business Days of DFAT's request.

## 8. INTELLECTUAL PROPERTY RIGHTS

### 8.1 Background IP

- (a) This **clause 8** does not affect the ownership of the Intellectual Property in any Background IP or any DFAT Material.
- (b) The Contractor must obtain all necessary copyright and other Intellectual Property permissions before making any Background IP available under this Deed.
- (c) The Contractor irrevocably grants to (or must procure for) DFAT an irrevocable perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate the Background IP for any purpose (except any commercial purpose).

### 8.2 DFAT ownership of Intellectual Property in Deed Material and use of DFAT Material

- (a) Except where otherwise agreed in writing with DFAT, all Intellectual Property in the Deed Material vest in DFAT on creation.
- (b) To the extent that the Contractor needs to use any of the DFAT Material or Deed Material for the purpose of performing its obligations under this Deed, DFAT grants to the Contractor for the Deed Period, subject to any conditions or restrictions specified in **Schedule 1** or otherwise specified by DFAT in writing, a 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 that purpose.
- (c) The licence granted to the Contractor under clause 8.2(b) does not include a right to exploit DFAT's Background IP or Third Party Material for the Contractor's commercial purposes.



- (d) The Contractor must deliver all Deed Material to DFAT as DFAT may direct in writing.

### 8.3 Warranty

The Contractor warrants that:

- (d) the Background IP and the Deed Material (**Warranted Materials**) and DFAT's use of the Warranted Materials will not infringe the Intellectual Property or Moral Rights of any person; and
- (e) it has the necessary rights to vest the Intellectual Property and grant the licences as provided for in this **clause 8**.

## 9. MORAL RIGHTS

### 9.1 Obtaining consents

- (a) To the extent permitted by applicable Laws and for the benefit of DFAT, the Contractor must:
  - (i) give, where the Contractor is an individual, in a form acceptable to DFAT; and
  - (ii) ensure that each author of the Deed Material gives, in a form acceptable to DFAT, genuine consent in writing to the use of the Deed Material for the Specified Acts (whether those Specified Acts occur before or after the consent is given), even if such use would otherwise be an infringement of its or their Moral Rights.
- (b) The Contractor must promptly provide DFAT with an original of any consent referred to in **clause 9.1(a)** if requested by DFAT.

### 9.2 Specified Acts

- (c) In this **clause 9**, Specified Acts means:
  - (i) falsely attributing the authorship of any Deed Material, or any content in the Deed Material (including without limitation 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 Deed Material and dealing in any way with the altered Deed Material;
  - (iii) reproducing, communicating, adapting, publishing or exhibiting any Deed Material; and
  - (iv) adding any additional content or information to the Deed Material.
- (d) For the purposes of this **clause 9**, Deed Material includes any Background IP to the extent that it is included in, forms part of or is attached to the Deed Material.

## 10. INDEMNITY

### 10.1 Indemnity by the Contractor

- (a) The Contractor is liable for and indemnifies DFAT and DFAT Personnel against any liability, damage, loss, claim or expense (including the cost of any settlement and legal costs and expenses on a solicitor / own client basis) sustained or incurred by DFAT as a result of a claim made or threatened by a third party arising out of or in connection with:
  - (i) any personal injury to, or death of, any person;
  - (ii) any negligent, unlawful or wilfully wrong act or omission of the Contractor or its Subcontractors or Personnel; or
  - (iii) an infringement, or an alleged infringement, of the Intellectual Property rights or Moral Rights of any person, when the infringement or alleged infringement arises out of any activity permitted under any license or assignment under this Deed, a Contract, or by reason of the performance of or use of the Services;
  - (iv) an infringement or alleged infringement of the provisions of the *Privacy Act 1988* (Cth), in connection with the Services;
  - (v) a breach of the Contractor's confidentiality or security obligations under this Deed or a Contract;



- (vi) any loss, liability or expense suffered or incurred by DFAT which arises directly or indirectly from a breach by the Contractor or any Subcontractor or other Contractor Personnel of any Contractor obligations in this Deed.
- (b) The Contractor's liability to indemnify DFAT and DFAT Personnel will be reduced proportionally to the extent that any act or omission on the part of DFAT or any person through whom DFAT is acting (but not including the Contractor or Contractor Personnel, including Specified Personnel) contributed to the liability, loss, damage, costs or expenses.

## 10.2 Notification and handling of claims

The Contractor will promptly notify DFAT if the Contractor becomes aware of a claim that is brought or threatened against DFAT and the claim is one that is or may be the subject of the indemnity given by the Contractor under clause 10.1.

## 10.3 Survival of Indemnities

Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the indemnifying Party and survives expiration or termination of this Deed.

## 10.4 Enforcement of Indemnities

It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.

# 11. LIABILITY

## 11.1 Party liability

The liability of a Party for breach of this Deed or a Contract, or in tort (including negligence), or for any other common law or statutory cause of action arising out of this Deed or a Contract, will be determined under the relevant law of this Deed.

## 11.2 Limitation of liability

Subject to clause 11.3, the liability of each Party to the other as described in clause 11.1 will be limited on a per event basis or for a series of related events to the amount specified in item 20 of the Services Order [or in a Quotation].

## 11.3 Limitation of liability

- (a) The limitation in clause 11.2 does not apply to liability of the Contractor for:
  - (i) personal injury, including sickness or death;
  - (ii) loss of, or damage to, tangible property;
  - (iii) the infringement or alleged infringement of any Intellectual Property Rights;
  - (iv) a breach of any obligation relating to confidentiality, security, protection of Personal Information or privacy;
  - (v) fraud or wilful default;
  - (vi) unlawful (not including breach of contract) or illegal acts; or
  - (vii) the IP indemnity provided by the Contractor under clause 10.1(a)(iii).
- (b) The liability of either Party to the other for loss or damage of any kind arising out of this Deed or a Contract is reduced to the extent (if any) that the other causes or contributes to the loss or damage. This reduction applies whether the liability is in contract, tort (including negligence), under any statute or otherwise.
- (c) Subject to clause 11.3(a), neither Party is liable to the other Party for loss or damage of the following types:
  - (i) loss of goodwill; or
  - (ii) loss of business revenue, business opportunity or business profits.

# 12. INSURANCE

## 12.1 Obligation to maintain insurance

The Contractor must affect and maintain:

- (a) for the Deed Period, valid and enforceable insurance policies and levels:
  - (i) Public liability: \$20 million per event, unlimited in aggregate;
  - (ii) Property damage: \$20 million per event, unlimited in aggregate;
  - (iii) Professional indemnity: \$20 million per event, unlimited in aggregate; and
  - (iv) Workers compensation: as required by Law.
- (b) for seven years after the expiration or termination of the Deed, valid and enforceable professional indemnity insurance.

#### 12.2 Required insurance

In addition to the insurances specified in **clause 11.1**, the Contractor must take out and maintain throughout the term of the Deed (or such other period as required by DFAT) any other insurance required by Law.

#### 12.3 Evidence of insurance

The Contractor must provide promptly upon the request of DFAT current relevant confirmation of insurance documentation from its insurers or insurance brokers certifying that it has insurance as required by **clause 11.1** and **clause 11.2**.

#### 12.4 Avoid insurance voiding events

The Contractor must use all reasonable endeavours to prevent any insurance policy referred to in this **clause 11** from becoming void, invalid, vitiated or ineffective.

#### 12.5 Termination on loss of insurance

If any insurance policy referred to in this **clause 11** becomes void, invalid, vitiated or otherwise ineffective, DFAT may terminate the Deed immediately by notice to the Contractor.

#### 12.6 Subcontractors' insurance

The Contractor must ensure that its subcontractors, agents and consultants are insured as required by clause 12.1, as is appropriate given the nature of services or work to be performed by them.

### 13. CONFIDENTIALITY

- 13.1 Neither Party nor their personnel (including any Contractor Personnel) may disclose, use or make public the Confidential Information of the other Party (or Confidential Information disclosed by or on behalf of the other) unless required by Law, necessary for legal proceedings, provided with the written consent of the relevant Party, or required to manage this Deed or a Contract. If the Confidential Information is required to be disclosed under this **clause 13**, a Party must use all reasonable endeavours to ensure that persons receiving the Confidential Information do not further disclose the information.
- 13.2 DFAT Data (including DFAT Confidential Information) must not be removed from Australia or the relevant Partner Country.
- 13.3 If a Party is required to disclose Confidential Information by Law or for legal proceedings, the disclosing Party must provide reasonable notice to the other Party, where it is lawful to do so.
- 13.4 If requested by DFAT in writing, the Contractor must obtain from any Personnel who will have access to DFAT Confidential Information, a written undertaking in a form reasonably required by DFAT relating to non-disclosure of that information. Without limiting the foregoing, the Parties agree that it is reasonable for DFAT to require a written undertaking under this **clause 13.4** in a form similar to **Schedule 6** (Deed of Confidentiality).
- 13.5 The Contractor acknowledges and agrees to allow DFAT to publish details and report lists of Contracts valued over certain thresholds and identify Confidentiality agreements in accordance with Senate Order requirements.
- 13.6 The Contractor acknowledges and agrees to allow DFAT to periodically publish detailed information about work under this Deed and any Contracts on the DFAT website. This will include information about the Contractor's policies, plans, processes, the results of the Contractor's aid activities and DFAT's evaluations of

the Contractor's performance. DFAT and the Contractor will consult prior to publication or release of information regarded as sensitive (for example, fraud or corruption matters).

- 13.7 The identity of the Contractor Personnel is not Confidential Information, nor is this Deed or any Contract with the exception of those items specified in **Schedule 7** (Confidential Information).
- 13.8 The Contractor must ensure that it obtains any necessary consent from Contractor Personnel in relation to the requirements of this **clause 13**.
- 13.9 Upon expiry or earlier termination of this Deed, the Contractor must (as directed in writing by DFAT) either destroy or deliver to DFAT all DFAT Confidential Information.
- 13.10 The obligations on the Parties under this **clause 13** will not be taken to have been breached to the extent that Confidential Information is:
- (a) disclosed by a Party to its advisers, employees or other personnel solely in order to comply with obligations, or to exercise rights, under this Deed or a Contract;
  - (b) disclosed to a Party's internal management personnel, solely to enable effective management or auditing of Deed or Contract-related activities;
  - (c) disclosed by any Agency within the Commonwealth, for the purpose of administering this Deed or a Contract;
  - (d) disclosed by any Agency to the responsible Minister;
  - (e) disclosed by any Agency in response to a request by a House or a Committee of the Parliament of the Commonwealth;
  - (f) shared by DFAT within the Australian Government, where this serves the Commonwealth's legitimate interests;
  - (g) authorised or required by Law, including under this Deed or a Contract, under a licence or otherwise, to be disclosed; or
  - (h) in the public domain otherwise than due to a breach of this **clause 13**.

#### **14. PRIVACY AND NOTIFIABLE DATA BREACHES**

##### **14.1 Compliance with Privacy Laws and policies**

The Contractor must ensure that:

- (a) in providing the Services, the Contractor and all Contractor Personnel comply with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles as if they were DFAT;
- (b) all its dealings with Personal Information in connection with this Deed meet its privacy-related obligations and the requirements of DFAT's latest published DFAT privacy policy (<https://www.dfat.gov.au/about-us/corporate/privacy>);
- (c) neither the Contractor nor any Contractor Personnel do an act, or engage in a practice, that would breach an Australian Privacy Principle if done or engaged in by DFAT; and
- (d) the Contractor Personnel dealing with Personal Information in connection with this Deed are aware of, are subject to, and comply with the Contractor's privacy-related obligations.

##### **14.2 DFAT access and requests**

The Contractor must:

- (a) give DFAT access, on request, to any Personal Information acquired from DFAT or collected or generated in connection with this Deed; and
- (b) comply with DFAT's reasonable requests to ensure that the Contractor and DFAT comply with:
  - (i) **clause 14.1**; or
  - (ii) any applicable guideline, recommendation, direction or determination issued by the Office of the Australian Information Commissioner (or such other privacy authority with jurisdiction over either Party).

##### **14.3 General Obligations of the Contractor**

The Contractor must:

- (a) acknowledge that the Scholarships Management System may not provide functionality to classify or restrict access to sensitive information. The Contractor must exercise appropriate judgment when recording information in the Scholarships Management System and must ensure that sensitive or Personal Information is handled in accordance with the Privacy Act and only recorded to the extent necessary.
- (b) ensure that its Contractor Personnel who deal with Personal Information in connection with this Deed are aware of and comply with the Contractor's obligations under this Deed in relation to such activities or practices;
- (c) ensure that records added to the Scholarships Management System that include personal or sensitive information are updated promptly to reflect any new information;
- (d) notify DFAT immediately (and in any event no later than 24 hours of becoming aware of a breach or possible breach of its obligations in relation to Personal Information under this Deed); and
- (e) nothing in this Deed limits the Contractors obligations to collect, use, disclose or record information where required by Law, including under the ESOS Framework, PRISMS reporting requirements, TEQSA requirements or any other applicable regulatory framework.

#### 14.4 Notifiable Data Breaches

If the Contractor SUSPECTS an Eligible Data Breach, the Contractor must:

- (a) Immediately (and in any event no later than 24 hours of becoming aware of a breach or possible breach) notify DFAT;
- (b) give DFAT a written report within 3 Business Days; and
- (c) carry out an assessment in line with the [Privacy Act 1988 \(Cth\)](#).

If the Contractor CONFIRMS the existence of, or DFAT notifies the Contractor that there has been, an Eligible Data Breach, **the Contractor must take:**

- (a) all reasonable action to minimise the risk of the Eligible Data Breach causing serious harm to any individual to whom the Personal Information relates;
- (b) all necessary actions to comply with the [Privacy Act 1988 \(Cth\)](#); and
- (c) any other action DFAT reasonably requires.

#### 15. DFAT DATA

DFAT Data is and will remain the property of DFAT. The Contractor must not, and must use its best endeavours to ensure that Contractor Personnel, a Subcontractor or Subcontractor Personnel, do not:

- (d) use DFAT Data for any purpose other than directly in relation to the provision of the Services;
- (b) purport to sell, let for hire, assign rights in or otherwise dispose of any DFAT Data;
- (c) make any DFAT Data available to any third party other than an approved Subcontractor and then only to the extent necessary to enable the approved Subcontractor to provide its part of the Services;
- (d) remove any DFAT Data from DFAT's premises without the express written permission of the DFAT Representative; or
- (e) commercially exploit DFAT Data and ensure that neither approved Subcontractors nor any Contractor Personnel or Subcontractor Personnel commercially exploit any DFAT Data.

#### 16. SECURITY

##### 16.1 Responsibility for Security

The Contractor is responsible for the security of Contractor Personnel and ensuring that both the Contractor and Contractor Personnel and Subcontractors comply with this **clause 16**.

##### 16.2 Security Assessments

- (a) If required by DFAT, any Contractor Personnel must meet all security assessments and standards specified by DFAT including:
  - (i) an identity check;
  - (ii) a national police clearance check or equivalent;
  - (iii) signing any forms notified to the Contractor by DFAT from time to time;
  - (iv) holding Commonwealth security clearances to the level requested by DFAT in accordance with the Australian Government Protective Security Policy Framework (**PSPF**), or as otherwise required by DFAT;
  - (v) attending and completing a DFAT security awareness course as soon as possible after the Commencement Date at the Contractor's cost; and
  - (vi) complying with any other security awareness requirements reasonably requested by DFAT.

#### 16.3 Access to information

- (a) If, during the performance of Deed, the Contractor is required to access or otherwise gains access to Official Information or Security Classified Information, it agrees to comply with:
  - (i) all relevant security requirements specified in the Australian Government Protective Security Policy Framework as minimum standards;
  - (ii) the Australian Government Information Security Manual (**ISM**);
  - (iii) the security requirements specified in this Deed; and
  - (iv) any variations or additions to the security requirements that DFAT (in its absolute discretion) notifies to the Contractor in writing. Such changes to the security requirements must be implemented by the Contractor from the date specified in the notice (or five (5) Business Days after it receives the notice if no date is specified).
- (b) The Contractor agrees to perform its security obligations to the highest professional standards described or indicated in the requirements of the Commonwealth Protective Security Policy Framework.
- (c) For the purposes of this Deed:
 

**"Official Information"** means information of any kind whatsoever, whether in material form or not, regardless of its security classification, belonging to the Commonwealth or which the Commonwealth has agreed to protect. For avoidance of doubt, Official Information includes DFAT Confidential Information and DFAT Data; and

**"Security Classified Information"** means information that has been designated or marked with a national security classification by the Commonwealth in accordance with the Australian Government Protective Security Policy Framework; the Australian Government Information Security Manual (ISM) or DFAT's security policies and procedures and must be protected accordingly.

#### 16.4 Security breaches

The Contractor must notify DFAT immediately on becoming aware of any security breach and comply with all DFAT directions to rectify the security problem.

#### 16.5 Cyber Security

- (a) The Contractor must take reasonable and prudent steps consistent with good industry practice to reduce the risk of a Security Incident or Cyber Attack on the Contractor's information technology systems that accesses, transmits or stores any DFAT Confidential Information or any other data connected with this Deed, including but not limited to, DFAT Data, Deed Material, a Services Order or Personal Information.
- (b) At DFAT's request in a notice, the Contractor must provide details of the Contractor's security measures in place to reduce the risk of a Security Incident or Cyber Attack on the Contractor's information technology systems.
- (c) If the Contractor becomes aware of a Security Incident or Cyber Attack on the Contractor's information technology systems, the Contractor must immediately notify:
  - (i) DFAT (and, if this notification is not done by notice, by notice within one (1) Business Day); and

- (ii) if required by DFAT, advise the Australian Cyber Security Centre (ACSC).
- (d) The Contractor must ensure that its Subcontractors comply with the requirements of this **clause 16.5**.
- (e) For the purposes of this **clause 16.5**, the following definitions are used:
  - ‘**Cyber Attack**’ means any action taken through the use of computer networks or any unauthorised access to or use of a computer system that is intended to have, is likely to have or does have an adverse effect on the security or reliability of data on the system or the accessibility of the system, and includes denial of service attacks.
  - ‘**Security Incident**’ means a security breach, violation, contact or approach from those seeking unauthorised access to the Contractor’s information technology systems, including:
    - (i) action taken using computer networks that result in an actual or potentially adverse effect on the Contractor’s information technology system and/or DFAT Confidential Information, DFAT Data or DFAT Material residing on that system; or
    - (ii) any other unauthorised access or use by a third party or misuse, damage or destruction by any person.

#### 16.6 **Storage media**

Contractor Personnel must not import or remove from any DFAT premises any storage media (whether owned by DFAT, Contractor Personnel or any other person) without the express written permission of the DFAT Representative.

#### 16.7 **Security reviews**

The Contractor must participate in security reviews of its procedures at least annually as requested by DFAT and participate in any security audit in relation to this Deed, providing full co-operation to DFAT or its independent auditors, including the Australian National Audit Office.

### 17. **CONFLICT OF INTEREST**

#### 17.1 **Warranty of no conflict of interest**

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

#### 17.2 **Notification of a conflict of interest**

If, during the Deed Period, a conflict of interest arises, or appears likely to arise, the Contractor 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 reasonably requires resolving, or otherwise deal, with the conflict.

### 18. **RESOLUTION OF DISPUTES**

#### 18.1 **Process**

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

- (a) the Party claiming that there is a dispute must give the other a written notice in accordance with **clause 20** (Notices) setting out the nature of the dispute;
- (b) within ten (10) Business Days following receipt of the written notice, attempt to resolve the dispute through direct negotiation between the Contractor Representative and the DFAT Representative;
- (c) if still unresolved, refer the dispute to the Parties’ Escalation Representative as set out in the Details Schedule, who must in good faith work to resolve the dispute within a further ten (10) Business Days or any other agreed period;
- (d) if still unresolved, the Parties have thirty (30) calendar days to reach a resolution or to agree that the dispute is to be submitted to mediation or conciliation rather than litigation or arbitration; and

- (e) if the dispute is not resolved in that time or there is no agreement to, or submission of the dispute to, mediation or conciliation within a further thirty (30) calendar days, then either Party may commence legal proceedings.

#### 18.2 **Contractor's Obligations not Affected**

The Contractor must continue to comply with its obligations under this Deed, notwithstanding that there is a dispute between the Parties, or that other proceedings are pending or current.

#### 18.3 **No limit**

Nothing in this **clause 20** limits, delays or prevents a Party from exercising any right that they have under this Deed.

### 19. **TERMINATION**

#### 19.1 **Termination or Reduction for Convenience**

- (a) DFAT has an unfettered discretion to, by notice to the Contractor in accordance with **clause 20** (Notices), to terminate or reduce the scope of this Deed from the time specified in the notice.
- (b) If DFAT exercises its right in this **clause 19**, the Contractor must:
  - (i) comply with all directions given by DFAT;
  - (ii) cease or reduce (as applicable) the performance of work under this Deed and any Contract, including reducing the number of Scholars under the scholarship attending the Contractor's institution; and
  - (iii) immediately do everything possible to mitigate its losses, and all other loss, costs (including the costs of the Contractor's compliance with any directions) and expenses in connection with the termination (including those arising from affected subcontracts) arising in consequence of termination of this Deed under this **clause 19**.
- (c) If DFAT terminates or reduces the Deed under this **clause 19**, DFAT will only be liable for:
  - (i) Management Fee and Reimbursable Costs, as payable under Schedule 2, for Services performed and Reimbursable Costs incurred prior to the termination, on a pro rata basis; and
  - (ii) Costs that are:
    - a. directly attributable to the termination or reduction in scope of this Deed; and
    - b. in DFAT's opinion, reasonably and properly incurred by the Contractor in connection with this Deed, to the extent that such costs are substantiated to DFAT's satisfaction.
  - (iii) negotiated with the Contractor regarding the ongoing management of Scholars enrolled at the institution operated by the Contractor.
- (d) The Contractor will not be entitled to compensation for loss of prospective profits if the Deed is terminated or reduced for convenience.
- (e) If this Deed is terminated under this clause 19, the Contractor must refund, to DFAT, all monies remaining, including any interest and any other monies for non-completion of the services in the pay period, including but not limited to tuition fees and Overseas Student Health Cover (OSHC) fees. The Contractor must, in each subcontract or other contract for services relating to the Services, reserve a right of termination to take account of DFAT's right of termination under clause 19 and the Contractor must, where appropriate, make use of such rights to mitigate losses in the event of termination by DFAT under the provisions of this clause. The Contractor must otherwise continue to provide the Services to the remainder of the Scholars at the institution operated by the Contractor where there is a part termination for convenience.

#### 19.2 **Termination for Breach or Insolvency**

DFAT may, in addition to any other right or remedy it may have, terminate this Deed by notice to the Contractor in accordance with **clause 20** (Notices), if the Contractor:

- (a) commits a material breach or breach of this Deed which, in DFAT's opinion, is not capable of remedy;



- (b) commits a breach of this Deed capable of being remedied by the Contractor but the Contractor fails to remedy it within ten (10) Business Days of receipt of a notice from DFAT specifying the breach;
- (c) where the Contractor is a company – if there is appointed or if steps are taken to appoint a liquidator, receiver, manager, controller or an administrator over the whole or any part of its affairs;
- (d) where the Contractor has entered into this Deed in the capacity of trustee of a trust – if any event occurs or any action or step is (or is proposed to be) taken, which limits, restricts, or prevents it being indemnified out of the assets of that trust in respect of its obligations and liabilities under this Deed;
- (e) ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Deed (except to the extent that this is outside the Contractor's reasonable control);
- (f) made a statement or warranty in its Tender or failed to make a disclosure in its Tender Declaration leading to this Deed and DFAT is satisfied on reasonable grounds that the statement was materially inaccurate, incorrect or misleading or the failure to make a disclosure would, in DFAT's opinion not have led to the formation of this Deed;
- (g) undergoes a Change in Control of the Contractor's legal entity, which in DFAT's reasonable opinion, may adversely affect the Contractor's ability to perform the Services;
- (h) the Contractor, its personnel and/or its Subcontractors are or become listed on the Criminal Code Act List, the DFAT Consolidated List, a World Bank List or Relevant List or are subject to an informal process that may lead to them becoming so listed
- (i) the Contractor misappropriates the Contribution to Living Expenses which is paid in advance to the Contractor under this Deed or
- (j) does not take appropriate steps to manage SEAH risks and respond to an allegation of sexual exploitation, abuse or harassment with respect to this Deed, including a failure to report to DFAT within 24 hours of any allegation of sexual exploitation, abuse or harassment in accordance with DFAT's Protection from Sexual Exploitation, Abuse and Harassment Policy.

### 19.3 After termination

On termination of this Deed, the Contractor must:

- (a) take all available steps to minimise loss resulting from that termination and to protect DFAT Material;
- (b) deal with DFAT Material as reasonably directed by DFAT; and
- (c) return all DFAT Confidential Information to DFAT.

### 19.4 Termination and treatment of Contracts at DFAT's discretion

Termination or expiration of this Deed will also contemporaneously terminate any Contract formed under this Deed if DFAT elects by notice in writing to the Contractor not to keep the relevant Contract(s) on foot.

### 19.5 Preservation of Rights

The expiration or termination of this Deed will not extinguish or affect:

- (a) any rights of either Party against the other which:
  - (i) accrued prior to the time of the expiration or termination; or
  - (ii) otherwise relates to or may arise at any future time from any breach or non-observance of obligations under this Deed which arose prior to the time of the expiration or termination; or
- (b) any other provisions of this Deed which by their nature survive expiration or termination.

### 19.6 Transition out

On the expiration or termination of this Deed:

- (a) Upon DFAT's request, the Contractor must provide DFAT with all reasonable assistance and information to assist DFAT in transitioning to DFAT's new service arrangements; and
- (b) the Contractor must promptly return all DFAT Material and Deed Material to DFAT, provided that the Contractor may keep a single copy for its records.



**20. NOTICES**

- 20.1 Unless the contrary intention appears, any notice under the Deed (not including Services Order), will be effective if it is in writing and sent from and delivered to the DFAT Representative or the Contractor Representative, as the case may be, in accordance with the recipient's address for notices specified in the Notice Details of the Details Schedule.

A notice given in accordance with this **clause 20** is deemed to be delivered:

- (a) if sent by pre-paid post, in three (3) Business Days when sent within Australia and in eight (8) Business Days when sent by air mail from one country to another;
- (b) if hand delivered, when received at the address, or by the addressee if sooner; or
- (c) if sent as an email, when the email enters the recipient's information system, unless the sender's information system receives a message within one (1) Business Day that the email has not been delivered to the recipient, but if the receipt, transmission or entry into the information system is not on a Business Day or is after 5.00pm (recipient's local time) on a Business Day, the notice is deemed to be delivered at 9.00am (recipient's local time) on the next Business Day.

**21. NOT USED****22. SCHOLARSHIPS MANAGEMENT SYSTEM**

- 22.1 The Scholarships Management System is DFAT's internet based centralised data management system used to administer the Program and Scholars and their scholarships.
- 22.2 DFAT will provide the Contractor's personnel with a Scholarships Management System Operating Guide (as updated by DFAT from time to time) and initial training in the relevant Scholarships Management System. The Contractor's Personnel who require access to the Scholarships Management System, including Student Contact Officers and their backups, are required to complete DFAT's form to request access following training.
- 22.3 Using the Scholarships Management System dictated by DFAT, the Contractor must:
- (a) ensure Scholar records on the Scholarships Management System are kept up-to-date and accurate;
  - (b) lodge variation requests to us on the Scholarships Management System where this Contract or the Handbook specifies DFAT's approval is required, for example, a request for scholarship extension or variation must be lodged via the Scholarships Management System;
  - (c) record on the Scholarships Management System the cost and expenses incurred by the Contractor by or on behalf of a Scholar and keep an up-to-date balance of scholarship funds for each Scholar;
  - (d) keep up to date records of the Scholar's academic progress on the Scholarships Management System, including a record of which subjects a Scholar fails;
  - (e) upload onto the Scholarships Management System any Documentation, record, journal entry, report or Plans in relation to Scholar and the Program;
  - (f) record on the Scholarships Management System any information or notes about a Scholar relevant to their scholarship, visa or the Services, including any grounds for termination of the scholarship or the occurrence of a Welfare Incident or Critical Incident;
  - (g) immediately (and in any event, within 24 hours of the Contractor becoming aware) advise DFAT if there has been an unauthorised access or breach of the Scholarships Management System, and take reasonable steps to mitigate the risk;
  - (h) comply with any other direction from DFAT in relation to the Scholarships Management System or as specified in the Handbook; and
  - (i) immediately notify DFAT when the Contractor's personnel who have access to the Scholarships Management System cease employment with the Contractor or no longer require access to the Scholarships Management System.

**23. MISCELLANEOUS****23.1 Variation**

- (a) The provisions of this Deed may not be varied either at law or in equity, except in writing signed by both DFAT and the Contractor as set out in this **clause 23.1**.
- (b) Either Party may propose a change to the Deed. Any amendment to the Deed must be in the form of a formal Deed of Amendment.

**23.2 Approvals and consents**

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

**23.3 Assignment and novation**

A Party may only assign its rights or novate its rights and obligations under this Deed with the prior written consent of the other Party.

**23.4 Costs**

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

**23.5 Counterparts**

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

**23.6 No merger**

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

**23.7 Entire agreement**

This Deed 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.

**23.8 Further action**

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

**23.9 Severability**

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

**23.10 Waiver**

A waiver of any provision of or right under this Deed:

- (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.

**23.11 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 Deed does not create a relationship of employment, agency or partnership between the Parties.

**23.12 Announcements**

- (a) Subject to **clause 23.12(b)**, the Contractor must, before making a public announcement in connection with this Deed or any transaction contemplated by it, obtain DFAT's written agreement to the announcement, except if required by law or a regulatory body (including a relevant stock exchange).
- (b) If the Contractor is required by law or a regulatory body to make a public announcement in connection with this Deed or any transaction contemplated by this Deed, the Contractor must, to the extent practicable, first consult with and take into account the reasonable requirements of DFAT.

**23.13 Trustee**

The Contractor represents and warrants that if the Contractor is a trustee, it enters this Deed personally and in its capacity as trustee and has the power to perform its obligations under this Deed.

**23.14 Governing law and jurisdiction**

This Deed 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.

**24. Regulatory Framework**

- 24.1 The Contractor must maintain CRICOS registration throughout the Term. Maintaining CRICOS registration is a fundamental requirement of this Deed.
- 24.2 The Parties acknowledge that Scholars are sponsored under a Commonwealth scholarship program and are not overseas students for the purposes of the ESOS Framework.
- 24.3 References to the ESOS Framework or National Code in this Deed are intended to identify the standard of academic, welfare and support services to be provided to Scholars and do not, unless expressly stated, incorporate all obligations applicable to overseas students under the ESOS Framework.
- 24.4 The Contractor remains responsible for compliance with all applicable legislative and regulatory requirements, including those arising from TEQSA registration, course accreditation, the Higher Education Standards Framework and CRICOS registration.

## **SCHEDULE 1 – STATEMENT OF REQUIREMENTS**

This Schedule 1 – Statement of Requirements describes the Services to be provided by the Contractor during the Term. The Contractor must read this Schedule 1 - Statement of Requirements in conjunction with the Australia Awards Scholarships Policy Handbook (the Handbook) as updated from time to time by DFAT.

### **1. Objectives**

- 1.1 As a significant Australian soft power asset, the Australia Awards play a critical role in enhancing Australia's networks and influence in the region. The Australia Awards strengthen people to people links and promote growth and stability in our region. The Australia Awards strives to develop leadership potential and stimulate lasting change by empowering a global network of talented individuals through high quality education experiences. Scholars return home with new ideas and knowledge, a deep connection with Australia and the ability to make a significant contribution to their home countries as leaders in their field.
- 1.2 The Australia Awards use both official development assistance and non-official development assistance funding.
- 1.3 Australia Awards offer:
  - (a) Australia Awards Scholarships support long-term study at Australian tertiary education institutions. The Australia Awards Scholarships are a whole-of-government initiative bringing together Scholarships administered by DFAT and the Australian Centre for International Agricultural Research (ACIAR);
  - (b) Australia Awards Fellowships provide structured, often competitive, opportunities, for individuals to develop advanced expertise through funded research, practice or professional development; and,
  - (c) Short Courses provide targeted, practical training and professional development, strengthening leadership, technical expertise and institutional capacity.
- 1.4 This Deed covers Australia Awards Scholarships only, excluding Australia Awards Pacific Scholarships which are delivered through Pacific institutions.

### **2. Overview of Services**

- 2.1 The Contractor must provide as a minimum, the Services detailed in this Schedule 1 Statement of Requirements, consistent with the Contractor's obligations in the Handbook as updated from time to time.
- 2.2 In providing the Services, the Contractor must provide academic, welfare and support services to scholars that are consistent with the standards expects of a CRICOS-registered provider and as otherwise required by the Deed and the Handbook.
- 2.3 The Australia Awards are delivered in Australia; however, during the Contract Term, DFAT may introduce Scholarships that allow transnational education Scholarships or through a split-site mode whereby the Scholars complete designated study components in both Australia and a DFAT approved offshore location. This is likely to be in limited cases and details will be included in a relevant Quotation and reflected in any Services Order.
- 2.4 Any offshore campuses or overseas delivery locations used for the Scholarships must be approved by the Contractor and operate in accordance with applicable host-country regulations and the Contractor's obligations under the TEQSA Higher Education Standards Framework.

### **3. Management and Governance**

- 3.1 For Australia Awards delivery, collaboration between partners, including government, education institutions and other DFAT appointed contractors, is critical for ensuring the objectives of the program are met. The Contractor acknowledges that its academic infrastructure and expertise, Commonwealth

policy, and third-party support for logistics and administration, are key to enabling DFAT to deliver the Australia Awards. The Contractor will act in good faith to collaborate with any third parties as required to support the successful delivery of the Services and the objectives of the Australia Awards.

- 3.2 DFAT may convene regular forums with other education institutions and related providers of the Australia Awards to facilitate the sharing of information for continuous improvement. Such information may include but is not limited to training on information management systems, policy updates, monitoring and evaluation exchanges and Handbook updates. The Contractor agrees to allocate resources to participate in such forums and to share relevant information.
- 3.3 The Contractor is responsible for the early identification of problems arising with Scholars in relation to the Program which may adversely affect their capacity to complete their course within the time agreed with DFAT; and early intervention and management of the identified problems to ensure Scholars have the best possible chance to successfully complete their studies in a timely manner. The Contractor will manage such issues in accordance with the requirements and time periods set out in this Deed and the Handbook.
- 3.4 The Contractor is also required to provide ancillary or ad hoc services, as reasonably requested by DFAT from time to time and provide information to DFAT about Scholars on request as permitted by law.

#### **4. Interactions with DFAT Responsible Officers**

##### **DFAT, Canberra**

- 4.1 DFAT (the International Education and Scholarships Branch, Canberra) is responsible for the policy development and administration of the Program and/or any future scholarship initiatives and successor programs including but not limited to: maintaining the Handbook, any Global Australia Awards Scholarship Framework and related frameworks including in relation to monitoring and evaluation of such programs; management of, and training on, the Scholarships Management System; contract management of, and relationships with, educational institutions; and the monitoring and evaluation of the Contractor's performance in relation to the provision of Services under this Contract. DFAT (Canberra) is the single source of advice and guidance on Australia Awards policy.

##### **DFAT Program Areas and/or its managing contractor**

- 4.2 DFAT Program Areas, which are comprised of Canberra-based or overseas-based Australian Government officials, diplomats or local staff engaged by Australia's overseas missions representing DFAT, will manage any consultations with the Partner Country concerning the Australia Awards and identify any country-specific development themes for learning objectives for each Scholarship round. The Program Areas, and/or DFAT's appointed managing contractors, will manage their respective Scholar selection processes, individual scholar agreements and approval. The Program Areas and/or their managing contractor are responsible for delivering the pre-departure arrangements for Scholars, travel arrangements to Australia for Scholars on commencement of their Scholarship and entering Scholars' details into the Scholarship Management System. The Program Area is also responsible for approving all payments to institutions under a Contract, including the Contractor, and approving any variations to a Scholar's placement or Scholarship agreement. Contact details for Program Areas can be provided to the Contractor by email, on request, from [support@australiaawards.org](mailto:support@australiaawards.org).
- 4.3 The responsibilities detailed in 4.1 and 4.2 may be subject to change with DFAT notification provided to the Contractor.

##### **Contractor's principal contacts**

- 4.4 In line with the requirements of the National Code, the Contractor's appointed Student Contact Officer will be the contact point for the Scholars for support services as outlined in the ESOS Framework. The Student

Contact Officer will also share information with scholars from DFAT, including but not limited to scholarship policy updates, local events and professional development opportunities.

- 4.5 The Contractor will also provide by notice in writing to DFAT, a Contractor Representative whose role is to act as the prime contact for liaison between the Contractor and DFAT on matters not directly related to Scholars. The initial Contractor Representative is listed in the Details Schedule.

#### **Management principles**

- 4.6 Notwithstanding any rights DFAT has under this Deed, or the Contract, the Contractor has the authority to make decisions on Scholar management without reference to DFAT unless this is required by the terms of this Deed, the Contract or the Handbook.
- 4.7 DFAT will monitor the Contractor's overall performance in meeting its obligations under the Contract, but reserves the right to direct the Contractor on matters relating to an individual Scholar if:
- (a) the terms of the Contract, Handbook or relevant DFAT policies, such as on child protection, provide that DFAT may do so;
  - (b) there is a financial implication adverse to DFAT arising from the management decision taken by the Contractor in relation to a Scholar; or
  - (c) the Contractor fails to meet its contractual obligations in respect of the Scholar.

### **5. General Management Requirements**

#### **Records and Information Management**

- 5.1 The Scholarships Management System supports the formation of a Contract through the Request for Quotation (RFQ), Quotation and acceptance and stores information necessary for the administration of Australia Awards Scholarships. This includes, but is not limited to:
- (a) applicant and Scholar personal details;
  - (b) academic history and course information;
  - (c) placement and enrolment data;
  - (d) Scholarship entitlements and financial records;
  - (e) travel arrangements;
  - (f) academic progress and completion results; and
  - (g) records of variations, communications, and supporting documentation.
- 5.2 The Scholarships Management System also maintains [a record of all Quotations approved by DFAT which cannot be edited by either Party], audit trails, status histories, and the Contractor's actions undertaken in relation to Scholarship management.
- 5.3 The Contractor will maintain accurate and complete Scholar records in DFAT's Scholarships Management System and make updates in a timely manner appropriate to the nature of the information, including but not limited to: course costs, entitlements, SAS approvals and expenditure, fieldwork details and costs, reunion and completion travel, Disability Support Agreement variations, academic progress and action plans, and journal notes of Welfare and Critical Incidents.
- 5.4 Access to DFAT's Scholarships Management System is restricted to DFAT authorised users. The Contractor must ensure that each nominated user completes all DFAT access request documentation and is approved by DFAT prior to being granted user credentials. User credentials must not be shared, and the Contractor is responsible for ensuring that access is limited to personnel who require it for the performance of their

duties. DFAT's Scholarship Management System is for authorised use only, and any unauthorised access or activity may result in suspension or deactivation of the Contractor's access while an investigation is conducted and may be reactivated at DFAT's sole discretion. The Contractor must also ensure appropriate internal controls are in place to safeguard system access and maintain the integrity of data entered into the Scholarship Management System.

- 5.5 DFAT will provide training to Contractor personnel on the Scholarships Management System intermittently, and user manuals and quick reference guides are available to users.

#### **Risk Management**

- 5.6 The Contractor will maintain a risk management plan and risk register(s) relating to the Services. The plan and register(s) will be provided to DFAT within 10 Business Days of being requested by DFAT. The Contractor is responsible for managing those risks which are the Contractor's responsibility under this Contract and carry out the Services in accordance with the Contractor's risk management plan.

#### **Fraud Management**

- 5.7 In addition to obligation in Clause 25 of Schedule 9, the Contractor will investigate Fraud involving any DFAT funds provided by the Contractor to the Scholar.
- 5.8 The Contractor will prepare a Fraud risk assessment and Fraud control plan and will provide them to DFAT within 10 Business Days of being requested by DFAT with this request not being more than twice per year.

#### **Duty of Care and Scholar Welfare**

- 5.9 The Contractor shall exercise a duty of care towards Scholars and shall comply with the Handbook, the ESOS Framework and associated instruments.
- 5.10 The Contractor must take all reasonable steps to ensure a safe, supportive, and inclusive learning and living environment for Scholars, including access to appropriate academic, health, mental health, disability, and pastoral support services consistent with good practice in the tertiary education sector.
- 5.11 The Contractor must have adequate procedures and resources in place to identify, respond to, and manage risks to the health, safety, and wellbeing of Scholars in a timely way, including but not limited to:
- (a) Critical Incidents;
  - (b) Welfare Incidents
  - (c) serious illness or injury;
  - (d) mental health crises;
  - (e) harassment, sexual exploitation, abuse, or violence; and
  - (f) discrimination or bullying.
- 5.12 The Contractor may seek views from DFAT on how to apply DFAT policy, or plans not covered by DFAT policy, but this does not discharge the Contractor's responsibilities under this Deed in relation to its investigative functions or any of its responsibilities under the ESOS Framework.
- 5.13 The Contractor must cooperate with DFAT, and any authorised third parties, as it manages, investigates, and resolves of such incidents, subject to applicable privacy and confidentiality requirements. DFAT's role does not extend to the day-to-day provision of education, student services, or campus-based welfare, which remain the responsibility of the Contractor in accordance with applicable law.
- 5.14 The Contractor must comply with all DFAT safeguarding policies as outlined in Schedule 8, including requirements relating to child protection, Fraud, prevention of sexual exploitation, abuse and harassment, and protection of vulnerable persons, as notified from time to time.

- 5.15 The Contractor must ensure that relevant staff are aware of, and appropriately trained in, their obligations relating to safeguarding, student welfare, and incident reporting.
- 5.16 Subject to applicable privacy laws, the Contractor may disclose information relating to a Scholar to DFAT or its Managing Contractor where reasonably necessary to:
- (a) protect the Scholar's health, safety, or wellbeing;
  - (b) manage risk or respond to a Critical or Welfare Incident; or
  - (c) support compliance with Scholarship conditions.
- 5.17 Nothing in this Deed limits or removes DFAT's overall responsibility for the Program, nor does it transfer DFAT's obligations to the Contractor beyond those expressly set out in this Deed. DFAT acknowledges the expertise and autonomy of the Contractor in managing student welfare matters under the ESOS Framework and in compliance with the Handbook. The Contractor must have regard to any reasonable safeguarding concerns raised by DFAT.
- 5.18 DFAT retains sole responsibility for decisions relating to:
- (a) the administration of Scholarship funding;
  - (b) Scholarship conditions and entitlements, including variations, suspensions, or terminations;
  - (c) Program-level responses to safeguarding risks; and
  - (d) reporting and accountability obligations to the Australian Government.
- 5.19 DFAT decisions will be informed by information provided by the Contractor but will not direct or interfere with the Contractor's internal student management, disciplinary, or investigative processes.
- 5.20 Specific scenarios - the below is not exhaustive and a general outline only.
- (a) Conflict, harassment and bullying: the Contractor will take necessary actions to ensure safety and wellbeing of Scholars; facilitate support including counselling and manage as per the Contractor's policies.
  - (b) Foreign interference: the Contractor will report perceived or actual foreign interference in relation to a Scholar to DFAT.
  - (c) Health issues and hospitalisations: the Contractor will monitor the Scholar's wellbeing and any academic impact, encourage the scholar to seek appropriate medical treatment and use their OSHC, refer the Scholar to appropriate services, consider flexible academic solutions, maintain contact with the scholar and hospital staff where appropriate, including on hospital / facility discharge plans and support. For prolonged and severe illness, the Contractor may work with DFAT on medical evacuation, early return home or suspension and termination. Where hospitalisation extends to six or more weeks, CLE will cease and the medical evacuation, early return home or suspension or termination process may be actioned in consultation with DFAT.
  - (d) Pregnancy: the Contractor will ensure that the relevant Scholar has access to information about relevant medical and counselling facilities; may approve reunion airfare entitlement for suspension and return home to give birth, and, sighting a medical certificate before approval.
  - (e) Victim of crime overseas: upon return to Australia, the Contractor will meet with the Scholar to determine access to counselling services.
  - (f) Scholars who are victims of, or charged with, a crime in Australia: the Contractor will take necessary action to confirm wellbeing and whereabouts of the relevant Scholar; ensure information on medical, counselling and legal representation is provided and that the Scholar understands that



DFAT does not fund legal assistance; facilitate support as required; and manage ongoing procedures (as per the Handbook), keeping DFAT informed of court dates and outcomes.

- (g) Death of a Scholar: the Contractor will liaise with relevant stakeholders, including appropriate authorities, DFAT and accompanying family members or next of kin, provide pastoral support for family and classmates / friends, and, support repatriation or funeral arrangements consistent with cultural traditions and consular services, manage DFAT funds for approved costs, and take necessary steps to manage the Scholar's possessions in Australia through appropriate authorities.
- (h) Death of a Scholar's Family Member: the Contractor will facilitate counselling and welfare support, flexibility for academic solutions in any academic impact and may approve reunion airfare entitlement for funeral attendance (where eligible).
- (i) Natural disasters in Australia: the Contractor will notify DFAT, including if it reasonably suspects Scholars are affected, prioritise the safety and wellbeing of relevant Scholars (by arranging safe accommodation, access to emergency relief and counselling), prioritise safety and wellbeing; prepare a group Critical Incident report (numbers affected, status, anticipated disruption, pre-emptive measures), continue monitoring and reporting to DFAT.
- (j) Natural disasters overseas/home country: the Contractor will notify DFAT, including if it reasonably suspects Scholars are affected, or conducting field work in the affected area, and continue monitoring and reporting as needed; where Scholars are affected or conducting fieldwork in affected areas; prioritise safety and wellbeing; facilitate counselling and discuss options such as altered study plans, tutoring or short-term suspensions. If a Scholar is due to return to their home country within 14 days of a natural disaster in that country, the Contractor will consult the Program Area on safety for return.

## **6. Services**

6.1 For additional academic and welfare services for bespoke arrangements such as split-site Scholarships, transnational education Scholarships, co-contribution Scholarships, the Services and basis of payments will be agreed in a Services Order.

6.2 Administration of placement requests:

- (a) The Contractor will respond to completed placement requests it receives in DFAT's Scholarships Management System within 15 Business Days for coursework studies and within 30 Business Days for research studies. This placement request forms the RFQ as specified in Clause 5.2 of the Agreed Terms of this Deed. The Contractor will assess the Scholar(s) against its admission requirements and capability to complete the program applied for. The Contractor will respond via DFAT's Scholarship Management System by either declining to offer a place (stating reasons), offering a place conditionally, or offering a place unconditionally. The Contractor's placement offer constitutes a Quote as per Clause 5.2 of the Agreed Terms of this Deed.
- (b) The Contractor's placement offers will contain details of the following for each Scholar:
  - (i) the Introductory Academic Program (IAP)
  - (ii) the Scholar's nominated course (reflecting any credit/RPL and adjusted course length, fees and entitlements);
  - (iii) details of any required preparatory programs;
  - (iv) details of other compulsory course elements (e.g. fieldwork, fieldtrips, work attachments, first aid, occupational health and safety);
  - (v) course costs and scholarship entitlements (refer Schedule 2);
  - (vi) conditions of offer; and

- (vii) any additional information requested in DFAT's Student Management System or relevant to non-standard delivery modes.
  - (c) If the Contractor requires further information from the Program Area to process a placement, the Contractor will request it as soon as possible to meet the timeframe in paragraph 6.2(a). If the Contractor does not respond to a completed request within the timeframe, DFAT may withdraw the placement at its discretion.
- 6.3 English language and PCE
- (a) Before making a placement offer, the Contractor will consider the English language training that a Scholar may require.
  - (b) The Contractor will only offer in-Australia PCE if the Scholar is within 0.5 IELTS, 10 TOEFL points or 7 PTE Academic points of the Contractor's minimum English language requirement and will not accept a Scholar who is unlikely to reach the standard within six months of PCE training.
- 6.4 Preparation programs
- (a) Upon receiving a placement request, the Contractor will assess whether the Scholar requires a preparation program to complete within timeframes specified by CRICOS, and will include such programs in the initial placement offer.
  - (b) Preparatory programs may run for up to 12 months and the total program (preparatory plus main course) must not extend the Scholarship by more than 12 months beyond the main course.
  - (c) If a shorter preparation period is later assessed as adequate, the Contractor will reduce the overall award length of the relevant preparatory program in DFAT's Scholarships Management System through a variation.
  - (d) DFAT will accept, deny or return for revision the Contractor's placement offers in the Scholarships Management System. On acceptance by DFAT, which will be confirmed in the Scholarships Management System, the Contractor will provide the following Services.
- 6.5 Institution information kit
- (a) The Contractor will provide an institution information kit directly to Scholars at the earliest possible time and no later than 14 days before departure of the Scholar from their home country, incorporating information ordinarily provided by CRICOS-registered providers to commencing international students, including local information relating to arrival arrangements, climate, accommodation options, living costs, course requirements, disability and wellbeing support services, childcare and schooling options, and public transport.
- 6.6 Enrolment, IAP and Ongoing Academic Support
- (a) The Contractor will deliver the IAP and, where appropriate, PCE and supplementary academic support, and will provide general support services consistent with the standards expects of a CRICOS-registered provider.
  - (b) The Contractor's IAP is mandatory for Australia Awards Scholars. The Contractor's IAP will:
    - (i) assist Scholars to make the transition from their home country to Australia and prepare them to undertake tertiary education in the Australian setting;
    - (ii) assist Scholars to understand the Australian education system; and
    - (iii) consolidate the Scholar's language proficiency, sharpen their academic skills and allow Scholars to gain an understanding of academic culture.
  - (c) Where the Contractor has enough Scholars to justify an IAP for Australia Awards Scholars only, this will be delivered. If the Contractor does not have sufficient numbers for a Scholar only IAP, the

Contractor will provide a shorter Australia Awards specific introductory program for Scholars, after which the Scholars join the broader orientation and enrolment program for all international students or Scholars may join with other institutions in the same geographic location to deliver a joint Australia Awards IAP.

- (d) The Contractor's IAP will cover the following topics. This list is not exhaustive, and the Contractor will incorporate other activities as relevant:
- (i) an introduction to living in Australia, including an introduction to First Nations issues, history and local culture. The Contractor is expected to make its best efforts to arrange a Welcome to Country during the IAP, recognising that the decision and availability ultimately rests with local Traditional Owners. In instances where organising a Welcome to Country is not possible, the Contractor will ensure that a meaningful Acknowledgement of Country is conducted.
  - (ii) introduction to student support staff and services including counselling, student loans, student ID cards, student union, postgraduate student associations;
  - (iii) overview of the Student Contract Officer role and engagement with DFAT;
  - (iv) familiarisation with the local environment including campus tour, services and facilities, library and IT services, local shops, local do's and don'ts, recycling and waste disposal, sporting and interest groups, transport;
  - (v) living in Australia - opening bank accounts, applying for a tax file number, where to find embassies/consulates, government and interaction with local agencies, such as police, visa issues;
  - (vi) networking sessions to meet domestic students, any New Colombo Plan alumni within the Contractor's network and other students;
  - (vii) the Contractor's requirements for academic success and good academic conduct.
  - (viii) accommodation – where to find it, legal process/lease negotiation, arranging connection of services, obtaining furniture and household goods;
  - (ix) understanding the Australia Awards allowances and budgeting guidance;
  - (x) health and safety including understanding overseas student health cover, medical welfare and health services in Australia, personal security, sexual well-being, water safety and what to do in an emergency; and
  - (xi) discussions on family entry, childcare and schooling.

#### 6.7 Academic program management and progress monitoring

- (a) The Contractor will manage teaching standards and educational resources consistent with the standards expected of a CRICOS registered provider and will ensure that these comply with the ESOS requirements and will ensure Scholars follow an enrolment pattern enabling completion within expected duration.
- (b) The Contractor will assist Scholars in selecting subjects which meet the requirements of the placement offer and the Scholars' learning objectives.
- (c) The Contractor will monitor academic progress at the end of each semester or session if not more regularly, maintain an up-to-date record for each Scholar in DFAT's Scholarships Management System, and implement strategies to address unsatisfactory progress, including action plans signed by the Scholar and the Contractor. Strategies may include supplementary academic support, enrolment in non-standard sessions, adjusted study load, cross-institution enrolment to repeat/replace failed subjects, or course downgrade.

#### 6.8 Supplementary Academic Support (SAS)

- (a) A SAS entitlement may be used to fund assistance to the Scholar that is reasonably required in line with the Contractor's academic requirements and is not available to the Scholar at no cost through the Contractor's existing academic support mechanisms.
- (b) A SAS entitlement may be used for the following (each of which must be directly related to the relevant Scholar's principal course of study):
  - (i) tutoring and other academic support in respect of the Scholar's principal course of study;
  - (ii) attendance at academic training, workshops, or conferences (attendance fees only) that are held in Australia; or
  - (iii) costs for practical components of courses such as vaccinations, police checks; and
  - (iv) editing theses, printing and binding costs.
- (c) A SAS entitlement must not be used for:
  - (i) attending conferences outside Australia;
  - (ii) airfares to attend training, workshops or conferences at any location;
  - (iii) research or field work expenses;
  - (iv) purchasing IT hardware, specialised software or textbooks
  - (v) expenses relating to reasonable adjustments and accommodations for Scholars with disability; or
  - (vi) professional memberships or accreditations.
- (d) The Contractor will either pay SAS entitlements directly to providers or reimburse Scholars upon presentation of original receipts. SAS entitlements accrue every six months at the amount specified in the Handbook. The accrued SAS entitlement may be expensed at any time during the Scholarship. SAS entitlements cannot be expensed in advance of being accrued.
- (e) The Contractor will maintain records of SAS approvals and expenditure in DFAT's Scholarships Management System and acknowledges DFAT may audit these records at any time.

#### 6.9 Cultural awareness and sensitivity

- (a) Cultural awareness and sensitivity should be promoted in both academic tuition and institutional support services. Where necessary, training will be made available by the Contractor for its personnel. Contractor personnel responsible for Scholar support and academic staff must be aware of cultural differences in educational training and the difficulties Scholars may face living in a new environment. The Contractor is expected to be able to respond to specific academic and welfare difficulties and identify potential issues arising from cultural differences.
- (b) The Contractor will create opportunities for Scholars to connect with the Australian community. This may include promoting social groups, events, cultural immersion experiences social groups and activities, engagement on First Nations issues, connecting Australia Awards Scholars with New Colombo Plan participants and alumni (if the Contractor is a New Colombo Plan partner), and teaching/leading language learning/conversational classes with Australians.

#### 6.10 Disability Inclusion and Reasonable Accommodations (Non-Academic Support)

- (a) DFAT, in collaboration with the Contractor and Scholars with disability, will determine and fund appropriate reasonable accommodations of a non-academic and non-medical nature to support inclusive participation in the Scholarship, in accordance with Australian legislation and principles of equal access.
- (b) The Contractor will:

- (i) work with DFAT's Disability Adviser to support the development and implementation of DFAT-approved DSAs and Disability Support Person Agreements (DSPAs), ensuring appropriate non-academic and non-medical reasonable accommodations are identified and put in place as soon as practicable, including prior to, or upon, the Scholar's arrival. This may include, but is not limited to:
  - a. identify and administer approved accommodation and rental assistance where accessible options are limited or incur higher costs, including for Disability Support Persons where applicable;
  - b. administer and approve transport assistance where public transport is limited and to promote and enable independent living;
  - c. support approved early mobilisation arrangements to facilitate participation in non-academic activities, including training in disability management skills and use of disability-specific technology and assistive devices;
  - d. administer funding and organise the purchase and provisions for assistive technology, assistive devices and mobility equipment in accordance with DFAT-approved DSA provisions and in accordance with relevant allied health assessments;
  - e. record any variations for Scholars with DSAs and Disability Support Persons with a DSPA, in DFAT's Student Scholarships Management System;
  - f. refer Scholars with disability to the Contractor's disability and inclusion services during the first week of the IAP (or earlier where mobilisation occurs prior to IAP) and maintain regular contact with the Scholar; and
  - g. manage associated financial arrangements in accordance with DSA and DSPAs and any approved variations ensuring that funding is applied only to DFAT approved items and within limits.

#### 6.11 Disability Inclusion and Reasonable Adjustments (Academic Support)

- (a) The Contractor will provide Scholars with reasonable adjustments to support their academic endeavours. The Contractor will consult with Scholars about support and access needs to determine appropriate reasonable adjustments for academic support, funded through the Contractor's own standard disability support mechanisms. Typical examples include access to and training in assistive technology; access to lecture summaries and materials; additional clarification of course materials; advice about where to sit in lecture theatres and classrooms; inclusive teaching strategies; communication through the Scholar's preferred method; additional assistance or extra time for assessments where necessary; alternative exam and assessment formats; accessible parking; disability advocacy and support; and provision of tutors and note-takers for disability support.
- (b) The Contractor will, where required for high-level disability support, facilitate a reduced study load in the first semester. Any extension beyond the first semester will require approval from the relevant Program Area. The Contractor may also recommend deferral where necessary to implement reasonable adjustments or where the Scholar cannot commence on time and if approved by the Program Area.

#### 6.12 Visas and Compliance

- (a) While Scholars are responsible for visa applications (including costs for dependants), the Contractor will provide documentation to assist with visas applications, including for Scholars' accompanying family, such as letters confirming enrolment.

- (b) The Contractor will notify DFAT within three Business Days if it becomes aware of a Scholar not upholding their visa obligations or intending to apply for, or has applied for, a subsequent visa, including evidence of the visa type and application date where applicable.
- (c) Where DFAT authorises a variation that extends the Scholarship beyond the Scholar's initial visa expiry date, the Contractor will request a letter from the Program Area which indicates that there is no objection from DFAT to the Scholar's visa application, and will ensure passport details of Scholars and dependants are up to date in DFAT's Scholarships Management System to enable issuance of a correct letter.
- (d) The Contractor will not offer a non-Australia Awards course enrolment after the end of the Scholarship, including a scholarship, or employment to a Scholar where the Contractor knows, or having used its best endeavours ought to reasonably know, that the Scholar has not completed their two-year Exclusion Period.

6.13 Establishment Allowance and CLE

- (a) The Contractor will pay the full Establishment Allowance into the Scholar's nominated Australian bank account as soon as possible on arrival, and within at least three working days of arrival. Suitable alternate payment method may be used if the Scholar's nominated Australian bank account is delayed. The Contractor will assist Scholars to open a bank account.
- (b) The Contractor will pay CLE every two weeks in arrears into the Scholar's Australian bank account. CLE will cease five days after the Scholarship End Date.

6.14 Overseas Student Health Cover (OSHC)

- (a) The Contractor will arrange and pay OSHC for Scholars and Disability Support Persons for the duration of their stay; ensure Scholars receive policy/product disclosure details; and maintain cover for the length of the Scholarship. The Contractor will not provide OSHC for accompanying family members / dependents.
- (b) The Contractor will request the OSHC provider to refund remaining premiums when a Scholar completes early and will remit any refunded OSHC costs to DFAT. Scholars are not permitted to claim the refund.
- (c) For accompanied Scholars, the Contractor will arrange OSHC in accordance with clause 6.4(a). Where the Scholar purchases family cover from another provider, the Contractor will still purchase single OSHC for the Scholar and any Disability Support Persons from the preferred provider for the period of the Scholarship.
- (d) During suspensions, if the Scholar leaves Australia, the Contractor will suspend OSHC for the suspension period and reactivate if the Scholar returns to their Scholarship in Australia.

6.15 Reunion airfares, fieldwork and fieldtrips

- (a) The Contractor will organise Fieldwork travel essential to the Program and, where approved by DFAT, arrange reunion fares for dependants - one return economy airfare for a Scholar studying a master's degree and up to three return economy airfares for a Scholar studying a PhD. Details and actual costs will be recorded in DFAT's Scholarships Management System by the Contractor once booked. DFAT approval is required for third-country Fieldwork proposed to be undertaken by a Scholar.
- (b) For fieldtrips required by the relevant Scholar's course, the Contractor will record travel costs as part of academic fees at placement stage. If a fieldtrip is approved outside Australia or the home region of the Scholar, DFAT will contribute up to the maximum amount specified in the Handbook toward travel costs only.

- (c) Travel will be based on the best fare of the day.
- 6.16 Accommodation
  - (a) The Contractor will arrange to meet new Scholars on arrival in Australia and transport them to their initial accommodation.
  - (b) The Contractor will arrange accommodation on arrival for new Scholars for seven days, unless the Scholar advises in writing that no accommodation [or a shorter period of accommodation] is required. Initial accommodation will be moderately priced having regard to the prevailing market, clean and secure, furnished with heating or cooling as necessary, and have access to cooking facilities or appropriate food outlets. The costs of this accommodation on arrival will be deducted from the Scholar's Establishment Allowance. If the Scholar fails to cancel accommodation within the timeframe specified by the Contractor that allows a refund, the Scholar will be liable for the costs which the Contractor must inform the Scholar of.
  - (c) The Contractor will advise on long-term accommodation options, including residential colleges/international houses/hostels and private options, with information on accessibility, tenancy requirements/protections, utilities and typical costs. The Contractor may offer to assist with arranging initial accommodation for family members where the Scholar is accompanied (at the Scholar's expense).
- 6.17 Work Attachments / Work Experience
  - (a) The Contractor will include the requirement for any work attachment in the placement offer in DFAT's Scholarship Management System and will obtain necessary approvals for participation. CLE will continue during work attachments irrespective of any payment from the host organisation. Work attachments must be within the Scholarship period.
- 6.18 Variations – general
  - (a) The Contractor will seek timely approval from Program Areas for all variations to a Scholarship (except terminations, which are approved by DFAT Canberra) and will lodge requests for variation as early as practical in DFAT's Scholarship Management System, and at least six weeks before the Scholarship End Date where the Scholar is in the last semester of their course. Variations lodged less than four weeks before payment batch processing dates may not be approved in time for that cycle.
  - (b) The Contractor must ensure that any variation request submitted to DFAT:
    - (i) is supported by a clear, well-documented and evidence-based justification;
    - (ii) demonstrates value for money; and
    - (iii) has been critically assessed by the Contractor as necessary and appropriate.
  - (c) Where a variation of a Scholarship relates to academic progress or academic failure, the Contractor will first assess the circumstances of the Scholar in accordance with this Deed and the Handbook and record in DFAT's Scholarships Management System: nature and extent of academic difficulties; reasons for academic performance; actions proposed or taken by the Scholar and the Contractor; the likelihood of successful completion; and any available options to support successful completion, including course downgrade.
- 6.19 Withdrawals
  - (a) The Contractor will notify Program Areas and obtain approval to process withdrawals for Scholars in Australia who wish to withdraw from their Scholarship.
- 6.20 Extensions

- (a) The Contractor will consider all possible options to avoid the need for an extension of a Scholarship such as suspension; SAS; non-standard sessions to repeat subjects; cross-institution enrolment; course downgrade; overloading where capable; completion from home without further DFAT funding; or termination after repeated failure.
- (b) Where an extension of a Scholarship is recommended, the Contractor will ensure appropriate support, monitoring and counselling strategies are in place to enable completion within the revised duration, and will submit a study plan signed by the Scholar and the Contractor (for research awards, include a supervisor letter and detailed submission timeline). The Contractor will maintain records of extension requests, approvals and rejections in DFAT's Scholarship Management System.
- (c) If institutional failures contributed to the need for extension (e.g., inadequate monitoring or supervision), the Contractor acknowledges it may be required to fund part or all course-related expenses of extending the Scholarship.

#### 6.21 Suspensions

- (a) The Contractor will assess Scholarship suspension requests having regard to remaining duration and impact on completion, and lodge requests as early as possible to DFAT with revised completion dates and additional costs, including cost of return airfares in the absence of a reunion entitlement.
- (b) The Contractor will organise travel for a Scholar to the airport closest to the Scholar's home and will invoice DFAT for the cost.
- (c) Where suspension of a Scholarship is due to illness or accident, the Contractor will advise the Scholar of the health assessment requirements necessary to confirm their capacity to resume studies. The Scholar is responsible for obtaining, at their own cost, an assessment from a suitably qualified and independent health professional and providing this assessment to the Contractor. The Contractor will review the assessment to confirm the Scholar's fitness to return. DFAT must approve also approve the Scholar's return before travel arrangements are made. Where applicable, will assist the Scholar to obtain a new Student visa (subclass 500).

#### 6.22 Course and institution transfers

- (a) The Contractor must obtain approval from the Program Area before a Scholar transfers to another course or Institution. The Contractor must provide strong justification for any proposed transfer. Any transfer will be assessed in accordance with this Deed and the Handbook and must not result in an extension to the Scholarship. For a transfer to another course at the same Institution (at the same or lower level), the Contractor must record the approved transfer in DFAT's Scholarships Management System. For a transfer to another institution, the receiving institution must be approved by DFAT and be authorised to deliver Services under the Australia Awards Scholarships Program. Where the receiving course has a shorter duration than the original course, the Contractor must reduce the Scholarship duration in DFAT's Scholarship Management System and advise the Scholar accordingly.

#### 6.23 Reductions and entitlement variations

- (a) Where reductions are required, the Contractor will advise DFAT of the revised end date via DFAT's Scholarship Management System
- (b) The Contractor will raise entitlement variations for a Scholar as soon as possible. For PhD, Masters by research or coursework with mandatory Fieldwork, an updated study plan with timeframes will be included demonstrating likely completion within the revised period.

#### 6.24 Terminations



- (a) The Contractor will advise DFAT via DFAT's Scholarship Management System within 24 hours of becoming aware of circumstances that may be grounds for termination, and, for academic failure, will request termination at least one month prior to census where possible.
  - (b) If DFAT decides not to terminate, the Contractor will liaise on any conditions to continue; if DFAT terminates, the Contractor will assist the Scholar to return home within 14 days of their termination letter and will cease CLE five days after the termination date in the final termination letter.
- 6.25 Welfare Incidents – general responsibilities
  - (a) The Contractor will notify DFAT of Welfare Incidents as per processes and timelines prescribed in this Contract and the Handbook. Student Contact Officers will be the primary contacts, unless escalated with the Contractor. The Contractor will record clear, factual journal notes in DFAT's Scholarship Management System that respect privacy requirements under the *Privacy Act 1988* (Cth) and will continue to monitor and report regularly to DFAT.
  - (b) The Contractor will intervene early where needed to manage study load during difficult periods (e.g., altered study plans, tutoring or short-term suspensions).
- 6.26 Critical Incidents – notification and reporting
  - (a) The Contractor will notify DFAT immediately (or in any event within 24 hours) of being aware of a Critical Incident being identified, including out-of-hours, by email (or by phone during business hours) as per the contacts in the Handbook, providing who/what/where/when, the Scholar's current situation, support provided, accompaniment status and known next steps. The Contractor's notification will not be delayed pending full details.
  - (b) Within 24 hours after notifying DFAT, the Contractor will create a journal note in DFAT's Scholarships Management System recording the time DFAT was notified, and will maintain a Critical Incident report updated until closure of the incident, prepare to provide it to DFAT at short notice and resubmitting after each update; the final version will be submitted upon closure and a copy retained on file.
  - (a) The Contractor will manage any wider community impacts, including social media, with an appropriate communication strategy.
- 6.27 Completion of studies and departure
  - (a) The Contractor will ensure Scholars arrange to leave Australia within 30 days of their Scholarship End Date, or within 14 days of a termination or withdrawal, or by their visa expiry date, whichever occurs first. The Contractor will advise DFAT of departure dates for Scholars. CLE will be ceased within DFAT-specified timeframes.
  - (b) The Contractor will book completion travel for all Scholars based on the most direct route and best fare of the day. Where a Scholar fails to arrange travel to leave within 30 days of the end date or 14 days from a termination or withdrawal, or fails to board their scheduled flight, the Contractor will notify DFAT. If the Scholar does not have a legitimate and justifiable reason for failure to board a flight and the travel costs are non-refundable, the Contractor will make every reasonable effort to recover this cost from the Scholar.
  - (a) For Scholars leaving Australia before results are released, the Contractor will obtain supervisor assurance that satisfactory results are likely.
  - (c) Where Scholars are unable to attend their graduation ceremony due to return travel, the Contractor will provide a suitable ceremony for Scholars in lieu of a graduation ceremony (such as a scholarship completion award, farewell event or similar).
- 6.28 Return-home briefing and reintegration

- (a) The Contractor will arrange a return-home briefing in the Scholar's final study period, ensure Scholars are aware of their obligations to return home and their allowances ending, provide reintegration advice and encourage Scholars to revisit reintegration plans, encourage Scholars to maintain networks established during their Scholarship and invite DFAT representatives to completion events where appropriate.

6.29 Financial Completion of Scholarship

- (a) For the purposes of this clause, financial completion does not require confirmation of the Scholar's physical departure from Australia. Within 14 days of the Scholarship End Date, the Contractor must:
  - (i) adjust all relevant scholarship entitlements;
  - (ii) record all known and committed costs associated with the Scholarship, including completion travel; and
  - (iii) update DFAT's Scholarships Management System to reflect the Scholar's financial completion status.

6.30 Finalisation of Scholarship Record

- (a) Within 40 days of the Scholarship End Date or the Scholar's departure from Australia (whichever occurs first), the Contractor will finalise the Scholar's record in DFAT's Scholarships Management System, including:
  - (i) academic completion details. For PhD or master's by research, Scholars who return home before thesis submission, the record will be marked as finalised pending results;
  - (ii) final financial acquittal of all scholarship costs;
  - (iii) confirmed travel details; and
  - (iv) home country contact information.

6.31 Alumni engagement

- (a) The Contractor will encourage Scholars to stay connected with supervisors and peers, join the Contractor's alumni network, and join local Australia Awards alumni associations upon return to their home country.

**7. Key Performance Measures (KPM)**

7.1 To measure the effectiveness and efficiency of the Contract and Program, the following performance framework will be used which incorporates a series of performance indicators and a benchmarking process to assess:

- (a) the performance of the Contractor;
- (b) the performance of DFAT, and
- (c) the development impact of the Program.

7.2 DFAT will monitor performance of the Contractor in the following areas:

- (a) Scholar Experience and Support: Assessing the quality of the Scholar experience, satisfaction with the Contractor's support services and arrival and transition support. Primarily measured by DFAT via annual and ongoing Scholar surveys.
- (b) Scholar Success: Assessing the Contractor's systems and interventions that contribute to scholar progression and successful completion. Primarily measured by DFAT via data on academic progress and study plans, case studies on early identification and intervention for at-

risk scholars, welfare and case management practices. Measures will focus on factors that the Contractor can reasonably influence.

- (c) Oversight, Accountability and Governance: Assessing compliance with this Contract and the Handbook, adequacy of the Contractor's oversight and reporting, data quality, and financial management. Primarily measured by DFAT via DFAT assessments of contractual compliance, annual, issues-based and financial reporting (including timeliness and completeness), participation in DFAT SCO forums and networks, and reviews of data in the Information Management System for accuracy and completeness.
  - (d) Continuous Improvement and Organisational Learning: Assessing how the Contractor uses evidence and feedback to identify issues, implement improvements and evaluate outcomes. Primarily measured by DFAT via Contractor reporting, improvement/remediation plans and case studies.
- 7.3 In assessing performance against the above four areas, DFAT may have regard to supplementary indicators. Further guidance on performance indicators and assessment approach may be provided by DFAT from time to time.
- 7.4 The Contractor may be subject to a more detailed KPM assessment(s) by DFAT if:
  - (a) Student dissatisfaction is more than 20% in specific service areas as part of the annual on-going Student Survey and bi-annual Student Arrival Survey (if more than 5 scholars being managed by the Contractor with the reporting period);
  - (b) DFAT identifies invoicing submission issues such as lateness and errors;
  - (c) Non-submission or poor-quality reporting; or
  - (d) DFAT identifies Handbook, Scholarship Management System and/or Contract compliance issues, including management of Critical and Welfare Incidents.
- 7.5 KPM assessments will be determined by DFAT and may involve a more detailed investigation and/or audit of issues by DFAT, and/ or DFAT may request a remediation plan from the Contractor. DFAT may provide a guidance note for best practice annual reporting and the KPM process that the Contractor must adhere to.
- 7.6 Outside of the KPM assessment, if DFAT raises a complaint or performance concern with the Contractor in writing, the Contractor will report on its performance of the Services within 10 Business Days of being requested by DFAT unless otherwise agreed with DFAT.
- 8. Reporting**
- 8.1 The Contractor is to provide an annual report to DFAT Canberra, covering the DFAT Scholarship program(s) that the Contractor is managing under this Deed for each academic year of the Contract, or as otherwise stated by DFAT (Annual Report). The Annual Report must be submitted to DFAT by 31 March in each year during the term covering the previous academic year.
- 8.2 The Annual Report will contain:
  - (a) any plans to remedy results on the student survey and, where relevant, actions to be undertaken by the Contractor to achieve improvement;
  - (b) comments and data on attrition rates, completion rates, progress rate/ratio and extension rates for the Contractor and any action that needs to be taken by the Contractor and/or DFAT to achieve improvements;
  - (c) comments and data on the Contractor's performance against the DFAT performance requirements detailed in Clause 7 of this Schedule and, where relevant, actions to be taken by the Contractor to achieve improvement;

- (d) significant achievements by Scholars in the reporting year;
- (e) significant initiatives taken by the Contractor in the reporting year to improve service delivery to students; and
- (f) suggestions to DFAT on how the Australia Awards Scholarships can be improved.

8.3 The Report must be no more than five pages.

**Financial Reporting Requirements**

- 8.4 The Contractor must, within ninety (90) days of the end of each financial year, for the duration of the Deed provide to DFAT an independently audited financial statement in respect of the foregoing financial year. The statement must be signed by an independent person who is Registered as an auditor under the *Corporations Act 2001* (Cth) or a member of the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants, certifying that the person is satisfied that the accounts and monies held by the Institution and paid to the Institution, are held or dealt with in accordance with the Deed and current Australian Accounting Standards.
- 8.5 An 'independent' person can be a person who is employed by the Contractor but must be independent of the area of the Contractor that manages the DFAT finances. The financial 'Statement' is not necessarily an official audit; it can be a statement of confidence. No Statement is required if the Contractor had no Scholars in the reporting period.

## SCHEDULE 2 – PRICING SCHEDULE

All amounts within this Schedule are expressed in Australian Dollars (AUD). Unless expressly specified as being inclusive of GST, all prices and consideration for supplies of Services and materials are exclusive of GST.

### MAXIMUM AMOUNT PAYABLE

- 1.1 All Contracts formed in accordance with clause 5.2 must be calculated and determined in accordance with the pricing set out in this Schedule 2.
- 1.2 The maximum amount payable by DFAT to the Contractor for the provision of the Goods and/or Services will not exceed the sum of individual issued Quotations and Service Orders. DFAT will not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.
- 1.3 Payments, excluding managements fees, listed in this Schedule 2 will be paid at the rate specified in the Handbook.
- 1.4 At DFAT's sole and absolute discretion, DFAT will review and adjust the payments, excluding management fees, listed in this Schedule 2 and the Handbook periodically and will advise the Contractor of any change as soon as practical.

### PRE-PAYMENTS

- 2.1 For Contracts issued through the Scholarship Management System, the CLE will be paid to the Contractor in advance each quarter by DFAT. The amount to be paid by DFAT is calculated by the Scholarships Management System, including any suspension, deferral and other variations, applies the DFAT approved daily rate and reflects the CLE entitlement that must be dispersed to Scholars by the Contractor in accordance with Schedule 1, clause 6.13 of this Deed and the Handbook.
- 2.2 The Contractor must ensure that CLE payments accurately reflect the Scholar's approved scholarship status and duration, including any approved suspension, deferral, withdrawal, termination, extension or other variation recorded in DFAT's Scholarships Management System.
- 2.3 The Contractor must maintain records evidencing: a) CLE amounts paid to each Scholar; b) the dates of payment; and c) any adjustments made as a result of changes to Scholarship status.
- 2.4 The funds paid to the Contractor in advance must not be used for any other purpose, noting DFAT may terminate this Deed immediately under clause 19.2 of the Deed if the Contractor misappropriates the CLE.
- 2.5 Prior to the creation of each subsequent CLE pre-payment batch, the Contractor must reconcile CLE payments previously made against Scholar entitlements in the Scholarships Management System. The reconciliation must account for any approved changes to Scholarship status or duration, including suspensions, deferrals, withdrawals, terminations, extensions and other approved variations. Any resulting overpayment or underpayment of CLE must be recorded in the Scholarships Management System and managed in accordance with clause 4.17 of this Schedule 2.

### MANAGEMENT FEES

- 3.1 The Management Fee is the amount payable by DFAT to the Contractor for each Scholar studying at the Contractor's Institution at two periods each year (31 March and 30 September). The Management Fee will be *\$[to be determined]* for each Scholar. Each Scholar is counted once each 6-month period.
- 3.2 The Management Fee for each Scholar will be invoiced by the Contractor to DFAT in accordance with Table 1 of this Schedule.
- 3.3 The Management Fee may be reduced by DFAT if there are significant performance issues based on the Contractor's annual performance against the six criteria outlined in Clause 7.2 of Schedule 1, Key Performance Measures, and any annual reviews, audits, evaluations including independent assessments DFAT agrees.
- 3.4 The Disability Administration Supplement is an additional Management Fee paid to the Contractor recognising the Contractor's additional support to the Scholar named in a Disability Support Agreement. The Disability Administration Supplement will be \$300 per Scholar with a Disability Support Agreement every six months.

- 3.5 The Disability Administration Supplement for each Scholar will be invoiced by the Contractor to DFAT in the 31 March and 30 September payment periods each year, in addition to the standard Management Fee for that same Scholar.

#### **REIMBURSABLE PAYMENTS**

- 4.1 Reimbursable payments will be made in accordance with Table 1 of this Schedule and as outlined below.

##### **Academic Fees**

- 4.2 Where DFAT has agreed to pay Academic Fees, the fee for each Scholar enrolled with the Contractor is *[to be determined]*.

##### **Student Services and Amenities Fee (SSAF)**

- 4.3 Where SSAF applies, DFAT will pay the Fee in accordance with the Contractor's publicly listed costs for SSAF.

##### **Introductory Academic Program (IAP)**

- 4.4 DFAT will pay the Contractor a one-off IAP fee per Scholar. The fee will be up to *[to be determined]*.

##### **Pre-Course English**

- 4.5 DFAT will pay to the Contractor a fee for the provision of PCE to Scholars, if PCE is required based on Scholar IELTS scores and as agreed with DFAT, in accordance with the Contractor's publicly listed costs for English language training courses and the accepted costs in the DFAT Scholarship Management System.

##### **Establishment Allowance**

- 4.6 DFAT will reimburse the Contractor's costs of making a one-off up-front Establishment Allowance payment to Scholars in accordance with Schedule 1 - Statement of Requirements and up to the limit specified in the Handbook.

##### **Supplementary Academic Support (SAS)**

- 4.7 DFAT will reimburse the SAS expensed by the Contractor in accordance with Schedule 1 - Statement of Requirements and up to the limit specified in the Handbook.
- 4.8 SAS expenditure that is above the financial limit specified in the Handbook will only be reimbursed where DFAT's prior written approval has been given.

##### **Overseas Student Health Cover (OSHC)**

- 4.9 DFAT will reimburse the Contractor for the cost of a Scholar's OSHC for the duration of their Scholarship, including any extensions approved by DFAT, in accordance with Schedule 1 - Statement of Requirements and the Handbook.
- 4.10 Any OSHC costs refunded to the Contractor must be managed as detailed in clause 6 of this Schedule 2.

##### **Disability Support Agreement Costs**

- 4.11 DFAT will reimburse the Contractor for costs expensed in accordance with approved Disability Support Agreements and DSPA as per Schedule 1 - Statement of Requirements and the Handbook.

##### **Response to an Extraordinary Event**

- 4.12 In accordance with the Handbook, the Scholars or the Contractor may be entitled to claim additional costs to cover expenses incurred due to the impacts of an extraordinary event (e.g. COVID-19 related costs).

##### **Compulsory Fieldwork**

- 4.13 In accordance with and subject to the requirements of the Handbook, DFAT will reimburse a contribution towards a Scholar's Fieldwork travel costs and travel related expenses. Compulsory Fieldwork of a Scholar must be approved by DFAT before commencement of the Scholarship.

##### **Travel**

- 4.14 DFAT will reimburse the Contractor for Scholars' return home travel, compulsory Fieldwork travel, an annual reunion airfare if required, and other travel, in accordance with the requirements of Schedule 1 - Statement of Requirements and the Handbook.

**Costs associated with Welfare Incidents and Critical Incidents**

- 4.15 These costs are limited to rare and exceptional circumstances where the cost is directly and reasonably required to support the affected Scholar's health, safety, welfare or wellbeing in response to a Welfare Incident or Critical Incident as defined in the Handbook. They do not include ordinary student support, routine welfare management, legal assistance, or services the Contractor is otherwise required to provide under this Deed, the ESOS Framework or the National Code.
- 4.16 The Contractor must obtain DFAT's prior approval before committing costs associated with Welfare Incidents and Critical Incidents. For costs up to \$500 per incident and for urgent goods or services necessary to protect the affected Scholar's immediate health, safety or welfare, approval may be given verbally by DFAT and confirmed in writing within 24 hours. For costs over \$500, DFAT approval in writing is required prior to costs being committed by the Contractor.

**REFUNDS OF CLE AND OTHER DFAT PAYMENTS**

- 4.17 Any CLE overpayments from a previous period, or any refund of DFAT payments (including those relating to OHSC payments) must be managed in accordance with this clause.
- 4.18 If the refund relates to costs from a previous financial year's expenditure, the Contractor must:
- (a) promptly notify DFAT of the overpaid amount;
  - (b) refund this amount (including any interest earned on the amount) directly to DFAT within [X] Business Days of notification; and
  - (c) not apply or retain the overpaid amount for any purpose unless expressly approved by DFAT in writing.
- 4.19 If the refund relates to expenditure from the current financial year, the Contractor may use these surplus funds to offset the next period's payment and must clearly document this amount and process to DFAT in the relevant invoice, accounting for any interest earned on the money.

Any CLE overpayments will be handled by the Contractor in accordance with clause 42 of the Deed.

**INVOICE PROCESSING AND DUE DATES FOR STANDARD SCHOLARSHIP PLACEMENTS**

- 4.20 For Standard Scholarship Placements, invoices will be managed via the Scholarship Management System. Invoices must be supported by complete and accurate information recorded in the Scholarship Management System. The Contractor will submit invoices in accordance with accepted Quotations and any approved variations. All invoices related to the same period will be consolidated by the Contractor into a payment batch summary covering multiple students for that period. DFAT will then validate or request further information or reject or adjust the invoice where it is inconsistent with the Contract and the Scholarship Management System. For Standard Scholarship Placements, the following table sets out each item of expenditure, the billing period, batch payment summary due dates and timeframes for invoicing:

**Table 1: Invoice Timing****Pre-payments**

| Fee | Period                  | Payment batch summary in Scholarship Management System | Invoice due                |
|-----|-------------------------|--------------------------------------------------------|----------------------------|
| CLE | 1 July – 30 September   | By 15 April                                            | With payment batch summary |
| CLE | 1 October – 31 December | By 31 July                                             | With payment batch summary |
| CLE | 1 January – 31 March    | By 15 October                                          | With payment batch summary |
| CLE | 1 April – 30 June       | By 31 January                                          | With payment batch summary |

**Management Fees**

| Fee             | Period                                                                             | Payment batch summary in Scholarship Management System | Invoice due                |
|-----------------|------------------------------------------------------------------------------------|--------------------------------------------------------|----------------------------|
| Management Fees | Per scholar at the Contractor's institution at 31 March and 30 September each year | By 15 April; By 15 October                             | With payment batch summary |

**Reimbursable Costs**



| <b>Fee</b>              | <b>Period</b>                                                                                      | <b>Payment batch summary in Scholarship Management System</b> | <b>Invoice due</b>         |
|-------------------------|----------------------------------------------------------------------------------------------------|---------------------------------------------------------------|----------------------------|
| Academic Fees           | Quarterly: 1 July – 30 September; 1 October – 31 December; 1 January – 31 March; 1 April – 30 June | Quarterly: 15 October, 31 January, 15 April and 31 July       | With payment batch summary |
| SSAF                    | Quarterly: 1 July – 30 September; 1 October – 31 December; 1 January – 31 March; 1 April – 30 June | Quarterly: 15 October, 31 January, 15 April and 31 July       | With payment batch summary |
| IAP                     | Quarterly: 1 July – 30 September; 1 October – 31 December; 1 January – 31 March; 1 April – 30 June | Quarterly: 15 October, 31 January, 15 April and 31 July       | With payment batch summary |
| PCE                     | Quarterly: 1 July – 30 September; 1 October – 31 December; 1 January – 31 March; 1 April – 30 June | Quarterly: 15 October, 31 January, 15 April and 31 July       | With payment batch summary |
| Establishment Allowance | Quarterly: 1 July – 30 September; 1 October – 31 December; 1 January – 31 March; 1 April – 30 June | Quarterly: 15 October, 31 January, 15 April and 31 July       | With payment batch summary |
| SAS                     | Quarterly: 1 July – 30 September; 1 October – 31 December; 1 January – 31 March; 1 April – 30 June | Quarterly: 15 October, 31 January, 15 April and 31 July       | With payment batch summary |

| <b>Fee</b>                                           | <b>Period</b>                                                                                      | <b>Payment batch summary in Scholarship Management System</b> | <b>Invoice due</b>         |
|------------------------------------------------------|----------------------------------------------------------------------------------------------------|---------------------------------------------------------------|----------------------------|
| OSHC                                                 | Quarterly: 1 July – 30 September; 1 October – 31 December; 1 January – 31 March; 1 April – 30 June | Quarterly: 15 October, 31 January, 15 April and 31 July       | With payment batch summary |
| Disability Support Agreement Costs                   | Quarterly: 1 July – 30 September; 1 October – 31 December; 1 January – 31 March; 1 April – 30 June | Quarterly: 15 October, 31 January, 15 April and 31 July       | With payment batch summary |
| Costs related to Response to Extraordinary Event(s)  | Quarterly: 1 July – 30 September; 1 October – 31 December; 1 January – 31 March; 1 April – 30 June | Quarterly: 15 October, 31 January, 15 April and 31 July       | With payment batch summary |
| Compulsory Fieldwork                                 | Quarterly: 1 July – 30 September; 1 October – 31 December; 1 January – 31 March; 1 April – 30 June | Quarterly: 15 October, 31 January, 15 April and 31 July       | With payment batch summary |
| Travel Costs                                         | Quarterly: 1 July – 30 September; 1 October – 31 December; 1 January – 31 March; 1 April – 30 June | Quarterly: 15 October, 31 January, 15 April and 31 July       | With payment batch summary |
| Costs associated with Welfare and Critical Incidents | Quarterly: 1 July – 30 September; 1 October – 31 December; 1 January – 31 March; 1 April – 30 June | Quarterly: 15 October, 31 January, 15 April and 31 July       | With payment batch summary |

**SUBMISSION OF INVOICES FOR STANDARD SCHOLARSHIP PLACEMENTS**

- 5.1 For Standard Scholarship Placements, the Contractor is required to submit invoices in accordance with clause 40 of the Contract.

**SUBMISSION OF INVOICES FOR SERVICES ORDERS**

- 6.1 For Services Orders formed under this Deed, the Contractor shall invoice DFAT in accordance with clause 40 of the Contract and the provisions of that Services Order.

**TERMS RELATING TO PAYMENTS**

- 7.1 All payments from DFAT shall be paid into the bank account nominated in Schedule 1 by the Contractor, or as otherwise updated by the Contractor.
- 7.2 All payments together with all interest earned thereon shall be held by the Contractor for the purpose of paying expenses.
- 7.3 The Contractor should seek to maximise the return on the monies received by DFAT and held by the Contractor subject to the legislative requirements upon the Contractor.
- 7.4 Annually, by 1 August each year, the Contractor will pay DFAT an amount equal to all accrued unspent interest up to 30 June of that year directly relating to the operation of the Program. This money is to be returned to DFAT in the form of Electronic Funds Transfer with details as advised by DFAT.

**FOREIGN TAX**

- 8.1 The Contractor acknowledges and agrees that nothing in this Schedule 2 entitles the Contractor to claim from DFAT any value added tax, goods and services tax or other tax incurred in any Partner Country (whether paid directly to the Partner Country or to any Contractor Personnel).

**CLAIMS FOR PAYMENT**

- 9.1 The Contractor's tax invoice must be submitted when due pursuant to this Schedule 2 in a form identifiable with the Goods and/or Services and in accordance with the Contract.
- 9.2 All claims for payment must be addressed to:

Chief Finance Officer  
Department of Foreign Affairs and Trade  
RG Casey Building  
John McEwen Crescent  
Barton

Tax invoices will be sent to [support@australiawards.org](mailto:support@australiawards.org) . Invalid invoices will be returned to the Contractor. Information on what constitutes a valid tax invoice can be found at <http://www.ato.gov.au/businesses/content.asp?doc=/content/50913.html>

**SCHEDULE 3 – SERVICES ORDER TEMPLATE****Services Order number – XXXXXX/SO number [Insert]**

DFAT may issue this Services Order to supplement a Contract formed under clause 5.3 of the Deed, where bespoke or additional Services apply. Services Order invoicing will be administered through the Scholarships Management System unless otherwise agreed with DFAT as per this Service Order.

[insert name of Contractor] has offered under **clause 5** of the Deed of Standing Offer (the Deed) specified at item 1 below to provide the Services to DFAT. DFAT accepts this offer on the terms and conditions set out in the Deed and issues this Services Order in accordance with **clause 5** of the Deed. Any inconsistency between this Services Order and another document forming part of this Contract is to be resolved in accordance with **clause 5.5** of the Deed. Terms used but not defined in this Services Order have the meaning given to them in **Schedule 9 – Standard Contract Conditions** to the Deed.

**DFAT Representative:** [insert name and contact details]

**Contractor Representative:** [insert name and contact details]

| Item number | Description                                        | Standard Contract Conditions clause reference | Details                                                                                                                                                                                                       |
|-------------|----------------------------------------------------|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1           | Deed number and description                        | 1.1                                           | [Insert deed number, date and description]                                                                                                                                                                    |
| 2           | Initial Contract Period                            | 1.1 and 2.1                                   | [Insert term of Initial Services Order Period, including the start date of that period. For example: from [date] until the services to Scholars in this Services Order are completed.]                        |
| 3           | Services Order Option Period                       | 2.2                                           | [Insert Services Order Option Period. For example: two periods, each one year in duration, including the start dates and end dates for each Services Order Option Period. Otherwise insert “Not applicable”.] |
| 4           | Background                                         | Not applicable                                | [Insert background]                                                                                                                                                                                           |
| 5           | Services                                           | 1.1 and 4                                     | [Insert any additional or bespoke services]                                                                                                                                                                   |
| 6           | DFAT requirements                                  | 4                                             | [Insert any DFAT requirements]                                                                                                                                                                                |
| 7           | Meetings                                           | Not applicable                                | [Insert any applicable meetings. Otherwise insert “Not applicable”.]                                                                                                                                          |
| 8           | Monitoring and Evaluation                          | Not applicable                                | [Insert any monitoring and evaluation requirements. Otherwise insert “Not applicable”.]                                                                                                                       |
| 9           | Reports                                            | 38                                            | [Insert any reports. Otherwise insert “Not applicable”.]                                                                                                                                                      |
| 10          | Performance Standards / Key Performance Indicators | 5                                             | [Insert any performance standards or key performance indicators. Otherwise insert “Not applicable”.]                                                                                                          |

| Item number | Description                                      | Standard Contract Conditions clause reference | Details                                                                                                                                                                                         |
|-------------|--------------------------------------------------|-----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11          | Personnel / Specified Personnel                  | 1.1 and 33                                    | [Insert details of Personnel and Specified Personnel. Otherwise insert “Not applicable”.]                                                                                                       |
| 12          | Subcontractors                                   | 34                                            | [Insert names and ABNs of any Subcontractors, including any independent contractors engaged by the Contractor. Otherwise insert “Not applicable”.]                                              |
| 13          | DFAT Material                                    | 1.1                                           | [Insert specific Material to be provided to the Contractor by DFAT, if any, and any restrictions on the use of the Material. Otherwise insert “Not applicable”.]                                |
| 14          | DFAT Supplied Items                              | 1.1                                           | [Insert a description of DFAT Supplied Items to be provided to the Contractor or which it is required to procure. Otherwise insert “Not applicable”.]                                           |
| 15          | Background IP                                    | 1.1 and 10.1                                  | [Insert a description of any specific Background IP. Otherwise insert “Not applicable”.]                                                                                                        |
| 16          | Payment – Fees, including any Payment Milestones | 41                                            | [Insert details of agreed Fees and Payment Milestones. Otherwise insert “Not applicable”.]                                                                                                      |
| 17          | Additional or higher level of insurance          | 9                                             | [Insert details of additional insurance requirements. Otherwise insert “No additional insurances required”.]                                                                                    |
| 18          | Confidential Information – DFAT                  | 1.1 and 29                                    | DFAT Confidential Information: DFAT Data. Period of confidentiality: Perpetual.                                                                                                                 |
| 19          | Confidential Information – Contractor            | 1.1 and 29                                    | Contractor Confidential Information: [insert relevant items]. Period of confidentiality: [insert period]. If none, insert “Not applicable”.                                                     |
| 20          | Limitation of liability amount                   | 11 of the Deed                                | [An amount equal to three times the total value of the Services]                                                                                                                                |
| 21          | Address for invoices                             | Not applicable                                | [Insert name and position of person to receive invoices], [insert postal address], [insert physical address], or by email to [insert email address if used]. Otherwise insert “Not applicable”. |
| 22          | Notices – DFAT                                   | 22                                            | [Insert name and position of person to receive Notices], [insert postal address], [insert physical address], [insert email                                                                      |

OFFICIAL

| Item number | Description | Standard Contract Conditions clause reference | Details                                                      |
|-------------|-------------|-----------------------------------------------|--------------------------------------------------------------|
|             |             |                                               | address]. If facsimile is not used, insert “Not applicable”. |

**EXECUTED as a CONTRACT**

**SIGNED** for and on behalf of the **Commonwealth of Australia** represented by the Department of Foreign Affairs and Trade, ABN 47 065 634 525, by:

.....  
(Name of authorised DFAT representative in block letters)  
as authorised representative for **DFAT** in the presence of:

.....  
(Signature of authorised DFAT representative)

.....  
(Signature of witness)

.....  
(Name of witness in block letters)

Date: .....

**SIGNED** for the **Contractor** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

.....  
(Signature of director)

.....  
(Name of director in block letters)

Date: .....

(Signature of director/company secretary\* (\*delete whichever is not applicable))

.....  
(Name of director/company secretary\* in block letters (\*delete whichever is not applicable))

**SCHEDULE 4 (INSTRUMENT OF ACCEPTANCE)**

**INSTRUMENT OF ACCEPTANCE** in respect to the irrevocable offer to supply Services to another Agency pursuant to:

**The Deed of Standing Offer for the provision of *[Insert Program Name]* Program between the Department of Foreign Affairs and Trade and *[Insert Contractor]*.**

To:

*[insert name of Contractor]*

*[Insert Contractor's address for notices under the Deed]*

The offer to *[insert name of Agency]* to provide the Services under **clause 5.8(a)** of the Deed is accepted.

In accordance with **clause 5.8** of the Deed the following modifications to the terms and conditions of the Deed apply to adapt it to the circumstances of *[insert name of Agency]*.

*Note: The format of this Schedule is provided as an example only and may be amended to address particular Agency requirements.*

**1. REFERENCES TO DEPARTMENT**

- 1.1 A reference to DFAT is to be taken as a reference to the:
- (a) Commonwealth of Australia represented by *[insert name of Agency]*; or
  - (b) *[insert name of Agency]*,
- as the case requires.

**2. AMENDMENT OF DETAILS SCHEDULE**

**Agency details**

- 2.1 The contents in the Details Schedule making reference to DFAT are deleted and replaced with:
- [Insert name of Agency]*
- [Insert address of Agency]*
- [Insert ABN of Agency]*

**Specification of Agency Representative**

- 2.2 The contents in the Details Schedule making reference to the DFAT Representative and DFAT Escalation Representative are deleted and replaced with:
- [insert position and contact details of Agency Representative]*
- [insert position and contact details of Agency Escalation Representative]*

**Specification of Commencement Date**

- 2.3 For the purposes of the Commencement Date of the Deed, that date will be the date this Instrument of Acceptance is executed by the Parties, or if executed on separate days, the date of last execution.



**Address for Notices**

- 2.4 The address for Notices for DFAT specified in the Details Schedule are deleted and replaced with:  
[Insert name of and position of person to receive Notices]  
[Insert postal address of Agency]  
[Insert physical address of Agency]  
[Insert facsimile number]

**Specification of Address for Invoices**

- 2.5 The contents of **Schedule 2** relating to the address for invoices (below the words 'All claims for payment should be sent to') is replaced with the following:  
[Insert position and name of the Agency representative]  
[Insert postal address]

**3. SERVICE REQUIREMENTS**

---

- 3.1 [Additional requirements should be inserted here or attached to this Instrument of Acceptance. Alternatively, insert "As per Schedule 1 of the Deed"].

**SIGNED** for and on behalf of the  
**COMMONWEALTH OF AUSTRALIA**  
represented by the [Agency]:

in the presence of:

\_\_\_\_\_  
Signature of PGPA Delegate

\_\_\_\_\_  
Name of Delegate (*Print*)

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (*Print*)

Date: \_\_\_\_\_

**SIGNED** for and on behalf of  
[Company] in accordance  
with s. 127 of the *Corporations*  
*Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director (*Print*)

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Name of Director/Company Secretary (*Print*)

Date: \_\_\_\_\_

## SCHEDULE 5 – PARTNER PERFORMANCE ASSESSMENT

---

**Note:** DFAT uses Partner Performance Assessments (PPAs) to assess how well implementing partners are delivering the services required in aid agreements. PPAs are internal DFAT documents, but data from PPAs are used to inform future procurement evaluations, including Tender Evaluation Committees, partner selection decision making, and core contributions to multilateral organisations. PPAs should be completed by DFAT agreement managers and be based on the most recent 12-month period where performance information is available. Delivery partners should be provided with a minimum 15 Business Days to endorse the ratings.

The Partner Performance Assessment template is available on the DFAT website at

<https://dfat.gov.au/about-us/business-opportunities/Pages/resources.aspx>

## SCHEDULE 6 – DEED OF CONFIDENTIALITY



Australian Government  
Department of Foreign Affairs and Trade

THIS DEED POLL is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

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

**BY** [insert name of person making this Deed Poll], of [insert address],

**RECITALS**

- A. DFAT and [insert name of Contractor] (the "Contractor") have entered into a contract pursuant to **clause 5.3** of the Deed of Standing Offer for the provision of [insert title of Services] (Deed No. [insert]) by signing a Services Order (No. [insert number]) dated [insert date] for the provision of certain Services ('**Contract**').
- B. I will be engaged directly or indirectly by the Contractor in connection with the performance of the Contract.
- C. In the course of performing the Services to be provided under the Contract, I may have access to DFAT's Confidential Information.
- D. I understand that the improper use or disclosure of the DFAT's Confidential Information may damage DFAT and impair its ability to perform its functions.
- E. DFAT therefore requires me to execute this Deed Poll to ensure that the Confidential Information is protected by me.

**OPERATIVE PART****1. DEFINITIONS**

In this Deed Poll, unless the contrary intention appears:

**Confidential Information** means information that:

- (a) is by its nature confidential;
  - (b) is designated by DFAT as confidential; or
  - (c) I know or ought to know is confidential,  
and includes to the extent that it is confidential:
  - (d) information comprised in or relating to any Intellectual Property of DFAT or third parties where the third-party Intellectual Property is made available by or on behalf of DFAT;
  - (e) information relating to the internal management and structure of the Department of Foreign Affairs and Trade, DFAT or the Commonwealth of Australia;
  - (f) Data; and
  - (g) personal information under the *Privacy Act 1988*;
- but does not include information which:
- (h) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality; or
  - (i) has been independently developed or acquired by the Recipient as established by written evidence.

**Contract** means the contract referred to in Recital A.

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

**Deed of Standing Offer** means the Deed of Standing Offer for the provision of [insert details] (Deed No. [insert]) dated [insert date].

**Intellectual Property Rights** means all intellectual property rights, including but not limited to, the following rights:

- (a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks), domain names;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.

**Services** means the services to be performed by me under a Services Order.

**Services Order** means an order placed by DFAT with the Contractor in accordance with the Standing Offer Terms.

**Standing Offer Terms** means the terms of the Deed of Standing Offer.

## 2. INTERPRETATION

2.1 In this Deed Poll, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing persons include a partnership and a body whether corporate or otherwise; and
- (e) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

## 3. NON DISCLOSURE

- 3.1 I have been notified, in writing, of all Confidential Information described in the Services Order.
- 3.2 I will treat as secret and confidential all Confidential Information to which I have access, or which is disclosed to me.
- 3.3 I will not disclose any Confidential Information to any person without the prior written consent of DFAT.
- 3.4 If DFAT grants its consent for me to disclose Confidential Information, it may impose conditions on that consent. In particular, DFAT may require that I obtain the execution of a Deed Poll in these terms by the person to whom I propose to disclose the Confidential Information.
- 3.5 My obligations under this Deed Poll will not be taken to have been breached where I am legally required to disclose the Confidential Information.

## 4. RESTRICTION ON USE

- 4.1 I will use the Confidential Information only for the purpose of my duties in respect of performance of the Contractor's obligations under the Contract.
- 4.2 I will not copy or record the Confidential Information without the approval of DFAT.
- 4.3 Subject to **clause 3.3**, I will not allow any other person other than DFAT access to the Confidential Information.

- 4.4 I will take all necessary precautions to prevent accidental disclosure or, unauthorised access to or copying of the Confidential Information in my control.
- 4.5 Despite **clause 3.5**, if I am required or anticipate or have cause to anticipate that I may be required by law, to disclose Confidential Information, I must immediately notify DFAT of the actual or anticipated requirement and use my best endeavours (without breach of applicable law) to delay and withhold disclosure until DFAT has had a reasonable opportunity to oppose disclosure by lawful means.
5. **POWERS OF DFAT**
- 5.1 Immediately upon request by DFAT, I must deliver to DFAT all documents in my possession or control containing Confidential Information.
- 5.2 If at the time of such a request I am aware that documents containing Confidential Information are beyond my possession or control, then I must provide full details of the location of the documents and the identity of the person who has control of them.
6. **ACKNOWLEDGEMENT**
- 6.1 I acknowledge that any breach by me of this Deed Poll may damage DFAT and impair its ability to perform its functions.
- 6.2 Without limiting anything contained in this Deed Poll, I acknowledge that my attention has been drawn to the following legislative provisions which may have application to my handling of Confidential Information:
- (a) Part 5.6 (Secrecy of information) of the *Criminal Code Act 1995* (Cth);
  - (b) Part 10.7 of the *Criminal Code Act 1995* (Cth); and
  - (c) the *Privacy Act 1988* (Cth).
7. **RELEASE IN RELATION TO INTELLECTUAL PROPERTY RIGHTS**
- 7.1 I make no claim to Intellectual Property Rights in any material developed for DFAT under the Contract, and I acknowledge that such Intellectual Property Rights are dealt with, as between DFAT and the Contractor, as provided under the Contract.
- 7.2 I agree to join in and execute any further instrument which may be necessary to give effect to this **clause 7**.
8. **CONSENT TO MORAL RIGHTS**
- 8.1 In this **clause 8** 'Moral Rights' includes the following rights of an author of copyright material:
- (a) the right of attribution of authorship;
  - (b) the right of integrity of authorship; and
  - (c) the right not to have authorship falsely attributed.
- 8.2 In this **clause 8** 'Specified Acts' in relation to any copyright material, means the following classes or types of acts or omissions:
- (a) those which would, but for this clause, infringe the author's right of attribution of authorship; and
  - (b) those which would, but for this clause, infringe the author's right of integrity of authorship,
- but does not include:
- (c) those which would infringe the author's right not to have authorship falsely attributed.
- 8.3 I hereby consent to the Specified Acts (whether occurring before or after this consent is given) in relation to any copyright material developed under the Contract of which I am the author.
9. **DECLARATION AS TO CONFLICT OF INTEREST**
- 9.1 In this **clause 9**, 'Conflict of Interest' means any circumstances in which the interests or personal circumstances of myself could influence, or could appear to influence my performance of duties or functions assigned to me under a Services Order in a manner detrimental to DFAT.

- 9.2 I warrant that, to the best of my knowledge after making diligent inquiry, at the date of this Deed Poll no Conflict of Interest exists or is likely to arise in the performance of the Services.
- 9.3 If, during the period of the Contract a Conflict of Interest arises, or appears likely to arise, I must:
- (a) notify DFAT immediately;
  - (b) make full disclosure of all relevant information relating to the Conflict of Interest; and
  - (c) take any steps DFAT reasonably requires to resolve or otherwise deal with the Conflict of Interest.
10. **CONDUCT ON DFAT PREMISES**
- 10.1 When using DFAT's premises I will comply with all reasonable directions of DFAT, including but not limited to documented procedures relating to work health, safety and security in effect at those premises. This obligation extends to all procedures which are notified to me by DFAT or which might reasonably be inferred by me in the circumstances.
- 10.2 In addition to the requirements in the preceding paragraph, I agree that when working on DFAT's premises I will comply with all applicable Commonwealth, State and local government laws, regulations and procedures relating to work health and safety in connection with the performance of my duties in respect of the Contract.
11. **NOTICES**
- 11.1 A notice, request or other communication will be deemed to have been received by me if it is in writing, marked to my attention and delivered or posted to my address for notices set out in **clause 11.3** below.
- 11.2 A notice is deemed effective:
- (a) if delivered by hand, upon delivery;
  - (b) if posted by pre-paid ordinary post within Australia, upon the expiration of two Business Days following the date upon which it was posted;
  - (c) if posted by airmail from one country to another, upon the expiration of eight Business Days following the date upon which it was posted; and
  - (d) if transmitted electronically or by facsimile, on receipt by the sender of an electronic or facsimile acknowledgement that the Notice has been properly transmitted to the recipient.
- 11.3 My address for notices is set out below:
- Physical address:
- Postal address:
- Fax number:
- Email address:
12. **MISCELLANEOUS**
- 12.1 This Deed Poll records the entire agreement between the parties in relation to its subject matter.
- 12.2 No variation of this Deed Poll is binding unless it is agreed in writing between the parties.
- 12.3 Any reading down or severance of a particular provision of this Deed Poll does not affect the other provisions of this Deed Poll.
- 12.4 No failure by DFAT to exercise, or delay by DFAT in exercising, any right in respect of this Deed operates as a waiver of that right.
- 12.5 A single or partial exercise by DFAT of any right in respect of this Deed does not prevent the further exercise of that right or of any other right in respect of this Deed.
13. **SURVIVAL OF OBLIGATIONS**
- 13.1 The provisions of this Deed Poll (other than clause 9) will survive the expiration or earlier termination of the Contract.
14. **APPLICABLE LAW**

OFFICIAL

14.1 This Deed will be governed in accordance with the law in the Australian Capital Territory.

**EXECUTED** as a Deed Poll.

**SIGNED, SEALED AND DELIVERED**, by [insert name] in the presence of:

.....

Signature of [insert name]

.....

Signature of witness:

.....

Name of witness  
(*Print*)

Date: .....



**SCHEDULE 7 – CONFIDENTIAL INFORMATION**

---

**Confidential Information identified by DFAT**

| Clause number, if applicable | Clause description or details of information to be kept confidential | Reason for classification | Period of confidentiality |
|------------------------------|----------------------------------------------------------------------|---------------------------|---------------------------|
| [Insert]                     | [Insert clause title or details of information]                      | [Insert reasons]          | [Insert period]           |
| [Insert]                     | [Insert clause title or details of information]                      | [Insert reasons]          | [Insert period]           |

**Confidential Information identified by the Contractor**

| Clause number, if applicable | Clause description or details of information to be kept confidential | Reason for classification | Period of confidentiality |
|------------------------------|----------------------------------------------------------------------|---------------------------|---------------------------|
| [Insert]                     | [Insert clause title or details of information]                      | [Insert reasons]          | [Insert period]           |
| [Insert]                     | [Insert clause title or details of information]                      | [Insert reasons]          | [Insert period]           |

**SCHEDULE 8 – COMMONWEALTH POLICIES**

---

**1 COMPLIANCE WITH LAWS AND POLICIES**

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

**2 COMPLIANCE WITH THE COMMONWEALTH SUPPLIER CODE OF CONDUCT**

- 2.1 For the purposes of this clause, 'Commonwealth Supplier Code of Conduct' or 'Code' means the Commonwealth Supplier Code of Conduct, as published on 1 July 2024, as updated from time to time.
- 2.2 The Contractor must comply with, and ensure that its Personnel comply with, the Code in connection with the performance of this Contract.
- 2.3 The Contractor must:
- (a) periodically monitor and assess its, and its Personnel's compliance with the Code; and
  - (b) on request from DFAT, promptly provide information regarding:
  - (c) the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and
  - (d) the Contractor's compliance with clause 2.2.
- 2.4 The Contractor must immediately issue DFAT a notice on becoming aware of any breach of clause 2.2. The notice must include a summary of the breach, the date that the breach occurred, and details of the Personnel involved.
- 2.5 Where DFAT identifies a possible breach of clause 2.2, it may issue the Contractor a notice, and the Contractor must, within three (3) Business Days of receiving the notice, either:
- (a) where the Contractor considers a breach has not occurred: advise DFAT that there has not been a breach and provide information supporting that determination; or
  - (b) where the Contractor considers that a breach has occurred: issue a notice under clause 2.4 and otherwise comply with its obligations under this clause 2.
- 2.6 Notwithstanding clause 2.5, DFAT may notify the Contractor in writing that it considers that the Contractor has breached clause 2.2, in which case the Contractor must issue a notice under clause 2.4 and otherwise comply with its obligations under this clause 2.
- 2.7 A failure by the Contractor to comply with its obligations under any part of this clause will be a material

breach of this Contract.

- 2.8 Nothing in this clause or the Code limits, reduces, or derogates from the Contractor's other obligations under this Contract. DFAT's rights under this clause are in addition to and do not otherwise limit any other rights the DFAT may have under this Contract. The performance by the Contractor of its obligations under this clause will be at no additional cost to DFAT.
- 2.9 The Contractor agrees that DFAT or any other Commonwealth agency may take into account the Contractor's compliance with the Code in any future approach to market or procurement process.

### 3 PAYMENT TIMES PROCUREMENT CONNECTED POLICY

**NOTE TO DRAFTERS:** *If the tenderer has declared that it is a reporting entity and the value of the contract will be above \$4 million (GST inclusive) DFAT must ensure the PT PCP contract clauses are included in the final contract prior to execution.*

#### Definitions

In this clause 3:

**Commonwealth Entity** has the meaning given to this term in the *Public Governance, Performance and Accountability Act 2013* (Cth).

**Entrusted Person** has the meaning given to this term in the PTR Act.

**General Interest Charge Rate** means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day.

**PT PCP** means the Commonwealth's 'Payment Times Procurement Connected Policy'.

**PT PCP Evaluation Questionnaire** means a questionnaire in substantially the form of Appendix C of the PT PCP.

**PT PCP Policy Team** means the relevant Minister, department or authority that administers or otherwise deals with the PT PCP on the relevant day.

**PT PCP Purpose** means:

- a. the review, evaluation, monitoring, assessment and reporting on the PT PCP, including the compliance by those DFAT suppliers and their subcontractors that are Reporting Entities; or
- b. improving payment times to PT PCP Subcontractors.

**PT PCP Remediation Plan** means a written remediation plan substantially in the form of Appendix D of the PT PCP.

**PT PCP Subcontract** means a subcontract between a Reporting Entity and another party (Other Party) where:

- a. the subcontract is (wholly or in part) for the provision of goods or services for the purposes of this Contract;
- b. both parties are carrying on business in Australia; and
- c. the component of the subcontract for the provision of goods or services for the purposes of this Deed has a total value of less than (or is reasonably estimated will not exceed) \$1,000,000 (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work/official orders entered into that are valued up to \$1 million (GST inclusive) under standing offer (panel) arrangements),

but does not include the following subcontracts:

- a. subcontracts entered into prior to the Reporting Entities' tender response for this Contract;
- b. subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or
- c. subcontracts for the purposes of:
  - i. procuring and consuming goods or services overseas; or
  - ii. procuring real property, including leases and licences.

*Note to Reporting Entities: you will need to identify whether a subcontract delivers goods or services for the purposes of each Contract under the Deed of Standing Offer.*

**PT PCP Subcontractor** means the party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract.

**PTR Act** means the *Payment Times Reporting Act 2020* (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the Act.

**Reporting Entity** has the meaning given to this term in the PTR Act.

**Reporting Entity Subcontractor** means any person that:

- a. is a Reporting Entity; and
- b. provides goods or services directly or indirectly to the Contractor for the purposes of this Deed where the value of such goods or services are estimated to exceed \$4,000,000 (GST inclusive),

and 'Reporting Entity Subcontract' has a corresponding meaning.

#### **PT PCP Subcontracts**

3.1 The Contractor must comply with the PT PCP.

3.2 If the Contractor enters into a PT PCP Subcontract, the Contractor must include in that subcontract:

- (a) a requirement for the Contractor to pay the PT PCP Subcontractor:
  - i. subject to clause 3.5, within 20 calendar days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a correctly rendered invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day; and
  - ii. subject to clause 3.5, for payments made by the Contractor after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with clause 3.6;
- (b) a statement that the PT PCP applies to that subcontract; and
- (c) a statement that the subcontractor may make a complaint to the PT PCP Policy Team or to DFAT in accordance with the PT PCP if there has been non-compliance with the requirements of this clause 3.2.

3.3 If the Contractor enters into a Reporting Entity Subcontract in anticipation of (or after) entering this Deed, the Contractor must use reasonable endeavours to include in that subcontract:

- (a) obligations equivalent to those in clause 3.2; and

(b) a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, that subcontract must include:

- i. obligations equivalent to those in clause 3.2; and
- ii. obligations equivalent to this clause 3.3(b) (such that the obligations in this clause 3.3(b) continue to be flowed down the supply chain to all Reporting Entity Subcontractors).

3.4 Clause 3.2(a)(i) does not limit any obligation to comply with applicable legislation that provides for a shorter payment period than the period referred to in clause 3.2(a)(i).

3.5 The Contractor is not required to pay interest in accordance with clause 3.2(a)(ii) if either:

- (a) DFAT has failed to pay the Contractor in accordance with the timeframes and requirements under the Deed and Service Order; or
- (b) the amount of interest payable is less than \$100 (GST inclusive).

3.6 Interest payable under clause 3.2(a)(ii) is simple interest calculated in respect of each calendar day from the day after the amount was due and payable up to and including the day the Contractor effects payment, calculated using the following formula:

$$SI = UA \times GIC \times D$$

Where:

SI = simple interest amount

UA = the unpaid amount

GIC = General Interest Charge Rate daily rate

D = the number of days from the day after payment was due up to and including the day payment is made

#### **PT PCP Evaluation Questionnaire**

3.7 If requested in writing by DFAT, the Contractor must properly complete and return a PT PCP Evaluation Questionnaire within 30 calendar days of the request.

#### **Non-compliance and Remediation**

3.8 If DFAT considers or becomes aware that the Contractor has not or may not have complied with:

- (a) the requirements of clauses 3.2 to 3.7; or
- (b) the payment requirements of a PT PCP Subcontract,

DFAT may direct the Contractor to provide to DFAT either or both of the following within the timeframes specified by DFAT:

- (c) information to enable DFAT to review the Contractor's compliance; or
- (d) a properly completed PT PCP Remediation Plan.

3.9 The Contractor must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under clause 3.8(d).

3.10 If DFAT considers that the Contractor has failed to comply with any of its obligations under this clause 3, without limiting DFAT's rights and remedies at Law or otherwise under the Deed, DFT may do either or both of the following:

- (a) take the failure or non-compliance into account as part of DFAT's monitoring of the Contractor's performance under the Deed; or
- (b) report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the PT PCP Policy Team.

3.11 The Contractor agrees that if it is the subject of a complaint in relation to its compliance with clauses 3.2 to 3.7 or the associated payment provisions of a PT PCP Subcontract:

- (a) it will not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
- (b) it will cooperate in good faith with DFAT in connection with any investigation or inquiry and any attempt to resolve the complaint.

#### Consent

3.12 For any PT PCP Purpose, the Contractor consents to DFAT:

- (a) using and sharing with any other Commonwealth Entity the information provided by the Contractor as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan, or otherwise received or obtained by DFAT in connection with this Deed or a PT PCP Subcontract; and
- (b) receiving information obtained under, or in accordance with, the PTR Act ('Protected Information') from an Entrusted Person and using such Protected Information.

3.13 By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other document in connection with the PT PCP that includes any personal information within the meaning of the Privacy Act, the Contractor warrants and represents that it has obtained all necessary consents in accordance with relevant privacy laws to the collection, use and disclosure of such information in the manner contemplated by clauses 3.12 and 3.13. The Contractor will provide evidence of such consents to DFAT on request.

#### Interpretation

3.14 A reference to DFAT in clauses **Error! Reference source not found.**, 3.8(a), 3.11(b), 3.12 and 3.13 includes the PT PCP Policy Team.

### 4 COMPLIANCE WITH DFAT POLICIES

4.1 In performing its obligations under the Contract, the Contractor must comply with, and must ensure that its Personnel comply with, all DFAT policies (as amended from time to time) including, accessible on the DFAT website at: [www.dfat.gov.au](http://www.dfat.gov.au):

- (a) 'Australia's International Disability Equity and Rights Strategy: Advancing equity to transform lives', accessible on the DFAT website at: [Australia's International Disability Equity and Rights Strategy: Advancing equity to transform lives | Australian Government Department of Foreign Affairs and Trade](http://www.dfat.gov.au/publications/Pages/Australia's-International-Disability-Equity-and-Rights-Strategy-Advancing-equity-to-transform-lives-Australian-Government-Department-of-Foreign-Affairs-and-Trade). Particular attention must be directed towards the Strategy's guiding principles;
- (b) the 'Child Protection Policy', accessible on the DFAT website at: <https://dfat.gov.au/about-us/publications/Pages/child-protection-policy.aspx>;
- (c) the 'Protection from Sexual Exploitation, Abuse and Harassment Policy', accessible on the DFAT website at: <https://dfat.gov.au/international-relations/themes/preventing-sexual-exploitation-abuse-and-harassment/Pages/default.aspx>

- (d) the 'Family Planning and the Aid Program: Guiding Principles' (2009) for the DFAT - Australian Aid Program, accessible on the DFAT website at: <https://dfat.gov.au/about-us/publications/Pages/family-planning-and-the-aid-program-guiding-principles.aspx>;
- (e) information accessibility requirements contained in the 'Creating documents that meet accessibility guidelines', accessible on the DFAT website at: <https://www.dfat.gov.au/about-us/about-this-website/accessible-documents/creating-documents-meet-accessibility-guidelines>;
- (f) the 'Environmental and Social Safeguard Policy for the Aid Program', accessible on the DFAT website at: <https://www.dfat.gov.au/sites/default/files/environmental-social-safeguard-policy.pdf>.
- (g) 'Australia's International Gender Equality Strategy', accessible on the DFAT website at: [Australia's International Gender Equality Strategy | Australian Government Department of Foreign Affairs and Trade](#).

4.2 DFAT may, at any time, conduct a review of the Contractor's compliance with DFAT's Child Protection Policy or Preventing Sexual Exploitation, Abuse and Harassment Policy. DFAT will give reasonable notice (at least 14 calendar days) to the Contractor and the Contractor must participate co-operatively in any such review.

4.3 If DFAT finds that the Contractor has failed to comply with DFAT's Child Protection Policy or Preventing Sexual Exploitation, Abuse and Harassment Policy, the Contractor must promptly, and at the cost of the Contractor, take such actions as are required to ensure compliance with the policy.

4.4 The Contractor must report:

- (a) any suspected or alleged case of sexual exploitation, abuse and harassment that relates to the Project/Program to [seah.reports@dfat.gov.au](mailto:seah.reports@dfat.gov.au) within 24 hours of becoming aware of the case;
- (b) any suspected or alleged case of child exploitation to [childwelfare@dfat.gov.au](mailto:childwelfare@dfat.gov.au) within 24 hours of becoming aware of the case;
- (c) any alleged incidents of non-compliance with DFAT's Preventing Sexual Exploitation, Abuse and Harassment Policy to [seah.reports@dfat.gov.au](mailto:seah.reports@dfat.gov.au) within 5 Business Days of becoming aware of the incident; and
- (d) any alleged incidents of non-compliance with DFAT's Child Protection Policy to [childwelfare@dfat.gov.au](mailto:childwelfare@dfat.gov.au) within 5 Business Days of becoming aware of the incident.

## 5 ANTI-CORRUPTION

### Definitions

In this clause 5:

**Corrupt Conduct** means corrupt conduct as defined in the *National Anti-Corruption Commission Act 2022* (Cth) or conduct that would satisfy that definition if any party involved in the conduct were a 'public official' as defined in that Act.

5.1 The Contractor warrants that, to the best of its knowledge, it has disclosed to DFAT;

- (a) all allegations of, or investigations in relation to, Corrupt Conduct involving it, or its officers, employees, agents and subcontractors, that may substantially impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation; and
- (b) any substantiated instances of Corrupt Conduct in the past [3] years, involving it, or its officers, employees, agents and subcontractors, that may substantially impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.

- 5.2 The Contractor must not, and must ensure that its officers, employees, agents and subcontractors do not, engage in Corrupt Conduct, or any practice that, if engaged in within Australia, could constitute the offence of bribing a foreign public official under s 70.2 of the *Criminal Code Act 1995* (Cth) in relation to the performance of the Deed.
- 5.3 The Contractor must not engage in any practice that could constitute the offence of failing to prevent bribery of a foreign public official under s 70.5A of the *Criminal Code Act 1995* (Cth) in relation to the performance of the Deed. If the Contractor becomes aware of any actual or potential Corrupt Conduct or relevant practice, it must report the matter to DFAT in writing within five (5) Business Days, investigate the matter at its own cost, and report on the progress and outcomes of the investigation.
- 5.4 Where Corrupt Conduct or either foreign bribery offence provision is found to have occurred in relation to this Deed, the Contractor must use reasonable efforts to recover any funds lost as a result of the conduct or practice, refer the matter to the appropriate governmental authorities, and reimburse to DFAT any funds misappropriated through the conduct or practice that are recovered by Contractor.
- 5.5 The Contractor must comply with any reasonable request, policy or direction issued by DFAT, and cooperate with DFAT at its own cost, in relation to any action taken by DFAT required or authorised by the *National Anti-Corruption Commission Act 2022* (Cth).
- 5.6 The Contractor must ensure that any subcontract entered into for the purpose of this Deed contains a substantially equivalent clause granting the rights specified in this clause 5.
- 5.7 This clause is an essential term of the Deed and survives the termination or expiry of the Deed. Nothing in this clause is intended to limit the Contractor's obligations under **clause 12 or clause 2** of this Schedule or any other clause of this Deed which imposes a reporting or notification requirement on the Contractor.

## **6 PROTECTION FROM SEXUAL EXPLOITATION, ABUSE AND HARASSMENT (PSEAH)**

- 6.1 In providing the Goods or Services to DFAT, the Contractor must comply with, and must ensure that its personnel, contractors and subcontractors comply with, DFAT's 'Protection from Sexual Exploitation, Abuse and Harassment Policy', accessible at: <http://www.dfat.gov.au/pseah>.
- 6.2 In accordance with DFAT's Protection from Sexual Exploitation, Abuse and Harassment Policy, the Contractor must immediately (within 24 hours) report any suspected or alleged case of sexual exploitation, abuse and harassment by anyone within scope of the policy in connection with official duties or business to [seah.reports@dfat.gov.au](mailto:seah.reports@dfat.gov.au).
- 6.3 In reporting to DFAT as required pursuant to clause 6.2, the Contractor must comply with the *Privacy Act 1988* (Cth), and the privacy provisions in the DFAT Incident Notification Form, accessible at <http://www.dfat.gov.au/pseah>.
- 6.4 DFAT may conduct a review of the Contractor's compliance with DFAT's Protection from Sexual Exploitation, Abuse and Harassment Policy. DFAT will give reasonable notice to the Contractor and the Contractor must at its own cost participate co-operatively in any such review.
- 6.5 If DFAT finds that the Contractor has failed to comply with DFAT's Protection from Sexual Exploitation, Abuse and Harassment Policy, the Contractor must promptly, and at the cost of the Contractor, take such actions as are required to ensure compliance with DFAT's Protection from Sexual Exploitation, Abuse and Harassment Policy.
- 6.6 This clause 6 is a material term of the Deed.

## **7 CHILD PROTECTION**

- 7.1 In providing the Goods or Services to DFAT, the Contractor must comply with, and ensure that its personnel, contractors and subcontractors comply with, DFAT's Child Protection Policy, accessible at: [www.dfat.gov.au/childprotection](http://www.dfat.gov.au/childprotection).



- 7.2 DFAT may conduct a review of the Contractor compliance with DFAT's Child Protection Policy. DFAT will give reasonable notice (at least 14 calendar days) to the Contractor and the Contractor must at its own cost participate co-operatively in any such review.
- 7.3 In accordance with DFAT's Child Protection Policy, the Contractor must immediately (within 24 hours) report any suspected or alleged case of child exploitation, abuse or harm by anyone within scope of the policy in connection with official duties or business to [childprotection@dfat.gov.au](mailto:childprotection@dfat.gov.au).
- 7.4 In reporting to DFAT as required pursuant to clause 7.3, the Contractor must comply with the *Privacy Act 1988* (Cth) and the privacy provisions in the DFAT Incident Notification Form, accessible at: [www.dfat.gov.au/childprotection](http://www.dfat.gov.au/childprotection).
- 7.5 This clause 7 is a material term of the Deed.

## 8 GENDER EQUALITY

### Definitions

In this clause 8:

**Director of Workplace Gender Equality** means the person so named in Section 9 of the *Workplace Gender Equality Act 2012* (Cth).

- 8.1 This clause 8 applies only to the extent that the Contractor is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* Cth (WGE Act).
- 8.2 The Contractor must comply with its obligations, if any, to promote gender equality in the workplace under the WGE Act.
- 8.3 Subject to clause 8.2, if the Contractor becomes non-compliant with the WGE Act during the Deed Period, the Contractor must promptly notify the DFAT Officer nominated in clause 20 (Notices) and DFAT reserves the right to provide the Contractor with directions regarding compliance.
- 8.4 If the Deed Period exceeds eighteen (18) months, the Contractor must provide a current letter of compliance from the Workplace Gender Equality Agency within 18 months from the Services Start Date and following this, annually, to the DFAT Officer nominated in clause 20 (Notices).
- 8.5 Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under the Deed.

## 9 MODERN SLAVERY

**DRAFTING NOTE:** The clauses below use option 3 of the model clauses which are suitable for arrangements where there is a high risk of modern slavery. For lower risk arrangements, it may be appropriate to use options 1 or 2 of the model clauses – see guidance at [Modern Slavery / Department of Finance](#).

### Definitions

In this clause 9:

**Grievance Mechanism** means a process for handling a complaint or grievance about Modern Slavery practices that is consistent with the criteria set out in the Guiding Principles on Business and Human Rights.

**Guiding Principles on Business and Human Rights** means the United Nations' *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* available at [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

**Modern Slavery** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

**Personnel** means any person who is an officer, employee, contractor (including subcontractor) or agent of the supplier involved in providing the Goods and/or Services.

- 9.1 The Contractor must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services.
- 9.2 The Contractor will:
- (a) ensure Personnel responsible for managing the operations and supply chains used in the performance of this Deed have undertaken suitable training to be able to identify and report Modern Slavery; and
  - (b) promptly notify DFAT after all relevant Personnel complete this training.
- 9.3 The Contractor will prepare and implement a Modern Slavery Risk Management Plan in relation to its performance of this Deed. The Supplier will submit the Modern Slavery Risk Management Plan to DFAT within one month of the Deed Commencement Date for review.
- 9.4 The Modern Slavery Risk Management Plan should at a minimum detail:
- (a) the Contractor's steps to identify and assess risks of Modern Slavery practices in the operations and supply chains used in the performance of this Deed;
  - (b) the Contractor's processes for addressing any Modern Slavery practices of which it becomes aware in the operations and supply chains used in the performance of this Deed;
  - (c) the content and timing of training for Personnel about Modern Slavery; and
  - (d) the Grievance Mechanism/s available to Personnel.
- 9.5 DFAT may provide comments to the Contractor in relation to the Modern Slavery Risk Management Plan, and the Supplier will promptly make any amendments required by the Customer and promptly resubmit the revised Modern Slavery Risk Management Plan to the Customer for its further review.
- 9.6 The Contractor must comply with the Modern Slavery Risk Management Plan in its performance of this Deed. For the avoidance of doubt, nothing in this clause 9 derogates from the Contractor's other obligations arising under this Deed or otherwise in relation to the provision of the Goods and/or Services.
- 9.7 If at any time the Contractor becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Deed, the Contractor must as soon as reasonably practicable:
- (a) promptly notify DFAT of the Modern Slavery practices and provide any relevant information requested by DFAT;
  - (b) take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains;
  - (c) take all reasonable steps to remediate any adverse impacts caused or contributed to by the Contractor from these practices in accordance with the Guiding Principles on Business and Human Rights;
  - (d) consult with DFAT about its actions and steps under clauses 9.7(b) and 9.7(c); and
  - (e) provide updates to DFAT of its progress to address or remove these practices and remediate the adverse impacts on a regular basis and as otherwise requested by DFAT.
- 9.8 Without limiting clause 9.7, in performing this Deed, the Contractor must:

- (a) not require Personnel to pay fees, charges, expenses or financial obligations incurred in order for the Personnel to secure their employment or placement (Recruitment Fees), regardless of the manner, timing or location of the imposition or collection of these Recruitment Fees;
- (b) not destroy or exclusively possess, whether permanently or otherwise, the travel or identity documents of Personnel; and
- (c) ensure Personnel can access a Grievance Mechanism to safely report any instances of Modern Slavery in the operations and supply chains used by the Contractor in its performance of the Deed.

## 10 INDIGENOUS PROCUREMENT POLICY

**DRAFTING NOTE:** The clauses below are suited for non 'High Value Contracts,' as the term is defined in the glossary of the Indigenous Procurement Policy. In some cases, it may be appropriate to choose to use the model clauses for High Value Contracts (where the mandatory minimum Indigenous participation requirements apply). For instance, DFAT could consider voluntarily applying the mandatory minimum requirements, even though the Deed is to be delivered wholly or partly overseas (see clause 4.2 of the Indigenous Procurement Policy). For model clauses to be included in High Value Contracts - see guidance at [Indigenous Procurement Policy | Department of Finance](#). Please refer to the policy and seek legal advice as needed.

### Definitions

In this clause 10:

**Indigenous Procurement Policy** means the Indigenous Procurement Policy of the Commonwealth, as amended from time to time, available on the Indigenous Procurement website at: <https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy>.

10.1 It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy, for further information).

10.2 The Contractor must use its reasonable endeavours to increase its:

- (a) purchasing from Indigenous enterprises; and
  - (b) employment of Indigenous Australians,
- in the delivery of the Goods and/or Services.

10.3 Purchasing from Indigenous Enterprises may include engagement of an Indigenous Enterprise as a subcontractor and/or use of Indigenous suppliers in the Contractor's supply chain.

10.4 In this clause 10, "Indigenous enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating a business.

10.5 Within one month of any written request from DFAT, the Contractor must provide written reports and evidence of its compliance with this clause 10.

## 11 SHADOW ECONOMY

### Definitions

In this clause 11:

**Shadow Economy Procurement Connected Policy** means the *Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines October 2024* available at <https://treasury.gov.au/publication/p2019-t369466>;

**Satisfactory** means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy;

**Statement of Tax Record** means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at [Statement of tax record](#); and

**Valid** means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.

11.1 The Contractor warrants in relation to any first-tier Subcontractor it has engaged to deliver goods and/or services as part of a contract resulting from a procurement with an estimated value of AUD \$4 million or more (GST inclusive) that the Contractor either:

- (a) at the time of responding to the approach to market that resulted in the entry of this Contract, obtained all Valid and Satisfactory Statements of Tax Record required for the Subcontractor's entity type under Part 10 of the Shadow Economy Procurement Connected Policy; or
- (b) obtained at the time of entry into the Subcontract, all Valid and Satisfactory Statements of Tax Record required for the Subcontractor's entity type under Part 10 of the Shadow Economy Procurement Connected Policy.

The Contractor must, on request by DFAT, provide to DFAT a copy of any such Statement of Tax Record.

11.2 If the Contractor is a partnership, the Contractor will ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the partner is provided to DFAT as soon as possible after they become a partner to the partnership.

11.3 The Contractor warrants that at the Services Start Date it holds all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy.

11.4 The Contractor must hold all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy at all times during the Deed Period and, on request by DFAT, provide to DFAT a copy of any such Statement of Tax Record.

11.5 Without limiting its other rights under this Deed or at law, any failure by the Contractor to comply with the requirements outlined in this clause 11 will be a breach of this Deed.

**DRAFTING NOTE:** DFAT to consider whether other standard Commonwealth policy clauses should be included – e.g. to address the Australian Industry Participation Policy or the Australian Skills Guarantee Procurement Connected Policy.

## 12 SIGNIFICANT EVENTS

In this clause 12, **Significant Event** means:

- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor or its Personnel that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
- (b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Contractor or its Personnel that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.

12.1 The Contractor must immediately issue DFAT a notice on becoming aware of a Significant Event.

12.2 The notice issued under clause 12.1 must provide a summary of the Significant Event, including the date that it occurred and whether any Personnel engaged in connection with the Goods and/or Services were involved.

12.3 DFAT may notify the Contractor in writing that an event is to be considered a Significant Event for the purposes of this clause 12, and where this occurs the Contractor must issue a notice under clause 12.1 in relation to the event within three (3) Business Days of being notified by DFAT.

12.4 Where reasonably requested by DFAT, the Contractor must provide DFAT with any additional information regarding the Significant Event within three (3) Business Days of the request.

12.5 If requested by DFAT, the Contractor must prepare a draft remediation plan and submit that draft plan to the DFAT Representative for approval within ten (10) Business Days of the request.

12.6 A draft remediation plan prepared by the Contractor under clause 12.5 must include the following information:

- (a) how the Contractor will address the Significant Event in the context of the Goods and Services, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Goods and Services or compliance by the Contractor with its other obligations under this Contract; and
- (b) how the Contractor will ensure events similar to the Significant Event do not occur again; and
- (c) any other matter reasonably requested by DFAT.

12.7 DFAT will review the draft remediation plan and either approve the draft remediation plan or provide the Contractor with the details of any changes that are required. The Contractor must make any changes to the draft remediation plan reasonably requested by DFAT and resubmit the draft remediation plan to DFAT for approval within three (3) Business Days of the request unless a different timeframe is agreed in writing by DFAT. This clause 12.7 will apply to any resubmitted draft remediation plan.

12.8 Without limiting its other obligations under the Deed, the Contractor must comply with the remediation plan as approved by DFAT. The Contractor agrees to provide reports and other information about the Contractor's progress in implementing the remediation plan as reasonably requested by DFAT.

12.9 A failure by the Contractor to comply with its obligations under this clause 12 will be a material breach of the Deed. DFAT's rights under this clause 12 are in addition to and do not otherwise limit any other rights DFAT may have under the Deed. The performance by the Contractor of its obligations under this clause 12 will be at no additional cost to DFAT.

### **13 ENVIRONMENTAL AND SOCIAL SAFEGUARD POLICY**

13.1 In providing Goods or Services to DFAT, the Contractor must comply with, and must ensure that its personnel, contractors and subcontractors comply with DFAT's Environmental and Social Safeguards Policy.

---

**SCHEDULE 9 – STANDARD CONTRACT CONDITIONS**


---

**1. DEFINITIONS AND INTERPRETATION****1.1. Definitions**

In this Contract, except where the contrary intention is expressed, the following definitions are used and capitalised terms defined in the Deed have the same meaning in the Contract:

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

**Background IP** means Material (whether owned by the Contractor or a third party) that is in existence at the Services Start Date or is subsequently brought into existence other than as a result of the performance of this Contract, and is embodied in, or attaches to, the Contract Material or Services or is otherwise necessarily related to the performance, functioning or operation of the Services. Background IP includes any IP in Material specified in **item 16** of the Services Order.

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

**Commonwealth** means the Commonwealth of Australia.

**Commonwealth Grant Rules and Principles** means the principles made from time to time under section 105C of the PGPA Act.

**Commonwealth Procurement Rules** ('CPRs') means the Rules made from time to time under section 105B(1) of the PGPA Act.

**Contract** means this agreement between DFAT and the Contractor, as varied from time to time in accordance with **clause 16** (Amendment).

**Contract Material** means all Material brought into existence in the course of the Contractor's performance of this Contract (whether by the Contractor or its Personnel), including documents, visual data, information, text and data stored by any means.

**Contract Period** means the Initial Contract Period plus any extension in accordance with **clause 2.2**.

**Contractor Representative** means the person identified in the Services Order or, if no person is identified in the Services Order, in the Details Schedule of the Deed.

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

**day** means a calendar day.

**Deed** means the deed of standing offer between the DFAT and the Contractor pursuant to which the Parties have entered into this Contract.

**Deliverable** means any Contract Material or other item or element of a Service to be provided by the Contractor under this Contract.

**DFAT** means the Department of Foreign Affairs and Trade.

**DFAT Material** means any Material provided to the Contractor by DFAT, including the Material (if any) specified in **item 14** of the Services Order.

**DFAT Representative** means the person identified in the Services Order, or if no person is identified in the Services Order, in the Details Schedule of the Deed.

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

**Fees** means the fees for the Services determined in accordance with the Deed and otherwise as set out in the Services Order, which include Management Fees, Personnel Costs and other Reimbursable Costs.

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

**Former DFAT Employee** means a person who was previously employed by DFAT (or seconded to DFAT), whose employment ceased within the last nine (9) months and who, in the twelve (12) months prior to their separation from DFAT, was substantially involved in the design, preparation, appraisal, review, and or daily management of this Contract or a contract relating to a predecessor to the program to which this Contract relates.

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

**General Obligations** means the obligations in **clause 3.1**.

**Goods** means the parts, equipment, consumables or other items (if any) described in the Services Order or required to perform the Services.

**Grant** means an arrangement for the provision of financial assistance by, or on behalf of, the Contractor:

- (a) under which Relevant Money is to be paid to a grantee other than the Commonwealth; and
- (b) that is intended to help address one or more of DFAT's policy outcomes while assisting the grantee to achieve its objectives.

For the purposes of this definition, 'Relevant Money' means any money that DFAT has paid to the Contractor under this Contract.

**GST** has the meaning that it has in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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

**Initial Contract Period** means the period for which this Contract is intended to continue, as specified in item 2 of the Services Order [or as approved by DFAT in the Scholarship Management System].

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

**NAA** means the National Archives of Australia.

**Partner Country** means each Scholar's home country, as reflected in their application.

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

**PAYG** means the same as in the *Taxation Administration Act 1953* (Cth).

**Payment Milestone** means a milestone identified in the Services Order for which the Contractor is entitled to receive a payment in accordance with this Contract.

**Performance Standards** means the performance standards in clause 5 and any standards specified in a Services Order.

**Persistent Breach** means three (3) or more breaches of the same Performance Standard as outlined in **clause 5** (Performance Standards) or any performance standards outlined in the Services Order in any Australian calendar year.

**Personnel** means the Contractor's officers, employees, agents and Subcontractors (including their respective personnel), and includes Associates.

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

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

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



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

**Quotation** means the Contractor's response to DFAT's RFQ through the Scholarship Management System which, if approved by DFAT, gives rise to a Contract.

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

**Reimbursable Costs** means any costs incurred by the Contractor for which DFAT will reimburse the Contractor as specified in **Schedule 2 (Pricing Schedule)** and as otherwise provided for in the Services Order.

**Relevant Employer** has the meaning given to the term in the WGE Act.

**RFQ** means means a request issued by DFAT to the Contractor through the Scholarship Management System inviting the Contractor to submit a Quotation for the provision of specified services. Upon DFAT's acceptance of a Quotation submitted in response to an RFQ, a Contract is formed between DFAT and the Contractor.

**Satisfactory** means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy.

**Service Obligations** means the obligations in **clause 4.1**.

**Services** means the services to be provided by the Contractor, as specified in item 6 of the Services Order or as approved by DFAT in response to a Quotation given by the Contractor in the Scholarship Management System and includes the provision of the Deliverables and any Goods.

**Services Order** means the Services Order substantially in the form of **Schedule 3B** (Services Order Template) and entered into in accordance with **clause 5** (Standing Offer) of the Deed giving rise to the formation of this Contract.

**Services Start Date** means the commencement date of the Initial Contract Period as specified in item 2 of the Services Order or as approved by DFAT in response to a Quotation given by the Contractor in the Scholarship Management System.

**Shadow Economy Procurement Connected Policy** means the *Shadow Economy Procurement Connected Policy – increasing the integrity of government procurement* available at <https://treasury.gov.au/policy-topics/economy/shadow-economy/procurement-connected-policy>.

**Specified Acts** has the same meaning as in **clause 9.2** of the Agreed Terms of the Deed.

**Standard** means a document, approved by a recognised body such as Standards Australia, the International Organisation for Standardisation, the International Electrotechnical Commission or the International Telecommunication Union, that provides, for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory, unless the goods or services are subject to regulation by government.

**Statement of Tax Record** means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at: [Statement of tax record](#)

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

**Tax Invoice** means a tax invoice which complies with the requirements under the GST Act.

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

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

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

**Valid** means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.



**WGE Act** means *Workplace Gender Equality Act 2012* (Cth).

**Wilful Default** means a default where the breach relates to an act or omission that is intended to cause harm, or otherwise involves recklessness in relation to an obligation not to cause harm.

**Warranted Materials** has the meaning given in **clause 10.9**

## 1.2. Interpretation and construction

In this Contract, 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 or paragraph is to a clause or paragraph of this Schedule 9;
- (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 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 Contract, 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) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Contract or any part of it;
- (n) if a day on or by which an obligation must be performed or an event must occur (other than Services) is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day; and
- (o) headings are for ease of reference only and do not affect interpretation.

### Completion of Services Order

- 1.3. To the extent that items have not been completed in the Services Order, unless otherwise stated in the Services Order, those items will be taken to be 'not applicable' for the purpose of this Contract.

## 2. DURATION OF CONTRACT

### Contract Period

- 2.1. This Contract begins on the Services Start Date and continues for the duration of the Contract Period unless terminated in accordance with clause 50 or 51.

### Option to extend Contract Period

- 2.2. The Contract Period may be extended by DFAT for further period(s), specified in item 4 of the Services Order [or as approved by DFAT in the Scholarship Management System] (each a Contract Option Period), on the terms and conditions then in effect, by giving written notice to the Contractor. Such notice must be given at any time before the end of the current Contract Period (Contract Option Notice Period).

2.3. Any extension in accordance with this clause 2 takes effect from the end of the then current Contract Period.]

### **3. GENERAL OBLIGATIONS OF THE CONTRACTOR**

3.1. The Contractor will, at all times:

- (a) act reasonably in performing its obligations and exercising its rights under this Contract; and
- (b) diligently perform its obligations under this Contract.

### **4. PROVISION OF SERVICES**

#### **Service obligations**

4.1. The Contractor must:

- (a) must perform all of the Contractor's obligations as specified in the Services Order [or in a Quotation approved by DFAT in the Scholarship Management System and any approved variations] in good faith in accordance with:
  - (i) the standards, requirements and practices adopted by the higher education and vocational training industry in Australia;
  - (ii) the National Standards for Education Services to International Students;
  - (iii) the Handbook; and
  - (iv) good industry practice;
- (b) must provide Scholars with all the services normally provided by the Contractor for international Scholars, whether or not those services are described in the Deed or any Contract, unless expressly excluded in this Contract;
- (c) where applicable, in accordance with the Disability Support Agreement;
- (d) acknowledge that DFAT is relying upon the Contractor's advice, skill and judgement in providing the Services;
- (e) must perform the Services, at minimum, to a standard which would be expected of a tertiary education institution in a like position as the Contractor under this Contract;
- (f) accept and implement DFAT's reasonable directions in relation to the management of the Program;
- (g) subject to any flexibility permitted in this Contract, ensure all timing obligations included in this Contractor are fully met;
- (h) perform the Services in a manner which, as far as possible, establishes and maintains a harmonious, cooperative and effective working relationship with stakeholders and any personnel from the Partner Country involved in the Program;
- (i) provide the Services in a manner which protects DFAT's interests and which maintains and enhances the relationship between DFAT and the Partner Country;
- (j) not share information known as a result of the Contractor's work on, or the Contractor's relationship to, the Program in a way that a reasonable person could foresee may be detrimental to the relationship between the Australian and Partner Governments;
- (k) cooperate with the Australian Diplomatic Mission in, or having responsibility for, the Partner Country with DFAT and with any third party;
- (l) provide adequate support resources to secure the aims and objectives of the Program;
- (m) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity; and

- (n) must remain informed throughout the Term of DFAT's requirements (including those in the Handbook as updated by DFAT from time to time) in providing the Services.
- (o) the Contractor must not take any action or make a decision which may materially adversely affect the function or provision of the Services without DFAT's prior written approval.

4.2. In the provision of the Services under this Contract, Contractor Personnel and the Contractor's Subcontractors must:

- (a) not engage in any political activity during the provision of the Services;
- (b) observe all Laws;
- (c) conduct themselves in a manner consistent with the *Public Service Act 1999* (Cth) (including the Australian Public Service Values and Employment Principles and Code of Conduct).

4.3 During the Term of this Contract, the Contractor and anyone acting on the Contractor's behalf must comply with all Australian Laws and the Laws of any other country that apply to activities the Contractor are engaged in in connection with the Program.

4.4 For the purpose of this clause 4, "good industry practice" means practices, methods and standards that would reasonably be expected from professional and experienced service providers in the relevant industry undertaking the same type of work as the Contractor in the same or similar circumstance.

## 5. PERFORMANCE STANDARDS

5.1 Where delivering the Services, the Contractor must at all times meet the performance standards outlined in this clause 5 and any performance standards outlined in the Services Order or in any Quotation and variation approved by DFAT as recorded in the Scholarship Management System.

5.2 Where this Contract is for Services they must be performed:

- (a) with due skill, care and diligence;
- (b) to a professional standard and in a timely manner;
- (c) in the most cost-effective manner and using suitable materials; and
- (d) at a level described in the Handbook.

---

## 6 NOT USED

## 7 WARRANTIES

7.1 The Contractor warrants that it does not have any judicial decision against it relating to employee entitlements (not including decisions under appeal), that has not been met in full by the Contractor.

7.2 If any judicial decision against the Contractor relating to employee entitlements occurs during the term of this Contract, the Contractor must notify DFAT immediately.

7.3 The Contractor warrants that it has made its own assessment of all information made available to the Contractor in respect of the Services and sought all appropriate professional advice.

7.4 The Contractor warrants that it has full corporate power and authority to enter into, perform and observe its obligations under this Contract and that the execution, delivery and performance of this Contract will be duly and validly authorised by all necessary corporate action.

7.5 Where the Contractor is a trustee, the Contractor warrants that it enters this Contract personally and in its capacity as trustee has the power to perform its obligations under this Contract.

### Services

7.6 In relation to the Services provided to DFAT by the Contractor under this Contract, the Contractor represents and warrants that:

- (a) its Personnel have the necessary experience, skill, knowledge, expertise and competence to perform the Services; and

- (b) the Services or related products are free from defects in design, performance and workmanship and are safe and durable.

#### **DFAT Property**

7.7 The Contractor warrants that it and its Personnel will:

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

---

### **8 CONFLICT OF INTEREST**

- 8.1 The Contractor warrants that, at the date of signing the Services Order [or, in the case of a Quotation, approval by DFAT of the Quotation in the Scholarship Management System], no conflict of interest exists, or is likely to arise in the performance of its obligations under this Contract by itself or by any of its Personnel. If required by DFAT, the Contractor must:
- (a) produce a conflict of interest plan (COI Plan) that includes steps it will take to avoid and if necessary mitigate or deal with, conflicts;
  - (b) give DFAT a copy of the COI Plan within five Business Days of receiving the request;
  - (c) review and if necessary update the COI Plan at least annually; and
  - (d) comply, and ensure that its Personnel comply, with the COI Plan.
- 8.2 If, during the performance of the Contract a conflict of interest arises, or appears likely to arise, the Contractor 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 reasonably requires to resolve, or otherwise deal, with the conflict.

---

### **9 INSURANCES**

- 9.1 In connection with the provision of the Services, the Contractor must have and maintain valid and enforceable insurance policies for those types of insurance described and the amounts specified in **clause 12** of the Deed.
- 9.2 In addition to the insurances required under clause 9.1, the Contractor must have and maintain valid and enforceable insurance policies for:
- (a) Motor vehicle third party property damage insurance;
  - (b) Workers' Compensation insurance which:
    - i. fully insures the Contractor for any amount it becomes liable to pay under any statute relating to workers' or accident compensation or for employer's liability at common law;
    - ii. is effected in the Partner Country as well as every state or territory in Australia where its Personnel normally reside or in which their contract of employment was made; and
    - iii. where possible at law, extends to indemnify DFAT as principal for DFAT's liability to persons engaged by the Contractor;
  - (c) adequate property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value;
  - (d) adequate medical and dental insurance for its Personnel who are engaged to operate outside their country of permanent residence; and
  - (e) adequate insurance for medical evacuation and evacuation resulting from an insured event for all its Personnel.
- 9.3 Where there is no workers compensation legislation in force in the Partner Country, the Contractor should arrange adequate personal accident and illness insurance (accidental death and weekly benefits) for any of its Personnel not otherwise covered for the term of this Contract.
-

- 9.4 The Contractor must, within **ten (10)** Business Days after a request by DFAT, provide for any insurance policy: a certificate of currency, a list of exclusions; and the amount of excess payable.
- 9.5 Where any policy is to be cancelled, or the level of cover reduced, the Contractor must give DFAT at least **twenty (20)** Business Days prior notice of the cancellation.
- 9.6 Neither the arrangement and maintenance of insurance nor any failure to arrange and maintain such insurance will in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the other provisions of this Contract or at law.
- 9.7 Failure by the Contractor to maintain all necessary insurances will entitle DFAT to terminate this Contract immediately in accordance with **clause 50** (Termination for Breach).
- 9.8 In the event of an insurance claim any deductible or excess payable will be the responsibility of the Contractor.

---

**10 INTELLECTUAL PROPERTY RIGHTS**

- 10.1 This **clause 10** does not affect the ownership of the Intellectual Property Rights in any Background IP or any DFAT Material.
- 10.2 The Contractor must obtain all necessary copyright and other Intellectual Property Rights permissions before making any Background IP available as a part of the Services.
- 10.3 Except where otherwise agreed in writing by DFAT (including where agreed pursuant to **clause 10.5(b)**), all Intellectual Property Rights in the Contract Material vest in DFAT on creation.
- 10.4 The Contractor grants to, or must procure for, DFAT an irrevocable perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate the Background IP for any purpose (except any commercial purpose).
- 10.5 To the extent that:
- (a) the Contractor needs to use any of the DFAT Material or Contract Material for the purpose of performing its obligations under this Contract, DFAT grants to the Contractor for the term of this Contract, subject to any conditions or restrictions specified in the Services Order or otherwise specified by DFAT in writing, a 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 providing the Services; or
  - (b) it is a condition for the creation of Contract Material that the Intellectual Property Rights in that Contract Material vest in a third party, for example when the Contractor engages a university or private sector organisation to create the Contract Material, the Contractor must obtain the agreement of the DFAT Representative in writing in advance of accepting such a condition. Where agreement is given, the Contractor must obtain for DFAT an irrevocable, perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Contract Material for any purpose (except any commercial purpose).
- 10.6 The Contractor must deliver all Contract Material to DFAT or to the Partner Government counterpart agency as may be directed in writing by DFAT.
- 10.7 To the extent permitted by applicable Laws and for the benefit of DFAT, the Contractor must:
- (e) give, where the Contractor is an individual, in a form acceptable to DFAT; and
  - (f) ensure that each author of the Contract Material and Background IP gives, in a form acceptable to DFAT, genuine consent in writing to the use of the Contract Material and Background IP for the Specified Acts (whether those Specified Acts occur before or after the consent is given), even if such use would otherwise be an infringement of its or their Moral Rights.
- 10.8 The Contractor must promptly provide DFAT with an original of any consent referred to in **clause 10.7** if requested by DFAT.
- 10.9 The Contractor warrants that:
- (a) the Background IP and Contract Material (Warranted Materials) and DFAT's use of those Warranted Materials, will not infringe the Intellectual Property Rights or Moral Rights of any person, and
-

|           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|           | (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided in this clause 10.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 10.10     | If a third party claims, or DFAT reasonably believes that a third party is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights or Moral Rights, the Contractor must, in addition to the Contractor's obligation under <b>clause 10 (Indemnities)</b> of the Deed and to any other rights that DFAT has against the Contractor, promptly, at the Contractor's expense: <ul style="list-style-type: none"> <li>(a) secure the rights for DFAT to continue to use the affected Warranted Materials free of any claim or liability for infringement; or</li> <li>(b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights or Moral Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.</li> </ul>                                                    |
| <b>11</b> | <b>NOT USED</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>12</b> | <b>NOT USED</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>13</b> | <b>BRANDING</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 13.1      | The Contractor must: <ul style="list-style-type: none"> <li>(a) identify, and with prior DFAT approval, implement appropriate opportunities for publicising the Project (including signage at each Project site that acknowledges the funding of the Project) in accordance with DFAT's logo and style guides accessible on the internet at: <a href="https://dfat.gov.au/about-us/corporate/pages/logos-and-style-guides.aspx">https://dfat.gov.au/about-us/corporate/pages/logos-and-style-guides.aspx</a> at all times;</li> <li>(b) only use the Australian Government/DFAT crest logo with prior approval, (in-line version or stacked version) in Australia or the Australian Aid identifier overseas to denote association with Australia, the Australian Government or DFAT in any publicity or other project related materials; and</li> <li>(c) promptly remove Contractor signs at the completion of the Project unless otherwise instructed by DFAT.</li> </ul> |
| <b>14</b> | <b>PUBLICITY</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 14.1      | The Contractor may not make media or other announcements or releases relating to this Contract without DFAT's prior written approval except to the extent that the announcement or release is required to be made by Law.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>15</b> | <b>NO AGENCY</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 15.1      | The Contractor, and its Personnel, will not be deemed to be and must not represent themselves as being, by virtue of this Contract, an employee, partner or agent of DFAT.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 15.2      | The Contractor acknowledges that it has no authority to bind DFAT without DFAT's specific consent.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>16</b> | <b>AMENDMENT</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 16.1      | The Contractor must not do anything that amounts to a variation of this Contract in whole or in part otherwise than in accordance with this <b>clause 16</b> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 16.2      | The provisions of this Contract may not be amended either in Law or in equity except in the form of a Deed of Amendment signed by both DFAT and the Contractor.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>17</b> | <b>WAIVER</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 17.1      | A waiver by either Party of a breach of a particular provision of this Contract by the other Party does not operate as a waiver in respect of any other breach, and the failure of either Party to enforce at any time a provision of this Contract is not to be interpreted as a waiver of the provision.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>18</b> | <b>SEVERANCE</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 18.1      | If any term or condition of this Contract is not enforceable, other terms or conditions of the Contract that are self-sustaining and capable of separate enforcement are to continue in operation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>19</b>                  | <b>ASSIGNMENT</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 19.1                       | The Contractor may not assign or transfer any of its rights or obligations under this Contract without DFAT's prior written approval, and where consent is given, the Contractor must execute a Deed of Novation in a form acceptable to DFAT.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>20</b>                  | <b>SURVIVAL</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 20.1                       | <p>The following clauses survive termination and expiry of this Contract:</p> <p><b>Clause 7</b> (Warranties), <b>Clause 9</b> (Insurances), <b>Clause 10</b> (Intellectual Property), <b>Clause 23</b> (Investigation by the Ombudsman), <b>Clause 25</b> (Fraud), <b>Clause 29</b> (Confidentiality), <b>Clause 30</b> (Privacy), <b>Clause 35</b> (Recordkeeping), <b>Clause 37</b> (Audit) and any other clause, which by their nature, survive the expiry or termination of this Contract. For the avoidance of doubt, clause 10.3 of the Deed continues to apply following the termination or expiry of this Contract.</p>                                                                                                                                                                                                                                                                                                |
| 20.2                       | In addition to the survival of clauses outlined at <b>clause 20.1</b> , the expiry or termination of this Contract will not extinguish or affect any rights of either Party against the other accrued prior to termination, or arising at any future time from any breach or non-observance of obligations under this Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>21</b>                  | <b>GOVERNING LAW AND JURISDICTION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 21.1                       | This Contract and any transactions contemplated under this Contract are governed by, and are to be construed in accordance with the Laws of the Australian Capital Territory. Each Party to the Contract unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>22</b>                  | <b>NOTICES</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 22.1                       | Unless the contrary intention appears, any notice under the Contract, will be effective if it is in writing and sent from and delivered to the DFAT Representative or the Contractor Representative, as the case may be, in accordance with the recipient's address for notices specified in <b>item 21</b> of the Services Order [or, in relation to a Quotation and variation approved by DFAT in the Scholarship Management System, the Notice Details in the Details Schedule of the Deed].                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 22.2                       | <p>A notice given in accordance with this clause 22 is deemed to be delivered:</p> <ul style="list-style-type: none"> <li>(a) if sent by pre-paid post, in <b>three (3)</b> Business Days when sent within Australia and in <b>eight (8)</b> Business Days when sent by air mail from one country to another;</li> <li>(b) if hand delivered, when received at the address, or by the addressee if sooner;</li> <li>(c) if sent as an email, when the email enters the recipient's information system, unless the sender's information system receives a message within one (1) Business Day that the email has not been delivered to the recipient, but if the receipt, transmission or entry into the information system is not on a Business Day or is after 5.00pm (recipient's local time) on a Business Day, the notice is deemed to be delivered at 9.00am (recipient's local time) on the next Business Day.</li> </ul> |
| <b>PART 2 – COMPLIANCE</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>23</b>                  | <b>INVESTIGATION BY THE OMBUDSMAN</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 23.1                       | In carrying out the Services, the Contractor, and an employee or Subcontractor of the Contractor, may be a 'Commonwealth service provider' under Section 3BA of the <i>Ombudsman Act 1976</i> (Cth).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 23.2                       | <p>The Contractor must use its best endeavours, and must ensure that employees and Subcontractors of the Contractor use their best endeavours, in undertaking the Services, not to engage in conduct that:</p> <ul style="list-style-type: none"> <li>(a) would, if the Contractor or an employee or Subcontractor were an officer of DFAT, amount to a breach of duty or to misconduct; or</li> <li>(b) should be brought to the attention of the principal officer of DFAT as defined in the <i>Ombudsman Act 1976</i> (Cth).</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                      |
| 23.3                       | <p>If the Commonwealth Ombudsman commences an investigation of conduct of the Contractor (or an employee or Subcontractor of the Contractor), as a Commonwealth service provider, the Contractor, at the cost of the Contractor, must cooperate with the investigator including:</p> <ul style="list-style-type: none"> <li>(a) providing all documentation required by the investigator;</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |



|           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|           | <ul style="list-style-type: none"> <li>(b) making Contractor Personnel available to assist the investigator; and</li> <li>(c) allowing the investigator, at any reasonable time of the day, to enter a place occupied by the Contractor and carry on the investigation at that place.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 23.4      | If the Ombudsman brings evidence to the notice of DFAT concerning the conduct of the Contractor, or of an employee or Subcontractor of the Contractor, the Contractor must, at the cost of the Contractor, take whatever remedial action is required by DFAT or by the Ombudsman to rectify the situation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>24</b> | <b>COUNTER-TERRORISM</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 24.1      | <p>The Contractor must ensure that funds provided under this Contract (whether through a Subcontract or not) do not provide direct or indirect support or resources to:</p> <ul style="list-style-type: none"> <li>(a) organisations and/or individuals associated with terrorism; and</li> <li>(b) organisations and individuals for whom Australia has imposed sanctions under: the <i>Charter of the United Nations Act 1945</i> (Cth) and regulations made under that Act; the <i>Autonomous Sanctions Act 2011</i> (Cth) and regulations made under that Act; or</li> <li>(c) organisations and/or individuals listed on the Criminal Code Act List, the DFAT Consolidated List, the World Bank List or a Relevant List.</li> </ul>                                                                                                                                                                                                                                                                                                                                                          |
| <b>25</b> | <b>FRAUD</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 25.1      | The Contractor must not, and must ensure that Personnel do not, engage in any Fraud and must prevent and detect Fraud, including Fraud by its Personnel.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 25.2      | Within one month of the Services Start Date, the Contractor must conduct a Fraud risk assessment and produce a Fraud control plan in compliance with the Commonwealth Fraud and Corruption Control Framework available at <a href="http://www.counterfraud.gov.au/library/framework-2024">www.counterfraud.gov.au/library/framework-2024</a> . The risk assessment and plan must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 25.3      | The Contractor is responsible for preventing and detecting Fraud including Fraud within those functions outsourced to/or performed by a Subcontractor or under any other arrangement established by the Contractor relating to the performance of this Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 25.4      | The Contractor must ensure that Personnel are responsible and accountable to the Contractor for preventing and reporting any Fraud as part of their routine responsibilities. The Contractor must ensure that Personnel who are not employed by the Contractor report Fraud to the Contractor within five (5) Business Days.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 25.5      | <p>If the Contractor becomes aware of a Fraud, it must report the matter to DFAT in writing within five (5) Business Days. The written report to DFAT must be signed by a Contractor authorised person and must include the following (where known):</p> <ul style="list-style-type: none"> <li>(a) the name of the Project under which DFAT funding is being provided;</li> <li>(b) name of any Personnel (including any Subcontractors) involved;</li> <li>(c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);</li> <li>(d) the names of the suspected offender(s) (where known);</li> <li>(e) details of witnesses;</li> <li>(f) copies of relevant documents;</li> <li>(g) references to any relevant legislation;</li> <li>(h) a nominated contact officer;</li> <li>(i) any other relevant information (e.g., political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and</li> <li>(j) the current status of any inquiries commenced by the Contractor.</li> </ul> |
| 25.6      | If a report has been made in accordance with <b>clause 25.5</b> above, the Contractor must respond within five (5) Business Days to any further requests for information DFAT may make.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 25.7      | If the Contractor becomes aware of a Fraud, the Contractor must, in consultation with DFAT, develop and                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |



implement a strategy to investigate the Fraud based on the principles set out in the Australian Government Investigations Standards.

- 25.8 The Contractor must investigate any Fraud at the Contractor's cost and in accordance with any directions or standards required by DFAT. Whether the Contractor conducts an investigation or appoints an investigator to conduct an investigation, the person conducting the investigation must possess the minimum qualifications specified in the Australian Government Investigation Standards or an equivalent agreed to by DFAT.
- 25.9 DFAT reserves the right to appoint its own investigator, conduct its own investigation or report Fraud to the appropriate law enforcement agencies or any other person or entity DFAT deems appropriate in Australia or in a Partner Country for investigation. If DFAT exercises its rights under this **clause 25.9**, the Contractor must provide all reasonable assistance that may be required at its sole expense.
- 25.10 After the investigation is finished, if a suspected offender has been identified or at the direction of the Director of DFAT Fraud Control Section, the Contractor must promptly report the Fraud to the local police and any other appropriate law enforcement agency in the country where the incident has occurred, unless the Director of DFAT- Fraud Control Section agrees otherwise in writing.
- 25.11 If the investigation finds the Contractor or Personnel have engaged in Fraud, the Contractor, in consultation with DFAT, must:
- (a) if DFAT funds have been misappropriated, pay to DFAT the full value of the misappropriated funds; and
  - (b) if DFAT-funded property has been misappropriated, either return the property to DFAT or, if the property cannot be recovered or has been damaged, replace the property with property of equal or greater value or quality, or repair the property, at no cost to DFAT.
- 25.12 If the investigation finds that a person other than the Contractor or Personnel has engaged in Fraud, the Contractor must, at the Contractor's cost, take all reasonable action to recover any DFAT funds or DFAT-funded property acquired or distributed through the Fraud, including taking recovery action in accordance with recovery procedures (including civil litigation) available in a relevant Partner Country.
- 25.13 The Contractor must keep DFAT informed, in writing, on a monthly basis, of the progress of its efforts to recover the DFAT funds or DFAT-funded property, including any recovery action.
- 25.14 If the Contractor considers that all reasonable action has been taken to recover the DFAT funds or DFAT-funded property and recovery has not been achieved or recovery has only been achieved in part, the Contractor may seek approval from DFAT that no further recovery action be taken.
- 25.15 If an investigation finds that the Contractor or Personnel have engaged in Fraud, or if DFAT discovers that a Fraud has not been reported to DFAT in accordance with **clause 25.5**, DFAT reserves the right to:
- (a) terminate this Contract by giving the Contractor notice in writing specifying the date on which the termination will take effect; and
  - (b) not enter into any further agreements with the Contractor until such time as DFAT is satisfied that any recommended changes to the Contractor's management and procedures have been made in order to prevent any further Fraud from occurring and to ensure timely reporting of fraud to DFAT.
- 25.16 Without limitation to DFAT's rights pursuant to **clauses 50** (Termination for Breach) and **25.15**, if the Contractor fails to comply with its obligations under this **clause 25** with respect to a Fraud, DFAT may give the Contractor a written notice which specifies:
- (a) the obligation(s) with which the Contractor has not complied;
  - (b) the action that the Contractor must take to rectify the failure; and
  - (c) the date by which the Contractor must rectify the failure.
- 25.17 If the Contractor does not comply with a notice issued pursuant to **clause 25.16**, DFAT reserves the right to:
- (a) terminate this Contract in accordance with **clause 50** (Termination for Breach); and / or
  - (b) exercise its rights pursuant to **clause 25.15**; and / or

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | (c) withhold payments (or parts of payments) due to the Contractor under this Contract until the Contractor has complied with the notice.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 25.18      | This <b>clause 25</b> survives the termination or expiration of this Contract, including with respect to any Fraud relating to the performance of this Contract, which is not detected until after this Contract has been terminated or has expired.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>26</b>  | <b>NOT USED</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>26B</b> | <b>NOT USED</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>27</b>  | <b>SECURITY</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 27.1       | The Contractor is responsible for the security of its Personnel, and for ensuring that both the Contractor and its Personnel comply with this <b>clause 27</b> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 27.2       | If, during the Contract Period, the Contractor is required to access or otherwise gains access to Official Information or Security Classified Information (as defined in <b>clause 16.3(c)</b> of the Deed), it agrees to comply with: <ul style="list-style-type: none"> <li>(a) all relevant security requirements specified in the Commonwealth Protective Security Policy Framework as minimum standards;</li> <li>(b) the security requirements specified in this Contract; and</li> <li>(c) any variations or additions to the security requirements under this <b>clause 27</b> that DFAT (in its absolute discretion) notifies the Contractor in writing. Such changes to the security requirements must be implemented by the Contractor from the date specified in the notice (or five (5) Business Days after it receives the notice if no date is specified).</li> </ul>    |
| 27.3       | The Contractor must ensure that all its Personnel, when using DFAT's premises or facilities, comply with all DFAT procedures and directions relating to security.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 27.4       | If required by DFAT each of its Personnel engaged by or on behalf of the Contractor, must meet all necessary security assessments and standards required by DFAT including: <ul style="list-style-type: none"> <li>(a) an identity check;</li> <li>(b) a National Police Clearance check or equivalent;</li> <li>(c) signing any forms notified to the Contractor by DFAT from time to time;</li> <li>(d) holding Australian Government security clearances to the level requested by DFAT in accordance with the Commonwealth Protective Security Policy Framework, or as otherwise required by DFAT;</li> <li>(e) attending and completing a DFAT Security Awareness Course prior to or as soon as possible after the Services Start Date at the Contractor's cost; and</li> <li>(f) complying with any other security awareness requirements reasonably requested by DFAT</li> </ul> |
| 27.5       | DFAT will facilitate the obtaining of security clearances for Personnel. The Contractor must bear the cost of security clearances for its Personnel. If the security requirements are redefined, the Contractor is entitled to apply to DFAT for a price variation where additional costs arising from those changed requirements can be substantiated (provided however that no such variation will take effect unless agreed in writing by the Parties).                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 27.6       | All Personnel, where DFAT considers this appropriate, must: <ul style="list-style-type: none"> <li>(a) attend and complete a Departmental Security Awareness Course prior to or as soon as possible after the Services Start Date at the Contractor's cost; and</li> <li>(b) comply with any other security awareness requirements reasonably requested by DFAT.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 27.7       | The Contractor acknowledges that if any of its Personnel lose their security clearance or causes a security breach, DFAT may: <ul style="list-style-type: none"> <li>(a) after consultation with the Contractor, require the replacement of that Personnel; or</li> <li>(b) terminate this Contract for breach.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 27.8       | The Contractor must:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

- (a) notify DFAT immediately on becoming aware of any security incident or security breach and comply with all DFAT directions to rectify the security problem; and
- (b) participate in security reviews of its procedures at least annually as requested by DFAT and participate in any security audit in relation to the Contract, providing full co-operation to DFAT or its Independent Auditors, including the Australian National Audit Office.

27.9 The Contractor must comply, and must ensure that its Personnel comply, with any additional security requirements specified in item 21 of the Services Order.

---

**28 WORK HEALTH AND SAFETY**

28.1 The Contractor must perform its, and must ensure that its Personnel perform their, obligations under this Contract in strict compliance with the *Work Health and Safety Act 2011* (Cth) ('WHS Act') and participate in:

- (a) any necessary inspections of work in progress;
- (b) any necessary consultation with DFAT regarding implementation of the WHS Act provisions; and
- (c) tests and evaluations of the Services.

28.2 The Contractor agrees, when using DFAT's premises or facilities, to comply with all reasonable directions and procedures relating to work health and safety and security in effect at those premises or in regard to those facilities, as notified by DFAT or as might be inferred from the use to which the premises or facilities are being put.

28.3 Without limiting any other provision of this Contract, the Contractor agrees to, on request, give all reasonable assistance to DFAT, by way of provision of information and documents, to assist DFAT and its officers as defined in the WHS Act to comply with the duties imposed on them under the WHS Act.

28.4 The Contractor acknowledges that DFAT may direct it to take specified measures in connection with the Contractor's work under this Contract that DFAT considers reasonably necessary to deal with an event or circumstance that has or is likely to have, an adverse effect on the health or safety of persons. The Contractor must comply with the direction at its own cost. The Contractor may be entitled to reimbursement of costs associated with compliance under this Clause 28.4 where compliance with DFAT's reasonable direction materially impacts upon the costs of the Contractor. DFAT will only be liable for costs it approves in writing prior to their accrual.

**Work Health and Safety Plan**

28.5 The Contractor will prepare and implement a Work Health and Safety Plan in relation to the performance of this Contract. The Contractor will submit the Work Health and Safety Plan to DFAT within 6 months following the Services Start Date, for information only.

28.6 The Contractor will update the Work Health and Safety Plan at intervals of not more than twelve (12) months each to ensure that it remains relevant and will promptly submit the updated Work Health and Safety Plan to DFAT, for information only.

28.7 The Work Health and Safety Plan should, at a minimum, detail:

- (a) policies and procedures that are necessary to meet any applicable legislative or regulatory work health and safety requirements;
- (b) potential work health and safety issues and how each is proposed to be managed, if it occurs;
- (c) whether any of the WHS related policies and practices, including any of the WHS Codes of practice, that the Contractor's organisation has in place to ensure the safety and security of persons working at any site associated with the performance this Contract are applicable;
- (d) a specific process and timetable for Critical Incident management; and
- (e) the timing and content of work health and safety training.

---

**29 CONFIDENTIALITY**

29.1 Neither Party nor their personnel (including any Personnel) may disclose, use or make public the Confidential Information of the other Party (or Confidential Information disclosed by or on behalf of the other) unless required by Law, necessary for legal proceedings, provided with the written consent of the relevant Party, or

required to manage the Contract. If the Confidential Information is required to be disclosed under this **clause 29.1**, a Party must use all reasonable endeavours to ensure that persons receiving the Confidential Information do not further disclose the information.

- 29.2 DFAT Data (including DFAT Confidential Information) must not be removed from Australia or the relevant Partner Country.
- 29.3 If a Party is required to disclose Confidential Information by Law or for legal proceedings, the disclosing Party must provide reasonable notice to the other Party.
- 29.4 The Contractor must obtain from any Personnel who will have access to DFAT Confidential Information, a written undertaking in the form set out at **Schedule 6** (Deed of Confidentiality) to the Deed relating to non-disclosure of that information.
- 29.5 The Contractor acknowledges and agrees to allow DFAT to publish details and report lists of Contracts valued over certain thresholds and identify Confidentiality agreements in accordance with Senate Order requirements.
- 29.6 The Contractor acknowledges and agrees to allow DFAT to periodically publish detailed information about work under the Contract on the DFAT website. This will include information about the Contractor's policies, plans, processes, the results of the Contractor's aid activities and DFAT's evaluations of the Contractor's performance. DFAT and the Contractor will consult prior to publication or release of information regarded as sensitive (for example, Fraud or corruption matters).
- 29.7 The identity of the Contractor's Personnel is not Confidential Information, nor is this Contract with the exception of those items specified in **Schedule 7** (Confidential Information) of the Deed.
- 29.8 The Contractor must ensure that it obtains any necessary consent from its Personnel in relation to the requirements of this **clause 29**.
- 29.9 Upon expiry or earlier termination of this Contract, the Contractor must (as directed in writing by DFAT) either destroy or deliver to DFAT all DFAT Confidential Information.
- 29.10 The obligations on the Parties under this **clause 29** will not be taken to have been breached to the extent that Confidential Information
  - (a) is disclosed by a Party to its advisers, employees or other personnel solely in order to comply with obligations, or to exercise rights, under this Contract;
  - (b) is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of contract-related activities;
  - (c) is disclosed by any agency within the Commonwealth, for the purpose of administering this Contract;
  - (d) is disclosed by any Commonwealth agency to the responsible Minister;
  - (e) is disclosed by any Commonwealth agency in response to a request by a House or a Committee of the Parliament of the Commonwealth;
  - (f) is shared by DFAT within the Commonwealth, where this serves the Commonwealth's legitimate interests;
  - (g) is authorised or required by Law, including under this a Contract, under a licence or otherwise, to be disclosed; or
  - (h) is in the public domain otherwise than due to a breach of this clause 29.

---

**30      PRIVACY AND NOTIFIABLE DATA BREACHES**

**30.1    Compliance with Privacy Laws and policies**

The Contractor must ensure that:

- (a) in providing the Services, the Contractor and all Personnel comply with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles as if they were DFAT;
- (b) all its dealings with Personal Information in connection with this Contract meet its privacy-related obligations and the requirements of DFAT's latest published DFAT privacy policy (<https://www.dfat.gov.au/about-us/corporate/privacy>) as amended from time to time;
- (c) neither the Contractor nor any Personnel do an act, or engage in a practice, that would breach an Australian Privacy Principle if done or engaged in by DFAT; and
- (d) the Contractor's Personnel dealing with Personal Information in connection with this Contract are aware of, are subject to, and comply with the Contractor's privacy-related obligations.

#### 30.2 DFAT access and requests

The Contractor must:

- (a) give DFAT access, on request, to any Personal Information acquired from DFAT or collected or generated in connection with this Contract; and
- (b) comply with DFAT's reasonable requests to ensure that the Contractor and DFAT comply with:
  - (i) **clause 30.1**; or
  - (ii) any applicable guideline, recommendation, direction or determination issued by the Office of the Australian Information Commissioner (or such other privacy authority with jurisdiction over either Party).

#### 30.3 General Obligations of the Contractor

The Contractor must:

- (a) ensure that its Personnel who deal with Personal Information in connection with this Contract is aware of and comply with the Contractor's obligations under this Contract in relation to such activities or practices;
- (b) ensure that records added to the Scholarships Management System that include personal or sensitive information are updated promptly to reflect any new information; and
- (c) notify DFAT immediately (and in any event no later than 24 hours of becoming aware of a breach or possible breach of its obligations in relation to Personal Information under this Contract).

#### 30.4 Notifiable Data Breaches

If the Contractor becomes aware that there are reasonable grounds to suspect, or suspects an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Contract or its provision of a Services Order, the Contractor must:

- (a) immediately (and in any event no later than 24 hours of becoming aware of a breach or possible breach) notify DFAT;
- (b) give DFAT a written report within 3 Business Days; and
- (c) carry out an assessment in line with the [Privacy Act 1988 \(Cth\)](#).

If the Contractor CONFIRMS the existence of, or DFAT notifies the Contractor that there has been, an Eligible Data Breach, the Contractor must take:

- (a) all reasonable action to minimise the risk of the Eligible Data Breach causing serious harm to any individual to whom the Personal Information relates;
- (b) all necessary actions to comply with the [Privacy Act 1988 \(Cth\)](#); and
- (c) any other action DFAT reasonably requires.

---

### PART 3 – CONTRACT MANAGEMENT

---

## **31 REVIEW**

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

---

## **32 PERFORMANCE ASSESSMENT**

- 32.1 The Contractor acknowledges and agrees that DFAT may issue in relation to this Contract:
- (a) a Partner Performance Assessment (PPA) of the Contractor substantially in accordance with the assessment sheet at <https://dfat.gov.au/about-us/business-opportunities/Pages/resources.aspx>;
  - (b) Advisor Performance Assessments (APAs) of particular Personnel substantially in accordance with the assessment sheet in **Schedule 7** (Adviser Performance Assessment) to the Deed;
  - (c) Subcontractor performance assessments (based on the PPA); and
  - (d) Subcontractor key personnel performance assessments (based on the APA).
- 32.2 Within 15 days of receiving a PPA from DFAT, the Contractor must:
- (a) sign and return to DFAT the PPA together with any response; and
  - (b) ensure that all other performance assessments together with any response the Subcontractor or any personnel wishes to include are signed and returned to DFAT.
- 32.3 The Contractor must undertake Personnel, Subcontractor and Subcontractor personnel assessments as required by DFAT.
- 32.4 DFAT may at any time request performance assessments to be done of any personnel engaged through the Service Orders.
- 32.5 The Contractor must insert clauses in any Subcontracts relating to the Contract that require the Subcontractor to agree that:
- (a) DFAT or the Contractor may issue:
    - (i) a Subcontractor performance assessment; or
    - (ii) Subcontractor key personnel performance assessments,
 in relation to the Subcontract;
  - (b) the Subcontractor will sign and return the Subcontractor performance assessment together with any response within 15 days of receipt and will ensure that Subcontractor personnel performance assessments together with any response any personnel wishes to include are signed and returned within 15 days of receipt.

---

## **33 SPECIFIED PERSONNEL**

- 33.1 It is a material term of this Contract that, where Specified Personnel are identified in the Services Order, the Services must be provided by them in their designated roles for the term of this Contract. If any of them are unable to do so for a period of more than ten (10) Business Days the Contractor must not remove or replace them, but must notify DFAT in accordance with clause 22 (Notices) and seek DFAT's approval for proposed replacement personnel within ten (10) Business Days and at no additional cost to DFAT.
- 33.2 The Contractor must advise DFAT promptly in writing of any change in the circumstances of any Personnel that would reasonably be considered likely to affect DFAT's assessment of the person under the Contract. In the event DFAT directs the Contractor to remove any Personnel as a result of notification under this Clause, the Contractor must identify replacement personnel within ten (10) Business Days.
- 33.3 The Contractor must only propose replacement personnel with suitable skills and qualifications to act as replacement Specified Personnel and able to commence providing the Services under this Contract

immediately.

- 33.4 DFAT may give notice to the Contractor in accordance with **clause 22 (Notices)** requiring the Contractor to remove any Personnel from work in respect of the provision of the Services and propose new Personnel in accordance with **clauses 33.1 and 33.2**.
- 33.5 The Contractor must not engage a currently serving Commonwealth employee in any capacity in connection with the Services without DFAT's prior written approval.
- 33.6 The Contractor must not engage a Former DFAT Employee in any capacity in connection with the Services unless DFAT has approved the engagement.
- 33.7 When engaging Personnel for work in a Partner Country, the Contractor will use its best endeavours to ensure they are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner.

---

#### **34 SUBCONTRACTING**

- 34.1 The Contractor must not:
  - (a) subcontract the provision of the whole or any part of the Services to; or
  - (b) enter into or maintain a Subcontract relating to the provision of the Services with a person who is or an entity which is listed on the Criminal Code Act List, the DFAT Consolidated List, a World Bank List or a Relevant List.
- 34.2 The Contractor must obtain DFAT's prior written approval to subcontract with any third party, except Specified Personnel, to the value of AUD100,000 or more. In granting its approval, DFAT may impose any conditions it considers appropriate.
- 34.3 Where DFAT objects to the Contractor's preferred subcontractor or DFAT nominates a particular subcontractor in place of the Contractor's preferred subcontractor, the Contractor must enter into an agreement with the subcontractor as directed by DFAT on the basis of remuneration approved by DFAT and provide DFAT with a copy of the executed Subcontract.
- 34.4 If the Contractor subcontracts its performance of any part of this Contract, the Contractor will remain liable for the acts, defaults and omissions of the Subcontractor as if they were the Contractor's acts, defaults and omissions.
- 34.5 Any Subcontract entered into by the Contractor for the performance of any part of this Contract must contain clauses:
  - (a) that authorise the Commonwealth to publish details of the name of the Subcontractor and the nature of the Services that the Subcontractor is subcontracted to perform;
  - (b) that reserve a right of termination to take account of DFAT's right of termination under **clause 51** (Termination for Convenience);
  - (c) under which the Subcontractor assumes all the Contractor's obligations (including all obligations under Australian Law and development policies), and gives all the warranties the Contractor gives, under this Contract to the extent they are relevant to the Services the Subcontractor is subcontracted to perform; and
  - (d) that gives DFAT the right of substitution under a Deed of Novation and Substitution, to further novate the Subcontract to another contractor.
- 34.6 The Contractor entering into a Subcontract for the provision of parts or elements of the performance of the



Services does not create any contractual relationship between DFAT and the Subcontractor.

**PART 4 – RECORDS, AUDIT AND REPORTS**

---

**35 RECORDKEEPING**

- 35.1 The Contractor must ensure that it and its Personnel at all times to the satisfaction of DFAT:
- (a) keep accurate and up-to-date accounts and records relating to the performance of its obligations under this Contract (including receipts and expenses) in a manner that enables them to be conveniently and properly audited;
  - (b) record all operational activities in relation to the provision of the Services, including to enable the prevention, detection and investigation of Fraud as required by **clause 25** (Fraud);
  - (c) keep accurate and up-to-date accounts and records which contain details of the disposition of Supplies as agreed to by DFAT, such as replacement, write-off or transfer to a Partner Country;
  - (d) comply with any standards prescribed by DFAT from time to time for the creation, care, access, storage, preservation and return or legal destruction of its accounts and records (including Contract Material) and any DFAT material;
  - (e) provide all reasonable assistance requested by DFAT for any administrative or statutory review concerning this Contract; and
  - (f) retain copies of all accounts and records for a period of seven (7) years after termination or expiration of this Contract or completion of any legal action arising out of or in connection with this Contract, whichever occurs later.
- 35.2 DFAT retains legal ownership of all records created for the provision of the Goods and/or Services by the Contractor. Upon termination or expiration of this Contract, the Contractor must transfer all records created and maintained for Goods and/or Services provided by the Contractor under this Contract to DFAT in a format and manner which allows the records to be quickly and easily retrieved, reviewed and utilised by DFAT.
- 35.3 The Contractor must store, dispose of, and/or transfer, custody or the ownership of any Commonwealth records in accordance with standards issued under the *Archives Act 1983* (Cth) and/or any specific instructions provided from time to time by the Australian Government through the NAA.
- 35.4 The Contractor must comply with any direction given by DFAT for the purpose of transferring Commonwealth records to the possession, custody or control of the NAA or providing the NAA with full and free access to those records.
- 35.5 The Contractor must maintain up to date records of the names of all Subcontractors engaged by the Contractor to perform part of the Services.
- 35.6 The Contractor may keep one (1) copy of all records created during the course of the provision of the Services for legitimate risk management and audit purposes.

---

**36 ACCESS TO PREMISES AND RECORDS**

- 36.1 The Contractor must:
- (a) produce records, books and accounts for inspection by DFAT immediately upon request (including where entering into a Subcontract and executing a Deed of Novation and Substitution) at the same time or within ten (10) Business Days of execution of the Subcontract by the Contractor.
  - (b) permit each of DFAT, the Commonwealth Auditor-General and the Information Privacy Commissioner or Privacy Commissioner as appropriate at reasonable times and on reasonable notice, through their officers, employees or agents authorised on their behalf, to:
    - (i) access the Contractor's premises;
    - (ii) examine, inspect, audit and copy any accounts and records relating to this Contract or the Goods and/or Services;
    - (iii) provide all necessary facilities for this purpose; and
    - (iv) in the case of documents or records stored on a medium other than in writing, make available to DFAT on request reasonable facilities necessary to enable a legible reproduction to be created.
-



- 36.2 In the exercise of the rights under this **clause 36**, DFAT must use reasonable endeavours not to unreasonably interfere with the Contractor's performance under the Contract in any material respect.

---

**37 AUDIT**

- 37.1 DFAT has the inspection and audit rights described in **clause 36** (Access to Premises and Records) and this **clause 37** and subject to these provisions, each Party is to bear its own costs in relation to any audit.
- 37.2 DFAT or a representative of DFAT may conduct audits relevant to the performance and/or compliance by the Contractor with any of its obligations under the Contract, including audits of the Contractor's relevant:
- (a) operational practices and procedures;
  - (b) project and financial management governance;
  - (c) oversight practices and procedures;
  - (d) invoices and reports;
  - (e) Material (including records, books and accounts) in the possession of the Contractor; and/or
  - (f) other matters determined by DFAT to be relevant to the performance of the Contractor's obligations under the Contract.
- 37.3 Where DFAT has reasonable concerns regarding the Contractor's financial management systems, DFAT will provide the Contractor with written notification of those concerns outlining the action to be undertaken by the Contractor. These actions include:
- (b) a request that the Contractor's Company Director provide a Statutory Declaration confirming that he/she has sighted the necessary supporting documentation and confirms the veracity of the claim for payment;
  - (c) the Contractor providing DFAT with additional documentation to support the claim for payment; and/or
  - (d) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including its invoicing procedures and practices, with a copy of each draft and the final audit report to be provided to DFAT.
- 37.4 The Contractor must respond to any notice received under clause 37.3 within fourteen (14) Business Days.
- 37.5 DFAT reserves the right, at any time to direct the Contractor engage an independent audit firm and to provide DFAT with a copy of the audit report from the Independent Auditor.
- 37.6 If DFAT directs the Contractor to undertake an independent audit it must do so at the Contractor's cost, and the Contractor must comply with any directions given by DFAT regarding terms of reference or required auditing standards.
- 37.7 Where a direction has been made under clause 37.6, DFAT will not make any further payments owed to the Contractor pending certification of the reliability of the Contractor's financial management systems and the veracity of the invoicing procedures and practices.
- 37.8 This clause 37 applies for the term of this Contract and for a period of seven (7) years from the date of its expiration or termination.
- 37.9 The requirement for access and participation in audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

---

**38 REPORTS**

- 38.1 The Contractor must at its own cost comply with DFAT's reasonable directions as to the form and content of reports or other written information required under this Contract. DFAT must give the Contractor at least two (2) weeks' notice of a change in the requirements for reports, unless otherwise agreed with the Contractor.
- 38.2 DFAT may reject and withhold payment of Fees for any report which does not, in the opinion of DFAT, meet the requirements or standards outlined in the Contract until the Contractor rectifies the report.
- 38.3 The Contractor must ensure that all reports:
- (a) are accurate and not misleading in any respect;
  - (b) are prepared in accordance with directions provided by DFAT;
-

- (c) incorporate sufficient information to allow DFAT to monitor and assess the success of the Services in achieving DFAT's objectives;
- (d) comply with DFAT's *Guidelines for Preparing Accessible Content* (available from DFAT's website at: [www.dfat.gov.au](http://www.dfat.gov.au));
- (e) are provided in Microsoft Word format (or Microsoft Excel format for spread sheets) unless otherwise approved or requested by DFAT (e.g. online system);
- (f) are prepared to be published on the DFAT or program website, ensuring any sensitive information is easily redacted (i.e. included in annexes);
- (g) do not incorporate either DFAT or the Contractor's logo; and
- (h) are provided at the time specified in this Contract.]

---

**39 NOT USED**

**PART 5 – PAYMENT AND TAX**

---

**40 INVOICING**

- 40.1 The Contractor must invoice DFAT for the provision of Goods and/or Services on a monthly basis, or as otherwise described in Schedule 2 (Pricing Schedule) of the Deed or any Services Order
- 40.2 For the purposes of this clause 40 and Schedule 2 (Pricing Schedule) of the Deed or any Services Order, an invoice is correctly rendered if:
- (a) it is in the form of a valid Tax Invoice under the GST Act (or, where the supply of the Services is not a Taxable Supply, in the form of an invoice approved by DFAT);
  - (b) it is accompanied by supporting documentation in respect of the Services in the form, and containing the information, reasonably required by DFAT;
  - (c) it is correctly addressed to DFAT and is correctly calculated;
  - (d) it relates only to Services that have been delivered to DFAT in accordance with the Contract;
  - (e) Reimbursable Costs, and amounts owing to suppliers or Subcontractors have been paid before submission of the invoice to DFAT;
  - (f) the invoice details all Services provided by the Contractor against the Fees referred to in **Schedule 2** (Pricing Schedule) and records the amount payable in respect of each category of Services described in the Contract;
  - (g) it is in Australian dollars or converted into Australian dollars at the exchange rate incurred by the Contractor at the time of making the payment;
  - (h) it is on the Contractor's official letterhead, includes the Contractor's address and contact details, is dated and includes the Contractor's Australian Business Number;
  - (i) it includes an invoice number and a DFAT-issued purchase order number (for any non-ODA costs);
  - (j) it relates to a Contract formed under a DFAT- approved Quotation, it includes details of the Scholarships Management System-generated invoice;
  - (k) it includes an overall total invoiced amount; and
  - (l) an authorised representative of the Contractor has certified that the invoice is accurate and represents the Goods and/or Services provided.
- 40.3 Where the Contract is for Goods, the Contractor must ensure that the charges for, and GST applicable to, the supply of Goods are itemised separately on the relevant invoice.
- 40.4 Invoices that are inconsistent with this Part 5 and not yet paid will be considered invalid tax invoices and will be returned to the Contractor for correction. If an invoice is found to have been rendered incorrectly and already paid, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due
-

from DFAT to the Contractor.

- 40.5 By submitting a payment batch and associated invoice (if applicable), the Contractor certifies that:
- (a) the payment batch is complete and accurately calculated;
  - (b) all Reimbursable Costs have been incurred in accordance with this Contract; and
  - (c) the Services have been performed in accordance with this Contract.

---

**41 PAYMENT**

- 41.1 Subject to this Contract, DFAT agrees to pay the Contractor the Fees for the provision of the Services in accordance with the Services Order or a Quotation or variation approved by DFAT in the Scholarship Management System, as applicable, and the Pricing Schedule.
- 41.2 Without limiting clause 45 (Taxes) and except to the extent expressly stated otherwise in this Contract, the Fees:
- (a) are inclusive of all taxes and duties (including GST) payable in connection with the Services; and
  - (b) represent the total consideration payable by DFAT for all matters relevant to this Contract.
- 41.3 Subject to this Contract, DFAT will pay the Fees within 20 days of:
- (a) receipt of a correctly rendered invoice in accordance with **clause 40** (Invoicing); and
  - (b) DFAT's acceptance of the satisfactory completion of the Services or relevant Payment Milestone as specified in the Services Order.
- 41.4 DFAT will pay all amounts payable to the Contractor under this Contract into a bank account nominated by the Contractor. The Contractor must provide DFAT with the necessary bank account details as soon as possible following execution of this Contract.
- 41.5 Any requests by the Contractor to change the bank account for payments under this Contract must be provided to DFAT with 30 Business Days written notice.
- 41.6 If clause 41.5 is not complied with, DFAT will not be responsible for any costs incurred by the Contractor as a result of the change including bank charges or exchange rate variances.
- 41.7 If the Contractor does not have an Australian Business Number ('ABN'), DFAT will be required to hold a prescribed proportion of the amount payable to the Contractor under the Contract, unless the exceptions under Division 12 of the PAYG legislation apply.

---

**42 REFUNDS OF CLE AND OTHER DFAT PAYMENTS**

- 42.1 The Contractor must, in relation to any CLE overpayments or any other refund of DFAT payments (including those relating to OHSC payments):
- (a) ensure that the amount is deposited in a bank as soon as practicable
  - (b) maintain records that properly record and explain the receipt, custody or expenditure of the amount and allow those records to be conveniently and properly audited;
  - (c) remit in full to DFAT any interest earned on those amounts; and
  - (d) otherwise handle the amounts in accordance with DFAT's directions and the requirements in item 4 of Schedule 2.

---

**43 PAYMENT NOT AN ADMISSION OF LIABILITY**

- 43.1 A payment by DFAT to the Contractor is not an admission of liability. If DFAT makes a payment and subsequently learns that performance specifications have not been met or that, on review, the amount is greater than the amount payable under the Contract, the payment will be deemed an overpayment and recoverable from the Contractor.
- 43.2 Any overpayment may be offset against any amount subsequently due to the Contractor or may be recovered in Court as a debt due and payable to DFAT by the Contractor.
- 43.3 Where DFAT deducts the amount of a debt or payment in accordance with clause 43.2, it must advise the

Contractor in writing that it has done so.

---

**44 DISPUTED INVOICES AND FAILURES TO MEET PERFORMANCE STANDARDS**

- 44.1 DFAT need not pay an amount to the Contractor that is disputed in good faith by DFAT until the dispute is resolved.
- 44.2 If DFAT considers in good faith that an invoice exceeds the amount properly payable to the Contractor, DFAT must:
- (a) notify the Contractor of the amount in dispute within ten (10) Business Days after receipt of the invoice; and
  - (b) pay the balance of the invoice in accordance with clause 41.3 (Payment).
- 44.3 The Contractor must continue to comply with its obligations under this Contract, notwithstanding that there is a disputed invoice.
- 44.4 If the Contractor fails to provide the Services in accordance with the General Obligations, the Service Obligations or the Performance Standards, DFAT may, without prejudice to any other rights it may have under this Contract or at Law:
- 44.5 itself perform the relevant Services, or engage a third party to perform the Services or provide the relevant Goods; and
- 44.6 suspend payment of any amount due to the Contractor until DFAT is reasonably satisfied that the Contractor has taken all reasonable steps to ensure that the relevant General Obligation, Service Obligation or Performance Standard will not be breached again.
- 44.7 If DFAT or its nominee provides the Services or the relevant Goods in accordance with clause 44.4(a) the Contractor will not be entitled to receive any fees that relate to the Goods and/or Services provided by DFAT or its nominee and will be responsible for meeting the reasonable costs DFAT incurs in procuring any replacement services or goods (as applicable).
- 44.8 Where DFAT becomes obliged to pay a third party to provide the Services and/or Goods as a result of the exercise of its rights under this clause 44, the Contractor agrees that DFAT may recover the difference between the substantiated reasonable fees paid to the third party for the Goods and/or Services and the fees that would otherwise have been payable by DFAT to the Contractor for those Goods and/or Services.

---

**45 TAXES**

- 45.1 Except as provided by this clause 45, all taxes, duties and charges imposed or levied in Australia or in the Partner Country in connection with:
- (a) the performance of this Contract (including any Subcontracts entered into for the performance of the Services and the obtaining of any approvals, consents or authorisations); and
  - (b) the sale, purchase, lease, assignment, licence or transfer of any property under this Contract,
- will be borne by the Contractor or its Subcontractor(s) as the case requires.
- 45.2 Unless otherwise indicated, the amount payable under this Contract for each supply of Goods and/or Services under this Contract as set out in the Services Order or in a Quotation or variation approved by DFAT in the Scholarship Management System, as applicable, is the value of that supply plus any GST imposed under the GST Act. Payment by DFAT to the Contractor of the GST will be subject to the Contractor providing DFAT with a valid Tax Invoice issued in accordance with the relevant provisions of the GST Act and regulations.
- 45.3 The total amount of GST payable by the Contractor, and for which the Contractor seeks payment from DFAT in respect of the supply will be shown as a separate item on the Contractor's Tax Invoice.
- 45.4 If the additional amount under clause 45.2 differs from the amount of GST payable by the Contractor, the additional amount must be adjusted between the Parties.
- 45.5 If a Party is entitled to be reimbursed or indemnified under this Contract, the amount to be reimbursed or indemnified does not include any amount attributable to GST which the Party is entitled to claim back by way of an input tax credit or otherwise.
- 45.6 If a Changed Tax occurs which affects the cost to the Contractor of providing the Goods and/or Services, the
-

Contractor must give DFAT:

- (a) written notice of the increase, decrease or removal;
- (b) written notice of the net effect of the Changed Tax on the cost of supplying the Goods and/or Services; and
- (c) in the case of a decrease or a removal, any supporting evidence of the change and an explanation of its effect on the Management Fees,

as soon as practicable after the change in the Changed Tax is announced or the Contractor becomes aware of the increase, decrease or removal.

---

**46 REIMBURSEMENT**

- 46.1 Except to the extent specifically agreed to the contrary by DFAT in writing, any reimbursement by DFAT to the Contractor under this Contract will only be made:
- (a) at Cost only;
  - (b) if specific prior written approval of DFAT has been obtained for the Contractor to incur the relevant Costs;
  - (c) if (on request by DFAT) the Contractor has provided DFAT with full and legible copies of receipts and other relevant material reasonably required by DFAT to substantiate that the relevant Costs have been paid and their actual amount; and
  - (d) if the claim for reimbursement complies with relevant limits, policies, processes and procedures advised to the Contractor prior to the relevant expense being incurred.
- 46.2 In this clause 46, 'Cost' means the actual cost payable after taking into account all discounts, allowances, adjustments, rebates, waivers, offsets, conditions or other mechanisms or benefits of any kind to the Contractor, that reduces (or has, or may have, the effect of reducing) the invoiced or ostensible cost payable or incurred.

**PART 6 – REMEDIES, DISPUTES AND TERMINATION**

---

**47 REMEDIES**

- 47.1 The Contractor must remedy at its own cost any failure to comply with the requirements of this Contract as soon as practicable after becoming aware of the failure.
- 47.2 If the Contractor fails to rectify an error or a defect under clause 47.1 within ten (10) Business days after notification by the DFAT Representative, DFAT may, without limiting the Contractor's warranties and obligations under this clause 47, perform or have performed the necessary remedial work at the expense of the Contractor, and may recover such expense as a debt due to DFAT payable by the Contractor on demand.

---

**48 DISPUTE RESOLUTION**

- 48.1 If a dispute arises under this Contract, prior to commencing any arbitration or court proceedings – other than for interlocutory relief or where an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the Law by the Contractor, or DFAT is exercising a right to terminate – the Parties must act in good faith and use their reasonable endeavours to resolve the dispute as follows:
- (a) the Party claiming that there is a dispute must give the other a written notice in accordance with **clause 20** (Notices) of the Deed setting out the nature of the dispute;
  - (b) within ten (10) Business Days following notice, attempt to resolve the dispute through direct negotiation between the Contractor Representative and the DFAT Representative;
  - (c) if still unresolved, refer the dispute to each Party's nominated senior representative, who must in good faith work to resolve the dispute within a further ten (10) Business Days or any other agreed period;
  - (d) if still unresolved, the Parties have thirty (30) Business Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or conciliation rather than litigation or arbitration; and

- (e) if the dispute is not resolved in that time or there is no agreement to, or submission of the dispute to mediation or conciliation within a further thirty (30) Business Days, then either Party may commence legal proceedings.

48.2 Subject to clause 41 (Payment), the Contractor and Personnel must continue to comply with its obligations under this Contract, notwithstanding that there is a dispute between the Parties, or that legal proceedings are pending or current.

---

**49 EARLY NOTIFICATION**

49.1 The Contractor must immediately notify DFAT if the Contractor (including Contractor Personnel) or a Subcontractor:

- (a) undergoes a Change in Control of the Contractor's legal entity;
- (b) where the Contractor:
  - (i) is a company – there is appointed or, steps are taken to appoint, a liquidator, receiver, manager, controller or an administrator over the whole or any part of its affairs;
  - (ii) is an individual – it enters into a scheme of arrangement with its creditors, commits any act of bankruptcy or becomes bankrupt, or becomes incapable of managing its own affairs;
- (c) is listed on the Criminal Code Act List, the DFAT Consolidated List, a World Bank List or on a Relevant List;
- (d) is subject to any proceedings or an informal process which could lead to listing on the Criminal Code Act List, the DFAT Consolidated List, a World Bank List or listing on a Relevant List;
- (e) is temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process;
- (f) is temporarily suspended from tendering by a donor of development funding other than the World Bank; and/or
- (g) is the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.

49.2 If the Contractor becomes aware of any issue that may affect its performance of the Contract and in particular its compliance with any of the following clauses: in this Schedule: clause 5 (Performance Standards), clause 7 (Warranties), clause 8 (Conflict of Interest), clause 9 (Insurances), clause 24 (Counter-terrorism), clause 25 (Fraud), clause 27 (Security), clause 29 (Confidentiality), clause 30 (Privacy and Notification of Data Breaches) and clause 34 (Subcontracting), (including the use or disclosure of Sensitive, Personal or Confidential Information, or any Security Incident that arises), and Schedule 8 (Commonwealth Policies), it must inform DFAT immediately.

---

**50 TERMINATION FOR BREACH**

50.1 DFAT may terminate this Contract by notice to the Contractor in accordance with clause 22 (Notices) in any of the following circumstances:

- (a) the Contractor commits a material breach or breach which, in DFAT's opinion, is not capable of remedy;
  - (b) the Contractor commits a breach capable of being remedied by the Contractor but the Contractor fails to remedy it within ten (10) Business Days of receipt of a notice from DFAT specifying the breach and requiring the Contractor to remedy the breach;
  - (c) the Contractor commits a Persistent Breach;
  - (d) where the Contractor is a company – if there is appointed or if steps are taken to appoint a liquidator, receiver, manager, controller or an administrator over the whole or any part of its affairs;
  - (e) where the Contractor is an individual – if it enters into a scheme of arrangement with its creditors, commits any act of bankruptcy or becomes bankrupt, or becomes incapable of managing its own affairs;
  - (f) where the Contractor has entered into this Contract in the capacity of trustee of a trust – if any event occurs or any action or step is (or is proposed to be) taken, which limits, restricts, or prevents it being indemnified out of the assets of that trust in respect of its obligations and liabilities under this Contract;
-

- (g) the Contractor undergoes a Change in Control of the Contractor's legal entity, which in DFAT's reasonable opinion, may adversely affect the Contractor's ability to perform the Services under this Contract;
- (h) the Contractor fails to notify DFAT under **clause 49** (Early Notification);
- (i) the Contractor ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Contract (except to the extent that this is outside the Contractor's reasonable control);
- (j) the Contractor made a statement or warranty in its Tender or failed to make a disclosure in its Tender Declaration leading to this Contract and DFAT is satisfied on reasonable grounds that the statement was materially inaccurate, incorrect or misleading or the failure to make a disclosure would, in DFAT's opinion not have led to the formation of a Contract;
- (k) the Contractor is convicted of any offence during the term of this Contract;
- (l) the Contractor, its Personnel or Subcontractors are or become listed on the Criminal Code Act list, the DFAT Consolidated List, a World Bank or Relevant List or are subject to any proceedings or an informal process that may lead to them becoming so listed;
- (m) the Contractor does not take appropriate steps to manage and resolve an allegation of child exploitation or abuse with respect to this Contract, including a failure to inform DFAT immediately of any allegation of child abuse or exploitation in accordance with DFAT's Child Protection Policy; and/or
- (n) the Contractor commits a breach of any clauses in **Schedule 8** and does not remedy the breach within ten (10) Business Days (or such longer period as DFAT may specify in the notice) of receipt of a notice from DFAT specifying the breach and requiring the Contractor to remedy the breach.

50.2 For the avoidance of doubt, clauses 50.1(h) to (n) do not limit the generality of clauses 50.1(a) to (c).

---

**51 TERMINATION FOR CONVENIENCE**

- 51.1 DFAT has an unfettered discretion to, by notice to the Contractor in accordance with clause 22 (Notices), terminate or reduce the scope of this Contract from the time specified in the notice. Without limiting DFAT's rights under this Contract, at law or in equity, DFAT's rights under this clause 51.1 include the discretion to terminate or reduce the scope of this Contract if DFAT determines that the continuation of this Contract, or the continuation of a program or initiative for the purposes of which this Contract was entered into, does not support the achievement of value for money by DFAT. The Parties acknowledge and agree that such a determination by DFAT may be made in the absence of a breach of this Contract by the Contractor and due to circumstances beyond the Contractor's control.
- 51.2 If DFAT exercises its right in clause 51.1, the Contractor must comply with directions given by DFAT, cease or reduce (as applicable) the performance of work and immediately do everything possible to mitigate its losses, and all other losses, costs and expenses in connection from, or arising out of termination, including novate any Subcontracts to DFAT or its nominee, if required by DFAT.
- 51.3 If DFAT terminates or reduces the Contract under this clause 51, DFAT will only be liable to the Contractor for the following loss or damage incurred as a direct consequence of termination of this Contract to the extent that they can be reasonably substantiated and are unable to be avoided or mitigated:
- (a) Fees as payable under **Schedule 2** (Pricing Schedule) of the Deed for Services provided before the effective date of termination (on a pro-rata basis, if applicable);
  - (b) lease termination costs for early termination of leases required specifically and exclusively for the performance of the Contract; and
  - (c) payments made to Subcontractors which are not related entities of the Contractor and which were paid prior to the date of notice of termination of this Contract by DFAT,
- and:
- (d) excluding all other loss or damage, including the cost of redundancies, the costs of terminating any Subcontracts, loss of profits and all other forms of expectation loss; and
  - (e) provided that DFAT will not be liable to pay any amount under this **clause 51.3** which, when added to any Fees already paid to the Contractor under this Contract, would together exceed the maximum
-



amount payable by DFAT to the Contractor under this Contract, as specified in a Services Order or in a Quotation or variation approved by DFAT and recorded in the Scholarship Management System, as applicable.

- 51.4 The Contractor must, in each Subcontract, reserve a right of termination to take account of DFAT's right of termination under this clause 51 and the Contractor must make use of such rights to mitigate losses in the event of termination by DFAT under the provisions of this clause 51.
- 51.5 Subject to this Contract, on expiry or termination (whether under this clause 51 or any other provision of this Contract):
- (a) the Parties are relieved from future performance of this Contract, without prejudice to any right of action that has accrued at the date of termination;
  - (b) all licences and authorisations granted to the Contractor by DFAT under this Contract terminate immediately; and
  - (c) the Contractor must provide DFAT with all reasonable assistance and information to assist DFAT in transitioning to DFAT's new provision of goods and/or services arrangements.
- 51.6 The Contractor's obligations under clause 51.5 include, at DFAT's request, continuing for a period of up to three (3) months to supply the Goods and/or Services to DFAT on the terms and conditions of this Contract until the time DFAT advises the Contractor that it is no longer required to do so. This clause does not apply during any period DFAT is in breach of an obligation to pay money under this Contract.
- 51.7 DFAT is not obliged to make any further payments to the Contractor (whether under this Contract, at law or in equity) if DFAT exercises its rights in clause 51.1 except as expressly provided under this Clause 51.

---

**52 FORCE MAJEURE**

- 52.1 Despite any other provision of this Contract, if a Party is unable to perform or is delayed in performing an obligation under this Contract (other than an obligation to pay money), by reason of a Force Majeure Event, and notice has been given in accordance with Clause 52.2:
- (a) that obligation is suspended, but only so far and for so long as it is affected by the Force Majeure Event; and
  - (b) the affected Party will not be responsible for any loss or expense suffered or incurred by any other Party as a result of, and to the extent that, the affected Party is unable to perform, or is delayed in performing, its obligations because of the Force Majeure Event.
- 52.2 A Party affected by a Force Majeure Event must give the other Party a written notice which:
- (a) sets out details of the Force Majeure Event (including the effect of the Force Majeure Event on the Contract and details of insurance available to mitigate damage if any);
  - (b) estimates the likely period of time that the Party will not be able to perform, or the Party will be delayed in performing, its obligations; and
  - (c) provides details of the action that it has taken, or proposes to take, to remedy the situation.
- 52.3 The Contractor must:
- (a) arrange a meeting with DFAT within 24 hours' of a notice given under **clause 52.2**; and
  - (b) take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible and re-commence performing them soon as possible.

---

**53 EXTENSION OF TIME**

- 53.1 Subject to clause 53.5 neither DFAT nor the Contractor will be in breach of the Contract to the extent that performance of their Contract obligations is prevented due to any significant change in circumstances (including change in Partner Country Laws, and industrial disputes) that are beyond the control of the Contractor.
- 53.2 Where in the Contractor's reasonable opinion there is likely to be a delay in the Contractor's discharging of an obligation under the Contract due to clause 52 (Force Majeure) it must notify DFAT in accordance with clause
-



52 providing details of the delay and its likely impact on the performance of this Contract.

- 53.3 Where clause 52 (Force Majeure) has been triggered, the Contractor must take all reasonable steps to mitigate the effects of any delay, use its best endeavours to continue to perform the obligations, and where necessary, make a request in writing to DFAT for an extension of time outlining the length of the extension which the Contractor considers reasonable in all the circumstances in the form of an Amendment Proposal in accordance with Clause 16 (Amendment).
- 53.4 DFAT must consider the Contractor's recommendations and request for an extension of time as soon as practicable after receiving the request in accordance with clause 53.3 and may grant approval subject to conditions.
- 53.5 If DFAT approves in writing a request by the Contractor for an extension of time under clause 54.3, any resultant changes to the Contract must be documented in a Deed of Amendment.
- 53.6 Even if the Contractor has not given notice under clause 53.2, where DFAT considers that a delay has arisen, in whole or in part, because of an act or omission on the part of DFAT, its employees or agents, DFAT may, by notice in writing to the Contractor, extend the time for performance of the relevant obligation of the Contractor.
- 53.7 Where an extension of time has been granted and the Contractor has been unable to perform its obligations for forty-five (45) Business Days or more, DFAT may suspend the Contract, reduce the scope or terminate the Contract by notice in writing.
- 53.8 In the event of suspension, deletion or termination of the Services or the Contract in accordance with this clause 53, DFAT will be liable for Fees in accordance with Clause 51 (Termination for Convenience).

---

**54 LIABILITY**

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

**PART 7 – PROJECT SPECIFIC CONDITIONS**

---

**55 PROCUREMENT AND GRANTS**

- 55.1 In procuring all Supplies for the purposes of providing the Services to DFAT (including establishing subcontracts), the Contractor must:
- (a) determine what Supplies are required for proper implementation of the Services and advise DFAT;
  - (b) keep DFAT informed of ongoing requirements for Supplies in connection with the Project;
  - (b) implement procedures that are consistent with the principles of the Commonwealth Procurement Rules and the *Public Governance, Performance and Accountability Act 2013* (Cth) in particular, observing the core principles of achieving value for money and the supporting principles;
  - (c) maintain complete and accurate records documenting the procedures followed in procuring, and the particulars of Supplies;
  - (d) use its best endeavours to ensure Supplies are maintained including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed;
  - (e) use its best endeavours to ensure Supplies are free from defects in design, material, manufacture or workmanship. The Contractor must replace defective Supplies under warranty provisions or at its own cost; and
  - (f) use the Supplies only for the purposes permitted under this Contract.

55.2 In administrating any Grant activities, the Contractor must:

- (a) implement procedures so that grant administration is undertaken in a manner that is consistent with the Commonwealth Grants Rules and Principles, in particular the key principles for Grants Administration; and
- (b) maintain complete and accurate records documenting the procedures followed in selecting Grant recipients.

---

**56 ACCESSIBILITY REQUIREMENT FOR DFAT WEBSITES**

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