



Australian Government

Department of Foreign Affairs and Trade

# Services Agreement for the provision of

## Security Services for the Australian Embassy, Baghdad

Dated 3 November 2010

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

Unity Resources Group Pte Ltd (ABN Not  
Applicable) (**Contractor**)



# Australian Government

## Department of Foreign Affairs and Trade

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this Schedule exempt in full -  
s 45(1), s 33(a)(i), s 37(1)(c),  
s 47G

# Services Agreement for the provision of Security Services for the Australian Embassy, Baghdad

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## Details

**Interpretation** – definitions and rules of interpretation are in Schedule 8

<b>Parties</b>		<b>DFAT and the Contractor</b>
<b>DFAT</b>	<b>Name</b>	<b>THE COMMONWEALTH OF AUSTRALIA REPRESENTED BY THE DEPARTMENT OF FOREIGN AFFAIRS AND TRADE</b>
	<b>ABN</b>	47 065 634 525
	<b>Address</b>	R.G. Casey Building John McEwen Crescent BARTON ACT 0221 AUSTRALIA
<b>Contractor</b>	<b>Name</b>	<b>Unity Resources Group Pte Ltd</b>
	<b>ABN</b>	Not Applicable
	<b>Address</b>	<b>30 Bideford Road 18-01 Thong Sia Building Singapore 229922</b>
<b>Recitals</b>	<b>A</b>	The Commonwealth of Australia, represented by the Department of Foreign Affairs and Trade ("DFAT"), requires the services of a suitably qualified and experienced contractor to provide guarding, personal security and associated support services to protect the Head of Mission (HOM), other diplomatic staff and visitors as well as Embassy premises including the chancery and premises used for residential accommodation.
	<b>B</b>	The Contractor has agreed to provide those services according to the terms of this Agreement.
<b>Commencement Date</b>	1 January 2011	
<b>Term</b>	Two (2) years	
<b>Further Term</b>	One (1) year	

<b>Second Further Term</b>	One (1) year
<b>Services</b>	Provide guarding, personal security and associated support services ("Services") to protect the Head of Mission (HOM), other diplomatic staff and visitors as well as Embassy premises including the chancery and premises used for residential accommodation, as described in more detail in Schedule 1.
<b>Goods</b>	Goods are included in the Services
<b>Warranty Period</b>	Not Applicable
<b>Insurance</b>	<p>Public liability: USD \$15 Million per event, unlimited in aggregate.</p> <p>Property damage: USD \$5 Million per event, unlimited in aggregate.</p> <p>Professional indemnity: USD \$20 Million per event. (See Clause 18.5)</p> <p>Workers compensation: as required by local laws for local employees and by the laws of the Australian Capital Territory for other employees.</p> <p>(see clause 14)</p>
<b>Clauses of this agreement that are confidential</b>	<p>Schedule 1 and Schedule 4</p> <p>(see clause 15.4)</p> <p>The confidentiality of these schedules survives the expiration or termination of this Agreement.</p>
<b>Executive escalation for disputes</b>	<p>DFAT - Director, High Threat Security Section, Diplomatic Security Branch</p> <p>Contractor – Senior Vice President – Strategic Development</p> <p>(see clause 25.1)</p>
<b>Governing law</b>	Australian Capital Territory
<b>Date of agreement</b>	See Signing page

## General terms

### Part 1 - Introduction

#### 1 Term

##### 1.1 Initial term

- 1.1.1 This agreement commences on the Commencement Date and continues for the Term.

##### 1.2 Further term

- 1.2.1 DFAT may extend this agreement for the Further Term, by giving the Contractor at least 30 days' notice before the end of the Term (or such other period of notice as agreed by the parties). The Further Term commences on the day after the last day of the Term.
- 1.2.2 DFAT may extend this agreement for a Second Further Term by giving the Contractor at least 30 days' notice before the end of the Further Term (or such other period of notice as agreed by the parties). The Second Further Term commences on the day after the last day of the Further Term.

##### 1.3 No obligation to extend

- 1.3.1 DFAT is not obliged to extend this agreement or to enter into any further agreement with the Contractor on the same or different terms.

#### 2 Contract Management

##### 2.1 Representatives

- 2.1.1 Each party must nominate one person with appropriate skills, qualifications and experience as its representative, to be responsible for the operational co-ordination and management between the parties of the provision of the Services. Either party may change its representative by notice to the other from time to time.

##### 2.2 Management committee

- 2.2.1 If required by DFAT, the parties must form a management committee, in accordance with this clause 2, to:
- (i) monitor and review each party's performance of this agreement;
  - (ii) consider ways in which the provision of the Services may be improved or delivered more efficiently;

- (iii) assess any deficiencies in the processes established by this agreement and, if appropriate, develop changes to those processes for the parties to consider; and
- (iv) without limiting clause 25, resolve promptly any complaints or issues raised by either party.

## **2.3 Meetings**

2.3.1 Unless otherwise required by DFAT, the committee will meet:

- (i) on a weekly basis for the first three months of the Term; and then
- (ii) on a monthly basis or as otherwise requested by DFAT.

## **2.4 Composition**

2.4.1 The management committee will comprise two representatives from each party, as nominated by the relevant party from time to time, and will be chaired by a representative of DFAT.

2.4.2 A representative of the Contractor must:

- (i) take minutes of all meetings of the management committee; and
- (ii) submit copies of the minutes to each member of the management committee within 10 days of the date of the relevant meeting.

## **2.5 Expected Knowledge**

2.5.1 All persons who attend meetings of the management committee must have suitable skills, qualifications and experience, be suitably informed about the matters to be considered by the committee and be able to provide sufficient information on the relevant matters to enable the management committee to properly perform its functions.

## Part 2 - Goods and Services

### 3 General

#### 3.1 Volume and exclusivity

3.1.1 The Contractor acknowledges that:

- (i) DFAT has no obligation to acquire any minimum volume of Goods or Services; and
- (ii) DFAT may obtain Goods and Services (or similar goods and services) from a third party.

#### 3.2 Directions

3.2.1 DFAT may give the Contractor directions about any aspect of the Contractor's performance of this agreement, or any of the Contractor's obligations under clauses 12 (Recordkeeping and Audit), 13 (Reports) and 14 (Insurance).

3.2.2 The Contractor must comply, and must ensure that Personnel comply, with directions given by DFAT under this clause.

#### 3.3 Performance outside Australia

3.3.1 Where the Contractor is performing any part of this agreement outside Australia (other than in a country where the Contractor is normally resident), the Contractor must:

- (i) not engage in any political activity in the relevant country during the provision of the Goods and Services;
- (ii) observe all laws and respect all religions and customs of that country; and
- (iii) otherwise not do anything that would damage the reputation of DFAT.

3.3.2 In addition, the Contractor must not do any act, or omit to do any act that would, or would be likely to:

- (i) bring the Commonwealth into disrepute; or
- (ii) adversely affect the Commonwealth's international relations.

#### 3.4 Conflict of interest

3.4.1 The Contractor warrants that no conflict of interest exists, or is anticipated, relevant to its performance of this agreement.

3.4.2 If such a conflict arises, the Contractor must notify DFAT immediately. DFAT may decide in its absolute discretion whether the Contractor may undertake the conflicting work or not.

- 3.4.3 If the Contractor fails to notify DFAT under this clause 3.4, or is unable or unwilling to resolve or deal with the conflict as required by DFAT, DFAT may terminate this agreement for breach.

### **3.5 False or misleading information**

- 3.5.1 The Contractor acknowledges that it is a serious offence under the *Criminal Code Act 1995* (Cwlth) to provide false or misleading information to the Commonwealth.

### **3.6 No unsettled judgements**

- 3.6.1 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.
- 3.6.2 If any judicial decision relating to employee entitlements occurs during the Term, the Contractor must notify DFAT immediately.
- 3.6.3 If the Contractor fails to notify DFAT under this clause 3.6, or is unable or unwilling to resolve or deal with the matter as required by DFAT, DFAT may terminate this agreement for breach.

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## **4 Services**

### **4.1 Scope of the Services**

- 4.1.1 The Contractor must provide DFAT with the services described in Schedule 1.

### **4.2 Other Services**

- 4.2.1 In addition to the services described in clause 4.1, the Contractor must provide any services which are necessary or incidental to those services, or the proper performance of those services.

### **4.3 Service standards**

- 4.3.1 The Contractor must provide the Services:
- (i) in accordance with applicable local law;
  - (ii) in accordance with applicable Australian standards, except to the extent inconsistent with any international standards referred to in Schedule 1;
  - (iii) with due skill, care and diligence; and
  - (iv) to a high professional standard, and in a timely manner.
- 4.3.2 The Contractor must, as far as practicable, to include equivalent service standards in any subcontract.

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## **5 Additional Services**

### **5.1 Additional Services**

- 5.1.1 If DFAT requires additional services not described or contemplated in the Details, clause 4 and Schedule 1 ("Additional Services"), DFAT may issue a Work Order for those Additional Services.
- 5.1.2 DFAT makes no representation or warranty as to the number of Work Orders that it may issue to the Contractor (if any) pursuant to this clause 5.1.

### **5.2 Payment for Additional Services**

- 5.2.1 The Contractor must not commence performance of, or charge DFAT for, any Additional Services unless DFAT has approved the performance of those Additional Services under a Work Order authorised by the DFAT Representative.
- 5.2.2 DFAT will have no liability to pay for, and the Contractor has no obligation to provide, any Additional Services not authorised by such a Work Order.

### **5.3 Details in a Work Order**

- 5.3.1 A Work Order must be in the form set out in Schedule 2, and include, as a minimum:
  - (i) details of the Additional Services to be performed;
  - (ii) a price for the Additional Services;
  - (iii) the process for the issuing of invoices for the Additional Services; and
  - (iv) a due date for the completion of the Additional Services.

### **5.4 Acceptance of a Work Order**

- 5.4.1 The Contractor must notify DFAT within 5 business days of receipt of a Work Order if it accepts the Work Order. If the Contractor notifies DFAT of its acceptance of the Work Order, the Contractor must:
  - (i) promptly return a signed copy of the Work Order to DFAT; and
  - (ii) complete the Additional Services required in accordance with the terms of this agreement and an accepted Work Order.
- 5.4.2 If the Contractor does not accept a Work Order, the parties may agree to negotiate variations to the proposed Work Order.
- 5.4.3 Nothing in this clause limits DFAT's right to engage a third party to perform Additional Services.

## **5.5 Terminating a Work Order**

- 5.5.1 DFAT may terminate a Work Order at any time by notice to the Contractor. The Contractor must immediately cease work in accordance with that notice.
- 5.5.2 DFAT will pay the Contractor for work undertaken from the time DFAT approved commencement of the Work Order until the date the notice of termination is received, at the rates (or other methods of charging) specified in the Work Order.

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## **6 Goods**

Goods are included in the Services

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## **7 Personnel**

### **7.1 Standard**

- 7.1.1 Without limiting Schedule 1, the Contractor must ensure that the Services are provided by Personnel with the necessary professional skills, qualifications and experience.

### **7.2 Personnel to comply with this agreement**

- 7.2.1 The Contractor must ensure that Personnel comply with the obligations of the Contractor under this agreement.

### **7.3 Specified Personnel**

- 7.3.1 The Contractor must at all times ensure that the Specified Personnel perform their designated roles in the provision of the Services as detailed in Schedule 1. The Contractor warrants that the Specified Personnel possess the skills and knowledge necessary to perform those designated roles.
- 7.3.2 Subject to Accountability Mechanisms set out in Schedule 1 – *Statement of Requirement*, the Contractor must not remove (temporarily or permanently) or replace Specified Personnel, or appoint a person as Specified Personnel, without DFAT's written consent.

### **7.4 DFAT required training**

- 7.4.1 DFAT will provide the Contractor with thirty (30) business days' notice of any training courses that DFAT requires Specified Personnel to attend.
- 7.4.2 The Contractor is responsible for the cost of any DFAT required training undertaken by Specified Personnel, unless otherwise agreed by DFAT. The Contractor must ensure Specified Personnel attend DFAT required training.

## **7.5 Replacement of Specified Personnel**

### **7.5.1 If any Specified Personnel are:**

- (i) no longer employed by the Contractor;
- (ii) removed in accordance with clause 7.7; or
- (iii) otherwise unavailable to provide the Services as required under this agreement,

### **7.5.2 ("Unavailability Circumstance"), the Contractor must present DFAT with an appropriately qualified and experienced proposed replacement for that Specified Personnel within 10 business days after the Unavailability Circumstance occurs.**

### **7.5.3 The proposed replacement must be in a position to commence providing the Services immediately after DFAT's consent to the proposed replacement.**

## **7.6 Conduct of personnel**

### **7.6.1 The Contractor must ensure that its officers, employees, subcontractors and agents conduct themselves in accordance with a Code of Conduct specified by DFAT and comply with all applicable existing and future laws, regulations, orders and directives pertaining to the provision of security services in Iraq (refer to Schedule 1, clause 4.9).**

## **7.7 DFAT's right to remove**

### **7.7.1 If DFAT is dissatisfied with the performance of particular Personnel, DFAT may request that the Contractor remove that Personnel from their involvement in the provision of the Services. Subject to any applicable law, the Contractor must comply with such a request.**

### **7.7.2 Subject to this clause 7, the Contractor must promptly replace the relevant Personnel at no additional cost to DFAT with another person who has the appropriate skills, qualifications and experience and is otherwise acceptable to DFAT.**

## **7.8 Contractor personnel entitlements**

### **7.8.1 The Contractor is solely responsible for ensuring the adequacy of any workers' compensation for its Personnel and is responsible for the payment of any sick pay, holiday pay, PAYG tax, fringe benefit tax, payroll tax, superannuation, other statutory charges and any other amount payable to the Personnel. The Contractor is also responsible for any applications for income tax exemption which may be available under section 23AF of the Income Tax Assessment Act 1936. The Contractor may not recover any of these amounts from DFAT.**

### **7.8.2 If any fine, penalty or other charge is imposed on DFAT as a result of the Contractor's non-compliance with this clause, the Contractor indemnifies DFAT in respect of that fine, penalty or other charge.**

## 7.9 Travel

7.9.1 If DFAT requires Specified Personnel to undertake travel to perform any part of this agreement, the Contractor must ensure that travel arrangements are made in consultation with DFAT. The Contractor must separately arrange and pay for any travel insurance for Specified Personnel. Except as otherwise required by DFAT, Specified Personnel travelling outside Australia to perform any part of this agreement must travel on a private passport.

7.9.2 s 47G, s 47E(d)

## 7.10 DFAT property

7.10.1 The Contractor warrants that the Contractor and its Personnel will:

- (i) use in a proper manner and maintain in good order all items of equipment, materials and facilities owned or controlled by DFAT (**DFAT Supplied Items**) which the Contractor and its Personnel may use in the course of providing the Services; and
- (ii) promptly return all DFAT Supplied Items upon completion of use or otherwise upon expiry or termination of this agreement, in good condition, apart from reasonable wear and tear.

## 7.11 Occupational Health and Safety

7.11.1 The Contractor must perform its, and must ensure that its Personnel, representatives, agents, advisers, suppliers and subcontractors perform their, obligations under this agreement in such a way that:

- (i) DFAT employees (as defined in Section 9(1) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (Cwlth)) are able to participate in any necessary inspections of work in progress and tests and evaluations of the Services; and
- (ii) DFAT is, as from delivery of the Services, able to maintain and to make full use of the Services for the purposes for which they are intended,

without DFAT being in breach of any occupational health and safety statutory requirement or other law.

## Part 3 - Charges

### 8 Charges and invoicing

#### 8.1 Charges

- 8.1.1 Subject to this agreement, DFAT agrees to pay the Contractor for the Services in accordance with Schedule 4.
- 8.1.2 Without limiting clause 10.5, the charges quoted in that Schedule are inclusive of all taxes and duties (including GST) payable in connection with the Services.

#### 8.2 Invoicing

- 8.2.1 The Contractor will invoice DFAT for the provision of the Services on a monthly basis, or as otherwise described in Schedule 4.
- 8.2.2 An invoice must be:
- (i) in the form of a Tax Invoice (or, where the supply of the Goods and Services is not a Taxable Supply, in the form of an invoice approved by DFAT);
  - (ii) in US dollars (USD);
  - (iii) addressed to DFAT in accordance with this agreement; and
  - (iv) accompanied by supporting documentation in respect of the Services in the form, and containing the information, reasonably required by DFAT,
- and must comply with any specific requirements in Schedule 4.

#### 8.3 Payment of invoices

- 8.3.1 DFAT agrees to pay a correctly rendered invoice within 30 days of receipt of the invoice, subject to DFAT being satisfied with the provision of the Services the subject of the invoice.

#### 8.4 Disputed invoices

- 8.4.1 If DFAT considers in good faith that an invoice exceeds the amount properly payable, DFAT must:
- (i) notify the Contractor of the amount in dispute within 10 business days after receipt of the invoice; and
  - (ii) pay the balance of the invoice in accordance with clause 8.3.
- 8.4.2 The Contractor must continue to comply with its obligations under this agreement, notwithstanding that there is a disputed invoice.

## 8.5 Payment of suppliers and subcontractors

- 8.5.1 Where an invoice from the Contractor includes an amount on account of services provided by a supplier or a subcontractor, that amount must first have been paid by the Contractor to the supplier or subcontractor before inclusion in the invoice. Any such inclusion constitutes a warranty by the Contractor that the amount has been paid in full to the relevant supplier or subcontractor.

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## 9 Provision of Services

### 9.1 Liability

- 9.1.1 If the Contractor fails to provide the Services in accordance with the Statement of Requirements (Schedule 1), DFAT may, without prejudice to any other rights it may have under this agreement or at law:
- (i) itself perform the relevant Services, or engage a third party to perform the Services;
  - (ii) 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 Services are provided in accordance with the Statement of Requirements (Schedule 1); and
  - (iii) recover any costs incurred in exercising its rights under subclause 9.1.1(i) as a debt due by the Contractor to DFAT in accordance with this agreement.

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## 10 Goods and services tax and other taxes

### 10.1 GST Inclusive

- 10.1.1 Unless otherwise indicated, any consideration for a supply under this agreement is inclusive of any GST imposed on the supply.

### 10.2 GST Recovery

- 10.2.1 Where the consideration for a supply by one party (**Supplier**) to another (**Recipient**) under or in connection with this agreement is stated to be exclusive of GST, the Recipient must pay to the Supplier an additional amount equal to the GST imposed (without deduction or set-off) in addition to the consideration the Recipient is required to provide the Supplier for the supply in question. However, no amount is payable by the Recipient under this clause 10.2 unless and until the Supplier provides a Tax Invoice to the Recipient.

### 10.3 Adjustment

- 10.3.1 If the additional amount under clause 10.2 differs from the amount of GST payable by the Supplier, the additional amount must be adjusted between the parties.

#### 10.4 Claim back

10.4.1 If a party is entitled to be reimbursed or indemnified under this agreement, 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.

#### 10.5 Other taxes

10.5.1 The parties agree that DFAT is not liable for:

- (i) any customs duty, export duty, excise, taxes or additional taxes (however described), duties or penalties which may be imposed on the Contractor as a result of or in connection with the provision of the Goods or Services as contemplated under this agreement;
- (ii) any increase in any customs duty, export duty, excise, taxes or additional taxes (however described), duties or penalties which may be imposed on the Contractor as a result of or in connection with any error, act or omission on behalf of the Contractor or DFAT, including the failure to deliver any Good on the date specified for delivery of that Good or any later date agreed by DFAT; or
- (iii) any administrative, financial or other charges in relation to increases or decreases in customs duty as a result of an alteration in the law, ruling, advice, allowance, decision or determination.

## Part 4 - Other Obligations

### 11 Security

#### 11.1 Compliance

11.1.1 The Contractor must comply with the security requirements for the protection of official information as advised by DFAT from time to time during the Term of this agreement.

#### 11.2 Subcontractors and personnel

11.2.1 The Contractor must ensure that all Personnel, when using DFAT's premises or facilities, comply with all DFAT procedures and directions relating to security.

11.2.2 If required by DFAT each of the Personnel engaged by or on behalf of the Contractor, must meet all necessary security assessments and standards required 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; and
- (iv) 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.

#### 11.3 Security clearances

11.3.1 DFAT may require Selected Personnel to hold Australian Government security clearances to the level specified by DFAT, in which case DFAT will facilitate the obtaining of security clearances. The cost of security clearances for Personnel will be borne by the Contractor. If the security requirements are redefined, the Contractor is entitled to apply to DFAT for a price variation.

#### 11.4 Security awareness

11.4.1 All Personnel must comply with any other security awareness requirements reasonably requested by DFAT.

#### 11.5 Security breaches

11.5.1 The Contractor acknowledges that if any Personnel loses their security clearance or causes a security breach, DFAT may:

- (i) after consultation with the Contractor, require the replacement of that Personnel; or
- (ii) terminate this agreement for breach.

- 11.5.2 The Contractor agrees to notify DFAT immediately on becoming aware of any security incident or security breach. The Contractor agrees that if a security incident or a security breach occurs, the Contractor will comply with all directions of DFAT in order to rectify the security problem.

### **11.6 Reviews**

- 11.6.1 The Contractor agrees to participate in security reviews of the procedures implemented in performance of this agreement at least annually, if requested by DFAT. The Contractor agrees to participate in any audit conducted of the operation of the security requirements specified in this agreement and to provide full co-operation to DFAT or its independent auditors, including the Australian National Audit Office for this purpose.

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## **12 Recordkeeping and Audit**

### **12.1 Records**

- 12.1.1 The Contractor must comply with the recordkeeping obligations described in Schedule 3.

### **12.2 Audit**

- 12.2.1 DFAT has the inspection and audit rights described in Schedule 3.

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## **13 Reports**

### **13.1 Reports**

- 13.1.1 The Contractor must provide DFAT with the reports described in Schedule 1.
- 13.1.2 The Contractor must comply with DFAT's reasonable directions as to the form and content of reports or other written information required under this agreement. DFAT must give the Contractor at least 2 weeks' notice of a change in the requirements for reports, unless otherwise agreed with the Contractor.
- 13.1.3 All costs associated with the preparation of any reports are to be borne by the Contractor.

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## **14 Insurance**

### **14.1 Required insurance**

- 14.1.1 The Contractor must take out and maintain throughout the term of this agreement (or such other period as required by DFAT):
- (i) the insurances specified in the Details;
  - (ii) any other insurance required by law; and
  - (iii) any other insurance reasonably required by DFAT from time to time relevant to the Services, on reasonable notice to the Contractor.

## **14.2 Evidence of insurance**

14.2.1 The Contractor must give DFAT evidence of the currency of any policy required under this clause 14, promptly on request.

## **14.3 Requirements for insurance policies**

14.3.1 The insurances referred to in the Details (other than professional indemnity insurance) must:

- (i) name DFAT as an insured;
- (ii) be with insurers, and on terms, reasonably acceptable to DFAT; and
- (iii) include clauses to the effect that:
  - (a) the policy operates as if there were a separate and distinct policy for each insured party;
  - (b) the insurer waives all rights and remedies to which it might become entitled by subrogation against either DFAT or the Contractor;
  - (c) failure by either insured to observe or fulfil the terms of the policy will not prejudice the insurance with respect to the other insured; and
  - (d) the insurer must give DFAT at least 28 days prior notice of the cancellation of the policy.

## **14.4 Avoid insurance voiding events**

14.4.1 The Contractor must use all reasonable endeavours to prevent any insurance policy referred to in this clause 14 from becoming void, invalid, vitiated or ineffective.

## **14.5 Termination on loss of insurance**

14.5.1 If any insurance policy referred to in this clause 14 becomes void, invalid, vitiated or otherwise ineffective, DFAT may terminate this agreement immediately by notice to the Contractor.

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# **15 Confidentiality**

## **15.1 Obligation**

15.1.1 Neither party may disclose the Confidential Information of the other (or Confidential Information disclosed by or on behalf of the other), or use that information for any purpose, except:

- (i) to officers, employees, agents, advisers or approved subcontractors requiring the information for the purposes of this agreement;
  - (ii) with the consent of the other party;
  - (iii) if required to do so by any law or a stock exchange; or
-

- (iv) to the extent necessary in connection with legal proceedings relating to this agreement.

15.1.2 When disclosing information under clauses 15.1.1(i) or (ii), a party must use all reasonable endeavours to ensure that persons receiving the Confidential Information do not disclose the information except in the circumstances permitted in this clause 15.1.1

15.1.3 Where a party is required to disclose the Confidential Information of the other party under clauses 15.1.1(iii) or (iv), the disclosing party must give to the other party reasonable notice of the required disclosure.

## **15.2 Undertaking from personnel**

15.2.1 If required by DFAT, Contractor must obtain from Personnel a written undertaking not to disclose Confidential Information in the form notified by DFAT from time to time.

## **15.3 Exception**

15.3.1 Notwithstanding clause 15.1, DFAT may disclose Confidential Information of the Contractor if required or requested to do so by any judicial, parliamentary or governmental committee, member, house, body, agency or Authority. If appropriate, DFAT must give reasonable notice to the Contractor of the relevant disclosure.

## **15.4 Confidentiality of this agreement**

15.4.1 The Contractor acknowledges that DFAT is subject to a number of specific Commonwealth requirements, which support internal and external scrutiny of its tendering and contracting processes. Without limitation, these include:

- (i) the requirement to publish details of agreements, contracts and standing offers with an estimated liability of \$10,000 or more on AusTender;
- (ii) the requirement to report a list of contracts valued at \$100,000 or more; and
- (iii) identifying confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts.

15.4.2 Accordingly, the terms of this agreement are not Confidential Information of the Contractor, except for any terms listed as confidential in the Details.

## **15.5 Confidentiality of subcontractors**

15.5.1 The Contractor agrees that:

- (i) the identity of any subcontractor engaged by the Contractor is not Confidential Information of the Contractor; and

- (ii) DFAT and the Commonwealth generally are entitled to publicly disclose the identity of any subcontractor engaged by the Contractor.

15.5.2 It is the Contractor's responsibility to ensure these requirements are agreed to by subcontractors.

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## 16 Privacy

### 16.1 Privacy

16.1.1 The Contractor agrees, in respect of personal information held in connection with this agreement:

- (i) to comply with the Information Privacy Principles in the *Privacy Act 1988* (Cwlth) (**Privacy Act**) applicable to this agreement, as if it were a "record-keeper" as defined in the Privacy Act, the National Privacy Principles, and any other applicable privacy law;
- (ii) to use personal information only for the purposes of fulfilling its obligations under this agreement;
- (iii) not to disclose the information without the written authority of DFAT except for the purposes of fulfilling its obligations under this agreement. The Contractor must immediately notify DFAT where it becomes aware that a disclosure of personal information may be required by law;
- (iv) not to transfer the personal information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of DFAT;
- (v) to maintain a privacy policy on access to and correction of the personal information, and other matters, that complies with the National Privacy Principles (as defined in the Privacy Act);
- (vi) to ensure Personnel requiring access to any personal information is under a legal obligation not to access, use, disclose or retain the information except in performing their duties of employment or engagement (as applicable) and is informed that failure to comply with this undertaking may be a criminal offence and may also require the Contractor to take disciplinary action against the relevant Personnel;
- (vii) to notify DFAT immediately if the Contractor becomes aware of a breach of this clause 16 by itself or by any subcontractor; and
- (viii) to include equivalent provisions in any subcontract, including this subclause (viii).

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## **17 Publicity**

### **17.1 Publicity**

- 17.1.1 The Contractor may not make media or other announcements or releases relating to this agreement or the provision of the Services without DFAT's consent to the form, content and manner of the announcement or release, except to the extent that the announcement or release is required to be made by law or by a stock exchange.

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## **18 Intellectual property**

### **18.1 General principle**

- 18.1.1 Subject to this clause 18, the title to and Intellectual Property in or in relation to all Contract Material vests on their creation in DFAT.

- 18.1.2 If requested by DFAT, the Contractor must:

- (i) sign, execute or otherwise deal with; and
- (ii) ensure that any third party that creates any Contract Material signs, executes or otherwise deals with,

any document which may be necessary to enable the vesting of that title and those rights in DFAT.

### **18.2 Exceptions to general principle**

- 18.2.1 Clause 18.1 does not apply to:

- (i) any Intellectual Property existing at the Commencement Date, or developed independently of the Contractor's performance of this agreement; or
- (ii) the Contractor's internal management, financial records and working papers created in the course of the Contractor's performance of this agreement.

### **18.3 Licence of Contractor and Third Party Material**

- 18.3.1 The Contractor grants DFAT a non-exclusive, perpetual, irrevocable, world-wide, royalty-free licence (including the right to sublicense) to Use any Contractor or third party Intellectual Property embodied in any of the Contract Material, for any purpose other than commercial exploitation.

### **18.4 Warranty**

- 18.4.1 The Contractor warrants that:

- (i) the Contractor's performance of this agreement; and
- (ii) DFAT's and its employees', agents', advisers' and subcontractors' Use of the Contract Material,

will not infringe the Intellectual Property of any person.

## 18.5 Indemnity

18.5.1 The Contractor indemnifies DFAT and its officers, employees, agents and subcontractors against all loss, liability or expense arising out of or in connection with a claim by a third party, that:

- (i) the Contractor's performance of this agreement; or
- (ii) DFAT's or its employees', agents', advisers' or subcontractors' Use of the Contract Material,

infringes their Intellectual Property.

18.5.2 The Contractor indemnifies DFAT and its officers, employees, agents and subcontractors against any compensation, remuneration or other amount payable to a third party for the Use or exploitation of the Services, or exercise of any Intellectual Property of a third party, by DFAT and its officers, employees, agents and subcontractors (or any person authorised by DFAT) in circumstances where that Use, exploitation or exercise is permitted under legislation without infringing the third party's Intellectual Property, and against all loss, liability and expense arising out of or in connection with a claim for payment of any such compensation, remuneration or other amount.

## 18.6 Moral Rights

18.6.1 The Contractor:

- (i) agrees not to enforce any Moral Rights that it may have; and
- (ii) must use its reasonable endeavours to procure from each author their express agreement, that they not enforce any Moral Rights that they may have, presently or in the future, in any works or material produced in accordance with this agreement, including by executing any Moral Rights consents required by DFAT.

If the Contractor is unable to procure from an author the consent or agreement referred to above, the Contractor must:

- (iii) notify DFAT as soon as possible; and
- (iv) not use that author's work, items or material without DFAT's approval.

18.6.2 The Contractor must ensure that any agreement or consent is genuinely given and not obtained by duress or by the making of any false or misleading statement. The Contractor must give DFAT the signed agreements and consents, promptly on request.

## Part 5 - Legal Provisions

### 19 Termination

#### 19.1 DFAT's right to terminate for breach or insolvency

19.1.1 DFAT may terminate this agreement by notice to the Contractor if the Contractor:

- (i) commits a breach of clause 11 (Security); or
- (ii) commits any other breach of this agreement where:
  - (a) the breach can be remedied, and the Contractor fails to remedy it within 10 business days of receipt of a notice from DFAT specifying the breach and requiring it to be remedied; or
  - (b) the breach cannot be remedied; or
- (iii) commits a Persistent Breach of the Performance Standards; or
- (iv) becomes Insolvent.

19.1.2 DFAT may also terminate this agreement as provided elsewhere in this agreement.

#### 19.2 DFAT's right to terminate for convenience

19.2.1 DFAT may at any time, by notice to the Contractor, terminate this agreement in whole or in part ending on any day.

19.2.2 If DFAT terminates this agreement under this clause 19.2, DFAT will only be liable for:

- (i) payment for Services provided before the effective date of termination; and
- (ii) any reasonable costs in respect of unavoidable expenses sustained or incurred or that are contractually committed by the Contractor that are directly attributable to the termination (other than the cost of redundancies or the cost of terminating any subcontracts, and not including loss of profits), provided that the expenses are substantiated to DFAT's reasonable satisfaction.

19.2.3 For the avoidance of doubt, DFAT has an unfettered discretion to terminate this agreement in accordance with this clause. Any implied obligations relating to the exercise of this clause 19.2 by DFAT, such as the obligation to act in good faith, are expressly excluded to the extent permitted by law.

## **20 Obligations on expiry or termination**

### **20.1 Transition out**

20.1.1 On the expiry or termination of this agreement:

- (i) the Contractor must provide DFAT with all reasonable assistance and information to assist DFAT in transitioning to DFAT's new service arrangements;
- (ii) the Contractor's obligations under subclause (i) include, at DFAT's request, continuing for a period of up to 3 months to supply the Services to DFAT on the terms and conditions of this agreement 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 agreement; and
- (iii) the Contractor must promptly return all DFAT material and Contract Material to DFAT, provided that the Contractor may keep a single copy for its records.

20.1.2 DFAT will pay the Contractor for implementing the Contractor's obligations under subclause 20.1.1(ii), as provided in Schedule 4 (or, if not provided in that Schedule, at the Contractor's standard rates at the time).

### **20.2 Preservation of rights**

20.2.1 The expiry or termination of this agreement will not extinguish or affect:

- (i) any rights of either party against the other which:
  - (a) accrued prior to the time of the expiry or termination; or
  - (b) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this agreement which arose prior to the time of the expiry or termination; or
- (ii) clauses 4.3, 11, 12, 14, 15, 16, 17, 18, 21 or 22, or any other provisions of this agreement which by their nature survive expiry or termination.

### **20.3 Reimbursement for prepayment**

20.3.1 The Contractor must reimburse DFAT on a pro rata basis in the form of a one-off payment for any prepayments made by DFAT for Services that were to be performed, after the effective date of termination, unless DFAT requires the Contractor to provide those Services under subclause 20.1.1(ii).

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## **21 Liability and Indemnity**

### **21.1 Liability for damage to property**

21.1.1 The Contractor is liable for and indemnifies DFAT and its officers, employees, agents and subcontractors against any liability, damage, loss, claim or expense (including legal costs on an indemnity basis) in respect of:

- (i) any loss, destruction or damage whatsoever to any property, real or personal; and
- (ii) any personal injury to, or death of, any person,

arising out of, or in any way connected with, the provision of the Services.

### **21.2 Indemnity for Loss**

21.2.1 The Contractor is liable for and indemnifies DFAT and its officers, employees and agents against liability, damages, loss, claim or expense (including legal costs on an indemnity basis) arising from, or incurred in connection with:

- (i) a breach of this agreement by the Contractor or any Personnel;
- (ii) the negligence or default of the Contractor or any Personnel; or
- (iii) DFAT doing anything which the Contractor must do under this agreement but it has not done or which DFAT considers the Contractor has not done properly.

### **21.3 Rights of the Commonwealth's employees etc**

21.3.1 DFAT will hold on trust for its officers, employees, agents and subcontractors the rights and indemnities given to them under this clause 21 and clause 18.5, and the Contractor agrees that DFAT may exercise those rights and indemnities for and on behalf of its officers, employees and agents.

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## **22 Archives Act 1983**

### **22.1 No transfer without approval**

22.1.1 The Contractor must not transfer, or permit the transfer of, custody or the ownership of any Commonwealth record (as defined in the *Archives Act 1983* (Cwlth)) without the prior approval of DFAT and the National Archives of Australia.

### **22.2 Compliance with Act**

22.2.1 If DFAT authorises the transfer of custody of Commonwealth records to the Contractor, the Contractor must comply with the requirements of the *Archives Act 1983* (Cwlth).

### **22.3 Compliance with directions**

22.3.1 The Contractor must comply with any direction given by DFAT for the purpose of transferring Commonwealth records to the custody of the National Archives of Australia or providing the National Archives of Australia with full and free access to those records.

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## **23 Australian Government requirements**

### **23.1 Compliance with Laws**

23.1.1 The Contractor must, and must ensure Personnel, when performing any obligation under this agreement, comply with:

- (i) applicable laws of the Commonwealth, any State, Territory or local authority;
- (ii) applicable labour laws of the Commonwealth, any State, Territory or local authority, as well as the laws of Iraq and/or the laws of the home States of employees including but not limited to laws regarding OH&S, employees' remuneration, statutory benefits and allowances, severance pay, annual leave, sick leave, workers' compensation, group insurance, medical insurance and benefits, superannuation, and other payments required by applicable law; and
- (iii) the *Crimes Act 1914* (Cwlth);

### **23.2 Commonwealth policies**

23.2.1 The Contractor must comply, and must ensure that Personnel comply, with applicable Commonwealth policies notified to the Contractor from time to time.

### **23.3 Commonwealth money**

23.3.1 With respect to any money payable either to or by DFAT, the Contractor must:

- (i) comply with all relevant provisions of Commonwealth legislation, financial regulations and directions, except to the extent that the relevant obligation is imposed on DFAT;
- (ii) if required by DFAT, comply with any recommendation by the Commonwealth Auditor-General concerning the handling of DFAT's money;
- (iii) handle all money due to or payable by DFAT in accordance with any relevant requirements; and
- (iv) fully account to DFAT for that money.

## **24 Force Majeure**

### **24.1 Effect of Force Majeure**

24.1.1 Despite any other provision of this agreement, if a party is unable to perform or is delayed in performing an obligation under this agreement (other than an obligation to pay money), by reason of a Force Majeure Event, and notice has been given in accordance with clause 24.2:

- (i) that obligation is suspended, but only so far and for so long as it is affected by the Force Majeure Event; and
- (ii) 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.

### **24.2 Notice of Force Majeure**

24.2.1 A party affected by a Force Majeure Event must give the other party a written notice which:

- (i) sets out details of the Force Majeure Event;
- (ii) identifies the nature and extent of the obligations affected by the Force Majeure Event;
- (iii) advises the period of time during which the affected party estimates that it will not be able to perform, or will be delayed in performing, its obligations;
- (iv) provides details of the action that it has taken, or proposes to take, to remedy the situation; and
- (v) provides details of the insurance policies on which the affected party considers that it will be able to rely in making good any damage caused by the Force Majeure Event.

### **24.3 Obligations of affected party**

24.3.1 A party affected by a Force Majeure Event must:

- (i) 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
- (ii) promptly re-commence performing the suspended obligations as soon as reasonably possible.

### **24.4 Meeting**

24.4.1 The parties must meet within 24 hours of service of a notice under clause 24.2, as required by DFAT, to determine the estimated length of time for which the Force Majeure Event will continue and how to proceed during that time.

## 25 Dispute Resolution

### 25.1 Process

25.1.1 The parties agree that any dispute arising during the course of this agreement is dealt with as follows:

- (i) the party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
- (ii) the parties will try to resolve the dispute initially through direct negotiation between the Contractor Representative and the DFAT Representative, who will endeavour to resolve the matter within 10 business days of the giving of the notice;
- (iii) if the dispute is not resolved within that time, the dispute must be referred to the parties' respective executives referred to in the Details, or such other persons who they have given authority to resolve the dispute, who will endeavour to resolve the dispute within a further 10 business days or any other agreed period;
- (iv) the parties have 20 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 some alternative dispute resolution procedure; and

if:

- (v) the dispute is not resolved in that time;
- (vi) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure in that time; or
- (vii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 business days,

then either party may commence legal proceedings.

### 25.2 Application

25.2.1 This clause 25 does not apply to the following circumstances:

- (i) either party commencing legal proceedings for urgent interlocutory relief; or
- (ii) action by DFAT under or purportedly under clause 19.1; or
- (iii) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by the Contractor.

### **25.3 No limit**

25.3.1 Nothing in this clause 25 limits, delays or prevents a party from exercising any right or remedy that they may have under this agreement.

### **25.4 Contractor's obligations not affected**

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

25.4.2 For the avoidance of doubt, this clause does not require the Contractor to change the Services in accordance with a DFAT request if the relevant change is the subject of dispute.

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## **26 Notices**

### **26.1 Requirements**

26.1.1 A notice, approval, consent, instruction or other communication in connection with this agreement:

- (i) must be in writing;
- (ii) must be marked for the attention of the person set out below; and
- (iii) must be:
  - (a) left at the address of the addressee;
  - (b) sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the street address of the addressee; or
  - (c) sent by fax to the fax number of the addressee or by e-mail to the e-mail address of the addressee,

where the street address, fax number and e-mail address of each addressee are those specified in this clause, or if the addressee notifies another street address, fax number or e-mail address then that street address, fax number or e-mail address.

26.1.2 The addresses and fax numbers of the parties are:

**DFAT**

Attention: Director  
High-Threat Security Section  
Diplomatic Security Branch  
Address: Department of Foreign Affairs and Trade  
R.G Casey Building  
John McEwen Crescent  
Barton ACT 0221

E-mail: s 22(1)(a)(ii) @dfat.gov.au

**Contractor**

Attention: s 47F(1)  
Senior Vice President – Strategic Development

Address: F20 Dubai Airport Free Zone,  
Dubai, United Arab Emirates

Fax: +971 4 2991720

E-mail: s 47F(1) @unityresourcesgroup.com

26.1.3 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

**26.2 Deemed Receipt**

26.2.1 A communication is taken to be received:

- (i) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting;
- (ii) in the case of fax, on creation of an entry in a transmission log kept by the machine from which the fax was sent which indicates that the fax was sent in its entirety to a fax number of the addressee; and
- (iii) in the case of e-mail, when it is delivered to a system from which the addressee can retrieve it.

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**27 Subcontractors**

**27.1 General Principle**

27.1.1 The Contractor may not subcontract its obligations under this agreement (or any part of them) without DFAT's prior consent, which may be given conditionally or unconditionally, or withheld, in DFAT's absolute discretion.

27.1.2 In order to consider its consent, DFAT may require that the Contractor provide DFAT with a copy of the proposed contract to be entered into with the subcontractor. The Contractor must provide DFAT with a copy of the executed contract promptly on request by DFAT.

## **27.2 Specific Subcontract**

27.2.1 The Contractor may not enter into a subcontract with a subcontractor which has any judicial decision against it relating to employee entitlements (not including decisions under appeal), that has not been met in full by the subcontractor.

## **27.3 Effect of Subcontract**

27.3.1 The Contractor entering into a subcontract does not:

- (i) create any contractual relationship between DFAT and the subcontractor; or
- (ii) relieve the Contractor from liability for the performance of any of its obligations under this agreement.

## **27.4 Up-to-date list of subcontractors**

27.4.1 The Contractor must provide DFAT with an up-to-date list of its subcontractors by 30 September each year, or promptly as otherwise required by DFAT during the Term.

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# **28 Other agencies may order Goods and Services**

## **28.1 Obligation to provide Goods and/or Services**

28.1.1 The Contractor offers to provide the Goods or Services to any other Agency in accordance with this clause 28.

## **28.2 Request**

28.2.1 An Agency may request the supply of Goods or Services by giving the Contractor a completed Agency Order Form.

## **28.3 Separate contracts**

28.3.1 Each Agency Order Form given under clause 28.2, will create a separate contract between the Contractor and:

- (i) the Commonwealth represented by the Agency (where that agency is subject to the *Financial Management and Accountability Act 1997* (Cwlth)); or

- (ii) the Agency,

as the case requires, for the supply by the Contractor of the requested Goods or Services to the Agency. The terms and conditions governing each such separate contract will be the terms of the Agency Order Form and this agreement.

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## **29 Miscellaneous**

### **29.1 No agency or partnership**

29.1.1 Nothing in this agreement constitutes either party as the agent, partner or joint venturer of the other.

29.1.2 The Contractor acknowledges that it has no authority to bind DFAT without DFAT's specific consent.

### **29.2 No employment relationship**

29.2.1 This agreement does not constitute a relationship of employer and employee between DFAT and the Contractor or any Personnel.

29.2.2 The Contractor enters into this agreement as an independent contractor and retains the sole responsibility for the management and direction of Personnel in relation to the provision of the Services.

29.2.3 The Contractor must not, and must ensure that Personnel do not, represent itself or themselves as being DFAT's employees, partners or agents.

### **29.3 Assignment by Contractor**

29.3.1 The Contractor may not assign any of its rights or obligations under this agreement without the prior consent of DFAT (which may be provided or withheld in the absolute discretion of DFAT).

29.3.2 A change in Control of the Contractor constitutes an assignment requiring DFAT consent under this clause, unless the Contractor is listed on a stock exchange at the time.

### **29.4 Costs**

29.4.1 The Contractor and DFAT each agree to bear their own legal and other costs of and incidental to the preparation, execution and completion of this agreement.

### **29.5 Discretion in exercising rights**

29.5.1 A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

### **29.6 Partial exercising of rights**

29.6.1 If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

### **29.7 No liability for loss**

29.7.1 DFAT is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this agreement.

**29.8 Approvals and consents**

29.8.1 By giving its approval or consent DFAT does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

**29.9 Remedies cumulative**

29.9.1 The rights and remedies provided in this agreement are in addition to other rights and remedies given by law independently of this agreement.

**29.10 Variation and Waiver**

29.10.1 The provisions of this agreement may not be varied either in law or in equity except in writing signed by both DFAT and the Contractor.

29.10.2 A waiver by either party in respect of a breach of a provision of this agreement 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 agreement is not to be interpreted as a waiver of the provision.

**29.11 Survival of indemnities**

29.11.1 Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives termination of this agreement.

**29.12 Enforcement of indemnities**

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

**29.13 Entire agreement**

29.13.1 This agreement constitutes the entire agreement between the parties about its subject matter and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

**29.14 Further steps**

29.14.1 Each party will promptly do and perform all further acts and executions and deliver all further documents (in form and content reasonably satisfactory to that party) required by law, or reasonably requested by the other party to give effect to this agreement.

**29.15 Counterparts**

29.15.1 This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, all of which together constitute one agreement.

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## **30 Governing law, jurisdiction and service of process**

### **30.1 Governing law**

30.1.1 This agreement and the transactions contemplated by this agreement are governed by the law in force in the Australian Capital Territory.

### **30.2 Submission to jurisdiction**

30.2.1 Each party irrevocably and unconditionally submits to the jurisdiction of the courts of the Australian Capital Territory, and courts of appeal from them, for determining any dispute concerning this agreement or the transactions contemplated by this agreement. Each party waives any right it has to object to an action being brought in those courts, including claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

### **30.3 Service of notices**

30.3.1 Without preventing any other method of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under clause 26.

**EXECUTED** as an agreement

**Schedule 1 - Statement of Requirements  
(clause 4.1)**

s 45(1), s 33(a)(i), s 37(1)(c), s 47E(d)

pp. 39-62 exempt in full - s 45(1),  
s 33(a)(i), s 37(1)(c), s 47E(d)

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## 9 Transition In

Notwithstanding anything in this Schedule, and in consultation with DFAT, the Contractor must develop and implement a Transition In Plan upon receiving notice from DFAT and must, when implementing the Transition In Plan:

- (a) ensure that there is no interruption to the Services during the transition period;
- (b) provide a timeline in the Transition In Plan with milestone dates and showing an outline of the Transition In tasks.
- (c) include Transition In arrangement in its weekly report (clause 4.35 – *Routine Reporting* refers.)

For the purposes of this clause 9 – *Transition In*, the transition period is from the Date of this Agreement until 31 January 2011.

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## Schedule 2 - Pro-forma Work Order (clause 5.1)

WORK ORDER BETWEEN THE COMMONWEALTH OF AUSTRALIA (REPRESENTED BY THE DEPARTMENT OF FOREIGN AFFAIRS AND TRADE) AND [INSERT CONTRACTOR] DATED [INSERT]		
	Required Information	Details
1	Work Order Number	
2	Date of Work Order	
3	Contractor Name	
4	Additional Services  (including a detailed description of all services and other deliverables to be provided by the Contractor under this Work Order)	
5	Specified Personnel (if any)  (including names, designated role and specific tasks to be performed)	
6	Service Fee	
7	Services to be provided  (Scope of work, due date for performance, deliverables designated role and specific tasks to be performed)	
8	Due date for completion	
9	Invoices	
10	Additional Performance Standards (if applicable)	
11	Other DFAT requirements (if applicable)	
12	DFAT contact  (Name and contact details)	

<b>SIGNED FOR AND ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA</b> by its authorised representative:		
..... Signature of Authorised Representative		..... Signature of Witness
..... Name of Authorised Representative		..... Name of Witness
<b>SIGNED FOR AND ON BEHALF OF THE CONTRACTOR</b> by its authorised representative:		
..... Signature of Authorised Representative		..... Signature of Witness
..... Name of Authorised Representative		..... Name of Witness

## **Schedule 3 - Recordkeeping and Audit (clause 12)**

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### **11 Records and accounts**

#### **11.1 Records and Accounts**

1.1.1 The Contractor must at all times to the satisfaction of DFAT:

- (i) keep complete accounts and records relating to the performance of its obligations under this agreement in a manner that enables them to be conveniently and properly audited;
- (ii) keep such other records and accounts as DFAT reasonably requires from time to time;
- (iii) 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;
- (iv) provide all reasonable assistance requested by DFAT for any administrative or statutory review, audit or inquiry, any request for information directed to DFAT and any inquiry conducted by Parliament or any Parliamentary Committee concerning the Services or this agreement; and
- (v) retain for a period of 7 years after termination or expiration of this agreement or completion of any legal action arising out of or in connection with this agreement, whichever occurs later, copies of all accounts and records.

## **12 Access to Contractor's premises and records**

### **12.1 Obligation to provide access**

#### **2.1.1 The Contractor must:**

- (i) permit each of DFAT, the Auditor-General and Privacy Commissioner at reasonable times and on reasonable notice, through their officers, agents or advisers authorised on their behalf, to:
  - (a) access the Contractor's premises;
  - (b) examine, inspect, audit and copy any accounts and records relating to this agreement or the Services; and
  - (c) provide all necessary facilities for this purpose;
- (ii) comply with subclause (a) however and wherever the records and accounts are stored or located, whether in the Contractor's or its subcontractors' custody, possession or control; and
- (iii) 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.

2.1.2 The Contractor must do all things necessary to comply with the requirements of the Auditor-General, the Privacy Commissioner, DFAT or their delegates in the exercise of their rights under this Schedule.

2.1.3 Nothing in this agreement reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General, the Privacy Commissioner or their delegates. The rights under this agreement are in addition to any other such power, right or entitlement.

### **12.2 Costs and Responsibility**

2.2.1 Subject to any express provision in this agreement to the contrary each party must bear its own costs of any audit.

2.2.2 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 agreement.

### **12.3 No unreasonable interference**

2.3.1 In the exercise of the rights granted by this Schedule, DFAT must use reasonable endeavours not to unreasonably interfere with the Contractor's performance under the agreement in any material respect.

## 12.4 Subcontracts

- 2.4.1 The Contractor must ensure that any subcontract entered into for the purpose of this agreement contains an equivalent clause permitting DFAT and its representatives to have access as specified in this clause.

# Services Agreement for the provision of Security Services for the Australian Embassy, Baghdad

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## Schedule 5 - Agency Order Form

The Contractor has entered into an agreement with the Commonwealth of Australia as represented by the Department of Foreign Affairs and Trade dated [insert] ("Agreement"). Under that Agreement, the Contractor offers to provide the Services to other Commonwealth Agencies.

The Agency specified in item 3 below accepts this offer on the terms and conditions set out in the Agreement and in this Agency Order Form. If there is an inconsistency between this Agency Order Form and any other provisions of the Agreement, the terms and conditions in this Agency Order Form will prevail to the extent of the inconsistency.

1	<b>Contract No. and description</b>	
2	<b>Names of Parties to the Contract</b>	
3	<b>Agency</b>	<i>[Insert Agency name]</i> A reference to <i>[insert name of the contracting Agency]</i> or the Customer in the Contract will be taken as a reference to <i>[the Agency]</i>
4	<b>Commencement Date</b>	
5	<b>Customer Representative</b>	Title: Name: Postal Address: Fax number: Email:
6	<b>Customer's details for Notices</b>	Postal address: Physical address: Facsimile number:
7	<b>Contractor Personnel</b>	<i>[insert names]</i>
8	<b>Services required</b>	<i>[attach additional pages if required]</i>
9	<b>Other requirements</b>	<i>[insert, e.g. due dates]</i>

**Services Agreement for the provision of Security Services  
for the Australian Embassy, Baghdad**

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SIGNED by

.....  
(Name of authorised [INSERT  
NAME OF AGENCY] representative  
in block letters)

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

.....  
(Signature of witness)

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

DATE: .....

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

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

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

DATE: .....

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

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

.....  
(Signature of witness)

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

## Schedule 6 - Definitions and Interpretation

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### 15 Definitions

In this agreement:

**Additional Services** has the meaning given in clause 5.1.

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

**Agency Order Form** means the form set out in Schedule 5.

**Authority** includes any Australian ministry, department, government, governmental or semi-governmental authority, agency, instrumentality, council, corporation, utility or other legal entity.

**business day** means a day (not being a Saturday, Sunday or ACT public holiday) on which banks are open for general banking business.

**chancery** means the offices of an embassy.

**Close Personal Protection (CPP)** means measures taken to ensure the safety of Australian Government representation in Baghdad, Iraq, and other locations as required by DFAT.

**Commencement Date** has the meaning given in the Details.

**Commonwealth** means the Commonwealth of Australia.

**Confidential Information** means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between (or on behalf of) the parties before, on or after the date of this agreement relating to the business, technology, customers or other affairs of a party to this agreement, excluding information which:

- (a) is in or becomes part of the public domain other than through breach of this agreement or an obligation of confidence owed to the owner of the information; or
- (b) the disclosing party can prove by contemporaneous written documentation was already known to it at the time of disclosure (unless that knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the recipient acquires from another source entitled to disclose it.

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

**Contractor Representative** means the person nominated by the Contractor under clause 2.1.

**Control** of a corporation means having:

- (a) more than 49.9% of the votes eligible to be cast in the election of directors or any similar matter; or
- (b) the right to appoint or remove directors (or members of a governing body having functions similar to a board of directors) or any similar matter representing more than 49.9% of the votes exercisable by all the directors (or persons having similar functions); or
- (c) an interest of more than 49.9% in any category of the profits, distributions or net liquidation proceeds of that corporation.

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

**DFAT Representative** means the person nominated by DFAT under clause 2.1.

**DFAT Supplied Items** has the meaning given in clause 7.10.1(i).

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention, flawed deposit arrangement or right of set off or any agreement to create any of them or allow them to exist.

**Force Majeure Event** includes the following causes:

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning storm, tempest, drought or meteor; or
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) pandemic;
- (d) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; or
- (f) strikes, blockades, lock out or other industrial disputes,  
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.

**Further Term** has the meaning given in the Details.

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

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

**Insolvent** means being an insolvent under administration or insolvent or having a controller appointed (each as defined in the Corporations Act), or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction.

**Intellectual Property** means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered and unregistered designs and patents, circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Mobilisation (or Mobilisation Date)** means the point in time when the Contractor assumes responsibility for providing the Services. Mobilisation is midnight on 31 December 2010. The Mobilisation Date is 1 January 2011.

**Montreux Document**, means the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict dated 17 September 2008, available at: <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/montreux-document-170908>;

**Moral Rights** means any of the rights described in Article 6bis of the *Berne Convention for Protection of Literary and Artistic Works 1886* (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cwlth) or any other law of the Commonwealth of Australia), that exists or that may come to exist, anywhere in the world.

**OH&S** means occupational, health and safety.

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

**Quarter** means a three month period commencing on either 1 August, 1 November, 1 February or 1 May.

**Regional Security Adviser** means an Australian-based officer appointed to an Australian Embassy or Embassy to advise the Head of Mission on security matters and oversee security at that mission.

**Second Further Term** has the meaning given in the Details.

**Services** means the services (if any) described in the Details, clause 4 and Schedule 1, the Contractor's other obligations under this agreement, and any Additional Services required by DFAT under a Work Order issued in accordance with clause 5.

**Specified Personnel** means the personnel listed as specified personnel in Schedule 1, as varied in accordance with this agreement.

**Term** has the meaning given in the Details, and (if applicable) the Further Term and Second Further Term.

**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.

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

**Work Order** means the purchase document for Additional Services, in the form of Schedule 2.

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## **16 Interpretation**

### **16.1 Rules of interpretation**

In this agreement unless the contrary intention appears:

- (a) a reference to this agreement or another instrument includes any variation or replacement of any of them;
- (b) a reference to a clause is a reference to a clause of this agreement;
- (c) a reference to a clause number is a reference to the clause including its subclauses;
- (d) a reference to a Schedule includes a reference to any part of that Schedule which is incorporated by reference;
- (e) the recitals to this agreement do not form part of this agreement;
- (f) words in the singular include the plural and vice versa;
- (g) words importing a gender include any other gender;
- (h) a reference to a person includes bodies corporate, unincorporated associations and partnerships;
- (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) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (k) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) a reference to Australian dollars, dollars, AUD, A\$ or \$ is a reference to the lawful currency of Australia;
- (m) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- (n) the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and,

when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

Headings are inserted for convenience and do not affect the interpretation of this agreement.

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## **17 Inconsistency**

### **17.1 Agreement and schedule**

If there is any inconsistency between the body of this agreement and a Schedule, the body of this agreement prevails to the extent of the inconsistency.

### **17.2 Schedules**

If there is any inconsistency between Schedules, the following order of priority in interpretation applies:

- (a) the Statement of Requirements (Schedule 1);
- (b) the Pricing Schedule (Schedule 4); and
- (c) other Schedules have equal status.

### **17.3 Other documents**

If there is any inconsistency between the contents of a Schedule in circumstances where the Schedule is made up of a number of sub-documents, the body of the Schedule will take priority over the sub-documents. The sub-documents have equal status.

Services Agreement for the provision of Security  
Services for the Australian Embassy, Baghdad

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Signing page

DFAT

EXECUTED as an agreement:

SIGNED by )

s 22(1)(a)(ii) )

..... )  
(Name of authorised DFAT )  
representative in block letters) )

as authorised representative for The )  
Department of Foreign Affairs and )  
Trade (ABN 47 065 634 525) in the )  
presence of: )

s 22(1)(a)(ii) )

..... )  
(Signature of witness) )

s 22(1)(a)(ii) )

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

s 22(1)(a)(ii)

(Signature of authorised DFAI  
representative)

By executing this agreement the  
signatory warrants that the signatory  
is duly authorised to execute this  
agreement on behalf of DFAT

DATE: 3 November 2010

EXECUTED by Unity Resources )  
Group Pte Ltd (ABN Not Applicable) )  
in accordance with section 127(1) of )  
the Corporations Act by authority of )  
its directors: )

s 22(1)(a)(ii) )

..... )  
Signature of witness )

s 22(1)(a)(iii) )

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

s 47F(1)

..... )  
Signature of director/company )  
secretary\* )

\*delete whichever is not applicable

s 47F(1)

..... )  
Name of director/company secretary\* )  
(block letters)

\*delete whichever is not applicable

DATE: 3 November 2010

