



**Australian Government**

**Department of Foreign Affairs and Trade**

# DFAT – Delivery Partner Services Contract

Dated

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

Cardno Emerging Markets (Australia) Pty Ltd (ABN 23 006 170 869)  
(‘Contractor’)

FOR

**Economic and Social Infrastructure Program (ESIP) Papua New Guinea**

DFAT AGREEMENT NUMBER: 74999



Contract 74999

SIGNED for and on behalf of the  
**COMMONWEALTH OF AUSTRALIA**  
represented by the  
Department of Foreign Affairs and Trade by:

s 22(1)(a)(ii)

Signature of PGPA Delegate/authorised DFAT  
representative

BRUCE DAVIS

Name of Delegate/authorised DFAT  
representative

(Print)

10/12/2018

Date

in the presence of:

s 22(1)(a)(ii)

Signature of witness

s 22(1)(a)(ii)

Name of witness

(Print)

10/12/2018

Date

SIGNED for and on behalf of  
**Cardno Emerging Markets (Australia) Pty Ltd** by:

s 47F(1)

s 47F(1)

Signature of Director

s 47F(1)

Name of Director

(Print)

10/12/18

Date

Signature of Director/company Secretary

s 47F(1)

Name of Director/company Secretary

(Print)

10/12/18

Date

**STRUCTURE OF THE CONTRACT**

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CONTRACT DETAILS	
<b>Parties:</b>	DFAT and the Contractor
<b>DFAT:</b>	The Commonwealth of Australia represented by the Department Foreign Affairs and Trade (ABN 47 065 634 525)
<b>Address:</b>	R.G Casey Building, John McEwen Crescent Barton, ACT 0221
<b>DFAT's (Management) Representative:</b>	Name: s 22(1)(a)(ii) Position: Counsellor, Infrastructure, Port Moresby Street address: Godwit Road, Waigani, NCD Postal address: Locked Bag 129, Waigani, NCD E-mail: s 22(1)(a)(ii) Telephone: s 22(1)(a)(ii)
<b>DFAT Escalation Representative</b>	Name: Benedict David Position: Minister Counsellor, Port Moresby Street address: Godwit Road, Waigani, NCD Postal address: Locked Bag 129, Waigani, NCD E-mail: s 22(1)(a)(ii) Telephone: s 22(1)(a)(ii)
<b>Contractor:</b>	Cardno Emerging Markets (Australia) Pty Ltd  <div> <div>ABN: 23 006 170 869</div> <div>ARBN:</div> </div> Acting as Trustee: No  <div> <div>Small Business: No</div> <div>Registered for GST: Yes</div> </div>
<b>Contractor's (Management) Representative:</b>	Name: s 47F(1) Position: Contractor Representative Street address: Level 4, 501 Swanston Street, Melbourne VIC 3000 Postal address: As Above E-mail: s 47F(1) Telephone: s 47F(1)

<b>Contractor's Escalation Representative:</b>	Name: s 47F(1) Position: s 47F(1) Street address: Level 4, 501 Swanston Street, Melbourne VIC 3000 Postal address: As Above E-mail: s 47F(1) Telephone: s 47F(1)
<b>Term:</b>	<b>Commencement Date:</b> 10 December 2018 <b>Term:</b> 10 December 2018 and 09 December 2022 (4 Years) <b>Option Period:</b> up to 4 years.

# PART A – GENERAL CONDITIONS

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## SECTION 1 – COMMON PROVISIONS

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### 1. DEFINITIONS

#### 1.1 In this Contract:

**Activity** means any project or program the subject of a Tasking Note.

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

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

**Approval** means any licence, permit, registration, consent, approval, determination, certificate, administrative decisions, permission or other requirement of any Australian Government (whether Commonwealth, State, Territory or local), Partner Government, provisional or local authority, body or other organisation having any jurisdiction or authority in connection with or over the Services, any Site, any Activity or, in the case of Delivery Partner Services, the Works, or otherwise under any other applicable Legislative Requirements, which must be obtained or satisfied to:

- (a) perform the Services or, in the case of Delivery Partner Services, carry out and complete the Works; or
- (b) in the case of Delivery Partner Services, occupy and use the Works.

**APS Code of Conduct** refers to the code of conduct of the Australian Public Service available at [www.apsc.gov.au](http://www.apsc.gov.au).

**APS Values** refers to the values of the Australian Public Service available at [www.apsc.gov.au](http://www.apsc.gov.au).

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

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

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

**Claim** includes any claim for an increase to the Management Fee, Fees or Reimbursable (Program) Costs, for payment of money (including damages) or for any other compensation or relief:

- (a) under, arising out of, or in any way in connection with, the Contract, including any direction of the DFAT Representative;
- (b) arising out of, or in any way in connection with, any Activity, the Services or either party's conduct before the Contract; or
- (c) otherwise at law or in equity including:
  - (i) by statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution.

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

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

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

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

**Commonwealth Requirements** includes all Commonwealth policies, plans, manuals, guidelines, instructions (including departmental procurement policy instructions) and other Commonwealth requirements which are, or may become, applicable to the Services, any Site, any Activity or, in the case of Delivery Partner Services, the Works.

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

**Contract** means the contractual relationship between the parties constituted by the Contract Details, Parts A - B (including all Sections), the Schedules and any Annexes.

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

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

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

**Contractor Confidential Information** means information that is by its nature confidential and/or is designated as confidential in **Schedule 4** (Confidential Information) but does not include this Contract or information which is or becomes

public knowledge other than by breach of this Contract or any other confidentiality obligation (Refer to Department of Finance's Confidentiality Test for more information: <http://finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/practice.html>).

**Control** of a corporation means having the power (directly or indirectly) to control more than 50% of the membership of the board of directors, more than 50% of the voting shares of the corporation, or otherwise direct or cause the direction of the management and policies of the corporation.

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

**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/s** means calendar days.

**Delivery Partner Services** means that part of the Services which must be performed by the Contractor and to which the conditions in **Part B** apply, and includes:

- (a) the services described in any Tasking Note for Delivery Partner Services and those services described in **Schedule 1** (Statement of Requirements) as may be relevant to the performance of Delivery Partner Services;
- (b) any services incidental to, or reasonably inferred from, the services referred to in paragraph (a); and
- (c) any Variation to them directed by the DFAT Representative in accordance with the Contract.

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

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

**DFAT Confidential Information** means information that is by its nature confidential and/or is designated as confidential in **Schedule 4** (Confidential Information) but does not include this Contract or information which is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation (Refer to Department of Finance's Confidentiality Test for more information: <http://finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/practice.html>).

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

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

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

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

**Early Warning Notice** has the meaning given under **Clause 35A.1**.

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

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

**Estimated Tasking Note Price** means the estimated Tasking Note Price set out in the Contractor's response to a Tasking Note Request.

**Fees** means, in respect of a Tasking Note, the sum of the Personnel Fees under **clause 3 of Schedule 2** (Pricing Schedule), Advisor Support Costs under **clause 4 of Schedule 2** (Pricing Schedule) and Operational Costs under **clause 5 of Schedule 2** (Pricing Schedule), each calculated in accordance with **Schedule 2** (Pricing Schedule), excluding the Management Fee and Reimbursable (Program) 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, whose employment ceased within the last **nine (9) months** and who was substantially involved in the design, preparation, appraisal, review, and or daily management of this Contract.

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

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

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

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

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

**Legislative Requirements** include any:

- (a) law of the Commonwealth, the Partner Country or a State or Territory or local body, including Acts, ordinances, regulations, by-laws and other subordinate legislation;
- (b) Approvals (including any conditions or requirement under them); and
- (c) Environmental Requirements,

applicable to the Services, any Site, any Activity or, in the case of the Delivery Partner Services, the Works.

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

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

**Management Fee** means the lump sum amount set out in **clause 2 of Schedule 2** (Pricing Schedule), which:

- (a) is payable on account of the Management Services; and
- (b) excludes the Fees and Reimbursable (Program) Costs.

**Management Services** means those Services which:

- (a) are required to be performed by the Contractor to enable the Contractor to perform the Services; and
- (b) do not form part of those Services for which the Contractor is paid the Fees or Reimbursable (Program) Costs.

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

**Maximum Contract Sum** means the maximum amount payable by DFAT to the Contactor under this Contract, as set out in **Clause 1.1 of Schedule 2** (Pricing Schedule).

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

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

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

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

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

**Open Book Basis** means the provision by the Contractor to DFAT (or a representative of DFAT), in a timely, clear, transparent and fully auditable manner, of all pricing, costing and other documentation held or reasonably ascertainable by the Contractor:

- (a) to enable DFAT (or a representative of DFAT) to assess the Contractor's proposed Estimated Tasking Note Price included in its response to a Tasking Note Request under **Clause 5.4**; or
- (b) where otherwise required under the Contract to be provided or accessible on an "open book basis",

including books, records, logs, reports, registers, systems, personnel, facilities, quotations, purchase orders, contracts, invoices (together with full supporting

documentation), subcontractor progress claim certificates, timesheets and payroll reports.

**Other Contractor** means any contractor, supplier or other person engaged by DFAT in relation to the Services or an Activity, other than the Contractor.

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

**Partner Country Requirements** includes all policies, plans, manuals, guidelines, instructions of the Partner Country and all other Partner Government, provincial, local or key stakeholder requirements, which are, or may become, applicable to the Services, any Site, any Activity or, in the case of the Delivery Partner Services, the Works

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

**Party** means DFAT or the Contractor or a Department or Agency that has signed **Schedule 8** (Department/Agency Access Form).

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

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

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

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

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

- (a) is in existence at the Commencement Date or is subsequently brought into existence other than as a result of the performance of the Contract, and
- (b) is embodied in, or attaches to, the Services or is otherwise necessarily related to the functioning or operation of the Services.

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

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

**PNG Tax** means any tax, levy, excise, duty (including stamp duty, customs duty and export / import duty), charge, surcharge, contribution, withholding tax, value added tax, impose or withholding obligation of whatever nature imposed under the laws of Papua New Guinea.

**PNG Taxing Authority** means any government or local authority of Papua New Guinea and any department, minister or agency of any government entity of Papua New Guinea, responsible for the assessment, collection, withholding or administration of PNG Tax in Papua New Guinea.

**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 an Activity.

**Project Director** means, in respect of each Activity, the specified person nominated in each Tasking Note.

**Project Specific Conditions** means Section 7 of this Part A.

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

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

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

**Reimbursable (Program) Costs** has the meaning in **Clause 1 of Part B**.

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

**Services** means all things and tasks which the Contractor is, or may be, required to do to comply with its Contract obligations, including those things or tasks more particularly described in **Schedule 1** (Statement of Requirements) and each Tasking Note and which may include the Delivery Partner Services or the provision of Goods.

**Services End Date** means the date by which the Contractor must cease the Services in the Partner Country, being the date specified in **Clause 4.2**.

**Services Start Date** means the date by which the Contractor must commence the Services in the Partner Country, being the date specified in **Clause 4.2**.

**Short Term Advisers** or **STA** means Advisers working on any Activity for less than **six (6) months** continuously.

**Site** has the meaning given in **Clause 1 of Part B**.

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

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

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

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

**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.

**Standard Contract Conditions** means the provisions contained in Sections 1-6 of this Part A.

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

**Tasking Note** means a tasking statement in the form set out in **Schedule 11** (Tasking Note) issued by DFAT to the Contractor from time to time under **Clause 5.2**.

**Tasking Note Budget** means the maximum amount allocated by DFAT to an Activity as set out in a Tasking Note (to the extent it does not exceed the Maximum Contract Sum).

**Tasking Note Commencement Date** means the date on which DFAT issues a notice of acceptance under **Clause 5.4(a) of Part A** (or in relation to any revised response following negotiations under **Clause 5.4(b) of Part A**).

**Tasking Note Price** means the amount payable by DFAT to the Contractor under a Tasking Note, which amount comprises the following components:

- (a) Fees; and
- (b) Reimbursable (Program) Costs,

but excludes the Management Fee.

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

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

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

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

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

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

**Variation** means any change to the Services, including any addition, increase, decrease, omission or deletion to or from the Services.

**WHS Legislation** means:

- (a) the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations 2011* (Cth); and
- (b) any corresponding work health and safety law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

**WHS Principal Contractor** means the 'principal contractor' as defined in the *Work Health and Safety Regulations 2011* (Cth).

**Works** has the meaning given in **Clause 1 of Part B**.

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

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## 2. INTERPRETATION

- 2.1 In this Contract including the Recitals and Schedules, unless the context otherwise requires:
- (a) a reference to this Contract or another instrument includes any variation, amendment, novation, or replacement of any of them;
  - (b) words in the singular include the plural and vice versa;
  - (c) words denoting a gender include all genders;
  - (d) a reference to a person includes a natural person and any type of body or entity whether incorporated or governmental, and any executor, administrator or successor in law of the person;
  - (e) a reference to any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (f) “shall” and “must” denote an equivalent positive obligation;
  - (g) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
  - (h) a reference to ‘dollars’, ‘\$’ or AUD is a reference to Australian currency;
  - (i) a reference to any Party to this Contract includes a permitted substitute or a permitted assign;
  - (j) if a word or phrase is defined, other parts of speech have a corresponding meaning;
  - (k) all headings and guidance or drafting notes (if any) are for convenience only and do not affect the interpretation of this Contract;
  - (l) a reference to a Party, Clause, Part, Section, Schedule, exhibit or annexure is a reference to a Party, Clause, Part, Section, Schedule, exhibit or annexure of or to this Contract;
  - (m) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation"; and
  - (n) the words "subcontractor" and "subconsultants" will include subcontractors, suppliers and consultants, and the word "subcontract" will include a contract with a subcontractor or subconsultant.
- 2.2 No rule of construction shall apply in the interpretation of this Contract to the disadvantage of one Party on the basis that such Party put forward or drafted this Contract or drafted any provision of this Contract.

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## 3. INCONSISTENCY

- 3.1 Subject to **Clause 3.4**, if there is any inconsistency (whether express or implied from the Contract or otherwise) between the Standard Contract Conditions (Parts 1 – 6 as

applicable) or Part B and a Schedule to the Contract, the Schedules are to be read subject to the Standard Contract Conditions or Part B and the relevant provisions of Standard Contract Conditions or Part B of the Contract prevail to the extent of the inconsistency unless explicitly amended in the Project Specific Contract Conditions (Part 7).

- 3.2 If there is any inconsistency between the Schedules, the following order of priority in interpretation applies:
- (a) the Tasking Note (**Schedule 11**);
  - (b) the Statement of Requirements (**Schedule 1**);
  - (c) the Pricing Schedule (**Schedule 2**); and
  - (d) all other Schedules.
- 3.3 If there is any inconsistency between the contents of a Schedule in circumstances where the Schedule is made up of a number of sub-documents, the body of the Schedule will take priority over the sub-documents. The sub-documents have equal status.
- 3.4 If there is any inconsistency between the Standard Contract Conditions (Parts 1 - 6 as applicable) and:
- (a) **Part B**, the terms of **Part B** will prevail; and
  - (b) **Schedule 2** (Pricing Schedule), the terms of **Schedule 2** (Pricing Schedule) will prevail.

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#### 4. CONTRACT TERM

- 4.1 This Contract commences upon the Commencement Date and continues for the term as set out in the Contract Details or until all obligations under this Contract have been fulfilled or this Contract is terminated, (except for any clauses which survive termination), whichever is earlier (**Term**).
- 4.2 The Contractor must commence provision of the Services by **10 December 2018 (Services Start Date)** and complete the provision of Services by **09 December 2022 (Services End Date)** as set out in the Contract Details.
- 4.3 The Contractor grants to DFAT an option to extend the term of this Contract for a period of up to 4 **years**. DFAT may exercise the option by notifying the Contractor in writing prior to the Services End Date. If DFAT exercises the option, the Contractor must continue to provide the Services for the extended term on the terms and conditions contained in this Contract, except that this **Clause 4.3** shall no longer apply.
- 4.4 Except to the extent referred to in this **Clause 4**, each Party must bear and is responsible for its own costs in connection with the preparation, execution and carrying into effect of this Contract.

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#### 5. SCOPE

- 5.1 This Contract sets out the terms and conditions on which the Contractor agrees to provide the Services and to secure the aims and objectives of each Activity.
- 5.2 The Contractor acknowledges and agrees that:

- (a) **Schedule 1** (Statement of Requirements) sets out the Services to be performed by the Contractor from the Commencement Date;
- (b) at any time during the Term, DFAT may instruct the Contractor to perform additional Services under Tasking Notes under this **Clause 5**; and
- (c) the Contractor must continue to perform the Services set out in **Schedule 1** (Statement of Requirements) throughout the Term, in addition to the Services under, and irrespective of the existence of, any extant Tasking Note.

5.3 At any time during the Term, DFAT may:

- (a) issue a Tasking Note setting out:
  - (i) a description of the Services which DFAT requires the Contractor to perform (which will be of the same or similar type to those set out in **Schedule 1** (Statement of Requirements));
  - (ii) the Tasking Note Budget; and
  - (iii) such other matters as may be set out in **Schedule 11** (Tasking Note); and
- (b) request the Contractor to provide DFAT with:
  - (i) its estimated Tasking Note Price, which must not exceed the Tasking Note Budget (**Estimated Tasking Note Price**), together with a breakdown of:
    - (A) the Fees and Reimbursable (Program) Costs payable in accordance with **Schedule 2** (Pricing Schedule);
    - (B) the proposed level of contingency (including risk which the Contractor intends the contingency to cover); and
    - (C) the milestone payments proposed for the milestones set out in the Tasking Note; and
  - (ii) such other information as may be requested by DFAT, (**Tasking Note Request**).

5.4 The Contractor must;

- (a) provide its response to a Tasking Note Request within fourteen (**14**) **Days** (or such other period agreed between the parties); and
- (b) ensure that all rates and prices in its response:
  - (i) are consistent with the pricing methodology for the other rates and prices in **Schedule 2** (Pricing Schedule);
  - (ii) provide DFAT with demonstrable value for money; and
  - (iii) are proposed on an Open Book Basis.

5.5 After receiving a response under **Clause 5.4(b)**, DFAT may, within fourteen (**14**) **Days** (or such other period agreed between the parties), notify the Contractor in writing that it:

- (a) accepts the response, in which case, from the date of DFAT's notice of acceptance:
  - (i) the Services will include the services required under the Tasking Note; and

- (ii) the Contractor must promptly commence to perform the Services the subject of the Tasking Note:
    - (A) so as to ensure that the Tasking Note Price does not exceed the Estimated Tasking Note Price; and
    - (B) in accordance with this Contract (without amendment); or
  - (b) rejects the response, in which case DFAT may require the Contractor to negotiate any part of its response or the Tasking Note may be withdrawn.
- 5.6 Unless otherwise expressly stated by DFAT, the addition of Services under a Tasking Note will not affect the Services required under any extant Tasking Note.
- 5.7 Without limiting any other rights or remedies available to DFAT under this Contract, DFAT may reduce funding available under this Contract if there is a policy or funding decision which impacts upon Australia's overseas development assistance budget and associated programs.
- 5.8 Upon reasonable notice being given by DFAT to the Contractor of policy or funding decisions under **Clause 5.3, Schedule 2** (Pricing Schedule) will be adjusted in accordance with **Clause 18.4**.
- 5.9 At any time during the Term, DFAT may vary the scope of the Services in accordance with the process under **Clause 18**.
- 5.10 This Contract constitutes the sole and entire agreement between the Parties about its subject matter.

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## **5A ALL WORK INCLUDED**

- 5A.1 The Contractor has allowed for the provision of all work necessary for the Services, whether or not expressly mentioned in **Schedule 1** (Statement of Requirements) or a Tasking Note. Any such work:
  - (a) must be undertaken and provided by the Contractor; and
  - (b) forms part of the Services and will not entitle the Contractor to make a Claim except as otherwise provided for in this Contract.

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## **6. CONTRACTOR OBLIGATIONS**

- 6.1 The Contractor must:
  - (a) provide DFAT with the Services as described in **Schedule 1** (Statement of Requirements) and any Tasking Note in addition to providing DFAT with any incidental Services to enable performance of this Contract;
  - (b) follow DFAT directions (including those issued by an Australian Embassy and High Commission) and cooperate with any third party appointed by DFAT to provide the Services including the provision of any reasonable assistance to third party providers of Services as DFAT may request;
  - (c) ensure the adequacy and lawfulness of any workers' compensation insurance for its Personnel, both in Australia, and in the Partner Country it operates in;
  - (d) remain responsible for the payment of any taxes, or entitlements, other statutory charges and/or any other amount payable to its Personnel and agrees

to indemnify DFAT in relation to any fine, penalty or other charge imposed on DFAT as a result of the Contractor's non-compliance with this **Clause 6.1**;

- (e) assign all Advisers a Job Level and Professional Discipline Category in accordance with the Adviser Remuneration Framework and engage and remunerate Advisers in accordance with the relevant classification specified in the Adviser Remuneration Framework;
- (f) where an Australian Standard (or in its absence, international) is applicable for Services provide evidence of relevant certifications; and comply with periodic auditing by an independent assessor if requested by DFAT; and
- (g) ensure that Advisers provide a written declaration prior to confirming their eligibility for allowances under the Adviser Remuneration Framework. The written declaration shall be substantially in accordance with the declaration at **Schedule 7** (Declaration of Status).

- 6.2 Where the Services include the provision of Goods, the Contractor is responsible for all Goods (and the risk of loss or damage to such Goods) until DFAT accepts them and title passes to DFAT upon payment of the Contractor.

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## 7. NON-EXCLUSIVITY AND VOLUME

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

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## 8. SERVICES TO OTHER AGENCIES

- 8.1 The Contractor may provide Services to any other Commonwealth Agency at its request provided it completes **Schedule 9** (Department/Agency Access Form).
- 8.2 Where a Contractor enters into an arrangement in accordance with **Schedule 9** (Department/Agency Access Form), the terms and conditions of this Contract will apply to the Contract entered into by that Commonwealth Agency.

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## 9. PERFORMANCE STANDARDS

- 9.1 Where delivering the Services, the Contractor must at all times meet the performance standards outlined in this **Clause 9** and any performance standards outlined in **Schedule 1** (Statement of Requirements) or a Tasking Note.
- 9.2 Where this Contract is for Services they must be performed:
- (a) with due skill, care and diligence;
  - (b) to a professional standard and in a timely manner; and
  - (c) in the most cost-effective manner, in accordance with any budgetary requirements of DFAT notified to the Contractor (and so as to not exceed the Maximum Contract Sum) and using suitable materials.
- 9.3 Where the Services include the provision of Goods, the Goods must:

- (a) be reasonably fit for their intended purpose as set out in or reasonably inferred from Schedule 1 (Statement of Requirements) or the requirements set out in the relevant Tasking Note;
- (b) be provided in compliance with all relevant Australian Standards (or if none apply, international) and Partner Country industry standards, best practice, guidelines and codes of practice;
- (c) ensure any product resulting from the Goods will be of such a nature and quality, state or condition that they can be reasonably expected to achieve their intended result;
- (d) be provided in a way that demonstrates the Contractor has sought to improve the quality, effectiveness and efficiency of the Goods at every opportunity; and
- (e) where for Construction, be provided in accordance with the design brief and/or functionality requirements and, using new materials unless otherwise specified.

9.4 **s 47(1)(b)**

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## **10. WARRANTIES**

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

### **Goods**

- 10.6 Where the Services include the provision of Goods, the Contractor must:
  - (a) satisfy itself, and, where required by DFAT, obtain from any third party supplier a warranty, that the Goods:
    - (i) are of acceptable quality, safe and durable;
    - (ii) are free from defects in design, performance, materials and workmanship;
    - (iii) are fit for all the purposes for which goods of that kind are commonly supplied;

- (iv) comply with the applicable Australian (or international) Standards
- (v) will not be adversely affected in any way by any date-related issue; and
- (vi) are free of any Encumbrances; and
- (b) ensure that DFAT obtains the full benefit of any third party warranties available for the Goods.

#### Services

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

- (a) s 47(1)(b)
- (b) its Personnel have the necessary experience, skill, knowledge, expertise and competence to perform the Services;
- (c) the Services are free from errors or omissions;
- (d) s 47(1)(b)
- (e) the Services comply with the applicable Australian (or international) Standards; and
- (f) it will exercise the utmost good faith in the best interests of DFAT and keep DFAT fully and regularly informed as to all matters affecting or relating to the scope or cost of the Services, each Activity or, in the case of Delivery Partner Services, the Works.

#### DFAT Property

10.8 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.

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### 11. CONFLICT OF INTEREST

- 11.1 The Contractor warrants that, at the date of signing this Contract, no conflict of interest exists, or is likely to arise in the performance of its obligations under this Contract.
- 11.2 The Contractor must use its best endeavours to ensure that no conflict of interest arises in relation to the performance of any aspect of this Contract.
- 11.3 Upon becoming aware of any conflict or possible conflict of interest, the Contractor will:
  - (a) immediately and fully disclose to the DFAT Representative any such conflict of interest or possible conflict of interest; and

- (b) take all steps required by the DFAT Representative to avoid or minimise the conflict of interest or risk of conflict of interest.

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## 12. INSURANCES

- 12.1 The Contractor must arrange and maintain the following policies of insurance for the Term of the Contract unless otherwise specified:
- (a) Public Liability insurance with a limit of at least **AUD20 million** for each and every claim which covers Loss of, or damage to, or Loss of Use of any real or personal property and/or any personal injury to, illness or death of any person arising from the performance of the Contract;
  - (b) Motor vehicle third party property damage insurance;
  - (c) Workers' Compensation insurance in accordance with **Clause 6.1 (c)** which:
    - (i) fully insures the Contractor for any amount it becomes liable to pay under any statute relating to workers' or accident compensation or for employer's liability at common law;
    - (ii) is effected in the Partner Country as well as every state or territory in Australia where its Personnel normally reside or in which their contract of employment was made; and
    - (iii) where possible at law, extends to indemnify DFAT as principal for DFAT's liability to persons engaged by the Contractor.
  - (d) adequate property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value;
  - (e) adequate Professional Indemnity insurance to cover the Contractor's obligations under this Contract. The Contractor must maintain the necessary insurance each year until the expiration of **three (3)** years after the full Term of the Contract or earlier termination of the Contract;
  - (f) adequate medical and dental insurance for its Personnel who are engaged to operate outside their country of permanent residence; and
  - (g) adequate insurance for medical evacuation and evacuation resulting from an insured event for all its Personnel.
- 12.2 Where there is no workers compensation legislation in force in the Partner Country, the Contractor should arrange adequate personal accident and illness insurance (accidental death and weekly benefits) for any of its Personnel not otherwise covered for the Term of the Contract.
- 12.3 **s 47(1)(b)**
- 12.4 Where any policy is to be cancelled, or the level of cover reduced, the Contractor must give DFAT at least fourteen (**14**) **Days** prior notice of the cancellation.
- 12.5 Neither the arrangement and maintenance of insurance nor any failure to arrange and maintain such insurance shall in any way limit, reduce or otherwise affect any of the

obligations, responsibilities and liabilities of the Contractor under the other provisions of this Contract or at law.

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

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### 13. INTELLECTUAL PROPERTY RIGHTS

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

- (a) the warranted Materials and DFAT's use of those warranted Materials, will not infringe the Intellectual Property Rights or Moral Rights of any person, and
  - (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided in this **Clause 13**.
- 13.8 If a third party claims, or DFAT reasonably believes that a third party is likely to claim, that all or part of the warranted Materials infringe their Intellectual Property Rights or Moral Rights the Contractor must, in addition to the Contractor's obligation under **Clause 14** (Indemnities) and to any other rights that DFAT has against the Contractor, promptly, at the Contractor's expense:
  - (a) secure the rights for DFAT to continue to use the affected warranted Materials free of any claim or liability for infringement; or
  - (b) replace or Modify the affected warranted Materials so that the warranted Materials or the use of them does not infringe the Intellectual Property Rights or Moral Rights of any other person without any degradation of the performance or quality of the affected warranted Materials.
- 13.9 The Contractor warrants or undertakes that the author of any Contract Material, other than Prior Material, has given or will give written consent to the Specified Acts (whether those Specified Acts occur before or after the consent is given) and that such consent extends directly or indirectly to DFAT.

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#### 14. INDEMNITIES

14.1 s 47(1)(b)

14.2 s 47(1)(b)

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

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**15. BRANDING****15.1** The Contractor must:

- (a) identify, and with prior DFAT approval, implement appropriate opportunities for publicising each Activity (including signage at each Activity site that acknowledges the funding of the Activity) in accordance with “DFAT Guidelines for managing Contractors (or NGOs or multilateral agencies) on the use of logos and other forms of acknowledgement” at all times;
- (b) only use the Australian Government/DFAT crest logo with prior approval, (in-line version or stacked version) in Australia or the Australian Aid identifier overseas to denote association with Australia, the Australian Government or DFAT in any publicity or other project related materials; and
- (c) promptly remove Contractor signs at the completion of each Activity unless otherwise instructed by DFAT.

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**16. PUBLICITY**

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

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**17. AGENCY**

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

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**18. AMENDMENT AND VARIATIONS**

- 18.1** The Contractor must not do anything that amounts to a Variation in whole or in part otherwise than in accordance with this **Clause 18**.
- 18.2** The provisions of this Contract may not be amended either in law or in equity except in writing and substantially in the form of a Deed of Amendment signed by both DFAT and the Contractor.
- 18.3** DFAT may, at any time, direct the Contractor to carry out a Variation and the Contractor must perform the Variation. The direction must be in writing and state that it is a direction for a Variation. If the direction states that the Contractor must provide an estimate of the cost of the Variation, then the Contractor must provide DFAT with an estimate within the time specified in the direction and, if no time is specified, then promptly.
- 18.4** **Schedule 2** (Pricing Schedule) will be adjusted for all Variations to the Contract under this **Clause 18**:
- (a) as agreed under Clause 18.3;
  - (b) to the extent paragraph (a) does not apply, in accordance with the rates and prices in Schedule 2 (Pricing Schedule) if, and insofar as the DFAT

- Representative determines that those rates or prices are applicable to, or it is reasonable to use them for valuing the Variation; or
- (c) to the extent paragraphs (a) and (b) do not apply, by a reasonable amount:
    - (i) to be agreed between the parties; or
    - (ii) failing agreement, determined by the DFAT Representative; and
  - (d) if Schedule 2 (Pricing Schedule) is adjusted under this Clause 18.4 and milestones apply, the fees payable by milestones will be adjusted on a pro rata basis:
    - (iii) to be agreed by the parties; or
    - (iv) failing agreement, determined by the DFAT Representative.
- 18.5 Where any rates and prices in **Schedule 2** (Pricing Schedule) are used under **Clause (a)**, the rates and prices will be deemed to cover:
- (a) all labour, materials, overheads and profit related to the work the subject of the Variation and compliance with the Contractor's obligations under the Contract; and
  - (b) all costs and expenses which will be incurred by the Contractor arising out of or in any way in connection with the Variation.
- 18.6 No Variation will invalidate the Contract irrespective of the nature, extent or value of the work the subject of the Variation.
- 18.7 If a Variation the subject of a direction by DFAT omits any part of the Services, DFAT may thereafter perform the omitted Services either itself or by engaging an Other Contractor.

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## **19. WAIVER**

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

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## **20. SEVERANCE**

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

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## **21. ASSIGNMENT**

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

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## **22. SURVIVAL**

- 22.1 The following clauses survive termination and expiry of this Contract:

**Clause 10** (Warranties), **Clause 12** (Insurances), **Clause 13** (Intellectual Property), **Clause 14** (Indemnities), **Clause 25** (Investigation by the Ombudsman), **Clause 27** (Fraud), **Clause 32** (Confidentiality), **Clause 33** (Privacy), **Clause 39** (Recordkeeping), **Clause 42** (Audit) and any other clause, which by their nature, survive the expiry or termination of this Contract.

- 22.2 In addition to the survival of clauses outlined at **Clause 22.1**, the expiry or termination of this Contract will not extinguish or affect any rights of either Party against the other accrued prior to termination, or arising at any future time from any breach or non-observance of obligations under this Contract.

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## 23. GOVERNING LAW AND JURISDICTION

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

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## 24. NOTICES

- 24.1 A notice given under this Contract:

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

- 24.2 The addresses, email addresses and fax numbers of the Parties are:

### DFAT

Attention: **s 22(1)(a)(ii)** Counsellor, Port Moresby

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

E-mail: **s 22(1)(a)(ii)**

### Contractor

Attention: **s 47F(1)**

Address: Level 4, 501 Swanston Street

E-mail: **s 47F(1)**

## SECTION 2 – COMPLIANCE

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### 25. INVESTIGATION BY THE OMBUDSMAN

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

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### 26. COUNTER-TERRORISM

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

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### 27. FRAUD

- 27.1 The Contractor must not, and must ensure that Personnel do not, engage in any Fraud and must prevent and detect Fraud, including Fraud by its Personnel.
- 27.2 Within one month of the Commencement Date, the Contractor must conduct a Fraud risk assessment and produce a Fraud control strategy in compliance with the Commonwealth Fraud Control Framework available at [www.ag.gov.au](http://www.ag.gov.au). The risk assessment and strategy must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures.

- 27.3 The Contractor is responsible for preventing and detecting Fraud including Fraud within those functions outsourced / performed by a sub-contractor or under any other arrangement established by the Contractor relating to the performance of this Contract.
- 27.4 The Contractor must ensure that Personnel are responsible and accountable to the Contractor for preventing and reporting any Fraud as part of their routine responsibilities. The Contractor must ensure that Personnel who are not employed by the Contractor report Fraud to the Contractor within five **(5) Business Days**.
- 27.5 If the Contractor becomes aware of a Fraud, it must report the matter to DFAT in writing within five **(5) Business Days**. The written report to DFAT must be signed by a Contractor authorised person and must include the following (where known):
- (a) the name of the Project under which DFAT funding is being provided;
  - (b) name of any Personnel (including any sub-contractors) involved;
  - (c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);
  - (d) the names of the suspected offender(s) (where known);
  - (e) details of witnesses;
  - (f) copies of relevant documents;
  - (g) references to any relevant legislation;
  - (h) a nominated contact officer;
  - (i) any other relevant information (eg, political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and
  - (j) the current status of any inquiries commenced by the Contractor.
- 27.6 If a report has been made in accordance with **Clause 27.5** above, the Contractor must respond within five **(5) Business Days** to any further requests for information DFAT may make.
- 27.7 If the Contractor becomes aware of a Fraud, the Contractor must, in consultation with DFAT, develop and implement a strategy to investigate the Fraud based on the principles set out in the Australian Government Investigations Standards.
- 27.8 The Contractor must investigate any fraud at the Contractor's cost and in accordance with any directions or standards required by DFAT. Whether the Contractor conducts an investigation or appoints an investigator to conduct an investigation, the person conducting the investigation must possess the minimum qualifications specified in the Australian Government Investigation Standards or an equivalent agreed to by DFAT.
- 27.9 DFAT reserves the right to appoint its own investigator, conduct its own investigation or report Fraud to the appropriate law enforcement agencies or any other person or entity DFAT deems appropriate in Australia or in the Partner Country for investigation. If DFAT exercises its rights under this **Clause 27.9**, the Contractor must provide all reasonable assistance that may be required at its sole expense.
- 27.10 After the investigation is finished, if a suspected offender has been identified or at the direction of the Director of DFAT Fraud Control Section, the Contractor must

promptly report the Fraud to the local police and any other appropriate law enforcement agency in the country where the incident has occurred, unless the Director of DFAT- Fraud Control Section agrees otherwise in writing.

- 27.11 If the investigation finds the Contractor or Personnel have engaged in Fraud, the Contractor, in consultation with DFAT, must:
- (a) if DFAT funds have been misappropriated, pay to DFAT the full value of the misappropriated funds; and
  - (b) if DFAT-funded property has been misappropriated, either return the property to DFAT or, if the property cannot be recovered or has been damaged, replace the property with property of equal or greater value or quality, or repair the property, at no cost to DFAT.
- 27.12 If the investigation finds that a person other than the Contractor or Personnel has engaged in Fraud, the Contractor must, at the Contractor's cost, take all reasonable action to recover any DFAT funds or DFAT-funded property acquired or distributed through the Fraud, including taking recovery action in accordance with recovery procedures (including civil litigation) available in the Partner Country.
- 27.13 The Contractor must keep DFAT informed, in writing, on a monthly basis, of the progress of its efforts to recover the DFAT funds or DFAT-funded property, including any recovery action.
- 27.14 If the Contractor considers that all reasonable action has been taken to recover the DFAT funds or DFAT-funded property and recovery has not been achieved or recovery has only been achieved in part, the Contractor may seek approval from DFAT that no further recovery action be taken.
- 27.15 If an investigation finds that the Contractor or Personnel have engaged in Fraud, or if DFAT discovers that a Fraud has not been reported to DFAT in accordance with **Clause 27.5**, DFAT reserves the right to:
- (a) terminate this Contract by giving the Contractor notice in writing specifying the date on which the termination will take effect; and
  - (b) not enter into any further agreements with the Contractor until such time as DFAT is satisfied that any recommended changes to the Contractor's management and procedures have been made in order to prevent any further Fraud from occurring and to ensure timely reporting of fraud to DFAT.
- 27.16 Without limitation to DFAT's rights pursuant to **Clauses 53** and **27.15**, if the Contractor fails to comply with its obligations under this **Clause 27** with respect to a Fraud, DFAT may give the Contractor a written notice which specifies:
- (a) the obligation(s) with which the Contractor has not complied;
  - (b) the action that the Contractor must take to rectify the failure; and
  - (c) the date by which the Contractor must rectify the failure.
- 27.17 If the Contractor does not comply with a notice issued pursuant to **Clause 27.16**, DFAT reserves the right to:
- (a) terminate this Contract in accordance with **Clause 53**; and / or
  - (b) exercise its rights pursuant to **Clause 27.15**; and / or

- (c) withhold payments (or parts of payments) due to the Contractor under this Contract until the Contractor has complied with the notice.
- 27.18 This **Clause 27** survives the termination or expiration of this Contract, including with respect to any Fraud relating to the performance of this Contract, which is not detected until after this Contract has been terminated or has expired.

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## 28. ANTI - CORRUPTION

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

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## 29. COMPLIANCE WITH LAWS AND POLICIES

- 29.1 The Contractor is responsible for ensuring that it and its Personnel comply with:
- (a) applicable laws of the Commonwealth, any state, territory or local authority and applicable Commonwealth Government policies as set out in this Contract or as notified to the Contractor from time to time.
  - (b) subject to **Clause 29.4**, applicable laws of any jurisdiction in which any part of the Contract is performed.
- 29.2 With respect to any monies payable either to DFAT by the Contractor or to the Contractor by DFAT, the Contractor must:
- (a) comply with all relevant provisions of Commonwealth legislation, financial regulations and directions, except to the extent that the relevant obligation is imposed on DFAT; and
  - (b) if required by DFAT, comply with any recommendation by the Commonwealth Auditor-General concerning the handling of DFAT's money.
- 29.3 In performing any part of this Contract outside Australia, the Contractor and its Personnel and Sub-Contractors must:
- (a) not engage in any political activity in the relevant country during the provision of the Services;
  - (b) subject to **Clause 29.4**, observe all laws and respect all religions and customs of that country; and
  - (c) conduct themselves in a manner consistent with the *Public Service Act 1999* (Cth) (including the Australian Public Service Values and Employment Principles and Code of Conduct).
- 29.4 The Contractor must provide the Services in accordance with the Commonwealth Requirements and the Partner Country Requirements unless directed otherwise by the DFAT Representative. In doing so, the Contractor must:
- (a) carry out the Services to any minimum standard required by the Partner Country Requirements; and

- (b) where any Commonwealth Requirements require the Services to be carried out to a higher standard than the Partner Country Requirements, in addition to carrying out the Services in accordance with the Partner Country Requirements, must also carry out the Services to the higher standard imposed by the relevant Commonwealth Requirements.
- 29.5 To the extent that any of the Commonwealth Requirements or the Partner Country Requirements (or both) would require the insertion of provisions into this Contract, then:
- (a) the DFAT Representative may direct that those provisions be incorporated by reference into this Contract; and
  - (b) any ambiguity, discrepancy or inconsistency arising out of the incorporation by reference will be resolved by the DFAT Representative in accordance with **Clause 3.**

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### **30. SECURITY**

- 30.1 The Contractor is responsible for the security of Contractor Personnel, ensuring that both the Contractor and its Personnel comply with this **Clause 30.**
- 30.2 If, during the Term of this Contract, the Contractor is required to access or otherwise gains access to Official Information or Security Classified Information, it agrees to comply with:
- (a) all relevant security requirements specified in the Commonwealth Protective Security Policy Framework as minimum standards;
  - (b) the security requirements specified in this Contract; and
  - (c) any variations or additions to the security requirements under this **Clause 30** that DFAT (in its absolute discretion) notifies the Contractor in writing. Such changes to the security requirements must be implemented by the Contractor from the date specified in the notice (or five (5) **Business Days** after it receives the notice if no date is specified).
- 30.3 The Contractor must ensure that all its Personnel, when using DFAT's premises or facilities, comply with all DFAT procedures and directions relating to security.
- 30.4 If required by DFAT each of the Contractor's Personnel engaged by or on behalf of the Contractor, must meet all necessary security assessments and standards required by DFAT including:
- (a) an identity check;
  - (b) a National Police Clearance check or equivalent;
  - (c) signing any forms notified to the Contractor by DFAT from time to time;
  - (d) holding Australian Government security clearances to the level requested by DFAT in accordance with the Commonwealth Protective Security Policy Framework, or as otherwise required by DFAT;
  - (e) attending and completing a DFAT Security Awareness Course prior to or as soon as possible after the Commencement Date at the Contractor's cost; and
  - (f) complying with any other security awareness requirements reasonably requested by DFAT

- 30.5 DFAT will facilitate the obtaining of security clearances for Contractor Personnel. The Contractor must bear the cost of security clearances for its Personnel. If the security requirements are redefined, the Contractor is entitled to apply to DFAT for a price variation.
- 30.6 All Personnel, where DFAT considers this appropriate, must:
- (a) attend and complete a Departmental Security Awareness Course prior to or as soon as possible after the Commencement Date at the Contractor's cost; and
  - (b) comply with any other security awareness requirements reasonably requested by DFAT.
- 30.7 The Contractor acknowledges that if any of its Personnel lose their security clearance or causes a security breach, DFAT may:
- (a) after consultation with the Contractor, require the replacement of that Personnel; or
  - (b) terminate this Contract for breach.
- 30.8 The Contractor must:
- (a) notify DFAT immediately on becoming aware of any security incident or security breach and comply with all DFAT directions to rectify the security problem; and
  - (b) participate in security reviews of its procedures at least annually as requested by DFAT and participate in any security audit in relation to the Contract, providing full co-operation to DFAT or its independent auditors, including the Australian National Audit Office.

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## **31. WORK HEALTH AND SAFETY**

- 31.1 In carrying out the Service, the Contractor must:
- (a) comply, and ensure that any subcontractor, subconsultant or, in the case of the Delivery Partner Services, Design Subcontractor or Construction Subcontractor comply, with all Legislative Requirements, codes of practice, standards and policies and other requirements of the Contract in respect of work health and safety. The other provisions of this **Clause 31** do not limit this clause;
  - (b) ensure so far as is reasonably practicable, the health and safety of workers engaged, or caused to be engaged by the Contractor, and workers whose activities in carrying out work are influenced or directed by the Contractor, while the workers are at work;
  - (c) ensure so far as is reasonably practicable, that the health and safety of other persons is not put at risk;
  - (d) comply with its duty under the WHS Legislation to consult with workers who carry out work for the Contractor (or are likely to be) directly affected by a work health and safety matter; and
  - (e) comply with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter.

- 31.2 Without limiting the Contractor's obligations under this Contract or otherwise at law or in equity, the Contractor must notify the DFAT Representative:
- (a) in respect of notifiable incidents within the meaning of the WHS Legislation, immediately (and in any event within 12 hours of such notifiable incident occurring);
  - (b) in respect of work health and safety incidents or accidents (which are not notifiable incidents) where the nature of the incident or accident indicates a potential systemic failure to identify hazards and manage risks to health and safety, so far as is reasonably practicable, within 24 hours of the incident or accident occurring; and
  - (c) in respect of all other work health and safety matters arising out of or in any way in connection with the Services and, in the case of the Delivery Partner Services, the delivery of the Works, including the occurrence of any other incident or accident (not required to be reported in accordance with **paragraphs (a) or (b))**, within 30 days of such incident occurring.
- 31.3 For the purposes of **Clause 31.2**, in respect of any notifiable incident, the Contractor must:
- (a) immediately provide the DFAT Representative with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;
  - (b) promptly provide the DFAT Representative with a copy of an investigation report relating to the notifiable incident and any witness statements prepared as a result of the occurrence of the notifiable incident;
  - (c) promptly provide the DFAT Representative with copies of any notice(s) or other documentation issued by the relevant Commonwealth, State or Territory regulator; and
  - (d) within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the DFAT Representative with a summary of the related investigations, actions to be taken, and any impact on the Contract that may result from the notifiable incident.
- 31.5 Where Works constitute a construction project (as that term is defined in the WHS Legislation):
- (a) the Contractor will be the WHS Principal Contractor for the applicable construction project; and
  - (b) as the WHS Principal Contractor, the Contractor will be authorised to have management and control of the applicable part of the Site and will have and must discharge the duties of a WHS Principal Contractor.
- 31.6 The Contractor must institute systems to:
- (a) obtain regular written assurances from each subcontractor, subconsultant and, in the case of the Delivery Partner Services, each Design Subcontractor and Construction Subcontractor, about their ongoing compliance with the WHS Legislation; and
  - (b) provide, in a format specified by the DFAT Representative, the written assurances regarding the Contractor's ongoing compliance with the WHS Legislation:

- (i) on a quarterly basis; and
  - (ii) as otherwise directed by the DFAT Representative.
- 31.7 The Contractor must provide the written assurances obtained under **Clause 31.6**, to the DFAT Representative in accordance with **Clause 31.6**.
- 31.8 Without limiting the Contractor's obligations under this [Contract](#) or otherwise at law or in equity within 10 days of receipt provide to the DFAT Representative copies of:
  - (a) all formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable WHS Legislation to the Contractor or any subcontractor, subconsultant or, in the case of the Delivery Partner Services, Design Subcontractor or Construction Subcontractor (as the case may be) relating to work health and safety matters;
  - (b) all formal notices issued by a health and safety representative of the Contractor or any subcontractor, subconsultant or, in the case of the Delivery Partner Services, Design Subcontractor or Construction Subcontractor (as the case may be), under or in compliance with the applicable WHS Legislation; and
  - (c) all formal notices, written communications and written undertakings given by the Contractor or any subcontractor, subconsultant or, in the case of the Delivery Partner Services, Design Subcontractor or Construction Subcontractor (as the case may be) to the regulator or agent of the regulator under or in compliance with the applicable WHS Legislation,
  - (d) arising out of or in any way in connection with the carrying out of the Services by the Contractor and, in the case of the Delivery Partner Services, carrying out the Works.
- 31.9 The Contractor must exercise a duty of the utmost good faith to DFAT in carrying out the [Services](#) to enable DFAT to discharge DFAT's duties under the WHS Legislation.
- 31.10 The Contractor must ensure all subcontracts include provisions equivalent to the obligations of the Contractor in this **Clause 31**.
- 31.11 The Contractor must ensure that, if any Legislative Requirement requires that:
  - (a) a person:
    - (i) be authorised or licensed (in accordance with the [WHS Legislation](#)) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
    - (ii) has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the [WHS Legislation](#)), that person has the required qualifications or experience or is so supervised; or
  - (b) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed.
- 31.12 The Contractor must not direct or allow a person to carry out work, or use plant or a substance at a workplace unless, the authorisation, licensing, prescribed

qualifications or experience required by any Legislative Requirement and **Clause 31.11** are met.

- 31.13 Without limiting the Contractor's obligations under this [Contract](#) (including **Clause 31.3** in respect of notifiable incidents) or otherwise at law or in equity, within 10 days of a request by the DFAT Representative or anyone else acting on behalf of DFAT, provide all information or copies of documentation held by the Contractor, a subcontractor, a subcontractor or, in the case of the Delivery Partner Services, a Design Subcontractor or Construction Subcontractor, to the DFAT Representative or anyone else acting on behalf of DFAT to enable DFAT to comply with its obligations under the [WHS Legislation](#).
- 31.14 If requested by the DFAT Representative or required by the [WHS Legislation](#), produce evidence of any [Approvals](#) including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the DFAT Representative before the Contractor or any subcontract or subconsultant or, in the case of the Delivery Partner Services, any Design Subcontractor or Construction Subcontractor, commences such work.
- 31.15 Where the Contractor is a supplier, manufacturer, designer or importer for the purposes of the WHS Legislation, promptly provide to the DFAT Representative information concerning:
- (a) the purpose for which any plant, structure or substance (as defined in the WHS Legislation) has been designed or manufactured;
  - (b) the results of any calculations, analysis, testing or examination carried out concerning the safety of the plant, substances or structures referred to in **paragraph (a)** (and the risks to the health and safety of persons); and
  - (c) any conditions necessary to ensure the plant, substances or structures are without risks to health and safety when used for the purpose for which they were designed or manufactured.

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## 32. CONFIDENTIALITY

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

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

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### 33. PRIVACY

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

## SECTION 3 – CONTRACT MANAGEMENT

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### 34. CONTRACT MANAGEMENT GROUP

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

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### 35. REVIEW

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

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### 35A NOTICE OF MATTERS IMPACTING THE SERVICES

- 35A.1 Without limiting **Clause 35** or, in the case of Delivery Partner Services, **Clause 22 of Part B**, and subject to **Clause 22(b) of Part B**, if either Party becomes aware of any matter which:
- (a) is likely to change or which has changed the scope, quality, timing or cost of the Services or, in the case of Delivery Partner Services, the Works;
  - (b) affects or may affect any program for the Services or the Estimated Tasking Note Price (including any matter which is likely to result in the Tasking Note Price exceeding the Estimated Tasking Note Price or the Tasking Note Budget); or
  - (c) involves any error, omission or defect in any continuing or completed aspect of the Services or, in the case of Delivery Partner Services, the Works,

that Party must promptly give written notice of that matter to the DFAT Representative and the other Party (**Early Warning Notice**) containing, as far as practicable in the circumstances:

- (d) particulars of the change, effect, error, omission or defect;
- (e) its impact or likely impact, including on the probable Tasking Note Price; and
- (f) in the case of the Contractor, its recommendation as to how to minimise its impact or likely impact upon the scope, quality, timing and cost of the Services and, in the case of Delivery Partner Services, the Works.

35A.2 Each Early Warning Notice will require the DFAT Representative and the Contractor's Representative to attend a meeting to discuss the matters the subject of the Early Warning Notice (**Risk Reduction Meeting**).

At the Risk Reduction Meeting, the DFAT Representative and the Contractor's Representative must:

- (a) make and consider proposals for how the effect and impact of the risk can be avoided or reduced;
- (b) seek solutions that will eliminate or reduce any negative effect or impact of the risk on those who will be affected;
- (c) seek to agree upon the actions that will be taken and who, in accordance with this Contract, will take them; and
- (d) decide which risks have not been avoided or have passed and can be removed.

35A.3 Following the Risk Reduction Meeting and where (at that meeting) the parties jointly determined the course of action (if any) to be taken to address the matters the subject of the Early Warning Notice, the Contractor must:

- (a) record that determination; and
- (b) provide that record to the DFAT Representative.

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## 36. PERFORMANCE ASSESSMENT

36.1 The Contractor acknowledges and agrees that DFAT may issue in relation to this Contract:

- (a) a Partner performance assessment;
- (b) Adviser performance assessments;
- (c) sub-contractor performance assessments; and
- (d) sub-contractor key personnel performance assessments.

36.2 Performance assessments will be substantially in accordance with the assessment sheet in **Schedule 10** (Partner Performance Assessment). Within 15 days of receiving a performance assessment from DFAT, the Contractor must:

- (a) sign and return to DFAT the Partner Performance Assessment together with any response; and
- (b) ensure that all other performance assessments together with any response the sub-contractor or any personnel wishes to include are signed and returned to DFAT.

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

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**37. SPECIFIED PERSONNEL**

- 37.1 It is a material term of this Contract that where Specified Personnel are identified in **Schedule 1** (Statement of Requirements) or a Tasking Note, the Services must be provided by them in their designated roles for the Term of the Contract. If any of them are unable to do so for a period of more than ten **(10) Business Days** the Contractor must not remove or replace them, but must notify DFAT in accordance with **Clause 23** (Notices) and seek DFAT's approval for proposed replacement personnel within ten **(10) Business Days** and at no additional cost to DFAT.
- 37.2 The Contractor must advise DFAT promptly in writing of any change in the circumstances of any Specified Personnel that would reasonably be considered likely to affect DFAT's assessment of the person under the Contract. In the event DFAT directs the Contractor to remove any Personnel as a result of notification under this Clause, the Contractor must identify replacement personnel within ten **(10) Business Days**.
- 37.3 The Contractor must only propose replacement personnel with suitable skills and qualifications to act as replacement Specified Personnel and able to commence providing the Services under the Contract immediately.
- 37.4 DFAT may give notice to the Contractor in accordance with **Clause 24** (Notices) requiring the Contractor to remove any Personnel from work in respect of the provision of the Services and propose new Personnel in accordance with **Clauses 37.1 and 37.2** above.
- 37.5 The Contractor must not engage a currently serving Commonwealth employee in any capacity in connection with the Services without DFAT's prior written approval.
- 37.6 The Contractor must not engage a Former DFAT Employee in any capacity in connection with the Services unless DFAT has approved the engagement.
- 37.7 When engaging Personnel for work in a Partner Country, the Contractor will use its best endeavours to ensure they are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary

medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner.

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### 38. SUBCONTRACTING

- 38.1 The Contractor may not sub-contract the provision of the whole of the Services and must not enter into a subcontract relating to the provision of the Services with a person who is or an entity which is listed on a World Bank List or a Relevant List.
- 38.2 The Contractor must obtain DFAT's prior written approval to sub-contract with any third party, except Specified Personnel, to the value of **AUD100,000** or more. In granting its approval, DFAT may impose any conditions it considers appropriate.
- 38.3 Where DFAT objects to the Contractor's preferred sub-contractor or DFAT nominates a particular sub-contractor in place of the Contractor's preferred sub-contractor, the Contractor must enter into an agreement with the sub-contractor as directed by DFAT on the basis of remuneration approved by DFAT and provide DFAT with a copy of the executed sub-contract.
- 38.4 If the Contractor subcontracts its performance of any part of this Contract, the Contractor will remain liable for the acts, defaults and omissions of the subcontractor as if they were the Contractor's acts, defaults and omissions, subject to **Clause 16.2 of Part B** in respect of Design Work and Construction Work (as defined **Clause 1 of Part B**).
- 38.5 Any subcontract entered into by the Contractor for the performance of any part of this Contract must contain clauses:
- (a) that authorise the Commonwealth to publish details of the name of the subcontractor and the nature of the Services that the subcontractor is subcontracted to perform
  - (b) under which the subcontractor assumes all the Contractor's obligations (including all obligations under Australian Law and development policies), and gives all the warranties the Contractor gives, under this Contract to the extent they are relevant to the Services the subcontractor is subcontracted to perform; and
  - (c) that give DFAT the right of substitution under **Schedule 5** (Deed of Novation and Substitution), to further novate the sub-contract to another contractor. The Contractor entering into a subcontract for the provision of parts or elements of the performance of the Services, or provision of the Goods, does not create any contractual relationship between DFAT and the subcontractor.

## SECTION 4 – RECORDS, AUDIT AND REPORTS

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### 39. RECORDKEEPING

- 39.1 The Contractor must ensure that it and its Personnel at all times to the satisfaction of DFAT:
- (a) keep accurate and up-to-date accounts and records relating to the performance of its obligations under this Contract (including receipts and expenses) in a manner that enables them to be conveniently and properly audited;
  - (b) record all operational activities in relation to the provision of the Services, including to enable the prevention, detection and investigation of Fraud as required by **Clause 27** (Fraud);
  - (c) keep accurate and up-to-date accounts and records which contain details of the disposition of Supplies as agreed to by DFAT, such as replacement, write-off or transfer to the Partner Country;
  - (d) comply with any standards prescribed by DFAT from time to time for the creation, care, access, storage, preservation and return or legal destruction of its accounts and records (including Contract Material) and any DFAT material;
  - (e) provide all reasonable assistance requested by DFAT for any administrative or statutory review concerning this Contract; and
  - (f) retain copies of all accounts and records for a period of **seven (7) years** after termination or expiration of this Contract or completion of any legal action arising out of or in connection with this Contract, whichever occurs later.
- 39.2 DFAT retains legal ownership of all records created for the provision of the Services by the Contractor. Upon termination or completion of this Contract, the Contractor must transfer all records created and maintained for Services provided by the Contractor under this Contract to DFAT in a format and manner which allows the records to be quickly and easily retrieved, reviewed and utilised by DFAT.
- 39.3 The Contractor must store, dispose of, and/or transfer, custody or the ownership of any Commonwealth records in accordance with standards issued under the *Archives Act 1983* (Cth) and/or any specific instructions provided from time to time by the Australian Government through the NAA.
- 39.4 The Contractor must comply with any direction given by DFAT for the purpose of transferring Commonwealth records to the possession, custody or control of the NAA or providing the NAA with full and free access to those records.
- 39.5 The Contractor must maintain up to date records of the names of all sub-contractors engaged by the Contractor to perform part of the Services.
- 39.6 The Contractor may keep one (1) copy of all records created during the course of the provision of the Services for legitimate risk management and audit purposes.

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### 40. ADVISER INFORMATION

- 40.1 In this **Clause 40**, “Adviser Information” means the information which the Contractor must give DFAT in accordance with **Clause 40.2** below, if requested to do so by DFAT. Adviser information may be Personal Information.

- 40.2 The Contractor must give DFAT the following information about each Adviser on **15 July** of each year:
- (a) position title;
  - (b) nature of engagement (short term/long term);
  - (c) ARF discipline category;
  - (d) ARF job level;
  - (e) gender;
  - (f) nationality;
  - (g) work location;
  - (h) contract start and end date;
  - (i) number of days/months worked in the time period specified by DFAT;
  - (j) monthly or Daily Remuneration Rate;
  - (k) Mobility Allowance, if any;
  - (l) Special Location Allowance, if any;
  - (m) Adviser Support Costs including Housing Costs, if any; and
  - (n) any other information regarding remuneration or costs associated with Advisers and identified by DFAT in the request.
- 40.3 In addition to the reporting requirements at **Clause 40.2** above, the Contractor must provide the information specified in **Clause 40.2 (a) – (n)** within **ten (10)** Business Days of receiving a written request from DFAT.
- 40.4 DFAT will use the Adviser Information to ensure that the Australian Government's official overseas aid program achieves value for money and to meet its reporting requirements.
- 40.5 DFAT may disclose Adviser Information in accordance with **Clause 32** (Confidentiality).
- 40.6 The Contractor must ensure that Advisers, before they are engaged consent in writing to DFAT using the Adviser Information which may be collected under this **Clause 40** for the purposes described in **Clause 40.4** and are aware that:
- (a) DFAT may request, and the Contractor may provide to DFAT, the Adviser Information;
  - (b) DFAT may disclose the Adviser Information to Commonwealth Government Departments and Agencies, Commonwealth Ministers and Parliamentary Secretaries, and to the Commonwealth Parliament; and
  - (c) They are entitled to access their own Personal Information which is held by DFAT, unless DFAT has a lawful right to refuse access.

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## **41. ACCESS TO PREMISES AND RECORDS**

- 41.1 The Contractor must:
- (a) produce records, books and accounts for inspection by DFAT immediately upon request (including where entering into a subcontract and executing a

Deed of Novation and Substitution) at the same time or within ten (10) Business Days of execution of the sub-contract by the Contractor.

- (b) permit each of DFAT, the Commonwealth Auditor-General and the Information Privacy Commissioner or Privacy Commissioner as appropriate at reasonable times and on reasonable notice, through their officers, agents or advisers authorised on their behalf, to:
  - (i) access the Contractor's premises;
  - (ii) examine, inspect, audit and copy any accounts and records relating to this Contract or the Services;
  - (iii) provide all necessary facilities for this purpose; and
  - (iv) in the case of documents or records stored on a medium other than in writing, make available to DFAT on request reasonable facilities necessary to enable a legible reproduction to be created.

41.2 In the exercise of the rights under this **Clause 41**, DFAT must use reasonable endeavours not to unreasonably interfere with the Contractor's performance under the Contract in any material respect.

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## 42. AUDIT

42.1 DFAT has the inspection and audit rights described in **Clause 41** (Access to Premises and Records) and this **Clause 42** and subject to these provisions, each Party is to bear its own costs in relation to any audit.

42.2 DFAT or a representative of DFAT may conduct audits relevant to the performance and/or compliance by the Contractor with any of its obligations under the Contract, including audits of the Contractor's relevant:

- (a) operational practices and procedures;
- (b) project and financial management governance;
- (c) oversight practices and procedures;
- (d) invoices and reports;
- (e) Material (including records, books and accounts) in the possession of the Contractor; and/or
- (f) other matters determined by DFAT to be relevant to the performance of the Contractor's obligations under the Contract.

42.3 Where DFAT has reasonable concerns regarding the Contractor's financial management systems, DFAT must provide the Contractor with written notification of those concerns outlining the action to be undertaken by the Contractor. These actions include:

- (a) a request that the Contractor's Company Director provide a Statutory Declaration confirming that he/she has sighted the necessary supporting documentation and confirms the veracity of the claim for payment;
- (b) the Contractor providing DFAT with additional documentation to support the claim for payment; and/or

- (c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including its invoicing procedures and practices, with a copy of the audit report to be provided to DFAT.
- 42.4 The Contractor must respond to any notice received under **Clause 42.3** above within fourteen **(14) Days**.
- 42.5 DFAT reserves the right, at any time to direct the Contractor engage an independent audit firm and to provide DFAT with a copy of the audit report from the independent auditor.
- 42.6 If DFAT directs the Contractor to undertake an independent audit it must do so at the Contractor's cost, and the Contractor must comply with any directions given by DFAT regarding terms of reference or required auditing standards.
- 42.7 Where a direction has been made under **Clause 42.6** above, DFAT will not make any further payments owed to the Contractor pending certification of the reliability of the Contractor's financial management systems and the veracity of the invoicing procedures and practices.
- 42.8 This **Clause 42** applies for the term of this Contract and for a period of seven **(7) years** from the date of its expiration or termination.
- 42.9 The requirement for access and participation in audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

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#### **43. REPORTS**

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

## SECTION 5 – PAYMENT AND TAX

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### 44. INVOICING

- 44.1 The Contractor must invoice DFAT for the provision of Services on:
- (a) a monthly basis; or
  - (b) on a milestone payment basis as described in **Schedule 2** (Pricing Schedule) and the relevant Tasking Note.
- 44.2 For the purposes of this **Clause 44** (Invoicing) and **Schedule 2** (Pricing Schedule), an invoice is correctly rendered if:
- (a) it is in the form of a valid Tax Invoice under the GST Act (or, where the supply of the 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 (Program) Costs, and all other amounts owing to suppliers or sub-contractors, have been paid before submission of the invoice to DFAT;
  - (f) the invoice details all Services provided by the Contractor against the Management Fee and the Fees referred to in **Schedule 2** (Pricing Schedule) and all Design Work and Construction Work provided by subcontractors against the Reimbursable (Program) Costs and records the amount payable in respect of each category of Services described in the Contract;
  - (g) the Management Fee, Fees and Reimbursable (Program) Costs claimed in the invoice are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Contractor in providing the Services (except as expressly provided otherwise under this Contract);
  - (h) it is in Australian dollars or converted into Australian dollars at the exchange rate incurred by the Contractor at the time of making the payment; and
  - (i) a company Director of the Contractor or authorised representative of the Contractor has certified that the invoice is accurate and represents the Services provided.
- 44.3 Where the Services include the provision of Goods, the Contractor must ensure that the charges for, and GST applicable to, the supply of Goods are itemised separately on the relevant invoice.
- 44.4 If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Contractor, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due from DFAT to the Contractor.

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**45. PAYMENT**

- 45.1 Subject to this Contract, DFAT agrees to pay the Contractor the Management Fee, the Fees and/or Reimbursable (Program) Costs for the provision of the Services in accordance with **Schedule 2** (Pricing Schedule), provided that (to the maximum extent permitted by law) DFAT will have no liability to pay the Contractor any amount on account of:
- (a) the Management Fee, Fees and/or Reimbursable (Program) Costs; or
  - (b) any other Claim,
- once the total of all amounts paid by DFAT to the Contractor under this Contract equals the Maximum Contract Sum.
- 45.2 Without limiting **Clause 48** (Taxes), the amounts payable under **Schedule 2** (Pricing Schedule) are inclusive of all taxes and duties (including GST) payable in connection with the Services.
- 45.3 Subject to the Contract (including any other timing for payment specified under **Schedule 2** (Pricing Schedule)), DFAT must pay the Management Fees, Fees and Reimbursable (Program) Costs within **30 days** of:
- (a) receipt of a correctly rendered invoice in accordance with Clause 44 (**Invoicing**); and
  - (b) DFAT's acceptance of the satisfactory completion of the Services and delivery of the Goods (if applicable).
- 45.4 DFAT will pay all amounts payable to the Contractor under this Contract into a bank account nominated by the Contractor. The Contractor must provide DFAT with the necessary bank account details as soon as possible following execution of this Contract.
- 45.5 Any requests by the Contractor to change the bank account for payments under this Contract must be provided to DFAT with thirty **(30) Business Days** written notice.
- 45.6 If **Clause 45.5** above is not complied with, DFAT will not be responsible for any costs incurred by the Contractor as a result of the change including bank charges or exchange rate variances.
- 45.7 If the Contractor does not have an Australian Business Number ('ABN'), DFAT will be required to hold a prescribed proportion of the amount payable to the Contractor under the Contract, unless the exceptions under **Division 12** of the PAYG legislation apply.

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

- 46.1 A payment by DFAT to the Contractor is not an admission of liability. If DFAT makes a payment and subsequently learns that performance specifications have not been met or that, on review, the amount is greater than the amount payable under the Contract, the payment shall be deemed an overpayment and recoverable from the Contractor.
- 46.2 Any overpayment may be offset against any amount subsequently due to the Contractor or may be recovered in Court as a debt due and payable to DFAT by the Contractor.

- 46.3 Where DFAT deducts the amount of a debt or payment in accordance with **Clause 46.2** above, it must advise the Contractor in writing that it has done so.
- 46.4 Unless approved in writing by DFAT, if the Contractor pays an Adviser more than the rate specified in the Adviser Remuneration Framework for the relevant Job Level and Professional Discipline Category:
- (a) the Contractor will not be entitled to seek reimbursement of the excess from DFAT; and
  - (b) if the Contractor discovers the excess payment after it has received reimbursement from DFAT, it must promptly advise DFAT of the excess and deduct the amount of the excess from its next invoice.

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**47. DISPUTED INVOICES**

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

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**48. TAXES**

- 48.1 Unless otherwise indicated, the amount payable under the Contract for each supply of Services under this Contract as listed in **Schedule 2** (Pricing Schedule) is the value of that supply plus any GST imposed under the GST Act. Payment by DFAT to the Contractor of the GST shall be subject to the Contractor providing DFAT with a valid Tax Invoice issued in accordance with the relevant provisions of the GST Act and regulations.
- 48.2 The total amount of GST payable by the Contractor, and for which the Contractor seeks payment from DFAT in respect of the supply shall be shown as a separate item on the Contractor's Tax Invoice.
- 48.3 If the additional amount under **Clause 48.2** above differs from the amount of GST payable by the Contractor, the additional amount must be adjusted between the Parties.
- 48.4 If a Party is entitled to be reimbursed or indemnified under this Contract, the amount to be reimbursed or indemnified does not include any amount attributable to GST which the Party is entitled to claim back by way of an input tax credit or otherwise.
- 48.5 Except as provided by this **Clause 48**, all taxes, duties and charges imposed or levied in Australia or in the Partner Country in connection with:
- (a) the performance of this Contract (including any sub-contracts entered into for the performance of the Services and the obtaining of any approvals, consents or authorisations); and

- (b) the sale, purchase, lease, assignment, licence or transfer of any property under this Contract,

shall be borne by the Contractor or its sub-contractor(s) as the case requires.

48.6 If a Changed Tax occurs which affects the cost to the Contractor of providing the 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 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,
- (d) as soon as practicable after the change in the Changed Tax is announced or the Contractor becomes aware of the increase, decrease or removal.

s 33(a)(iii), s 47D

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## 49. SUPERANNUATION

49.1 DFAT will, as the case requires and in accordance with legislative requirements, contribute to a complying Superannuation Fund, a pre-existing fund nominated by the Contractor or where none is nominated to the Australian Superannuation a sum equivalent to the level stipulated from time to time in the *Superannuation Guarantee (Administration) Act 1992* (Cth). The Contractor must include in its invoice for the Services the following information with regards to the superannuation guarantee contributions: superannuation guarantee contribution amount, full name and address of the Superannuation Fund and the Contractor's membership number.

## SECTION 6 – REMEDIES, DISPUTES AND TERMINATION

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### 50. REMEDIES

- 50.1 The Contractor must remedy at its own cost:
- (a) any failure to comply with the requirements of this Contract as soon as practicable after becoming aware of the failure; and
  - (b) if the Services include the provision of Goods, any errors or defects in the Goods notified to the Contractor by the DFAT Representative for the warranty period described in the Contract Details.
- 50.2 If the Contractor fails to rectify an error or a defect under **Clause 50.1** above within ten **(10) Business Days** after notification by the DFAT Representative, DFAT may, without limiting the Contractor's warranties and obligations under this **Clause 50**, perform or have performed the necessary remedial work at the expense of the Contractor, and may recover such expense as a debt due to DFAT payable by the Contractor on demand.

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### 51. DISPUTE RESOLUTION

- 51.1 If a dispute arises under this Contract, prior to commencing any arbitration or court proceedings -other than for interlocutory relief or where an authority of the Commonwealth, a state or Territory is investigating a breach or suspected breach of the law by the Contractor, or DFAT is exercising a right to terminate – the Parties must act in good faith and use their reasonable endeavours to resolve the dispute as follows:
- (a) the Party claiming that there is a dispute must give the other a written notice in accordance with **Clause 24** (Notices) setting out the nature of the dispute;
  - (b) within ten **(10) Business Days** following notice, attempt to resolve the dispute through direct negotiation between the Contractor Representative and the DFAT Representative;
  - (c) if still unresolved, refer the dispute to each Party's Escalation Representative as set out in the Contract Details, who must in good faith work to resolve the dispute within a further ten **(10) Business Days** or any other agreed period;
  - (d) if still unresolved, the Parties have thirty **(30) Business Days** from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or conciliation rather than litigation or arbitration; and
  - (e) if the dispute is not resolved in that time or there is no agreement to, or submission of the dispute to mediation or conciliation within a further thirty **(30) Business Days**, then either Party may commence legal proceedings.
- 51.2 Subject to **Clause 45** (Payment), the Contractor and Personnel must continue to comply with its obligations under this Contract, notwithstanding that there is a dispute between the Parties, or that legal proceedings are pending or current.

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**52. EARLY NOTIFICATION**

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

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**53. TERMINATION FOR BREACH**

- 53.1 DFAT may terminate this Contract by notice to the Contractor in accordance with **Clause 24** (Notices) in any of the following circumstances:
- (a) the Contractor commits a material breach or breach which, in DFAT's opinion, is not capable of remedy;
  - (b) the Contractor commits a breach capable of being remedied by the Contractor but the Contractor fails to remedy it within ten **(10) Business Days** of receipt of a notice from DFAT specifying the breach and requiring the Contractor to remedy the breach;
  - (c) the Contractor commits a Persistent Breach;
  - (d) where the Contractor is a company – if there is appointed or if steps are taken to appoint a liquidator, receiver, manager, controller or an administrator over the whole or any part of its affairs;
  - (e) where the Contractor is an individual – if it enters into a scheme of arrangement with its creditors, commits any act of bankruptcy or becomes bankrupt, or becomes incapable of managing its own affairs;
  - (f) where the Contractor has entered into this Contract in the capacity of trustee of a trust – if any event occurs or any action or step is (or is proposed to be) taken, which limits, restricts, or prevents it being indemnified out of the assets of that trust in respect of its obligations and liabilities under this Contract;

- (g) the Contractor fails to notify DFAT under **Clause 52** (Early Notification);
  - (h) the Contractor ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Contract (except to the extent that this is outside the Contractor's reasonable control);
  - (i) the Contractor made a statement or warranty in its Tender or failed to make a disclosure in its Tender Declaration leading to this Contract and DFAT is satisfied on reasonable grounds that the statement was materially inaccurate, incorrect or misleading or the failure to make a disclosure would, in DFAT's opinion not have led to the formation of a Contract;
  - (j) the Contractor is convicted of any offence during the Term of this Contract;
  - (k) the Contractor 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;
  - (l) the Contractor, its Personnel or subcontractors are or become listed on a World Bank or Relevant List or are subject to any proceedings or an informal process that may lead to them becoming so listed;
  - (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 **Clauses 29.1** (Compliance with Laws and Policies) or **61.1** (Compliance with DFAT Policies) and does not remedy the breach within ten **(10) Business Days** (or such longer period as DFAT may specify in the notice) of receipt of a notice from DFAT specifying the breach and requiring the Contractor to remedy the breach.
- 53.2 For the avoidance of doubt, **Clauses 53.1 (g) to 53.1 (m)** do not limit the generality of **Clauses 53.1 (a) or 53.1 (b)**.

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#### **54. TERMINATION FOR CONVENIENCE**

- 54.1 DFAT has an unfettered discretion to, by notice to the Contractor in accordance with **Clause 24** (Notices), terminate or reduce the scope of this Contract from the time specified in the notice. Without limiting DFAT's rights under this Contract, at law or in equity, DFAT's rights under this **Clause 54.1** include the discretion to terminate or reduce the scope of this Contract if DFAT determines that the continuation of this Contract, or the continuation of a program or initiative for the purposes of which this Contract was entered into, does not support the achievement of value for money by DFAT. The parties acknowledge and agree that such a determination by DFAT may be made in the absence of a breach of this Contract by the Contractor and due to circumstances beyond the Contractor's control.
- 54.2 If DFAT exercises its right in **Clause 54.1**, the Contractor must comply with directions given by DFAT, cease or reduce (as applicable) the performance of work and immediately do everything possible to mitigate its losses, and all other losses, costs and expenses in connection from, or arising out of Termination, including novate any Subcontracts to DFAT or its nominee, if required by DFAT.

- 54.3 If DFAT terminates this Contract under this **Clause 54**, DFAT will only be liable to the Contractor for the following loss or damage incurred as a direct consequence of termination of this Contract to the extent that they can be reasonably substantiated and are unable to be avoided or mitigated:
- (a) Management Fee, Fees and any Reimbursable (Program) Costs, as payable under **Schedule 2** (Pricing Schedule) 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;
  - (c) the Contractor's finance termination costs required specifically and exclusively for performance of this Contract;
  - (d) **s 47(1)(b)**

and

- (e) **s 47(1)(b)**

- 54.4 The Contractor must, in each subcontract, reserve a right of termination to take account of DFAT's right of termination under this **Clause 54** (Termination for Convenience) and the Contractor must make use of such rights to mitigate losses in the event of termination by DFAT under the provisions of this **Clause 54**.

- 54.5 Subject to this Contract, on expiry or termination:

- (a) the Parties are relieved from future performance of this Contract, without prejudice to any right of action that has accrued at the date of termination;
- (b) all licences and authorisations granted to the Contractor by DFAT under this Contract terminate immediately; and
- (c) the Contractor must provide DFAT with all reasonable assistance and information to assist DFAT in transitioning to DFAT's new provision of Services arrangements.

- 54.6 The Contractor's obligations under **Clause 54.5** above include, at DFAT's request, continuing for a period of up to **three (3) months** to supply the Services to DFAT on the terms and conditions of this Contract until the time DFAT advises the Contractor that it is no longer required to do so. This clause does not apply during any period DFAT is in breach of an obligation to pay money under this Contract.

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

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## 55. FORCE MAJEURE

- 55.1 Despite any other provision of this Contract, if a Party is unable to perform or is delayed in performing an obligation under this Contract (other than an obligation to

pay money), by reason of a Force Majeure Event, and notice has been given in accordance with **Clause 55.2** below:

- (a) that obligation is suspended, but only so far and for so long as it is affected by the Force Majeure Event; and
- (b) the affected Party will not be responsible for any loss or expense suffered or incurred by any other Party as a result of, and to the extent that, the affected Party is unable to perform, or is delayed in performing, its obligations because of the Force Majeure Event.

55.2 A Party affected by a Force Majeure Event must give the other Party a written notice which:

- (a) sets out details of the Force Majeure Event (including the effect of the Event on the Contract and details of insurance available to mitigate damage if any);
- (b) estimates the likely period of time that the Party will not be able to perform, or the Party will be delayed in performing, its obligations; and
- (c) provides details of the action that it has taken, or proposes to take, to remedy the situation.

55.3 The Contractor must:

- (a) arrange a meeting with DFAT within 24 hours of a notice given under **Clause 55.2** above; and
- (b) take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible and re-commence performing them soon as possible.

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**56. NOT USED**

**57. LIABILITY**

57.1 If any Party to this Contract consists of more than one person then the liability of those persons in all respects under this Contract is a joint liability of all those persons and a separate liability of each of those persons.

57.2 Subject to any law to the Contrary, DFAT, its employees, agents and advisors, disclaim all liability for any loss or damage suffered by any other person acting on any part of the information made available to the Contractor, in respect of the Project, whether or not the Loss arises in connection with any negligence, default or lack of care on the part of DFAT, its employees, agents or advisors.

## SECTION 7 – PROJECT SPECIFIC CONDITIONS

58. NOT USED

59. NOT USED

### 60. PROJECT VEHICLE CONTRIBUTION

- 60.1 Project Vehicles remain the responsibility of the Contractor for the term of the relevant Activity.
- 60.2 In consideration of the Contractor being entitled to use Project Vehicles for non-project use, the Contractor must contribute **AUD400.00** for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor's invoices.
- 60.3 The Contractor must prioritise project use over private use of vehicles, ensure Personnel have relevant licences, ensure vehicles are appropriately insured and serviced at regular intervals and have seat belts fitted.
- 60.4 The Contractor is responsible for any costs incurred in the event of an accident while the Project Vehicle is being privately used.
- 60.5 In this **Clause 60, "Project Vehicles"** means vehicles paid for by DFAT for an Australian Aid Program Project or Program and that are provided for Activities.

### 61. COMPLIANCE WITH DFAT POLICIES

- 61.1 The Contractor must ensure that it and its Personnel comply with all DFAT policies including:
- (a) the disability inclusive strategy: '*Development for All 2015-2020: Strategy for strengthening disability-inclusive development in Australia's aid program*', accessible on the DFAT website at: <http://dfat.gov.au/about-us/publications/Pages/development-for-all-2015-2020.aspx>. Particular attention must be directed towards the Strategy's guiding principles;
  - (b) the '*Child Protection Policy*', accessible on the DFAT website at: [www.dfat.gov.au](http://www.dfat.gov.au);
  - (c) the '*Family Planning and the Aid Program: Guiding Principles*' (2009) for the DFAT - Australian Aid Program, accessible on the DFAT website at: [www.dfat.gov.au](http://www.dfat.gov.au) ;
  - (d) information accessibility requirements contained in the '*Guidelines for preparing accessible content*' (2012) for the DFAT - Australian Aid Program, accessible on the DFAT website at: [www.dfat.gov.au](http://www.dfat.gov.au) ;
  - (e) the '*Environmental and Social Safeguard Policy for the Aid Program*' (2018), accessible on the DFAT website at: <http://dfat.gov.au/about-us/publications/Pages/environmental-social-safeguard-policy-for-the-aid-program.aspx>; and

- (f) 'Gender equality and women's empowerment strategy' (February 2016) accessible on the DFAT website at: <https://dfat.gov.au/about-us/publications/Pages/gender-equality-and-womens-empowerment-strategy.aspx>.

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**62. NOT USED**

**63. GENDER EQUALITY**

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

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**64. NOT USED**

**65. NOT USED**

**66. NOT USED**

**67. PERFORMANCE GUARANTEE**

- 67.1 **s 47(1)(b)**

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**68. NOT USED**

**69. PROCUREMENT AND GRANTS**

- 69.1 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;
  - (c) implement procedures that are consistent with the principles of the Commonwealth Procurement Rules or the Public Governance, Performance and Accountability Act in particular, observing the core principles of achieving value for money and the supporting principles;

- (d) maintain complete and accurate records documenting the procedures followed in procuring, and the particulars of Supplies;
  - (e) use its best endeavours to ensure Supplies are maintained including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed;
  - (f) use its best endeavours to ensure Supplies are free from defects in design, material, manufacture or workmanship. The Contractor must replace defective Supplies under warranty provisions or at its own cost; and
  - (g) use the Supplies only for the purposes permitted under this Contract.
- 69.2 In 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 Guidelines, in particular the seven Key Principles for Grants Administration; and
  - (b) maintain complete and accurate records documenting the procedures followed in selecting grant recipients.

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**70. NOT USED**

**71. ACCESSIBILITY REQUIREMENT FOR DFAT WEBSITES**

- 71.1 If Schedule 1 (**Statement of Requirements**) requires the Contractor to develop or maintain a website on behalf of DFAT, the Contractor must ensure that the website complies with the Web Content Accessibility Guidelines (WCAG) Version 2.0, Level AA.

# PART B: DELIVERY PARTNER CONDITIONS

## SECTION 1 – DEFINITIONS AND INTERPRETATION

### 1. DEFINITIONS

Words defined in this Part B have the meanings given to them in **Clause 1 of Part A** and the following terms have the following definitions:

**Certificate of Project Completion** means a certificate issued by the Contractor under **Clause 19.3**.

**Completion** means, in relation to a Milestone, the achievement of the verifiable indicator for the Milestone, as set out in the relevant Tasking Note.

**Construction Costs** means the sum of all amounts properly and actually payable by the Contractor to Construction Subcontractors in accordance with the Construction Subcontracts for the performance of Construction Work, excluding all amounts arising out of or in connection with any breach of contract or other wrongful act of omission by the Contractor.

**Construction Subcontract** means a contract between the Contractor and a Construction Subcontractor for the performance of Construction Work entered into in accordance with **Clause 15**.

**Construction Subcontractor** means a subcontractor with whom the Contractor enters into Construction Subcontract.

**Construction Warranty** means a collateral warranty provided by a Construction Subcontractor in favour of DFAT in the form of a deed poll on terms to be provided by DFAT, and procured by the Contractor under **Clause 15.1(b)(ii)**.

**Construction Work** means any physical construction work (including the supply of goods and materials) required to be performed by the Contractor to enable the construction of physical works the subject of the Project or the Works.

**Date of Project Completion** means the date set out in the Certificate of Project Completion as the date upon which Project Completion was achieved.

**Defect** means an element of the Works which does not conform with the requirements of the Contract or a Project Subcontract.

**Deliverable** means any Document or other material or item:

- (a) prepared, or procured from a Project Contractor, by the Contractor and provided or required to be provided to DFAT, or
- (b) otherwise produced by the Contractor in connection with the Delivery Partner Services or the Contract.

**Design Costs** means the sum of all amounts properly and actually payable by the Contractor to Design Subcontractors in accordance with the Design Subcontracts for the performance of Design Work, excluding all amounts arising out of or in connection with any breach of contract or other wrongful act of omission by the Contractor.

**Design Subcontract** means a subcontract between the Contractor and a Design Subcontractor for the performance of Design Work entered into in accordance with **Clause 15**.

**Design Subcontractor** means a subcontractor with whom the Contractor enters into a Design Subcontract.

**Design Warranty** means a collateral warranty provided by a Construction Subcontractor in favour of DFAT in the form of a deed poll on terms to be provided by DFAT, and procured by the Contractor under **Clause 15.1(a)(i)**.

**Design Work** means design or other professional services required to be performed by the Contractor to enable the construction of physical works comprising part of the Project or the Works.

**Documents** means all documents, reports, plans, drawings, computer disks, specifications and all other materials in both hard and electronic formats.

**DP Cost Plan** has the meaning given under **Clause 9.2(a)**.

**DP Program** has the meaning given under **Clause 9.2(b)**.

**Environmental Law** means any Legislative Requirements relating to environmental protection, including all:

- (a) environmental conditions or the requirements of any Approval;
- (b) Legislative Requirements applicable to the actual or potential effect on the environment of the activities in, at or on the Site;
- (c) Legislative Requirements applicable to the disposal of materials or the discharge of chemicals, gases, liquids or other substances or materials into the environment, or the presence of such chemicals, gases, liquids or other substances or materials in, at or on the Site (including Hazardous Materials); and
- (d) Legislative Requirements applicable to the emanation of noise at or from the Site.

**Environmental Requirements** include:

- (a) DFAT's environmental requirements or plans for the Project, the Works, the Delivery Partner Services or the Site;
- (b) the requirements of Environmental Law; and
- (c) the requirements of environmental authorities, licences, approvals, permits, decisions, requirements, conditions, notices and/or management plans for the Project, the Works, the Delivery Partner Services or the Site issued under any Environmental Law or by any authority.

**Estimated Total Project Price** means the amount included by the Contractor as the estimated total Project price in the DP Cost Plan approved under **Clause 9.5**, being the sum of the:

- (a) Fees; and
- (b) Reimbursable (Program) Costs.

**Good Industry Practice** means the care, skill, diligence, prudence and foresight reasonably expected of a competent, qualified, skilled and experienced professional

working in a firm providing similar services to an organisation like the Contractor, seeking to comply with its contractual and legal obligations and having regard to the requirements of the Project and any other circumstances affecting the carrying out of the Delivery Partner Services.

**Hazardous Materials** means any hazardous materials, including any form of organic or chemical matter whether solid, liquid, gas, odour, heat, sand vibration, radiation, or substance which makes or has the capacity to make the environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in its capacity to support plant life;
- (c) contaminated; or
- (d) otherwise environmentally degraded.

**Known Defect** means any element of the Works which does not conform with the requirements of the Contract which is known to the Contractor at the time of application for a Certificate of Project Completion.

**Material Change Event** means an event:

- (a) not caused by, and beyond the reasonable control of, the Contractor;
- (b) which has had or will have a material adverse impact on the Total Project Price or the achievement of Project Completion which cannot be avoided or substantially mitigated by the exercise of Good Industry Practice by the Contractor; and
- (c) in respect of which, from the date that any relevant Project Contract for the Works affected by the event comes into effect, DFAT would be obliged to (subject to the terms of the Project Contract):
  - (i) pay the relevant Project Contractor under that Project Contract an additional amount on account of that event; or
  - (ii) grant an extension of time to the relevant Project Contractor in respect of that event.

**Milestone** means a milestone described in the Tasking Note.

**Packaging and Procurement Plan** means, if the **Project Particulars** specify that a Packaging and Procurement Plan is required, the packaging and procurement plan prepared by the Contractor and applicable to the Project.

**Project** means the project described in the Tasking Note.

**Project Completion** is the stage when:

- (a) all the Works are complete including rectification of all Known Defects;
- (b) all Deliverables have been provided to the DFAT Representative;
- (c) the Works comply with all applicable Legislative Requirements; and
- (d) everything which this Contract requires to be done as a condition precedent to Project Completion (including those things described in the Project Particulars) has been done, including the provision of a Certificate of Project Completion to DFAT.

**Project Particulars** means the Project particulars contained in the relevant Tasking Note.

**Project Plan** means the Project plan approved by the DFAT Representative under **Clause 9.5(a)**, as revised with the approval of the DFAT Representative.

**Project Subcontractors** means, collectively, the Design Subcontractors and the Construction Subcontractors.

**Project Subcontracts** means, collectively, the Design Subcontracts and the Construction Subcontracts.

**Reimbursable (Program) Costs** means, in respect of a Tasking Note:

- (a) the Design Costs;
- (b) the Construction Costs; and
- (c) such other costs identified in **Clause 6.1A** of **Schedule 2** as may be incurred by the Contractor, calculated in accordance with **Schedule 2**.

**Site** means the site specified in the relevant Tasking Note.

**Target Date for Project Completion** means the target date by which Project Completion should be achieved, being the date stated in the **Project Particulars**.

**Target Milestone Date** means each milestone date set out in the Tasking Note as the target date by which Completion of the relevant Milestone should be achieved.

**Total Project Price** is the sum of the Fees and Reimbursable (Program) Costs payable in accordance with **Schedule 2** (Pricing Schedule) calculated as at Project Completion and subject to the Maximum Contract Sum.

**WHS Legislation** the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations 2011* (Cth).

**Works** means the physical works to be handed over to DFAT or, where DFAT is not the asset owner, the asset owner, in accordance with the Project Contracts and as a result of the execution of:

- (a) the whole of the Delivery Partner Services, including Variations; and
- (b) the work, services and supply of items under each of the Project Contracts, the general scope of which is described in the Tasking Note.

## SECTION 2 – ROLE OF THE CONTRACTOR

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### 2. ENGAGEMENT

The Contractor must carry out the Delivery Partner Services in accordance with:

- (a) this Contract; and
- (b) the Project Subcontracts.

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### 3. STANDARD OF CARE

In addition to the performance standards outlined in **Clause 9 of Part A** and any performance standards outlined in **Schedule 1** (Statement of Requirements) and the relevant Tasking Note, in performing the Delivery Partner Services, the Delivery Partner must:

- (a) exercise the utmost good faith in the best interests of DFAT and keep DFAT fully and regularly informed about all matters affecting or relating to the Works, the Project, the Delivery Partner Services or otherwise; and
- (b) subject to **clause 16.2**, ensure that at Project Completion the Works will be fit for their intended purpose insofar as that purpose is set out in or reasonably inferred from Schedule 1 (Statement of Requirements) or the relevant Tasking Note.

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### 4. AUTHORITY TO ACT

4.1 Other than as expressly set out in this Contract or otherwise authorised by DFAT in writing, the Contractor has no authority to, and must not:

- (a) enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, DFAT or enter into any Project Subcontracts;
- (b) take any act or step to bind or commit DFAT in any manner, whether as a disclosed agent of DFAT or otherwise;
- (c) give directions to Project Subcontractors which could give rise to any entitlement in a Project Subcontractor to payment, an extension of time, or any other claim or relief;
- (d) waive or vary any requirements of a Project Subcontract;
- (e) terminate or suspend any Project Subcontract; or
- (f) discharge or release any Project Subcontractor from any of its obligations under a Project Contract.

4.2 The Contractor is an independent contractor and is not, and must not purport to be, a partner or joint venturer of DFAT.

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### 5. CONTRACTOR'S FUNDAMENTAL OBLIGATIONS

5.1 The Contractor must:

- (a) regularly and diligently progress the Delivery Partner Services and use its best endeavours to ensure:
  - (i) Completion of each Milestone is achieved by the applicable Target Milestone Date; and
  - (ii) Project Completion is achieved by the Target Date for Project Completion;
- (b) use its best endeavours to ensure that Project Completion is achieved so that the Total Project Price does not exceed the Estimated Total Project Price;
- (c) before construction of any part of the Works is commenced, ensure that the methods of working proposed or specified by the Contractor or any Project Subcontractor are:
  - (i) in accordance with the requirements of the applicable Project Subcontract; and
  - (ii) appropriate and satisfactory for their purpose; and
- (d) ensure that all work and methods of working under the Project Subcontracts are performed in accordance with the requirements of the applicable Project Subcontracts.

5.2 The Contractor must:

- (a) inform itself of DFAT's requirements as required by **Clause 6**; and
- (b) at all times perform the Delivery Partner Services in accordance with DFAT's requirements referred to in **paragraph (a)** and any instructions given by the DFAT Representative.

5.3 Unless otherwise approved by DFAT, neither the Contractor nor any related body corporate or related entity of any entity that forms a part of the Contractor will:

- (a) design or construct any part of the Works; or
- (b) have the design or the construction of any part of the Works undertaken by any Personnel.

## SECTION 3 – INFORMATION, DELIVERABLES AND DOCUMENTATION

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### 6. KNOWLEDGE OF DFAT'S REQUIREMENTS

The Contractor must:

- (a) inform itself of DFAT's requirements for the Delivery Partner Services, the Works and the Project, as set out in **Schedule 1** (Statement of Requirements) and the relevant Tasking Note and as otherwise notified by the DFAT Representative to the Contractor, including by the making of relevant enquiries of DFAT;
- (b) refer to all DFAT Material; and
- (c) consult DFAT throughout the carrying out of the Delivery Partner Services.

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**7. ADDITIONAL INFORMATION**

If:

- (a) the Contractor, in its reasonable opinion, considers that any additional information, Documents or particulars are needed to enable it to carry out the Delivery Partner Services or otherwise in respect of the Project; and
- (b) the additional information, Documents or particulars is not something that:
  - (i) the Contractor is required to obtain or provide as part of the Delivery Partner Services; and
  - (ii) DFAT is not otherwise required to provide under this Contract,

then:

- (c) the Contractor must give notice in writing to the DFAT Representative of the details of the additional information, documents or particulars and the reasons why they are required; and
- (d) DFAT must, if the DFAT Representative believes that the additional information, Documents or particulars are needed by the Contractor, use its best endeavours to arrange the provision of the additional information, Documents or particulars.

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**8. DELIVERABLES**

8.1 The Contractor must:

- (a) manage the planning, programming, procurement, design and construction of the Works in accordance with the Tasking Note and for this purpose prepare all relevant Deliverables in accordance with this Contract;
- (b) develop and complete to the standard of Good Industry Practice all Deliverables required for the performance of the Delivery Partner Services so that the Deliverables:
  - (i) meet the requirements of this Contract;
  - (ii) are accurate and complete in all respects; and
  - (iii) are otherwise suitable in all respects for their intended purpose insofar as that purpose is set out in or reasonably inferred from Schedule 1 (Statement of Requirements) or the relevant Tasking Note.; and
- (c) review DFAT's Materials for errors, contradictions or deficiency of information and promptly notify the DFAT Representative of any such errors, contradictions or deficiency of information of which the Contractor becomes aware for the attention and action of the DFAT Representative.

8.2 The Contractor must:

- (a) promptly and fully review all Project Subcontractor Deliverables for compliance with the relevant Project Subcontract before submitting those Project Subcontractor Deliverables to DFAT;
- (b) not submit Project Subcontractor Deliverables to DFAT unless they have been fully reviewed and complies with the relevant Project Subcontract;

- (c) if any Project Subcontractor Deliverables do not fully comply with the relevant Project Subcontract, provide the Project Subcontractor with all comments and other assistance necessary and appropriate to enable the Project Subcontractor to amend and finalise the Project Subcontractor Deliverables so that they complies with the relevant Project Subcontract;
  - (d) in any event, provide the review of the Project Subcontractor Deliverables to DFAT advising of the actions required to finalise the documentation;
  - (e) for the purposes of this clause, be responsible for coordinating the finalisation of all Project Subcontractor Deliverables, including by providing and directing all necessary personnel to administer, supervise, review, coordinate and control finalisation of all Project Subcontractor Deliverables at a rate of progress so that the relevant Project Subcontractor complies with its obligations under the relevant Project Subcontract;
  - (f) if the Contractor requires any information, guidance, or other direction from DFAT for the purpose of finalising its review of, or enabling the Project Subcontractor to finalise any Project Subcontractor Deliverables - promptly request the information, guidance or direction from DFAT;
  - (g) proactively program and manage the development, review and finalisation of all Project Subcontractor Deliverables with the relevant Project Subcontractor so as to ensure that there are no delays to the completion of the Project and that value for money for DFAT is otherwise maximised;
  - (h) when Project Subcontractor Deliverables are submitted to DFAT, provide recommendations and advice in respect of such Project Subcontractor Deliverables to DFAT; and
  - (i) otherwise do all things necessary to ensure that DFAT is able to efficiently and effectively review all Project Subcontractor Deliverables.
- 8.3 For the purposes of **Clause 8.2**, "Project Subcontractor Deliverable" means any deliverable required to be prepared by a Project Subcontractor under its Project Subcontract.
- 8.4 The Contractor must:
- (a) within a reasonable time of any request by DFAT, give access to, and at DFATs request and cost, provide verified copies of, any Deliverable created or used in connection with the Delivery Partner Services; and
  - (b) upon reasonable notice, permit DFAT access to the Contractor's premises in order for DFAT to inspect, discuss and assess any Deliverable created or used in connection with the Delivery Partner Services.

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## 9. CONTRACTOR'S PROJECT PLAN

- 9.1 The Contractor must, promptly after the Project Commencement Date, conduct the cost planning, programming and value management activities identified in the Contract, **Schedule 1** (Statement of Requirements) and the relevant Tasking Note.
- 9.2 Within fourteen (14) **Days** of the Project Commencement Date or such other period of time as may be directed by the DFAT Representative, the Contractor must submit to the DFAT Representative for approval a draft Project Plan, including:

- (a) a detailed cost plan for the Project in accordance with the requirements under **Clause 9.3** and as otherwise notified in writing by the DFAT Representative (**DP Cost Plan**);
- (b) a detailed program for the performance of the Delivery Partner Services and the delivery of the Works, as required under **Clause 9.4** and as otherwise notified in writing by the DFAT Representative (**DP Program**); and
- (c) such other information as may be required by the DFAT Representative, (**Draft Project Plan**).

9.3 In preparing the detailed cost plan under **Clause 9.2(a)**, the Contractor must:

- (a) ensure the DP Cost Plan includes:
  - (i) identification of all work required for, and all risks which could be encountered in, Project Completion, which a prudent, competent and experienced consultant would anticipate and provide for in its cost plan for the Project;
  - (ii) a cost analysis in respect of each part of the Project, including a detailed break-up of:
    - (A) the Fees and Reimbursable (Program) Costs payable in accordance with **Schedule 2** (Pricing Schedule); and
    - (B) the proposed level of contingency (including the risks which the Contractor intends the contingency to cover);
  - (iii) a detailed recommendation as to every reasonably possible alternative amount which could be set as the Estimated Total Project Price (based on its initial Estimated Tasking Note Price), having regard to all relevant considerations, including:

- (A) the budgetary limitations of DFAT in respect of the Project which the DFAT Representative may from time to time notify to the Contractor in writing;
  - (B) the paramount importance to DFAT of balancing between minimising both the cost and time to achieve Project Completion (on the one hand) and maximising the scope of the Works to be delivered and cost certainty for DFAT (on the other hand);
  - (C) the rules in relation to "value for money", "encouraging competition", "efficient, effective, economical and ethical procurement", "accountability and transparency" and the need to achieve value for money, as described in the Commonwealth Procurement Rules;
  - (D) without limiting **sub-subparagraph (C)**, all opportunities for cost savings which a prudent, competent and experienced consultant could implement without derogating from the achievement of the other requirements of the Contract; and
  - (E) all other relevant considerations, arising out of or in connection with or reasonably incidental to or to be inferred from the considerations in **sub-subparagraphs (A)-(D)**, which the DFAT Representative may from time to time notify to the Contractor in writing; and
- (iv) all such other matters as the DFAT Representative may require in writing;
- (b) co-operate with DFAT, the DFAT Representative and all other people nominated by the DFAT Representative for the purpose of furthering the considerations referred to in **Clause 9.3(a)(iii)**; and
- (c) take all possible steps necessary to ensure the Estimated Total Project Price does not exceed the budgetary limitations and requirements of DFAT in respect of the Works notified to the Contractor under **Clause 9.3(a)(iii)(A)** (and in any case the Tasking Note Budget), including all such reasonable steps directed by the DFAT Representative.

9.4 The detailed program to be prepared under **Clause 9.2(b)** must:

- (a) comply with the program requirements in Schedule 1 (Statement of Requirements) and the relevant Tasking Note (if any);
- (b) be consistent with the Milestones;
- (c) include the planned major activities, durations and sequences to be undertaken by the Contractor in providing the Delivery Partner Services;
- (d) specify the date for delivery for any Deliverables required to be delivered by the Delivery Partner Services to DFAT;
- (e) specify the resources the Contractor will commit to the provision of the Contractor's Delivery Partner Services;
- (f) include any other matter reasonably required by DFAT; and
- (g) be in a format acceptance to DFAT.

- 9.5 If (in the DFAT Representative's absolute discretion), the Draft Project Plan is:
- (a) approved by the DFAT Representative, then the DFAT Representative will issue a written notice to the Contractor; or
  - (b) rejected by the DFAT Representative (in the DFAT Representative's absolute discretion), the Contractor submit an amended Draft Project Plan.
- 9.6 Without limiting the Contractor's obligations in **Schedule 1** (Statement of Requirements) and the relevant Tasking Note in respect of the DP Cost Plan, the Contractor must:
- (a) regularly review the DP Cost Plan;
  - (b) inform the DFAT Representative if it becomes aware of any likely or actual cost overruns or cost underruns for the Project Subcontracts;
  - (c) identify and advise the DFAT Representative of any potential cost savings in any of the Project Subcontracts; and
  - (d) identify and advise the DFAT Representative of the appropriate measures for ensuring that the Total Project Price does not exceed the Estimated Total Project Price.
- 9.7 The Contractor must ensure that the DP Program is updated monthly or whenever otherwise directed by the DFAT Representative to show:
- (a) progress achieved;
  - (b) the effect (if any) of any extensions of time granted under any Project Subcontract;
  - (c) any changes to the sequence and duration of activities and corresponding changes to proposed manpower and shifts to be worked and resources to be utilised; and
  - (d) such other changes as may be reasonably required by DFAT,
- and that a copy of each update is promptly provided to the DFAT Representative.
- 9.8 The Contractor acknowledges that review of, comments on or approval or rejection of, or any failure to review or comment on, any Project Plan developed or updated by the Contractor under this **Clause 9** by the DFAT Representative will not:
- (a) relieve the Contractor from or alter its liabilities or obligations under this Contract, including the obligation to:
    - (i) take all possible steps necessary to ensure the Estimated Total Project Price does not exceed the budgetary limitations and requirements of DFAT in respect of the Works notified to the Contractor under **Clause 9.3(a)(iii)(A)** (and in any case the Tasking Note Budget); and
    - (ii) use its best endeavours to ensure that:
      - (A) Completion of each Milestone is achieved by each applicable Target Milestone Date; and
      - (B) Project Completion is achieved by the Target Date for Project Completion; or
  - (b) affect the time for carrying out DFAT's or the DFAT Representative's obligations under the Contract.

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**10. CONTRACTOR'S REPORTING OBLIGATIONS**

The Contractor must:

- (a) within seven (7) **Days** of the end of each month, give a written report to the DFAT Representative. The written report must be in a form required by this Contract and as otherwise required by the DFAT Representative and must contain such information and supporting evidence in relation to:
  - (i) the status and progress of the Delivery Partner Services and the Project;
  - (ii) the performance of the Works and the status of each Project Subcontract, including all reports, claims and certificates and submitted by a Project Subcontractor under a Project Subcontract;
  - (iii) a detailed reconciliation of costs incurred against the DP Cost Plan and the Estimated Total Project Price; and
  - (iv) any other matter or thing,as is required by the Contract and the DFAT Representative;
- (b) give the DFAT Representative:
  - (i) any report on any specific issue in connection with the performance of the Delivery Partner Services, the Works and the Project Subcontracts; and
  - (ii) any other periodic report,which the DFAT Representative reasonably requires;
- (c) promptly report all incidents, accidents, infringements and fines to the DFAT Representative;
- (d) advise the DFAT Representative (in writing if the DFAT Representative directs) of suitable courses of action in relation to any matters required by DFAT; and
- (e) establish and maintain any records which the DFAT Representative reasonably requires.

**SECTION 4 – SITE**

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**11. CONDITIONS OF ACCESS**

- 11.1 The Contractor's (including the Project Subcontractors') access to the Site is subject to the following conditions:
  - (a) the Contractor must ensure that its Personnel (and those of the Project Subcontractors) comply with DFAT's access, security and health and safety requirements;
  - (b) the Contractor must have in place the insurances which it is required to arrange and maintain under **Clause 12 of Part A**;
  - (c) if required by DFAT, the Contractor must give DFAT accurate information about the identity and job history of its Personnel (and those of the Project Subcontractors); and

- (d) DFAT may for its sole convenience and at its absolute discretion deny or restrict access to the premises to any person who DFAT considers does not comply with DFAT's access, security and health and safety requirements.

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**12. ENVIRONMENT**

- 12.1 The Contractor must use its best endeavours to ensure that the Project Subcontractors comply with all Environmental Requirements.
- 12.2 The Contractor must:
- (a) demonstrate to DFAT whenever required that all requirements of the Contract for protection of the environment have been met (including compliance with **Clause 61 of Part A**);
  - (b) manage the Project Subcontractors in their dealing with and disposal of Hazardous Materials in accordance with the requirements of applicable Legislative Requirements; and
  - (c) not, and must ensure that the Project Subcontractors do not, pollute, contaminate or otherwise damage the environment, except to the extent that this is the inevitable consequence of the delivery of the Works in accordance with the requirements of the Contract.
- 12.3 Without limiting any other obligation of the Contractor under the Contract or under any Environmental Requirement, the Contractor must notify the DFAT Representative in writing immediately upon the occurrence of any environmental incident (whether caused by the Contractor, its Personnel, a Project Subcontractor, an Other Contractor or third party). The notice must include:
- (a) details of the environmental incident (including details of any harm or potential harm to the environment) and its cause; and
  - (b) details of all remedial and/or corrective actions taken, or proposed to be taken, to rectify or avoid any harm to the environment as a result of the incident and to prevent a re-occurrence of such an incident.

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**13. URGENT PROTECTION OR REPAIR**

- 13.1 The Contractor must take (and must ensure that all relevant Project Subcontractors take) all urgent action necessary to protect or repair the Works, other property or people.
- 13.2 If the Contractor or the relevant Project Subcontractor is unable to do so, DFAT may;
- (a) require the Contractor to take all such steps as DFAT may consider necessary at the Contractor's cost; or
  - (b) engage Other Contractors to take all such steps as DFAT may consider necessary at the Contractor's cost.

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**14. WORKPLACE RELATIONS**

The Contractor:

- (a) is solely responsible for, and must manage all aspects of, workplace relations in relation to the Delivery Partner Services and the Project;

- (b) must comply with, and ensure its Personnel and its Project Subcontractors, comply with, all applicable Legislative Requirements, including any labour law and law relating to work health and safety (and without limiting this **paragraph (b)**, the Contractor is responsible for handling and complying with, all immigration and emigration procedures required to get personnel to and from the Site);
- (c) must keep the DFAT Representative fully and promptly informed of:
  - (i) any actual, anticipated or threatened workplace relations issues or problems (including grievances, refusals to work, disciplinary measures, disputes between employee unions regarding jurisdiction over work areas or work types, strikes, boycotts and other industrial disputes) which affect or are likely to affect the performance of the Delivery Partner Services or the Project (whether involving the Contractor, Project Subcontractors or any other persons); and
  - (ii) the measures the Contractor proposes to take with regard to any such workplace relations issues or problems; and
- (d) must provide the DFAT Representative with weekly reports of any actual, anticipated or threatened workplace relations issues or problems of the type mentioned in **paragraph (c)**.

## **SECTION 5 – PROJECT CONTRACTS (PROCUREMENT, COMMISSIONING, HANDOVER AND COMPLETION)**

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15. **s 47G(1)(a), s 47G(1)(b)**



s 47G(1)(a), s 47G(1)(b)

## SECTION 6 – TIME

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### 20. PROGRESS

The Contractor must:

- (a) commence providing the Delivery Partner Services as soon as practical; and
- (b) subject to any suspension under **Clause 23**, thereafter progress the Delivery Partner Services regularly and diligently (in any case so as to not depart (without reasonable cause) from the DP Program); and
- (c) use its best endeavours to achieve:
  - (i) Completion of each Milestone by the relevant Target Milestone Date; and
  - (ii) Project Completion by the Target Date for Project Completion.

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### 21. DELAYS

- (a) If the Contractor becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Project Completion, the Contractor must give DFAT an Early Warning Notice in accordance with **Clause 8**.
- (b) The Contractor must take all reasonable steps to:
  - (i) prevent the cause of any delay to the Works; and
  - (ii) avoid or minimise the consequences of any delay, including any delay arising from a Material Change Event.
- (c) If a Material Change Event occurs which will cause a delay in the achievement of Project Completion, the Contractor must give the DFAT Representative the notices required by **Clause 22**.

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### 22. NOTICES OF DELAY

- (a) Under this **Clause 22**, a notice is to be given within seven (7) Days after the earlier of the date the Contractor first became aware, or ought reasonably to have become aware, of a Material Change Event which will cause a delay in the achievement of Project Completion, which:
  - (i) contains detailed particulars of the Material Change Event causing the delay and the parts of the Works that have been (or will be) delayed;
  - (ii) contains detailed particulars and evidence of the delay caused by the Material Change Event; and

- (iii) if the effects of the delay continue beyond the period of seven (7) **Days** after the commencement of the Material Change Event causing the delay, a further notice:
  - (A) every seven (7) **Days** after the first written notice until seven (7) **Days** after the Material Change Event ceases to cause the delay; and
  - (B) containing the information required by this **Clause 22**.
- (b) An Early Warning Notice is not required to be given for a Material Change Event which has previously been notified under **Clause 22**.

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## **23. SUSPENSION**

### **23.1 The DFAT Representative:**

- (a) may instruct the Contractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Delivery Partner Services; and
- (b) is not required to exercise the DFAT Representative's power under **paragraph (a)** for the benefit of the Contractor.

### **23.2 If a suspension under this **Clause 23** arises as a result of:**

- (a) the Contractor's failure to carry out its obligations in accordance with the Contract, the Contractor will not be entitled to make any Claim against DFAT arising out of, or in any way in connection with, the suspension; or
- (b) a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract:
  - (i) an instruction to suspend under this **Clause 23** will entitle the Contractor to be paid by DFAT the extra costs reasonably incurred by it as a result of the suspension as determined by the DFAT Representative;
  - (ii) the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
  - (iii) the Contractor will not be entitled to make any other Claim against DFAT arising out of, or in any way in connection with, the suspension other than under this **paragraph (b)**.

### **23.3 Except to the extent permitted by a relevant Legislative Requirement, the Contractor may only suspend the Delivery Partner Services when instructed to do so under this **Clause 23**.**

# SCHEDULE 1 – Statement of Requirements

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## SCHEDULE 1: STATEMENT OF REQUIREMENTS

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### 1. BACKGROUND

- 1.1. Papua New Guinea (PNG) faces challenges in providing quality infrastructure that meets the needs of its growing population and allows it to fulfil its growth potential.
- 1.2. This Economic and Social Infrastructure Program (ESIP) will support Papua New Guinea to address this challenge by improving the prioritisation, quality, and sustainability of infrastructure investment in PNG. ESIP will work across key economic and social infrastructure sectors at the project, sectoral and national levels. It will leverage project-level activities to create opportunities for deeper engagement in sector-wide planning and policy, and enable the identification and resolution of broader national level policy, financing and planning reforms and partnerships necessary for sustained long term change. ESIP will seek to influence change across these levels through the following key mechanisms: project management, budget and financing advisory services; technical assistance and capacity development for improved planning and prioritisation; and high level engagement in support of institutional and regulatory reform.
- 1.3. ESIP is envisaged as a sustained engagement over a 15-20 year period. The investment will be commissioned for an initial 4 year period, with an option to extend for a further 4 years.

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### 2. OBJECTIVES AND OUTCOMES

- 2.1. The objective of the program is to improve the prioritisation, quality, and sustainability of infrastructure investment in PNG.
- 2.2. In the initial phase of assistance, the key program outcomes include:
  - (a) an increased number of capital projects are being effectively planned, managed and implemented by the relevant GoPNG agencies.
  - (b) focal sectors have evidence based prioritised infrastructure plans and processes for their implementation and review.
  - (c) a legislative and administrative reform agenda exists to improve policies, regulatory structures and planning for infrastructure investment.

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### 3. ROLES AND RESPONSIBILITIES

- 3.1. The Contractor, through its team leader, will report to a designated representative of DFAT in Port Moresby and other Australian High Commission staff as directed.

*ESIP Steering Committee*

**Schedule 1**

- 3.2. The Contractor will be required to work closely with the ESIP Steering Committee (ESIPSC) jointly chaired by a senior Australian Government Representative and a senior Government of Papua New Guinea (GoPNG) Representative.
- 3.3. The ESIPSC will meet regularly and will:
- (a) approve the ESIP Annual Plan;
  - (b) review progress against the ESIP objectives;
  - (c) provide strategic advice and direction on operational matters, including reviewing the quality and scope of planned activities and the program budget.
  - (d) identify emerging priorities and advise on managing risks.

*Sectoral Steering Committees*

- 3.4. Sectoral Steering Committees (SSCs) will be the key governance mechanism in each focal sector. The SSCs will be led by the relevant GoPNG senior official. Membership of the SSCs will include representatives from the Australian High Commission; representatives from the Government of Papua New Guinea, including any relevant regulatory entities and central agencies; donor partners, including multilateral banks; representatives from industry and the private sector; and representatives of the Contractor. SSCs will meet at a working level on a bi-monthly basis to discuss strategic and operational issues impacting the sector. The role of the SSCs will include:
- (a) facilitating clear operational level communication between stakeholders within the sector;
  - (b) supporting discussion and development of sectoral legislative, institutional, regulatory and policy framework;
  - (c) engaging and advising on sectoral planning and prioritisation processes;
  - (d) facilitating a joint approach on sector budgeting, planning and implementation;
  - (e) coordinating planning and delivery of sectoral investment programs;
  - (f) providing a forum for coordinated dialogue, engagement and submissions to central agencies and government; and
  - (g) review of implementation of agreed sectoral plans and policies.

*The Australian High Commission*

- 3.5. The Australian High Commission will manage the delivery of ESIP on behalf of the Government of Papua New Guinea and the Government of Australia through this Contract.
- 3.6. The Australian High Commission will play a key role in stakeholder engagement and policy dialogue alongside other stakeholders in the sector.

**Schedule 1**

- 3.7. All proposed capital projects and major consultancies will require the written approval of the designated manager in the Australian High Commission prior to commencement through the issue of a Tasking Note. All Tasking Notes will, as a minimum, specify tasks required and agreed activity costs (including financial limits).
- 3.8. DFAT will issue Tasking Notes in the form specified in the draft contract. Tasking Notes will not form a sub-agreement to this Contract.

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**4. THE SERVICES**

- 4.1. The Contractor must provide all Services necessary for the successful delivery of ESIP, including but not limited to, the items specified in this **Clause 4**.

*Provision of Logistical, Administrative and Secretariat Support*

- 4.2. The Contractor must provide logistical, administrative and secretariat support to the ESIPSC and SSCs, workshops, site visits, networking activities and other events and meetings. As directed by DFAT, the Contractor must:
- (a) develop Terms of Reference for the ESIPSC and SSC;
  - (b) facilitate engagement and attendance of ESIPSC and SSC members as directed by DFAT;
  - (c) provide and/or facilitate venue arrangements, including hire if necessary;
  - (d) organise and pay for travel and accommodation arrangements for ESIPSC and SSC members as necessary;
  - (e) prepare and collate research, reports and documents in preparation for meetings;
  - (f) provide analysis and recommendations to the ESIPSC and SSC for consideration;
  - (g) draft and circulate a draft agenda at least **ten (10) working days** in advance of scheduled meetings;
  - (h) draft and circulate meeting minutes no more than **five (5) working days** following meetings;
  - (i) chair and facilitate meetings and events as required; and
  - (j) provide secretariat support as required.

*Establishment and Management of ESIP offices and staff*

- 4.3. The Contractor must manage the provision, staffing and operation of an ESIP office in Port Moresby. The ESIP office must be appropriately staffed and readily accessible to respond to tasking and other requests issued by DFAT. The Contractor must:
- (a) ensure the effective management of all Personnel including:
    - (i) recruitment of suitably qualified Personnel to staff the ESIP office and deliver program objectives, as agreed with DFAT;
    - (ii) ensuring that all Personnel have up-to-date Terms of Reference which must be approved by DFAT if requested;

**Schedule 1**

- (iii) ensuring that proposed Personnel inputs are incorporated in Annual Plans and accounted for in the Monthly Financial Reports, including indicative duration of engagement, overall costs and anticipated outputs and objectives;
- (iv) mobilising Personnel, including, organising travel, accommodation, visa and itinerary;
- (v) provision of pre-mobilisation briefings to Personnel covering work health and safety, security; medical issues; cultural environment; ESIP objectives and context; operational procedures; and relevant contract obligations;
- (vi) management of the performance of Personnel to ensure the successful delivery of ESIP objectives; and
- (vii) ensuring compliance with all relevant legal, employment and tax regulations and provisions regarding the engagement of Personnel;
- (b) provide and maintain appropriate office facilities in Port Moresby including:
  - (i) maintaining and equipping the offices, inclusive of meeting rooms and space for colocation of DFAT staff to facilitate program activities;
  - (ii) effectively managing office costs including rent, utilities, insurance, communications and consumables;
  - (iii) ensuring appropriate security and work health and safety arrangements are in place;
  - (iv) procurement and maintenance of vehicles; and
  - (v) maintain a functioning IT network system for the offices, including a user-friendly information database with remote access;
- (c) maintain information systems both electronic and manual for all Program documentation;
- (d) purchase equipment and materials for the office (including office equipment and furniture) in accordance with the principles of the Commonwealth Procurement Rules;
- (e) obtaining and maintaining all necessary office insurances; and
- (f) other administrative tasks as reasonably directed by DFAT.

*Establishment and Operation of ESIP, operational, financial and accounting systems*

4.4. The Contractor must ensure the effective management of ESIP operational, financial and accounting systems including:

- (a) developing and maintaining policy procedures manuals, including an ESIP Operations Manual;

**Schedule 1**

- (b) managing the ESIP finance and accounting system and records to ensure the provision of timely and accurate financial and procurement information including:
  - (i) preparation of Financial Reports of expenditure and financial forecasts on a monthly basis;
  - (ii) provision of ad hoc variation reports and forecasts as requested by DFAT.
- (c) managing funding provided for ESIP activities, including:
  - (i) providing a suitable and effective management accounting and financial accounting function;
  - (ii) oversee procurement and grant management in accordance with Commonwealth requirements;
  - (iii) actively monitoring, controlling and reporting on program costs to ensure cost effectiveness;
- (d) maintaining auditable financial and administrative records up to date and to a standard consistent with Commonwealth requirements.

*Program Strategy and Planning*

- 4.5. The Contactor must provide comprehensive project management services to ensure the successful implementation of activities under ESIP, including:
- (a) establishing and managing program controls to ensure effective delivery of ESIP;
  - (b) developing and maintaining detailed work plans and budgets for program activities in consultation with DFAT;
  - (c) scheduling activities to ensure achievement of ESIP objectives;
  - (d) ensuring accurate financial forecasting and budgeting against the ESIP Annual Plan;
  - (e) ensuring cost effective delivery of agreed program activities to maximise value for money and impact;
  - (f) integrating findings of project M&E into the ESIP management approach;
  - (g) ensuring that ESIP activities are consistent with Australian Government policy and legislative requirements, in particular but not limited to, gender, disability, child protection, fraud control and anti-corruption and environmental management.

*Infrastructure Policy and Regulation*

- 4.6. The Contractor must provide advice and support on institutional, policy and regulatory issues affecting ESIP focal sectors including:
- (a) undertaking review of existing legislative, institutional, regulatory and policy frameworks in key focal sectors against international best practice;

**Schedule 1**

- (b) undertaking consultation with key stakeholders to inform the development of legislative, institutional, regulatory and policy settings;
- (c) examining policy and reform options to support the effective functioning of infrastructure markets;
- (d) providing advice on regulatory and legislative design and institutional arrangements;
- (e) supporting development and review of regulatory submissions and proposals;
- (f) undertaking regulatory and policy cost benefit analysis, including regulatory burden analysis;
- (g) advising on the optimisation of sector financing, including review of fees, tariffs and charges across key economic infrastructure sectors;
- (h) undertaking research and analysis as necessary to inform the development of legislative, institutional, regulatory and policy settings;
- (i) preparing updates to legislative, institutional, regulatory and policy frameworks as requested by the Government of Papua New Guinea;
- (j) providing technical support to government departments, regulatory and state owned enterprises.

*Project Planning and Prioritisation*

4.7. The Contractor must support planning and prioritisation in ESIP focal sectors including:

- (a) supporting the preparation of national level infrastructure prioritisation plans in key focal sectors (sector infrastructure development plans) including:
  - (i) analysis of key GoPNG social, economic and environmental objectives and challenges to provide framework for planning;
  - (ii) review of current state of infrastructure including an assessment of its adequacy in light of projected demand and GoPNG objectives;
  - (iii) demand analysis addressing key infrastructure needs against projected economic and population growth;
  - (iv) options available to deliver on identified infrastructure needs and priorities, including identification of key projects in each sector. This must:
    - (A) be prioritised through a rigorous and structured process;
    - (B) include consideration of maintenance or rehabilitation of existing assets versus the cost of new construction;
    - (C) adopt a holistic approach to planning and best practice network design;
    - (D) consider whole of life costs of any proposed investments;
    - (E) balance fiscal and resource constraints against demand to maximise service delivery.

**Schedule 1**

- (v) undertaking independent review of project proposals, including unsolicited proposals.

*Project Financing and Structuring*

4.8. The Contractor must support the financing of projects in ESIP focal sectors, including:

- (a) preparing investment plans to support delivery of sector infrastructure development plans. Investment plans must:
  - (i) be consistent with GoPNG priorities, policies and plans, including the sectoral infrastructure prioritisation plan;
  - (ii) encourage private sector participation and investment into public infrastructure markets;
  - (iii) consider options for user fees and revenue charges to finance infrastructure development; and
  - (iv) be achievable in the context of fiscal constraints and resource availability.
- (b) undertaking due diligence and fiduciary risk assessments of counterpart systems in accordance with Australian Government policy;
- (c) developing commercial, financial and legal frameworks, systems and processes to allow the provision of funding to counterpart entities, including counterpart government departments, state owned enterprises and private sector entities;
- (d) preparing supporting legal and commercial frameworks to enable investment in infrastructure markets;
- (e) investing in economic and social infrastructure, including arranging provision of grant, debt and equity financing;
- (f) supporting engagement with potential financiers and investors to raise capital for identified priority projects, including:
  - (i) assessing market demand;
  - (ii) developing marketing materials including project information memoranda;
  - (iii) managing requests for information including due diligence assessments;
  - (iv) preparing briefings and presentations;
- (g) providing independent advice on project proposals and financing options, including reviewing, assessing and advising on term sheets and funding proposals;
- (h) advising on debt management and financing, including designing and structuring financing and debt facilities;
- (i) supporting preparation of public private partnerships, privatisation processes, asset divestments and refinancing of assets.

*Project Preparation*

4.9. The Contractor must support preparation of projects in ESIP focal sectors, including:

- (a) preparation of feasibility studies, option appraisals and business cases to support project selection and optimisation;
- (b) providing commercial advisory support including undertaking:
  - (i) options analysis for delivery of priority projects to identify:
    - (A) prevailing legal architecture and frameworks;
    - (B) procurement strategy and contracting modality;
    - (C) investment plan including financing options;
    - (D) assessment of project financial viability;
    - (E) proposed capital structure;
    - (F) risk and liability allocation;
    - (G) corporate structure and ownership;
    - (H) accounting and tax advice with respect to project structure.
  - (i) project due diligence including addressing:
    - (A) legal issues;
    - (B) land tenure and access;
    - (C) regulatory issues;
    - (D) approvals and permitting;
    - (E) social safeguards including both socio-economic and environmental issues;
  - (ii) preparation of project financial model, including projections of costs and revenues, detailed assumptions, project risk valuation, net present value and sensitivity analysis;
  - (iii) economic assessment of the project including assessing macroeconomic impact, undertaking market analysis and preparing detailed project cost benefit analysis.

*Project Design*

4.10. The Contractor must provide comprehensive project design services to support the delivery of ESIP, including:

- (a) overseeing the review of project delivery options and concept development including:
  - (i) conducting an initial site inspection to assess the site and any proposed works;

**Schedule 1**

- (ii) facilitating community consultation on the proposed work and ensuring issues of land ownership (proof of land title) are addressed;
  - (iii) preparing an initial design concept, setting out key design requirements, options for project delivery and preliminary costing estimates;
  - (iv) undertaking an assessment of environmental and social impacts in accordance with relevant DFAT policies;
  - (v) liaising with relevant authorities to obtain approval for the works;
  - (vi) conducting value management workshops to assess and analyse options for project delivery as required through the project lifecycle;
  - (vii) preparing draft project plan based on delivery of the preferred option;
  - (viii) presenting the preferred approach to DFAT and the partner organisation to obtain endorsement and confirm agreed approach.
- (b) overseeing preparation of a detailed design reflecting the agreed approach and taking consideration of:
- (i) any concerns raised by stakeholders during consultations;
  - (ii) the relationship between capital and recurrent costs, including asset management;
  - (iii) minimising servicing and maintenance requirements;
  - (iv) maximising durability;
  - (v) energy and water use minimisation and conservation;
  - (vi) waste minimisation;
  - (vii) climate change and the impact of potential natural disasters;
  - (viii) use of sustainable building materials with preference given to materials with high recycled content; locally or regionally produced products and materials; and sustainable timber sourced from plantation or managed forests (not old growth forests);
  - (ix) the potential needs of all user groups, including women, the elderly, children, and people with a disability;
  - (x) risk management, in particular security, work health and safety (WHS) and Asbestos Containing Materials management;
  - (xi) compliance with all relevant legislation, standards and codes;
  - (xii) compliance with and consideration of local and international best practice standards; and
  - (xiii) the agreed project budget.
- (c) arranging for independent technical reviews of designs;
- (d) assisting in the preparation of any submissions required to obtain approvals based on approved design;

**Schedule 1**

- (e) liaising with authorities as required and incorporating any alterations required by authorities in the design;
- (f) overseeing value management workshops to optimise and ensure cost effectiveness of design against functional brief.

*Project Procurement and Grants*

4.11. The Contractor must support procurement and grants to counterparts in ESIP focal sectors including:

- (a) developing proforma approach to market and agreement documentation to ensure compliance with regulatory and legislative requirements;
- (b) market sounding and engagement including pre-tender industry briefings;
- (c) undertaking pre-tender technical review of projects including:
  - (i) review of functional and technical solutions;
  - (ii) assessment of estimated capital and operating costs;
  - (iii) re-examination of project feasibility, including capital cost estimates, demand and revenue projections and whole of life costs;
  - (iv) permissions, permits and approvals;
  - (v) review of alignment drawings and specifications;
  - (vi) site conditions and capacity;
  - (vii) integration and linkages with network;
  - (viii) environmental impact assessment;
  - (ix) socio-economic safeguards and WHS.
- (d) preparation and review of bidding documents, including evaluation procedures and risk assessment;
- (e) arranging industry briefings and marketing of procurements and investment opportunities in ESIP focal sectors;
- (f) undertaking bid evaluation and selection of a preferred bidder;
- (g) chairing and overseeing assessment processes, including providing any necessary technical support;
- (h) issuing clarifications to tenderers as necessary;
- (i) providing negotiations support on commercial and legal matters;
- (j) conducting due diligence prior to finalisation of agreement arrangements;
- (k) preparation and submission of approval documentation;
- (l) drafting and finalisation of contractual documentation;

**Schedule 1**

- (m) entering into agreements for provision of funding as well as direct delivery of capital projects;
- (n) advising all applicants of the outcome of selection processes, including providing debriefs to unsuccessful applicants as necessary.

*Project Management and Delivery*

4.12. The Contractor must support management and delivery of projects in ESIP focal sectors including:

- (a) overseeing the construction of works to reflect the agreed design, including:
  - (i) tendering for and engaging sub-contractors and consultants as necessary to complete the works, using an appropriate commercial construction contract consistent with recognised industry proforma;
  - (ii) ensuring that sub-contractors have all appropriate insurances, including professional indemnity and public liability insurances as necessary;
  - (iii) ensuring all necessary planning and construction approvals are in place before any work commences;
  - (iv) ensuring that a detailed program in relation to the project is maintained as current, including key deliverables for the works, hold points, and critical path items;
  - (v) ensuring the project plan is regularly reviewed and updated to clearly identify all components of construction and the works to be completed;
  - (vi) preparing a project risk management plan consistent with relevant ISO 9000 standards and incorporating a review of risks associated with the project and mitigating strategies, including risk workshops and allowing for evaluation of new risks as they emerge;
  - (vii) ensuring robust systems are in place to manage WHS, including a WHS Plan for each project which feeds into program level WHS reporting;
  - (viii) ensuring safe handling and disposal of hazardous material in accordance with Australian standards.
  - (ix) managing sub-contractors to ensure cost effective delivery within project budget, including negotiating any variations and variation costings;
  - (x) monitoring compliance with site safety, environmental management and social safeguards plans;
  - (xi) attending meetings and undertaking regular site visits to inspect and audit the works and ensure effective progress against the project plan;
  - (xii) actively monitoring the input costs of all activities to ensure cost effectiveness and value for money;

**Schedule 1**

- (xiii) ensuring claims are paid in line with contract and only on verification of works completed and certified by the Contractor as satisfactory;
  - (xiv) keeping DFAT informed on progress, opportunities and risks with respect to the agreed design, budget and schedule;
  - (xv) undertaking pre-commissioning inspection to identify construction defects and ensure rectification of any issues at no additional cost to DFAT;
  - (xvi) engaging an independent third party to provide DFAT with a certificate of verification confirming that the works have been satisfactorily completed in accordance with the approved design and building permissions; and
  - (xvii) ensuring that all contracts are monitored and completed in a timely and efficient manner and in accordance with the relevant terms and conditions.
- (b) providing regular advice to DFAT's nominated representative on outstanding contractual and agreement matters, including financial reporting and acquittals;
  - (c) overseeing management and rectification of defects during the defects liability period;
  - (d) supporting ongoing maintenance, including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed;
  - (e) assisting partners in the development of an asset management plan, including an operations and maintenance manual;
  - (f) supporting operational commissioning and handover of the asset to the designated counterpart;
  - (g) supporting counterpart organisations to put in place operations and maintenance contracts to ensure sustainability of assets once commissioned.

*Infrastructure Asset Management*

4.13. The Contractor must support improved asset management practises including:

- (a) the development of integrated asset management systems in key focal sectors including:
  - (i) asset management policies that support international best practice standards in asset management to align with the ISO 55000 suite;
  - (ii) asset management strategies and objectives reflecting GoPNG sectoral priorities;
  - (iii) asset management plans that encourage the adoption of a maintenance first approach to investment;
  - (iv) asset management systems that ensure whole of life costs are factored into investment decision making;

- (v) performance, monitoring and review processes;
- (b) support preparation of asset management plans for existing assets;
- (c) undertake market testing reviews of existing projects to benchmark performance;
- (d) provide technical advice on management of existing assets and networks to achieve operational efficiency savings;
- (e) provide technical support for improved commercial management of existing assets and networks; and
- (f) provide technical support for network planning and optimisation.

### *Risk Management*

4.14. The Contractor must actively monitor and manage program risks including:

- (a) incorporating a Fraud, Safeguards and Risk Control Policy in the Operations Manual that addresses risks to program delivery and risks associated with key DFAT policies such as fraud control, anti-corruption, child protection, resettlement and the environment;
- (b) developing a comprehensive risk register;
- (c) proactively identifying risks to the delivery of ESIP;
- (d) analysing the potential impact of risks to identify appropriate management strategies;
- (e) advising DFAT of potential risks to program delivery and proposed mitigation strategies as appropriate; and
- (f) taking appropriate action to avoid or mitigate risks.

### *Work Health and Safety*

4.15. The Contractor must ensure robust systems are in place to manage work health and safety at ESIP activity sites. DFAT may request from the Contractor at any stage information related to WHS considerations relevant to this Contract including but not limited to risk assessments, completed WHS inspections, incident reports and audit reports. A Work, Health and Safety Management Plan must be developed.

### *Program Communications*

4.16. The Contractor must manage delivery and development of ESIP communications and public relations services including:

- (a) establishing and maintaining an ESIP Public Relations Strategy, to be updated and maintained as current;
- (b) promotion of ESIP to potential partners, DFAT bilateral and regional programs, and other stakeholders;

**Schedule 1**

- (c) development and maintenance of the ESIP website and social media sites with relevant information, e-groups and interactive capability;
- (d) preparation of promotional material for key aspects of ESIP's work, including written, internet web page and audio visual material tailored for specific audiences in consultation with DFAT;
- (e) marketing funding opportunities and concept paper requests to potential ESIP partners;
- (f) establish and maintain processes and systems for organising and managing travel, logistics and coordination of events and large public meetings to promote ESIP;
- (g) identifying publicity opportunities for ESIP as directed by DFAT;
- (h) advising potential ESIP partners and other stakeholders on processes for project and activity design; and
- (i) ensuring ESIP funding and activities are appropriately branded in accordance with DFAT policy 'Branding aid projects and initiatives – for managing contractors, NGOs, multilaterals and other partners'.

*Monitoring and Evaluation*

4.17. The Contractor must monitor and evaluate (M&E) the outcomes of ESIP, including by:

- (a) developing and maintaining an ESIP M&E Manual based on the M&E framework set out in the design document
- (b) ensuring the Manual is consistent with the DFAT M&E Standards (available from [www.dfat.gov.au](http://www.dfat.gov.au)) and is updated annually;
- (c) resourcing and implementing all M&E activities as described in the M&E Manual;
- (d) providing assistance for any independent evaluation to be conducted of ESIP, as requested by DFAT;
- (e) ensuring the M&E system:
  - (i) is adequately resourced and costed
  - (ii) incorporates different M&E approaches at the different levels (project, sector and whole-of-program) and for different interventions under the program;
  - (iii) is based on sound program logic/theory of change for the whole program and for each focus sector which are reviewed and revised at least annually;
  - (iv) includes identified performance indicators and evaluation questions which are directly related to the program outcomes and which have coinciding targets and baselines;
  - (v) identifies opportunities to work with partners including to review program logic and analyse collected data;

**Schedule 1**

- (vi) includes periodic monitoring of relevant aspects of the program context;
- (vii) utilises/builds on monitoring systems of partners where appropriate but ensures appropriate verification of reported results where monitoring is primarily carried out by partners;
- (viii) requires sex disaggregated data;
- (ix) incorporates both quantitative and qualitative data; and
- (x) has strategies for the dissemination and use of information collected through M&E activities including for both reporting and program learning and improvement.

*Integration of cross-cutting issues*

4.18. The Contractor will ensure cross-cutting issues of the Australian aid program (gender, disability, climate change and disaster risk reduction) and safeguards (environment, resettlement and child protection) and others if applicable, are actively considered throughout the life of the program, at all levels of the program and through monitoring and evaluation. This will include the following:

- (a) develop processes to facilitate good practice regarding gender equality and include these as part of the Gender and Social Inclusion Strategy;
- (b) ensure that all team members understand the importance of and methods for promoting gender equality and social inclusion;
- (c) prepare and lead engagement on sector level gender analysis reports for each focus sector that identify barriers for women's participation in each sector and options for increasing access and participation;
- (d) develop processes to facilitate good practice around adopt climate smart and disaster proof-infrastructure both in projects delivered directly by ESIP and those where ESIP engages at a policy level.

---

## 5. REPORTING

5.1. The Contractor must provide the following reports by the dates indicated:

Item	Description	Submission Date
A	ESIP Operations Manual	s 47(1)(b)
B	Risk Register	s 47(1)(b)
C	WHS Management Plan	s 47(1)(b)
D	Annual Plan	s 47(1)(b)
E	Monitoring and Evaluation Manual	s 47(1)(b)

## Schedule 1

F	Gender Equality and Social Inclusion Strategy	s 47(1)(b)
G	Progress Reports	s 47(1)(b)
H	Annual Report	s 47(1)(b)
I	Financial Reports	s 47(1)(b)
J	Brief Exception Reports	s 47(1)(b)
K	Handover Plan	s 47(1)(b)
L	Completion Report	s 47(1)(b)

5.2. Unless otherwise directed in writing by DFAT, for all reports, the Contractor shall prepare one electronic and one hard copy for DFAT. DFAT reserves the right to request additional hard or electronic copies of each report.

- (e) **ESIP Operations Manual** to be submitted s 47(1)(b)  
s 47(1)(b) The ESIP Operations Manual will outline the systems and processes established to ensure effective management of ESIP and include:
- (i) governance arrangements, including the ESIPSC and SSC Terms of Reference;
  - (ii) financial management procedures, including policies for financial management; management of grants and procurement;
  - (iii) personnel management policy, including approach to recruitment and retention of personnel and ESIP personnel code of conduct;
  - (iv) security plan outlining arrangements to ensure the security of ESIP personnel;
  - (v) a Fraud, Safeguards and Risk Control Policy which incorporates how the program will be delivered in accordance with the DFAT environment and social safeguards and fraud and risk policies; and
  - (vi) procurement and grant selection and management procedures;
- (f) **Risk Register:** s 47(1)(b)  
s 47(1)(b) Review of ESIP risks and assumptions including evaluation of new risks as they emerge with recommendations for their management;
- (g) **Work, Health and Safety Management Plan:** s 47(1)(b)  
s 47(1)(b) As a minimum, the Contractor's WHS Management System must demonstrate compliance with all the duties of a person/organisation with a business or undertaking (Person Conducting a Business or Undertaking (PCBU) as specified under WHS legislation. The WHS Management System shall include:
- (i) WHS Policy;
  - (ii) WHS objectives and targets;

**Schedule 1**

- (iii) organisational structures, WHS roles and responsibilities in-country; and
- (iv) procedures including:
  - (A) consultation and communication;
  - (B) WHS hazard management;
  - (C) construction risk management
  - (D) emergency preparedness and response;
  - (E) auditing and inspections;
  - (F) performance monitoring;
  - (G) training and induction;
  - (H) management review;
  - (I) safe work practices;
  - (J) performance reporting on a monthly basis addressing the number of incidents and type, nature of incident, number of hazards and hazard types and any non-compliance with legislative requirements; and
  - (K) procedures for regularly reviewing the WHS Management System.
- (v) Without derogating from any other provisions in this Contract DFAT may request the Contractor to improve its WHS Management System where DFAT considers that Contractor's WHS Management System is deficient with regards to the business or undertakings being conducted pursuant to this Contract.
- (h) **Annual Plan: s 47(1)(b)** an Annual Plan which, before it is implemented, must be approved by DFAT. The Annual Plan must be prepared in accordance with any directions provided in writing by DFAT and include the following matters:
  - (i) ESIP meeting schedules and governance arrangements;
  - (ii) plan for establishing systems and processes and mobilising resources to implement ESIP;
  - (iii) the Contractor's plan for performance of the Services required for the period of the Annual Plan, including:
    - A. a proposed budget for Program Activities;
    - B. the supply and deployment of Long and Short Term Advisers and overall approach to their assignments;

**Schedule 1**

- C. details of proposed projects to be funded based on issue of Tasking Notes ; and
- D. proposed procurement activities, including planned approach to management of any sub-contracts.
- (iv) details of public relations and communications initiatives in accordance with the ESIP Public Relations Strategy; and
- (v) a current Risk Register highlighting any significant changes to Program risks.

The Contractor must make amendments to the Annual Plan as reasonably requested by DFAT.

- (i) **Monitoring and Evaluation Manual:** to be completed s 47(1)(b) s 47(1)(b) and must:
  - (i) include the program logic/theory of change for the whole program and for each focus sector
  - (ii) describe the performance indicators and evaluation questions which are directly related to the program outcomes and which have coinciding targets and baselines;
  - (iii) provide an annual schedule of all M&E activities a costed work plan for all M&E activities;
  - (iv) outline the scope and timing of all M&E reports and products to be produced;
  - (v) detail strategies/plans for the utilisation of information collected and the findings resulting from analysis;
  - (vi) articulate and provide guidance on the delivery of the monitoring and evaluation system including:
    - (A) full details of the methods to be used for sampling, data collection, management, analysis and processing;
    - (B) the requirement and approach to collecting sex-disaggregated monitoring data, and, where possible, disaggregation by people with disabilities;
    - (C) an explanation of data management tools including database system;
    - (D) a description of analysis and evaluative approaches;
    - (E) detailed report and data collection templates.
- (j) **Gender Equality and Social Inclusion Strategy:** s 47(1)(b) s 47(1)(b) this will articulate how gender equality and social inclusion will be actively considered throughout the life of the program, at all levels of the

## Schedule 1

program and through monitoring and evaluation. It will detail processes to facilitate good practice regarding gender equality and social inclusion.

- (k) **Progress Reports:** submitted by s 47(1)(b) The Progress Report will provide a description of progress against the Annual Plan, including an update on strategic issues, program operations, risk management, activity budgeting and expenditure, project specific design, procurements and progress, activity progress by sector, and M&E findings;

- (l) **Annual Report:** submitted s 47(1)(b) The Annual Report will provide a complete description of the year's outputs and outcomes. The Annual Report will include a comprehensive Annual Monitoring and Evaluation Report. It will also address strategic and operational issues and clearly state any recommendations for decision or action by DFAT. The Annual Report will refer to the previous Annual Plan and identify issues arising from the year's experiences that are reflected in the proposed new Annual Plan, which is prepared simultaneously.

Annual Reports will also have a financial report that includes: estimates of current year financial expenditure; estimates for future financial years' expenditure; a breakdown of actual expenditure; a summary showing expenditure to date; and a breakdown of all advisers and their associated costs for the forward year;

- (m) **Financial Reports:** to be submitted s 47(1)(b) These reports as a minimum will provide the following details:

- (i) projected expenditure for the following month.
- (ii) projected expenditure for the next quarter (adjusted monthly).
- (iii) advice on financial variations.
- (iv) a reconciliation of expenditure against the previous month's forecast.

The Contractor will also be required to provide additional financial and expenditure reports as directed by DFAT.

- (n) **Exception Reports:** submitted immediately upon identification of any unforeseen problems arising in the Program that may have a detrimental effect on the Program, particularly in relation to the achievement of the objectives of the Program. One electronic copy of the Exception Report should be sent to the DFAT Program Manager. Exception Reports should include a proposed solution and/or strategy to address the issues;

- (o) **Handover Plan:** to be prepared as per PART B, Clause 18;

- (p) **Completion Report:** s 47(1)(b) in accordance with the prevailing DFAT requirements, which will be clarified and confirmed in writing between DFAT and the Contractor s 47(1)(b) before the end of the Contract. The Contractor will ensure this confirmation is sought in a timely manner;

s 47(1)(b)

## 5.3. All reports must:

- (a) be provided in accordance with the requirements of the Contract;
- (b) be accurate and not misleading in any respect;
- (c) be prepared as directed by DFAT;
- (d) allow DFAT to properly assess progress under the Contract;
- (e) comply with DFAT's Guidelines for Preparing Accessible Content (available from DFAT's website);
- (f) be provided in Microsoft Word format (or Microsoft Excel format for spread sheets), unless otherwise approved or requested by DFAT;
- (g) not incorporate either the DFAT or the Contractor's logo;
- (h) be provided at the time specified in this Contract; and
- (i) incorporate sufficient information which allows DFAT to monitor and assess the success of the Services in achieving the objectives of DFAT's policy framework.

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**6. ADVISERS AND PERSONNEL****6.1. The Contractor must engage and manage all Advisers and Locally Engaged Personnel required for the delivery of the Program, including at a minimum:***Long-term Advisers (ARF)*

- (a) Managing Director;
- (b) Director of Planning and Policy;
- (c) Director of Projects;
- (d) M&E and Safeguards Senior Adviser;
- (e) Additional advisers as agreed between DFAT and the Contractor.

*Long-term Advisers (Non ARF)*

- (f) As agreed between DFAT and the Contractor.

*Short-Term Advisers (ARF)*

- (g) As agreed between DFAT and the Contractor.

## Schedule 1

*Recruitment and engagement*

- 6.2. The Contractor must undertake the following services in respect of Advisers or Locally Engaged Personnel:
- (a) employ best practice processes in identifying, selecting and engaging Advisers/Personnel to ensure that the expected outcomes are fully met;
  - (b) comply with relevant local and Australian legislation including articulating non-discriminative policies and wherever possible, endeavouring to recruit PNG nationals, including through using appropriate local recruitment strategies that align with local labour market rates;
  - (c) ensure that all recruitment for Advisers is conducted in a manner that is consistent with the *principles* of the Commonwealth Procurement Rules (CPR's), including the core principle of "value for money" (incorporating both technical and price assessments), and all relevant regulatory and DFAT requirements on the use of Advisers as may be amended from time to time;
  - (d) ensure that all internationally engaged Advisers are recruited in accordance with the *Adviser Remuneration Framework* and as specified under each positions' Terms of Reference agreed between the Contractor and DFAT;
  - (e) facilitate the final approval by DFAT of the preferred internationally engaged Adviser candidates. If the preferred candidate is not approved at this step, the Contractor is to undertake further recruitment activities at the Contractor's Head Office expense;
  - (f) provide initial briefings and ongoing logistical and administrative support for Advisers/Personnel that is tailored to their specific location; and
  - (g) encourage Advisers and Personnel to mentor, coach, provide on the job training and encourage a learning environment wherever possible with stakeholders.
- 6.3. DFAT reserves the right to reject the Contractor's preferred internationally engaged Adviser candidates at DFAT's absolute discretion and to require the Contractor to undertake further recruitment activities at the Contractor's Head Office expense. In addition, the Contractor must ensure they provide adequate administrative personnel to carry out the services required under the Contract.
- 6.4. The Contractor must ensure that all program personnel undergo appropriate security and referee checks, including police checks, to ensure they are appropriate and of good character. All checks are the responsibility of the Contractor with the cost borne by the Contractor and must be undertaken before finalisation of personnel appointments. The Contractor must confirm that all personnel already engaged by the Contractor were checked thoroughly prior to their appointment.
- 6.5. There are currently no positions identified as working with children.

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## 7. PERFORMANCE ASSESSMENTS

*Performance Assessments - Contractor*

- 7.1. The assessment of the Contractor's performance shall be on an **annual basis** with the first assessment to be held no later than **one (1) year** after the Contract Start Date.

**Schedule 1**

DFAT shall manage the performance assessment process and may consult relevant stakeholders, counterparts of GoPNG, and others, as part of the Contractor Performance Assessment.

- 7.2. Performance criteria will be in accordance with **Schedule 9** of the Contract.
- 7.3. The Partner Performance Assessment shall focus on how well the services and response times have progressed over the previous period, as well as identifying any constraints or issues (on both parties) that need to be resolved or improved.
- 7.4. At the end of each year of the Contract, DFAT must notify the Contractor of the Draft Partner Performance Assessment outcomes. The Contractor will be given no less than fifteen (15) days to respond to the Draft Partner Performance Assessment. Outcomes may be discussed by DFAT and the Contractor at a formal meeting. Subsequent to this discussion, or after the Contractor's response if no discussion takes place, DFAT shall formally inform the Contractor of its assessment. The Contractor will have the opportunity to place its response on record within twenty eight (28) days.

*Performance Assessments - Advisers*

- 7.5. The Contractor must conduct Adviser Performance Assessments (APAs) on the four Specified Personnel in accordance with **Schedule 10** of this Contract. That is, APAs are only required for the Managing Director, Director or Policy and Planning, Director of Projects and any Senior Advisors as advised by DFAT and not all Advisers engaged under this Contract.
- 7.6. The Contractor will seek feedback from DFAT and the GoPNG in their assessment of their Specified Personnel.

## SCHEDULE 2 – Pricing Schedule

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s 47(1)(b)



**Contract 74999**  
**Schedule 2**

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s 47(1)(b)

- 6.3 The Contractor must retain all receipts for all expenditure items claimed for reimbursement for Program Costs for audit purposes.
- 6.4 The Contractor must keep up to date records of allocation and expenditure for all Program Costs.

---

**7 CLAIMS FOR PAYMENT**

- 7.1 The Contractor's correctly rendered invoice must be submitted when due pursuant to this **Schedule 2** in a form identifiable with the Services and in accordance with **Clauses 44** (Invoicing) and **45** (Payment) of **Part A**. Invoices must also reference the Payment Event number(s) as notified by DFAT.
- 7.2 All claims for payment must be made to:
- Financial Operations Section  
Department of Foreign Affairs and Trade  
RG Casey Building  
John McEwen Crescent  
Barton ACT 0221  
AUSTRALIA
- 7.3 Tax invoices should be sent to the above address. Alternatively, DFAT shall accept electronic tax invoices. These can be sent to **s 22(1)(a)(ii)** and copy in the DFAT Activity Manager/Contact Person.

**Contract 74999**  
**Schedule 2**

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- 7.4 Invalid invoices will be returned to the Contractor. For the purposes of **Clause 44.2 of Part A**, information on what constitutes a valid tax invoice can be found at <https://www.ato.gov.au/business/gst/issuing-tax-invoices/>.





## Schedule 3

## SCHEDULE 3 - Deed of Confidentiality

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**THIS DEED POLL** is made on the \_\_\_\_\_ day of [ ]  
in favour of **COMMONWEALTH OF AUSTRALIA** represented by the Department of  
Foreign Affairs and Trade ("DFAT").

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

### RECITALS

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

### THE RECIPIENT DECLARES AS FOLLOWS:

---

#### 1 INTERPRETATION

In this Deed, unless the contrary intention appears:

‘Confidential Information’ means information that:

- (a) is designated by DFAT as confidential; or
- (b) the Recipient knows or ought to know is confidential, but does not include information which:
- (c) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality.

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

---

#### 2 CONFIDENTIAL INFORMATION

2.1 The Recipient acknowledges and agrees that:

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

- (c) improper use or disclosure of Confidential Information would damage the Commonwealth.

---

**3 Article 1. RESTRICTIONS ON USE**

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

---

**4 Article 2. PERSONAL INFORMATION**

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

---

**5 SURVIVAL OF OBLIGATIONS**

- 5.1 The obligations in this Deed are perpetual.

**EXECUTED** as a deed poll.

**SIGNED**, by the Individual in the presence of:

.....  
Signature of Individual

.....  
Signature of witness

.....  
Name of Individual (***Print***)

.....  
Name of witness (***Print***)

.....  
Date

.....  
Date

## SCHEDULE 4 – Confidential Information

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**Confidential Information identified by DFAT**

Description	Period of Confidentiality
NA	

**Confidential Information identified by the Contractor**

s 47(1)(b)

# SCHEDULE 5 - Deed of Novation and Substitution

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This **DEED OF NOVATION AND SUBSTITUTION** made the \_\_\_\_\_ day of \_\_\_\_\_  
BETWEEN:

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

AND:

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

AND:

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

## WHEREAS:

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

## NOW THIS DEED WITNESSES AS FOLLOWS:

---

### 1 DEFINITIONS

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

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

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

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

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

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

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

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

---

**2 APPLICATION OF DEED**

- 2.1 The Contractor and the Subcontractor agree that:
- (a) this Deed is entered into for the benefit of DFAT; and
  - (b) DFAT may exercise the rights granted to it under this Deed.
- 2.2 This Deed commences on the Commencement Date of the Subcontract.

---

**3 NOVATION**

- 3.1 DFAT may issue a notice of substitution to the Subcontractor if DFAT is entitled to exercise its rights under **Clause 38** (Subcontracting) and **Clause 37** (Specified Personnel) of the Contract
- 3.2 The Parties agree that on and from the date of issue of a notice of substitution:
- (a) DFAT is substituted for the Contractor under the Subcontract in respect of the Subcontractor Services as if DFAT was originally the Party to the Subcontract instead of the Contractor, and all references in the Subcontract to the Contractor are to be read and construed as if they were references to DFAT;
  - (b) DFAT is to pay any amount due to the Subcontractor under the Subcontract to the Subcontractor and the receipt of the Subcontractor (as stated in the notice of substitution) shall be full and sufficient discharge for any such payments;
  - (c) subject to paragraph (a), DFAT is bound by, and must fulfil, comply with and observe all the provisions of the Subcontract and enjoys all the rights and benefits of the Contractor under the Subcontract; and
  - (d) the performance by the Subcontractor of services under the Subcontract, is instead of, and not in addition to, any performance by the Contractor of its obligations under that Subcontract.
- 3.3 If DFAT exercises its rights of novation under this deed, DFAT may further novate the Subcontract by substituting a new contractor in place of the Contractor on the terms of this deed with appropriate alterations. In the event of such novation, the rights and obligations of the Subcontractor with respect to the Contractor shall become the rights and obligations of the Subcontractor with respect to the new contractor.

---

**4 RELEASE**

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

---

**5 FURTHER ASSURANCES**

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

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**6 DISCHARGE**

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

---

**7 NOTICES**

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

**Address of Party**

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

**DFAT**

To: Desk Name

Attention: Country Program Manager

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

Facsimile: Desk Fax

**Contractor**

To: Contractor's Name

Attention:

Address: Contractor's Address

Facsimile: Contractor's Fax

### **Subcontractor**

To:

Attention:

Address:

Facsimile:

---

## **8 LAWS**

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

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## **9 WARRANTY**

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

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## **10 GENERAL**

### **Counterparts**

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

### **Attorneys**

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

### Further Assurance

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

### Assignment

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

### EXECUTED as a Deed.

**SIGNED** for and on behalf of the  
**COMMONWEALTH OF**  
**AUSTRALIA**

.....

Signature of PGPA Delegate/authorised  
 DFAT representative

.....

Name (*Print*)

.....

Date

)

) In the presence of:

)

.....

Signature of witness

.....

Name of witness (*Print*)

.....

Date

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

.....

Signature of Director

.....

Name of Director  
 (*Print*)

.....

Date

.....

Signature of Director/Secretary

.....

Name of Director/Secretary  
 (*Print*)

.....

Date

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

.....  
Signature of Director

.....  
Signature of Director/Secretary

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

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

.....  
Date

.....  
Date

**Schedule 6**

## SCHEDULE 6 – Not used

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# SCHEDULE 7 – Declaration of Status

---

**THIS DEED POLL** is made on the \_\_\_\_\_ day of \_\_\_\_\_ ]

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

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

## RECITALS

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

## THE ADVISER DECLARES AS FOLLOWS:

---

### 1 INTERPRETATION

In this Deed:

“**Partner**” means a person who:

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

“**Dependant**” means a person who:

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

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

### 2 ADVISER STATUS

- (a) The Adviser [has/has not] relocated in-country from their permanent country of residence.
- (b) The Adviser [is/is not] accompanied by dependants.

## Schedule 7

- (c) The Adviser's dependants and/or partner **[are/are not]** in receipt of an expatriate housing allowance from the Commonwealth of Australia or any other employer.
- (d) The Adviser's dependants and/or partner:
  - (i) **[are/are not]** currently employed by DFAT or on an DFAT funded project; and
  - (ii) **[are/are not]** in receipt of an allowance that recognises their accompanied status from the Commonwealth of Australia.
- (e) The Adviser **[is/is not]** accompanied by a Dependent Child/ren.
- (f) The Dependant Child/ren **[is/is not]** attends kindergarten through to year 12.
- (g) The Adviser acknowledges that he/she must provide proof of enrolment in a primary or secondary school for each Dependent Child in order to be eligible to receive the Mobility Allowance Supplement.
- (h) The Adviser must inform DFAT or the Contractor promptly if their status as described in this **Clause 2** changes.

---

**3 PROOF OF STATUS**

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

**EXECUTED** as a deed poll.

**SIGNED**, by the Adviser

In the presence of:

.....

.....

Signature of Adviser

Signature of witness

.....

.....

Name (*Print*)

Name of witness (*Print*)

.....

.....

Date

Date

**Schedule 8**

# SCHEDULE 8 – Department/Agency Access Form

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

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

1	<b>Contract description</b>	
2	<b>Names of Parties to the Contract</b>	
3	<b>Customer</b>	<i>[Insert Department/Agency name]</i> A reference to <i>[insert name of the contracting Department /Agency]</i> or the Customer in the Contract Contractor be taken as a reference to <i>[the Agency]</i>
4	<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 Specified Personnel</b>	<i>[insert names]</i>
8	<b>Services required</b>	<i>[itemise the specifics required in a separate Attachment A to this Schedule 9 ]</i>
9	<b>Any other changes</b>	<i>[insert any additional commercial requirements, insurances,]</i>

Schedule 8

SIGNED by

.....  
(Signature)

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

Date

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

.....  
(Signature of witness)

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

Date

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

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

\*delete whichever is not applicable

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

.....  
(Name of authorised DFAT  
representative)

Date

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

In the presence of

.....  
(Signature of witness)

**Schedule 8**

*(Name of witness in block letters)*

.....

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

.....

*Date*

*\*delete whichever is not applicable*

.....

*Date*

# SCHEDULE 9 – Partner Performance Assessment

## Partner Performance Assessment (PPA)

*Drafting 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 agreement managers and be based on the most recent 12 month period where performance information is available. Responses should be based on assessments of performance by a partner in relation to a specific agreement. It is mandatory to complete a PPA for all agreements with NGOs, commercial suppliers and multilateral organisations with a total value over \$3 million, except for core contributions to multilateral organisations. As PPAs inform future funding decisions, delivery partners must be given an opportunity to review the assessment. Delivery partners should be provided with a minimum 15 working days to endorse the ratings. The text in this schedule provides an example of the current form. The most up to date form will be used in a given year. Visit [www.dfat.gov.au](http://www.dfat.gov.au) for the current PPA/APA template.*

## Summary

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

<b>Agreement Type</b>	<input type="radio"/> <i>Procurement</i> <input type="radio"/> <i>Grant</i>
-----------------------	---

### Australian Aid – Rated Performance Criteria

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

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

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

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

#### Assessment (no more than 300 words)

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

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

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

## Contract 74999

## Schedule 9

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

**Assessment** (no more than 300 words)

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

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

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

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

**Assessment** (no more than 300 words)

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

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

## Contract 74999

## Schedule 9

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

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

**Assessment** (no more than 300 words)

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

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

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

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

## Contract 74999

## Schedule 9

c) Recruitment and management of staff is conducted in a timely and professional manner and DFAT has been alerted to any recruitment/staffing issues	1 6	2	3	4	5
	Overall rating:				

**Assessment** (no more than 300 words)

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

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

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

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

**Assessment** (no more than 300 words)

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

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

**7) General Comments** (no more than 500 words)

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

**Partner Acknowledgement**

- ☐ I/we endorse this Partner Performance Assessment

Name:	
Position:	
Date:	

**OR**

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

Name:	
Position:	
Date:	

# SCHEDULE 10 – Adviser Performance Assessment

---

## NOTES FOR COMPLETING:

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

## NOTES FOR ADVISERS:

1. Advisers are required to sign completed APAs within 15 working days of receipt.
2. Advisers may include a written response with the APA to address any issues raised.
3. Responses must be returned to the party conducting the APA (i.e. DFAT or Managing Contractor)
4. Failure to respond within 15 working days of receipt is deemed as acceptance of the APA.
5. Completed APAs are placed on DFAT's performance register and remain valid for five (5) years.
6. APAs, including written responses from Advisers, can be used by DFAT as part of a future adviser selection process.
7. APAs may be provided by DFAT to other Partner (Government, Multilateral etc.) procurement processes which involve DFAT funds.
8. The text in this schedule provides an example of the current form. The most up to date form will be used in a given year. Visit [www.dfat.gov.au](http://www.dfat.gov.au) for the current PPA/APA template.

## Summary

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

## Australian Aid – Rated Performance Criteria

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

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

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

a) Achieves results and delivers on time; ensuring deliverables are of high quality, accurate and meet the defined requirements.	1 6	2	3	4	5
--	--------	---	---	---	---

## Contract 74999

## Schedule 10

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

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

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

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

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

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

a) Effectively manages risks and informs DFAT of any risks or issues that may adversely affect timing, cost or quality of services.	1 6	2	3	4	5
b) Takes appropriate account of DFAT policies including on Child protection, Environmental and Resettlement safeguards; Gender Equality and Disability Inclusive Development.	1 6	2	3	4	5

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Schedule 10

*Supporting evidence is required if a rating of 3 or below or 6 is given (no more than 300 words).*

5) Other Contract Specific Measurable(s)

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

<i>DFAT Representative</i>	<i>DFAT Partner Representative</i>	<i>Adviser</i>
<b>Name:</b>	<b>Name:</b>	<b>Name:</b>
<b>Signature:</b>	<b>Signature:</b>	<b>Signature:</b>
<b>Date:</b>	<b>Date:</b>	<b>Date:</b>

# SCHEDULE 11 – Tasking Note

---

**Drafting Notes:** Tasking Notes

Where DFAT requires particular Services to be carried out by the Contractor, DFAT will issue individual Tasking Notes in the form of this Schedule 11. Tasking Notes are contractual documents which detail the specific Services required (including the roles and responsibilities of the Contractor, what the Contractor will be expected to produce and any outputs or required performance standards). The Tasking Note should be a comprehensive and focussed document that sets out what is expected of the Contractor.

The Contractor will carry out the Services and prepare its Estimated Tasking Note Price on the basis of this Tasking Note, so it is critical that it clearly identifies everything that the Contractor will be expected to do and the standards to which the Contractor will be expected to perform.

When preparing the details for this Template, delete all text in boxes, [text in brackets] and all drafting instructions, and replace with appropriate text.

---

## 1 BACKGROUND

Insert brief, concise details of the background to the Activity (preferably no more than one to two paragraphs). This may include information on: the context of the Activity, relevant stakeholders, location, and DFAT's objectives.

---

## 2 TASKING NOTE PRICE

DFAT should set out below its maximum budget allocated for the Services the subject of the Tasking Note. The Contractor will be required to fully cost an estimate for those Services on the basis of this budget.

- 2.1 The maximum amount payable by DFAT to the Contractor for the provision of the Services the subject of this Tasking Note shall not exceed the sum of AUD[insert amount] plus GST (if any) up to a maximum amount of AUD[insert 10 percent of the Contract amount].

---

## 3 REQUIREMENTS

- 3.1 The Contractor shall provide DFAT with the following Services in accordance with the Contract:
- [insert description of Services];
  - [insert description of Services];

**Drafting Note:**

The Tasking Note should clearly state the extent to which the Services required include:

- Services described in **Schedule 1** (Statement of Requirements);

## Contract 000000

## Schedule 11

- Delivery Partner Services - in which case the conditions in Part B will apply; and
- the provision of Goods.

The Tasking Note should clearly set out comprehensive details of the role and responsibilities of the Contractor including:

- identifying and engaging appropriately qualified Personnel;
- managing preparation and briefing of Personnel;
- identifying and listing any Australian Standard/s (or in its absence, international) applicable for goods or services;
- regulatory frameworks or regulations (labour regulations, including ethical employment practices; occupational, health and safety; and environmental impacts) that apply (e.g. the National Construction Code or the Safe Work Australia regulatory framework);
- environmental management/sustainability requirements;
- meeting quality assurance obligations;
- establishing regular and effective communications with stakeholders;
- reporting and liaison requirements;
- requirements for any travel or site visits;
- complying with requirements relating to financial management, audit and asset management;
- ensuring appropriate risk management and quality control procedures are in place;
- comprehensive details of monitoring and reporting requirements;
- comprehensive details of key deliverables including details of any quality or performance standards that will be applied; and
- full description of phasing and scheduling requirements with a particular focus on scheduling of key deliverables and outputs.

#### 4 ACTIVITY DELIVERABLES

##### **Drafting Note:**

DFAT prefers to pay for delivery of outcomes/outputs wherever possible. This requires clear identification of key Contract outputs and deliverables (known as 'Milestones') against which payment can be made. These Milestones should be set out in **Table 1** below.

Where outputs are defined, the Tasking Note should also clearly define the minimum requirements.

- 4.1 During the Term, the Contractor must provide DFAT with the following Contract deliverables as set out in **Table 1** (Milestones) below:

**Drafting Note:**

The content of **Table 1** (Milestones) below is an example only. Drafters should amend the Table as necessary, including by adding additional rows or to detail any other type of Milestones required by DFAT. The final column will only apply to the extent that DFAT requires milestone payments.

**Table 1: Milestones**

<b>Milestone number</b>	<b>Milestone Description</b>	<b>Verifiable Indicator</b>	<b>Due Date</b>	<b>Milestone Payment (if applicable)</b>
1	[insert milestones – usually milestones represent the delivery by the Contractor of a contract deliverable as per section 4 above]		[insert date]	
2				
3				
4				

**5 MEETINGS****Drafting Note:**

The content of **Table 2** (Meetings) below is an example only. Drafters should amend the Table as necessary, including by adding additional rows or to detail any other type of Meetings that the Contractor will be required to attend with DFAT.

- 5.1 The Contractor must attend the following meetings with DFAT during the Term of the Contract:

Table 2: Meetings

<b>Meeting type</b>	<b>Location</b>	<b>Date</b>
<b>Activity start up</b>	[insert details]	[insert date]
<b>Progress Meetings</b>	[insert details eg. DFAT's Canberra office once a fortnight or first Wednesday each month commencing on (insert date)]	[insert date/s]
<b>Activity completion and transition</b>	[insert details]	[insert date]

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## 6 SPECIFIED PERSONNEL

### Drafting Note:

The content of **Table 5** (Specified Personnel) below is an example only. Drafters should amend the Table as necessary, including by adding additional rows or to detail any other specified personnel that the Contractor will be required to provide.

- 6.1 The Contractor must provide the following Specified Personnel in accordance with **Clause 37** (Specified Personnel) in **Section 3 of Part A** of the Contract:

**Table 3: Specified Personnel**

Position	ARF Classification
Eg. Project Director	[Insert Professional Discipline Group and Job Level]
[insert position title or reference from RFT]	[Insert Professional Discipline Group and Job Level]

## 7 REPORTS

### Drafting Note:

Consider whether to include the following requirements in **Table 4** (Reports) below:

**1. Mobilisation of Service or Quality Management Plan** (usually to be provided within the first **4 months** of the Project Commencement Date in a form agreed by DFAT) including:

- (a) information on communication channels with DFAT, the Australian Mission and other stakeholders;
- (b) outlining obligations for the Contractor to implement Services including timing;
- (c) supply and deployment of Short and Long term Advisors, and overall approach;
- (d) establishment of procurement procedures, financial control procedures and other administrative requirements; and
- (e) Planned approach to construction and/or identification of supply and construction requirements and approvals.

**2. Annual Plan** (usually to be provided by **31 March** of the year following the year of Project and requiring DFAT approval) including:

- (a) Contractor's plan for performance of the Services for that period;
- (b) Contractor's Strategy for coordinating Third Party Issues, and providing Services in a flexible manner; and
- (c) a detailed Budget.

**3. Risk Management Plan** (usually to be provided within **30 days** of the Project Commencement Date) including arrangements for it to be regularly updated and reports to be made to DFAT where new risks arise.

**4. Security Management Plan** (usually to be provided within **10 days** of the Project Commencement Date).

7.1 The Contractor must provide DFAT with the following reports by the date, in the format and number of copies indicated:

**Table 4: Reports**

Report Type	Indicative Content	Due Date	Format	Qty
<b>Progress Report</b>	A summary of the following information for the reporting period: b) the Services provided; c) the amounts invoiced to DFAT; d) any problems encountered and the actions taken to resolve those problems and prevent re-occurrence; e) written reports and evidence of compliance with clause 62 (Indigenous Procurement Policy); f) updates and issues relating to the future delivery of Services; and g) tasks or jobs not completed in accordance with the Contract.	The Report must be provided to the DFAT Representative within <b>5 Business Days</b> after the end of each [Quarter].		
<b>Performance Report</b>	A summary of the Contractor's compliance with Performance Standards, detailing all instances where a Performance Standard breach occurred, and actions taken to remedy the breach and prevent re-occurrence.	The report must be provided to the DFAT Representative within <b>5 Business Days</b> after the end of each month		

7.2 All reports must:

- (a) be accurate and not misleading in any respect;
- (b) be 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;

**Contract 000000****Schedule 11**

- (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) be provided in Microsoft Word format (or Microsoft Excel format for spread sheets) unless otherwise approved or requested by DFAT;
- (f) not incorporate either DFAT or the Contractor's logo;
- (g) be provided at the time specified in **Table 4** (Reports) of this **Schedule 1**; and
- (h) be provided in accordance with the specification under **Clause 43** (Reports) in **Section 4 of Part A**.

DFAT SIGNATURE	CONTRACTOR SIGNATURE
Signature: .....	Signature: .....
Name:	Name:
Position:	Position:
Date: .....	Date: .....

Contract 74999  
Amendment No. 1



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

## DEED OF AMENDMENT

Dated: 20<sup>th</sup> December 2019

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

**Cardno Emerging Markets (Australia) Pty Ltd** (ABN 23 006 170 869)  
(‘Contractor’)

FOR

**Economic and Social Infrastructure Program (ESIP) Papua New Guinea**

DFAT AGREEMENT NUMBER: 74999

CONTRACT made 10<sup>th</sup> day of December 20 18

Contract 74999  
Amendment No. 1

**THIS DEED OF AMENDMENT** is made this                      day of                      20

**BETWEEN:**

The **COMMONWEALTH OF AUSTRALIA**, represented by the **DEPARTMENT OF FOREIGN AFFAIRS AND TRADE**, ABN 47 065 634 525 ("the Commonwealth")

**AND**

**Cardno Emerging markets (Australia) Pty Ltd**, ABN 23 006 170 869, of Level 4 / 501 Swanston Street Melbourne VIC 3000, ("the Contractor") (respectively 'the Parties').

**RECITALS:**

- A. On 10 December 2018 the Commonwealth and the Contractor entered into Contract 74999 for the provision of the Goods and/or Services described in the Economic and Social Infrastructure Program (ESIP) Papua New Guinea.
- B. The Parties have now agreed to amend the Contract Conditions for the Goods and/or Services provided by the Contractor as set out in this Deed of Amendment ('Deed').

**OPERATIVE PROVISIONS:**

1. In this Deed, unless the contrary intention appears, a reference to "the Contract" is to the Contract referred to in **Recital A** above.
2. The Contract is amended as set out below:

Schedule 1 – Statement of Requirements	<p>Insert new Clause 8 as follows:</p> <p><b>8. PARTNER ORGANISATION FINANCIAL CONTRIBUTIONS</b></p> <p>8.1 DFAT and the Contractor agree that third parties may provide financial contributions to support activities under the Contract. For the purposes of this Clause 8, third parties providing financial contributions are referred to as "partner organisations". The Contractor agrees, in relation to any financial contributions received from partner organisations, that:</p> <p>(a) the Contractor must obtain DFAT's agreement in writing to accept and use partner organisation financial contributions for a specified activity;</p>
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Contract 74999

Amendment No. 1

	<p>(b) the contractor must agree with the partner organisation to a program of expenditure and allocation of funds to support agreed activities and will share this information with DFAT;</p> <p>(c) all partner organisation financial contributions must be separately ledgered in the Contractor's financial management system so that they can be separately identified and reported on by the Contractor;</p> <p>(d) the partner organisation financial contributions must be managed and spent through subcontract and grant arrangements applying the same policies and procedures as the Contractor does in managing DFAT funds;</p> <p>(e) the Contractor must comply with clauses 26 (Counter Terrorism), 27 (Fraud) and 29 (Compliance with Laws and Policies) of Part A (General Conditions) of this Contract as if the partner organisation financial contributions were DFAT funds;</p> <p>(f) the Contractor must report to DFAT monthly on the use of the partner organisation's financial contributions for agreed activities;</p> <p>(g) DFAT will not be liable for any misuse, including Fraud, of partner organisation financial contributions by the Contractor, its Personnel or any other party. The Contractor must ensure its agreement with the partner organisation informs the partner that DFAT has no liability;</p> <p>(h) s 22(1)(a)(ii)</p> <p>(i) The Contractor must ensure that the processes and procedures for managing partner organisation financial contributions are reflected in the Contractor's relevant internal documents as agreed with DFAT.</p> <p>8.2 For the avoidance of doubt, all aspects of the Contractor's management, handling and expenditure of partner organisation financial contributions forms part of the Services.</p>
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3. The amendments set out in this Deed take effect on the date on which this Deed is signed by the Parties.
4. In all other respects the Parties confirm the Contract

Contract 74999  
Amendment No. 1

**EXECUTED AS A DEED** by the Commonwealth, by an authorised officer, and by the Contractor by its authorised officer(s).

**SIGNED** for and on behalf of the

**COMMONWEALTH OF AUSTRALIA**

represented by the

Department of Foreign Affairs and Trade by:

in the presence of:

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

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

BRUCE DAVIS High Commissioner  
Name of Delegate  
(Print)

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

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

**s 22(1)(a)(ii)**  
Name of witness  
(Print)

**SIGNED** for and on behalf of  
**Cardno Emerging Markets (Australia) Pty Ltd** by:

**s 47F(1)**

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

**s 47F(1)**

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

**s 47F(1)**

\_\_\_\_\_  
Signature of Director/company Secretary

**s 47F(1)**

\_\_\_\_\_  
Name of Director/company Secretary  
(Print)

Contract 74999  
Amendment No. 1

### AMENDMENT SUMMARY

The Contract has been amended in accordance with the Standard Conditions clause headed **Contract Amendment** of the Contract/Period Offer on the following dates relating to:

Amendment Number	Date	Brief Summary of Amendment	Increase/Decrease in financial limit AUD	New Financial Limit (ex GST) AUD
1		Co-financing from third parties	s 47(1)(b)	s 47(1)(b)

Contract 74999  
Amendment No.2



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

## DEED OF AMENDMENT

Dated: 25 November 2022

BETWEEN

**COMMONWEALTH OF AUSTRALIA** represented by THE DEPARTMENT OF  
FOREIGN AFFAIRS AND TRADE ('DFAT') ABN 47 065 634 525

AND

**DT GLOBAL ASIA PACIFIC PTY LTD (ABN 23 006 170 869)** ('Contractor')

FOR

**ECONOMIC AND SOCIAL INFRASTRUCTURE PROGRAM (ESIP) PAPUA  
NEW GUINEA**

DFAT AGREEMENT NUMBER: 74999  
CONTRACT made 10<sup>th</sup> day of December 2018

Contract 74999

Amendment No.2

**THIS DEED OF AMENDMENT** is made this                      day of                      2022

**BETWEEN:**

The **COMMONWEALTH OF AUSTRALIA**, represented by the **DEPARTMENT OF FOREIGN AFFAIRS AND TRADE**, ABN 47 065 634 525 ("the Commonwealth")

**AND**

**DT Global Asia Pacific Pty Ltd.**, ABN 23 006 170 869, of Level 5, 501 Swanston St, Melbourne, VIC 3000 ("the Contractor") (respectively 'the Parties').

**RECITALS:**

1. On 10<sup>th</sup> December 2018 the Commonwealth and the Contractor entered into Contract 74999 for the provision of the Goods and/or Services described in the Economic and Social Infrastructure Program (ESIP) Papua New Guinea Contract.
2. The Contract has been amended in writing on 20<sup>th</sup> December 2019 (Amendment 1).
3. The Parties have now agreed to amend the Contract Conditions for the Goods and/or Services provided by the Contractor as set out in this Deed of Amendment ('Deed').

**OPERATIVE PROVISIONS:**

1. In this Deed, unless the contrary intention appears, a reference to "the Contract" is to the Contract referred to in **Recital A** above.
2. The Contract is amended as set out below:

Contract Details	Change all references to the Contractor as "Cardno Emerging Markets (Australia) Pty. Ltd" and replace with reference to the Contractor as "DT Global Asia Pacific Pty. Ltd" throughout the Contract.
Contract Details	<p>Replace the Contractor's (Management) Representative with the following:</p> <p>"Name: <b>s 47F(1)</b></p> <p>Position: Contractor Representative</p> <p>Street address: Level 5, 501 Swanston Street, Melbourne VIC, 3000</p> <p>Postal address: As Above</p> <p>E-mail: <b>s 47F(1)</b></p> <p>Telephone: <b>s 47F(1)</b></p>
Contract Details	Replace the Contractor's Escalation Representative with the following:

	<p>“Name: <b>s 47F(1)</b>  Position: <b>s 47F(1)</b>  Street address: Level 5, 501 Swanston Street, Melbourne VIC, 3000  Postal address: As Above  E-mail: <b>s 47F(1)</b>  Telephone: <b>s 47F(1)</b></p>
Contract Details	<p>Replace the Term with the following:</p> <p><b>“Commencement Date: 10 December 2018</b>  <b>Term: 10 December 2018 and 09 December 2026</b>  <b>Option Period: Nil”</b></p>
Part A: Conditions Clause 1.1	<p>Insert new definitions into the existing Clause 1.1 as follows:</p> <p><b>Black Economy Procurement Connected Policy</b> means the Black Economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019 available at <a href="http://www.treasury.gov.au/publication/p2019-t369466">www.treasury.gov.au/publication/p2019-t369466</a> .</p> <p><b>Statement of Tax Record</b> means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at <b>s 22(1)(a)(ii)</b>  <b>s 22(1)(a)(ii)</b></p> <p><b>Satisfactory</b> means meets the conditions set out in Part 6.b of the Black Economy Procurement Connected Policy or, if the circumstances in Part 6.c apply, the conditions set out in Part 8.b of the Black Economy Procurement Connected Policy.</p> <p><b>Valid</b> means valid in accordance with Part 7.c of the Black Economy Procurement Connected Policy.</p>
Part A: Conditions Clause 4.2	<p>Delete existing Clause 4.2 (contract term) of Part A and replace with a new Clause 4.2 as follows:</p> <p><b>‘4.2 The Contractor must commence provision of the Services by 10 December 2018 (Services Strat Date) and complete the provision of Services by 9 December 2026 (Services End Date) as set out in the Contract Details.</b></p>
Part A: Conditions Clause	<p>Delete existing Clause 4.3 (contract term) of Part A and replace with a new Clause 4.2 as follows:</p> <p><b>‘4.3 Not Applicable’</b></p>
Part A: Conditions	<p>Insert new Clause 33A as follows:</p> <p><b>33A Black Economy</b></p>

Contract 74999

Amendment No.2

<p>New Clause 33A</p>	<p>33A.1 It is Commonwealth Policy to increase the integrity of government procurement, as listed in the procurement connected policy guidelines: Black Economy – increasing the integrity of government procurement.</p> <p>33A.2 In this clause the Contractor warrants in relation to any first tier subcontractor it has engaged to deliver goods and/or services with an estimated value of over <b>s 47(1)(b)</b> that the Contractor either:</p> <ul style="list-style-type: none"> <li>(a) provided a valid and satisfactory Statement of Tax Record for the subcontractor as part of its response for the approach to market that resulted in the entry of this contract; or</li> <li>(b) holds a satisfactory Statement of Tax Record for the Subcontractor that was Valid at the time of entry into the subcontract by the supplier and the subcontractor.</li> </ul> <p>33A.3 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 the Contractor as soon as possible after they become a partner to the partnership.</p>
<p>Contract Conditions - Clause 53.1.m and n</p>	<p>Delete existing Conditions Clause 53.1 m and n. and replace with a new Clause 53.1 m and n as follows:</p> <ul style="list-style-type: none"> <li>m) <i>the Contractor does not take appropriate steps to manage child protection risks and respond to an allegation of suspicion of child harm with respect to this Contract, including a failure to inform DFAT immediately of any allegation or suspicion of child abuse, exploitation or harm or policy non-compliance in accordance with DFAT's Child Protection Policy;</i></li> <li>n) <i>the Contractor does not take appropriate steps to manage sexual exploitation, abuse and harassment risks and respond to an allegation of sexual exploitation, abuse, or harassment with respect to this Contract, including a failure to report to DFAT within 48 hours of any allegation of sexual exploitation, abuse or harassment in accordance with DFAT's Preventing Sexual Exploitation, Abuse and Harassment Policy and/or</i></li> </ul>
<p>Contract Conditions - Clause 53.n/o</p>	<p>Renumber existing Conditions Clause 53.1 n as Clause 53.1 o.</p>
<p>Contract Conditions - Clause 61</p>	<p>Delete existing Clause 16 (Compliance with DFAT policies) and replace with a new Clause 61 as follows:</p> <p>61. <i>The Contractor must ensure that it and its Personnel, contractors and subcontractors comply with all DFAT policies including:</i></p> <ul style="list-style-type: none"> <li>(a) <i>the disability inclusive strategy: 'Development for All 2015-2020: Strategy for strengthening disability-inclusive development in Australia's aid program, accessible on the DFAT website at: <a href="http://dfat.gov.au/about-us/publications/Pages/development-for-all-2015-2020.aspx">http://dfat.gov.au/about-us/publications/Pages/development-for-all-2015-2020.aspx</a>. Particular attention must be directed towards the</i></li> </ul>

*Strategy's guiding principles;*

(b) the 'Child Protection Policy', accessible on the DFAT website at: [www.dfat.gov.au/childprotection](http://www.dfat.gov.au/childprotection);

- (i) DFAT may conduct a review of the Contractor's 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 at its own cost.
- (ii) The Contractor must immediately report:  
any suspected or alleged case of child exploitation, abuse, harm or policy non-compliance by anyone within scope of the policy in connection with official duties or business to **s 22(1)(a)(ii)**
- (iii) In reporting to DFAT as required pursuant to Clause 61.(b)(ii), the Contractor must comply with the Privacy Act 1988 (Cth) and the privacy provisions in the Child Protection Incident Notification Form, accessible at [www.dfat.gov.au/childprotection](http://www.dfat.gov.au/childprotection)
- (iv) This Clause 61(b) is a material term of the Contract.

(c) the 'Preventing Sexual Exploitation, Abuse and Harassment Policy', accessible on the DFAT website at [www.dfat.gov.au/pseah](http://www.dfat.gov.au/pseah)

- (i) DFAT may conduct a review of the Contractor's compliance with DFAT's Preventing Sexual Exploitation, Abuse and Harassment 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 at its own cost.
  - (ii) In accordance with the DFAT Preventing Sexual Exploitation, Abuse and Harassment policy, the Contractor must report:  
Any alleged case of sexual exploitation, abuse and harassment that relates to provision of the Services to **s 22(1)(a)(ii)** within 48 hours of becoming aware of the case; and  
Any alleged incidents of non-compliance with DFAT's Preventing Sexual Exploitation, Abuse and Harassment Policy to **s 22(1)(a)(ii)** within five (5) Business Days of becoming aware of the incident.
  - (iii) In reporting to DFAT as required pursuant to Clause 61(c)(ii), the Contractor must comply with the Privacy Act 1988 (Cth), Principle 3 of the PSEAH Policy and the privacy provisions in the Sexual Exploitation, Abuse and Harassment (SEAH) Incident Notification Form, accessible at [www.dfat.gov.au/pseah](http://www.dfat.gov.au/pseah).
  - (iv) This Clause 61(c) is a material term of the Contract.
- (d) the 'Family Planning and the Aid Program: Guiding Principles' (2009) for the DFAT - Australian Aid Program, accessible on the DFAT website at: [www.dfat.gov.au](http://www.dfat.gov.au);
- (e) information accessibility requirements contained in the 'Guidelines for preparing accessible content' (2012) for the DFAT - Australian Aid

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	<p><i>Program, accessible on the DFAT website at: <a href="http://www.dfat.gov.au">www.dfat.gov.au</a>;</i></p> <p><i>(f) the 'Environmental and Social Safeguard Policy for the Aid Program' (2018), accessible on the DFAT website at: <a href="http://www.dfat.gov.au">www.dfat.gov.au</a>;</i></p> <p><i>(g) the Displacement and Resettlement of People in Development Activities Policy, accessible on the DFAT website at: <a href="http://www.dfat.gov.au">www.dfat.gov.au</a>;</i></p> <p><i>(h) 'Gender equality and women's empowerment strategy' (February 2016), accessible on the DFAT website at: <a href="http://www.dfat.gov.au">www.dfat.gov.au</a>;</i></p> <p><i>(i) 'Partnerships for Recovery: Australia's COVID-19 Development Response', accessible on the DFAT website at <a href="http://www.dfat.gov.au">www.dfat.gov.au</a>; and</i></p> <p><i>(j) 'Pacific Regional COVID-19 Development Response Plan', accessible on the DFAT website at <a href="http://www.dfat.gov.au">www.dfat.gov.au</a>.</i></p>
Part A Conditions Clause 72	<p>Insert a new clause 72: Indigenous Procurement Policy as follows:</p> <p>72.1 It is Commonwealth policy to stimulate indigenous entrepreneurship and business development, providing indigenous Australians with more opportunities to participate in the economy.</p> <p>72.2 The Contractor must use its reasonable endeavours to increase its purchasing from Indigenous Enterprises; and employment of indigenous Australians, in the delivery of the Goods and/or Services.</p> <p>72.3 Purchases from Indigenous Enterprises may be in the form of engagement of an Indigenous Enterprise as a subcontractor and use of indigenous suppliers in the Contractor's supply chain.</p> <p>72.4 Without limiting this Clause 72, the Contractor must comply with the Indigenous Participation Plan (Schedule 12).</p> <p>72.5 In this Clause 10.13, "Indigenous Enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating a business.</p>
Schedule 1: Statement of Requirements	<p>Replace existing <b>Schedule 1</b> with new <b>Schedule 1</b> as per <b>Attachment 1</b> of this Deed of Amendment. The clauses which have been replaced in Schedule 1 comprise:</p> <ul style="list-style-type: none"> <li>- 2. Impact and outcomes</li> <li>- 3. Roles and responsibilities</li> <li>- 4. The services</li> <li>- 5. Reporting</li> <li>- 6. Advisers and personnel; and</li> <li>- 7. Performance assessments.</li> </ul>
Schedule 2: Pricing Schedule	<b>s 47(1)(b)</b>
Schedule 2:	<b>s 47(1)(b)</b>

Contract 74999  
Amendment No.2

Pricing Schedule	
Schedule 2: Pricing Schedule	s 47(1)(b)
Schedule 12: Indigenous Participation Plan	Insert a new Schedule 12: Indigenous Participation Plan

3. The amendments set out in this Deed take effect on the date on which this Deed is signed by the Parties.
4. In all other respects the Parties confirm the Contract.

Contract 74999  
Amendment No.2

**EXECUTED AS A DEED** by the Commonwealth, by an authorised officer, and by the Contractor by its authorised officer(s).

**SIGNED** for and on behalf of the

**COMMONWEALTH OF AUSTRALIA** as represented by the Department of Foreign Affairs and Trade by:

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

in the presence of:

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

Signature of PGPA Delegate

Signature of witness

*Ewen Neil McDonald*

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

Name of Delegate

Name of witness

**SIGNED** for and on behalf of

**DT Global Asia Pacific PTY. LTD. ABN 23 006 170 869** by:

**s 47F(1)**

**s 47F(1)**

Signature of Director

Signature of ~~Director~~/Company Secretary

**s 47F(1)**

**s 47F(1)**

Name of Director

Name of ~~Director~~/Company Secretary

Contract 74999

Amendment No.2

**AMENDMENT SUMMARY**

The Contract is amended in accordance with the Standard Conditions clause headed **Amendment and Variations** of the Contract on the following dates relating to:

<b>Amendment Number</b>	<b>Date</b>	<b>Brief Summary of Amendment</b>	<b>Increase/Decrease in financial limit (AUD)</b>	<b>New Financial Limit (AUD)</b>
1	20/12/2019	Co-financing from third parties	s 47(1)(b)	s 47(1)(b)
2	November 2022	Exercise the full four year option period including updates to several conditions clauses, as well as updates to the Statements of Requirements and Pricing Schedule.	s 47(1)(b)	s 47(1)(b)

# SCHEDULE 1 – Statement of Requirements

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## 1. BACKGROUND

- 1.1. Papua New Guinea (PNG) faces challenges in providing quality infrastructure that meets the needs of its growing population and allows it to fulfil its growth potential.
- 1.2. This Economic and Social Infrastructure Program (ESIP) will support Papua New Guinea to address this challenge by improving the prioritisation, quality, and sustainability of infrastructure investment in PNG. ESIP will work across key economic and social infrastructure sectors at the project, sectoral and national levels. It will leverage project-level activities to create opportunities for deeper engagement in sector-wide planning and policy, and enable the identification and resolution of broader national level policy, financing and planning reforms and partnerships necessary for sustained long term change. ESIP will seek to influence change across these levels through the following key mechanisms: project management, budget and financing advisory services; technical assistance and capacity development for improved planning and prioritisation; and high level engagement in support of institutional and regulatory reform.
- 1.3. ESIP is envisaged as a sustained engagement over a 15-20 year period. The investment will be commissioned for an initial 4 year period, with an option to extend for a further 4 years.

## 2. IMPACT AND OUTCOMES

- 2.1. The developmental impact of the program is that women, men, people with disability and socially disadvantaged groups benefit equitably from safe, accessible and inclusive economic and social infrastructure.
- 2.2. The program works across five focus sectors: Energy; Water; Information, Communication and Technology (ICT); State-Owned Enterprise (SOE) Reform; and, Social Infrastructure.
- 2.3. In the initial phase of assistance (eight years), end of investment outcomes are:
  - (a) There is stronger infrastructure planning, management, implementation, and maintenance in focus sectors.
  - (b) Targeted SOE and government institutions (and other stakeholders) have stronger management capacity, institutional and partner arrangements to deliver quality and sustainable capital infrastructure projects.
  - (c) There is a stronger policy and legislative reform agenda for infrastructure investment.

## 3. ROLES AND RESPONSIBILITIES

- 3.1. The Contractor, through its team leader, will report to a designated representative of DFAT in Port Moresby and other Australian High Commission staff as directed.

### *The Australian High Commission*

- 3.2. The Australian High Commission will manage the delivery of ESIP on behalf of the Government of Papua New Guinea and the Government of Australia through this Contract.

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- 3.3. The Australian High Commission will play a key role in stakeholder engagement and policy dialogue alongside other stakeholders in the sector.
- 3.4. All proposed capital projects and major consultancies will require the written approval of the designated manager in the Australian High Commission prior to commencement through the issue of a Tasking Note. All Tasking Notes will, as a minimum, specify tasks required and agreed activity costs (including financial limits).
- 3.5. DFAT will issue Tasking Notes in the form specified in the draft contract. Tasking Note form and structure can be adjusted with written approval from DFAT (i.e. via email). Tasking Notes will not form a sub-agreement to this Contract.

#### 4. THE SERVICES

- 4.1. The Contractor must provide all Services necessary for the successful delivery of ESIP, including but not limited to, the items specified in this **Clause 4**.

##### *Provision of Logistical, Administrative and Secretariat Support*

- 4.2. The Contractor must provide logistical, administrative and secretariat support to workshops, site visits, networking activities and other events and meetings. As directed by DFAT, the Contractor must:
- (d) develop Terms of Reference and support for agreed governing bodies;
  - (e) provide and/or facilitate venue arrangements, including hire if necessary;
  - (f) organise and pay for travel and accommodation arrangements as necessary;
  - (g) prepare and collate research, reports and documents in preparation for meetings;
  - (h) provide analysis and recommendations to DFAT for consideration;
  - (i) chair and facilitate meetings and events as required; and
  - (j) provide secretariat support as required.

##### *Establishment and Management of ESIP offices and staff*

- 4.3. The Contractor must manage the provision, staffing and operation of an ESIP office in Port Moresby. The ESIP office must be appropriately staffed and readily accessible to respond to tasking and other requests issued by DFAT. The Contractor must:
- (a) ensure the effective management of all Personnel including:
    - (i) recruitment of suitably qualified Personnel to staff the ESIP office and deliver program objectives, as agreed with DFAT;
    - (ii) ensuring that all Personnel have up-to-date Terms of Reference which must be approved by DFAT if requested;
    - (iii) ensuring that proposed Personnel inputs are incorporated in plans and accounted for in the Monthly Financial Reports, including indicative duration of engagement, overall costs and anticipated outputs and objectives;

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- (iv) mobilising Personnel, including, organising travel, accommodation, visa and itinerary;
  - (v) provision of pre-mobilisation briefings to Personnel covering work health and safety, security; medical issues; cultural environment; ESIP objectives and context; operational procedures; and relevant contract obligations;
  - (vi) management of the performance of Personnel to ensure the successful delivery of ESIP objectives; and
  - (vii) ensuring compliance with all relevant legal, employment and tax regulations and provisions regarding the engagement of Personnel;
- (b) provide and maintain appropriate office facilities in Port Moresby including:
- (i) maintaining and equipping the offices, inclusive of meeting rooms and space for colocation of DFAT staff to facilitate program activities;
  - (ii) effectively managing office costs including rent, utilities, insurance, communications and consumables;
  - (iii) ensuring appropriate security and work health and safety arrangements are in place;
  - (iv) procurement and maintenance of vehicles; and
  - (v) maintain a functioning IT network system for the offices, including a user-friendly information database with remote access;
- (c) maintain information systems both electronic and manual for all Program documentation;
- (d) purchase equipment and materials for the office (including office equipment and furniture) in accordance with the principles of the Commonwealth Procurement Rules;
- (e) obtain and maintain all necessary office insurances; and
- (f) other administrative tasks as reasonably directed by DFAT.

*Establishment and Operation of ESIP, operational, financial and accounting systems*

- 4.4. The Contractor must ensure the effective management of ESIP operational, financial and accounting systems including:
- (a) developing and maintaining policy procedures manuals, including an ESIP Operations Manual;
  - (b) managing the ESIP finance and accounting system and records to ensure the provision of timely and accurate financial and procurement information including:
    - (i) preparation of Financial Reports of expenditure and financial forecasts on a monthly basis;
    - (ii) provision of ad hoc variation reports and forecasts as requested by DFAT.

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- (c) managing funding provided for ESIP activities, including:
  - (i) providing a suitable and effective management accounting and financial accounting function;
  - (ii) oversee procurement and grant management in accordance with Commonwealth requirements;
  - (iii) actively monitoring, controlling and reporting on program costs to ensure cost effectiveness;
- (d) maintaining auditable financial and administrative records up to date and to a standard consistent with Commonwealth requirements.

#### *Program Strategy and Planning*

4.5. The Contactor must provide comprehensive project management services to ensure the successful implementation of activities under ESIP, including:

- (a) establishing and managing program controls to ensure effective delivery of ESIP;
- (b) developing and maintaining detailed work plans and budgets for program activities in consultation with DFAT;
- (c) scheduling activities to ensure achievement of ESIP objectives;
- (d) ensuring accurate financial forecasting and budgeting against agreed annual budgets;
- (e) ensuring cost effective delivery of agreed program activities to maximise value for money and impact;
- (f) integrating findings of project MEL into the ESIP management approach;
- (g) ensuring that ESIP activities are consistent with Australian Government policy and legislative requirements, in particular but not limited to, gender, disability, child protection, fraud control and anti-corruption and environmental management.

4.6. The Contractor must implement activities as outlined with agreed Tasking Notes. These Tasking Notes must consider:

- (a) existing institutional, policy and regulatory issues affecting ESIP focal sectors and international best practice;
- (b) options available to deliver on identified infrastructure needs and priorities, including identification of key projects in each sector. This must:
  - (i) be prioritised through a rigorous and structured process;
  - (ii) include consideration of maintenance or rehabilitation of existing assets versus the cost of new construction;
  - (iii) adopt a holistic approach to planning and best practice network design;
  - (iv) consider whole of life costs of any proposed investments;

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- (v) balance fiscal and resource constraints against demand to maximise service delivery.
- (c) Project financial and structuring options which may include preparing investments plans. Investment plans would
  - (i) be consistent with GoPNG priorities, policies and plans, including the sectoral infrastructure prioritisation plan;
  - (ii) encourage private sector participation and investment into public infrastructure markets;
  - (iii) consider options for user fees and revenue charges to finance infrastructure development; and
  - (iv) be achievable in the context of fiscal constraints and resource availability.

4.7. The Contractor must support preparation of infrastructure projects in ESIP focal sectors, including:

- (a) preparation of scoping and feasibility studies, option appraisals, cost-benefit analyses and business cases as required to support project selection and optimisation;
- (b) providing commercial advisory support including undertaking:
  - (i) options analysis for delivery of priority projects to identify:
    - (A) prevailing legal architecture and frameworks;
    - (B) procurement strategy and contracting modality;
    - (C) investment plan including financing options;
    - (D) assessment of project financial viability;
    - (E) proposed capital structure;
    - (F) risk and liability allocation;
    - (G) corporate structure and ownership;
    - (H) accounting and tax advice with respect to project structure.
  - (i) project due diligence including addressing:
    - (A) legal issues;
    - (B) land tenure and access;
    - (C) regulatory issues;
    - (D) approvals and permitting;
    - (E) social safeguards including both socio-economic and environmental issues.

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4.8. The Contractor must provide comprehensive infrastructure design services to support the delivery of ESIP, including:

- (a) overseeing the review of project delivery options and concept development including:
  - (i) conducting an initial site inspection to assess the site and any proposed works;
  - (ii) facilitating community consultation on the proposed work and ensuring issues of land ownership (proof of land title) are addressed;
  - (iii) preparing an initial design concept, setting out key design requirements, options for project delivery and preliminary costing estimates;
  - (iv) undertaking an assessment of environmental and social impacts in accordance with relevant DFAT policies;
  - (v) liaising with relevant authorities to obtain approval for the works;
  - (vi) conducting value management workshops to assess and analyse options for project delivery as required through the project lifecycle;
  - (vii) preparing draft project plan based on delivery of the preferred option;
  - (viii) presenting the preferred approach to DFAT and the partner organisation to obtain endorsement and confirm agreed approach.
- (b) overseeing preparation of a detailed design reflecting the agreed approach and taking consideration of:
  - (i) any concerns raised by stakeholders during consultations;
  - (ii) the relationship between capital and recurrent costs, including asset management;
  - (iii) minimising servicing and maintenance requirements;
  - (iv) maximising durability;
  - (v) energy and water use minimisation and conservation;
  - (vi) waste minimisation;
  - (vii) climate change and the impact of potential natural disasters;
  - (viii) use of sustainable building materials with preference given to materials with high recycled content; locally or regionally produced products and materials; and sustainable timber sourced from plantation or managed forests (not old growth forests);
  - (ix) the potential needs of all user groups, including women, the elderly, children, and people with a disability;
  - (x) risk management, in particular security, work health and safety (WHS) and Asbestos Containing Materials management;
  - (xi) compliance with all relevant legislation, standards and codes;

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- (xii) compliance with and consideration of local and international best practice standards; and
  - (xiii) the agreed project budget.
- (c) arranging for independent technical reviews of designs;
- (d) assisting in the preparation of any submissions required to obtain approvals based on approved design;
- (e) liaising with authorities as required and incorporating any alterations required by authorities in the design;
- (f) overseeing workshops to optimise and ensure cost effectiveness of design against functional brief.

#### *Project Procurement and Grants*

4.9. The Contractor must support procurement and grants to counterparts in ESIP focal sectors including:

- (a) developing proforma approach to market and agreement documentation to ensure compliance with regulatory and legislative requirements;
- (b) market sounding and engagement including pre-tender industry briefings;
- (c) undertaking pre-tender technical review of projects including:
  - (i) review of functional and technical solutions;
  - (ii) assessment of estimated capital and operating costs;
  - (iii) re-examination of project feasibility, including capital cost estimates, demand and revenue projections and whole of life costs;
  - (iv) permissions, permits and approvals;
  - (v) review of alignment drawings and specifications;
  - (vi) site conditions and capacity;
  - (vii) integration and linkages with network;
  - (viii) environmental impact assessment;
  - (ix) socio-economic safeguards and WHS.
- (d) preparation and review of bidding documents, including evaluation procedures and risk assessment;
- (e) arranging industry briefings and marketing of procurements and investment opportunities in ESIP focal sectors;
- (f) undertaking bid evaluation and selection of a preferred bidder;

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- (g) chairing and overseeing assessment processes, including providing any necessary technical support;
- (h) issuing clarifications to tenderers as necessary;
- (i) providing negotiations support on commercial and legal matters;
- (j) conducting due diligence prior to finalisation of agreement arrangements;
- (k) preparation and submission of approval documentation;
- (l) drafting and finalisation of contractual documentation;
- (m) entering into agreements for provision of funding as well as direct delivery of capital projects;
- (n) advising all applicants of the outcome of selection processes, including providing debriefs to unsuccessful applicants as necessary. and
- (o) as per Conditions Clause 69, implement procurements and grants in line with the *principles* of the 'Commonwealth Procurement Rules' and the 'Commonwealth Grants Rules and Guidelines'.

#### *Project Management and Delivery*

4.10. The Contractor must support management and delivery of projects in ESIP focal sectors including:

- (a) overseeing the construction of works to reflect the agreed design, including:
  - (i) tendering for and engaging sub-contractors and consultants as necessary to complete the works, using an appropriate commercial construction contract consistent with recognised industry proforma;
  - (ii) ensuring that sub-contractors have all appropriate insurances, including professional indemnity and public liability insurances as necessary;
  - (iii) ensuring all necessary planning and construction approvals are in place before any work commences;
  - (iv) ensuring that a detailed program in relation to the project is maintained as current, including key deliverables for the works, hold points, and critical path items;
  - (v) ensuring the project plan is regularly reviewed and updated to clearly identify all components of construction and the works to be completed;
  - (vi) preparing a project risk management plan consistent with relevant ISO 9000 standards and incorporating a review of risks associated with the project and mitigating strategies, including risk workshops and allowing for evaluation of new risks as they emerge;
  - (vii) ensuring robust systems are in place to manage WHS, including a WHS Plan for each project which feeds into program level WHS reporting;

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- (viii) ensuring safe handling and disposal of hazardous material in accordance with Australian standards.
  - (ix) managing sub-contractors to ensure cost effective delivery within project budget, including negotiating any variations and variation costings;
  - (x) monitoring compliance with site safety, environmental management and social safeguards plans;
  - (xi) attending meetings and undertaking regular site visits to inspect and audit the works and ensure effective progress against the project plan;
  - (xii) actively monitoring the input costs of all activities to ensure cost effectiveness and value for money;
  - (xiii) ensuring claims are paid in line with contract and only on verification of works completed and certified by the Contractor as satisfactory;
  - (xiv) keeping DFAT informed on progress, opportunities and risks with respect to the agreed design, budget and schedule;
  - (xv) undertaking pre-commissioning inspection to identify construction defects and ensure rectification of any issues at no additional cost to DFAT;
  - (xvi) engaging an independent third party to provide DFAT with a certificate of verification confirming that the works have been satisfactorily completed in accordance with the approved design and building permissions; and
  - (xvii) ensuring that all contracts are monitored and completed in a timely and efficient manner and in accordance with the relevant terms and conditions.
- (b) providing regular advice to DFAT's nominated representative on outstanding contractual and agreement matters, including financial reporting and acquittals;
  - (c) overseeing management and rectification of defects during the defects liability period;
  - (d) supporting ongoing maintenance, including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed;
  - (e) assisting partners in the development of an asset management plan, including an operations and maintenance manual;
  - (f) supporting operational commissioning and handover of the asset to the designated counterpart;
  - (g) supporting counterpart organisations to put in place operations and maintenance contracts to ensure sustainability of assets once commissioned.

*Infrastructure Asset Management*

4.11. The Contractor must support improved asset management practises including:

- (a) the development of integrated asset management systems in key focal sectors including:

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- (i) asset management policies that support international best practice standards in asset management to align with the ISO 55000 suite;
- (ii) asset management strategies and objectives reflecting GoPNG sectoral priorities;
- (iii) asset management plans that encourage the adoption of a maintenance first approach to investment;
- (iv) asset management systems that ensure whole of life costs are factored into investment decision making;
- (v) performance, monitoring and review processes;
- (b) support preparation of asset management plans for existing assets;
- (c) undertake market testing reviews of existing projects to benchmark performance;
- (d) provide technical advice on management of existing assets and networks to achieve operational efficiency savings;
- (e) provide technical support for improved commercial management of existing assets and networks; and
- (f) provide technical support for network planning and optimisation.

*Risk Management*

4.12. The Contractor must actively monitor and manage program risks including:

- (a) incorporating a Fraud, Safeguards and Risk Control Policy in the Operations Manual that addresses risks to program delivery and risks associated with key DFAT policies such as fraud control, anti-corruption, child protection, resettlement and the environment;
- (b) developing a comprehensive risk register;
- (c) proactively identifying risks to the delivery of ESIP;
- (d) analysing the potential impact of risks to identify appropriate management strategies;
- (e) advising DFAT of potential risks to program delivery and proposed mitigation strategies as appropriate; and
- (f) taking appropriate action to avoid or mitigate risks.

*Work Health and Safety*

4.13. The Contractor must ensure robust systems are in place to manage work health and safety at ESIP activity sites. DFAT may request from the Contractor at any stage information related to WHS considerations relevant to this Contract including but not limited to risk assessments, completed WHS inspections, incident reports and audit reports. A Work, Health and Safety Management Plan must be developed.

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*Program Communications*

4.14. The Contractor must manage delivery and development of ESIP communications and public relations services including:

- (a) establishing and maintaining an ESIP Public Relations Strategy, to be updated and maintained as current;
- (b) promotion of ESIP to potential partners, DFAT bilateral and regional programs, and other stakeholders;
- (c) marketing funding opportunities and concept paper requests to potential ESIP partners;
- (d) establish and maintain processes and systems for organising and managing travel, logistics and coordination of events and large public meetings to promote ESIP;
- (e) identifying publicity opportunities for ESIP as directed by DFAT;
- (f) advising potential ESIP partners and other stakeholders on processes for project and activity design; and
- (g) ensuring ESIP funding and activities are appropriately branded in accordance with DFAT policy 'Branding aid projects and initiatives – for managing contractors, NGOs, multilaterals and other partners'.

*Monitoring and Evaluation*

4.15. The Contractor must monitor and evaluate the outcomes of ESIP, including by:

- (a) developing and maintaining an ESIP Monitoring Evaluation and Learning (MEL) Framework;
- (b) ensuring the Framework is consistent with the DFAT M&E Standards (available from [www.dfat.gov.au](http://www.dfat.gov.au)) and is updated annually;
- (c) resourcing and implementing all MEL activities as described in the Framework;
- (d) providing assistance for any independent evaluation to be conducted of ESIP, as requested by DFAT;
- (e) ensuring the MEL system:
  - (i) is adequately resourced and costed
  - (ii) incorporates different MEL approaches at the different levels (project, sector and whole-of-program) and for different interventions under the program;
  - (iii) is based on sound program logic/theory of change for the whole program and for each focus sector which are reviewed and revised at least annually;
  - (iv) includes identified performance indicators and evaluation questions which are directly related to the program outcomes and which have coinciding targets and baselines;

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- (v) identifies opportunities to work with partners including to review program logic and analyse collected data;
- (vi) includes periodic monitoring of relevant aspects of the program context;
- (vii) utilises/builds on monitoring systems of partners where appropriate but ensures appropriate verification of reported results where monitoring is primarily carried out by partners;
- (viii) requires sex disaggregated data;
- (ix) incorporates both quantitative and qualitative data; and
- (x) has strategies for the dissemination and use of information collected through MEL activities including for both reporting and program learning, and improvement.

*Integration of cross-cutting issues*

4.16. The Contractor will ensure cross-cutting issues of the Australian aid program (gender, disability, climate change and disaster risk reduction) and safeguards (environment, resettlement, PSEAH, modern slavery and child protection) and others if applicable, are actively considered throughout the life of the program, at all levels of the program and through monitoring and evaluation. This will include the following:

- (a) develop processes to facilitate good practice regarding gender equality and include these as part of the Gender and Social Inclusion Strategy;
- (b) ensure that all team members understand the importance of and methods for promoting gender equality and social inclusion;
- (c) prepare and lead engagement on sector level gender analysis reports for each focus sector that identify barriers for women's participation in each sector and options for increasing access and participation;
- (d) develop processes to facilitate good practice around adopt climate smart and disaster proof-infrastructure both in projects delivered directly by ESIP and those where ESIP engages at a policy level.

**5. REPORTING****s 47(1)(b)**



s 47(1)(b)

5.3. All reports must:

- (a) be provided in accordance with the requirements of the Contract;
- (b) be accurate and not misleading in any respect;
- (c) be prepared as directed by DFAT;
- (d) allow DFAT to properly assess progress under the Contract;
- (e) comply with DFAT's Guidelines for Preparing Accessible Content (available from DFAT's website);
- (f) be provided in Microsoft Word format (or Microsoft Excel format for spread sheets), unless otherwise approved or requested by DFAT;
- (g) not incorporate either the DFAT or the Contractor's logo;
- (h) be provided at the time specified in this Contract; and

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- (i) incorporate sufficient information which allows DFAT to monitor and assess the success of the Services in achieving the objectives of DFAT's policy framework.

**6. ADVISERS AND PERSONNEL**

- 6.1. The Contractor must engage and manage all Advisers and Locally Engaged Personnel required for the delivery of the Program, including at a minimum:

## Long-term Advisers (ARF)

- (a) Managing Director;
- (b) Director of Planning and Policy;
- (c) Director of Projects;
- (d) M&E and Safeguards' Senior Adviser;
- (e) Additional advisers as agreed between DFAT and the Contractor.

## Long-term Advisers (Non ARF)

- (f) As agreed between DFAT and the Contractor.

## Short-Term Advisers (ARF)

- (g) (g) As agreed between DFAT and the Contractor.

*Recruitment and engagement*

- 6.2. The Contractor must undertake the following services in respect of personnel:

- (a) employ best practice processes in identifying, selecting and engaging Personnel to ensure that the expected outcomes are fully met;
- (b) comply with relevant local and Australian legislation including articulating non-discriminative policies and wherever possible, endeavouring to recruit PNG nationals, including through using appropriate local recruitment strategies that align with local labour market rates;
- (c) ensure that all recruitment for Advisers is conducted in a manner that is consistent with the principles of the Commonwealth Procurement Rules (CPR's), including the core principle of "value for money" (incorporating both technical and price assessments), and all relevant regulatory and DFAT requirements on the use of Advisers as may be amended from time to time;
- (d) ensure that all internationally engaged Advisers are recruited in accordance with the Adviser Remuneration Framework and as specified under each positions' Terms of Reference agreed between the Contractor and DFAT;
- (e) facilitate the final approval by DFAT of the preferred internationally engaged candidates. If the preferred candidate is not approved at this step, the Contractor is to undertake further recruitment activities at the Contractor's Head Office expense;

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- (f) provide initial briefings and ongoing logistical and administrative support for Personnel that is tailored to their specific location; and
  - (g) encourage Advisers and Personnel to mentor, coach, provide on the job training and encourage a learning environment wherever possible with stakeholders.
- 6.3. DFAT reserves the right to reject the Contractor's preferred internationally engaged Adviser candidates at DFAT's absolute discretion and to require the Contractor to undertake further recruitment activities at the Contractor's Head Office expense. In addition, the Contractor must ensure they provide adequate administrative personnel to carry out the services required under the Contract.
- 6.4. The Contractor must ensure that all program personnel undergo appropriate security and referee checks, including police checks, to ensure they are appropriate and of good character. All checks are the responsibility of the Contractor with the cost borne by the Contractor and must be undertaken before finalisation of personnel appointments. The Contractor must confirm that all personnel already engaged by the Contractor were checked thoroughly prior to their appointment.
- 6.5. There are currently no positions identified as working with children.

**7. PERFORMANCE ASSESSMENTS***Performance Assessments - Contractor*

- 7.1. The assessment of the Contractor's performance shall be on an **annual basis** with the first assessment to be held no later than **one (1) year** after the Contract Start Date. DFAT shall manage the performance assessment process and may consult relevant stakeholders, counterparts of GoPNG, and others, as part of the Contractor Performance Assessment.
- 7.2. Performance criteria will be in accordance with **Schedule 9** of the Contract.
- 7.3. The Partner Performance Assessment (PPAs) shall focus on how well the services and response times have progressed over the previous period, as well as identifying any constraints or issues (on both parties) that need to be resolved or improved.
- 7.4. At the end of each year of the Contract, DFAT must notify the Contractor of the Draft Partner Performance Assessment outcomes. The Contractor will be given no less than fifteen (15) days to respond to the Draft Partner Performance Assessment. Outcomes may be discussed by DFAT and the Contractor at a formal meeting. Subsequent to this discussion, or after the Contractor's response if no discussion takes place, DFAT shall formally inform the Contractor of its assessment. The Contractor will have the opportunity to place its response on record within twenty eight (28) days.

*Performance Assessments - Advisers*

- 7.5. The Contractor must conduct Adviser Performance Assessments (APAs) on the four Specified Personnel in accordance with **Schedule 10** of this Contract. That is, the Managing Director, Directors and any Personnel as advised by DFAT. the requirement for the Contractor to conduct APAs beyond those identified positions is subject to discussion between DFAT the Contractor.

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- 7.6. The Contractor will seek feedback from DFAT and the GoPNG in their assessment of their Specified Personnel.

## SCHEDULE 2 – Pricing Schedule

s 47(1)(b)

# SCHEDULE 2B – Pricing Schedule

(10 December 2022 to 09 December 2026)

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s 47(1)(b)



s 47(1)(b)

## 7 CLAIMS FOR PAYMENT

- 7.1 The Contractor's correctly rendered invoice must be submitted when due pursuant to this **Schedule 2** in a form identifiable with the Services and in accordance with Clauses 44 (Invoicing) and 45 (Payment) of Part A. Invoices must also reference the Payment Event number(s) as notified by DFAT.
- 7.2 All claims for payment must be made to:
- Financial Operations Section  
Department of Foreign Affairs and Trade  
RG Casey Building  
John McEwen Crescent  
Barton ACT 0221  
AUSTRALIA
- 7.3 Tax invoices should be sent to the above address. Alternatively, DFAT shall accept electronic tax invoices. These can be sent to s 22(1)(a)(ii) and copy in the DFAT Activity Manager/Contact Person.





## Indigenous Participation Plan

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Preferred Citation: Indigenous Participation Plan

For further information, please contact:

s 47F(1)

DT Global

s 47F(1)

## Document History

Version	Effective Date	Description of Revision	Prepared by	Reviewed by
0	21/09/2022		s 47F(1)	

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This publication is intended to provide general information only and before entering into any particular transaction users should rely on their own enquiries, skill and care in using the information, check with primary sources, and seek independent advice.

# 1 Introduction

DT Global has a strong corporate commitment to supporting Indigenous initiatives across our global operations. We aspire to be a leader in the engagement of Indigenous peoples and businesses throughout our global supply chains. In Australia, we play a meaningful role in national efforts to advance reconciliation. DT Global seeks to embed Aboriginal and Torres Strait Islander peoples, businesses and perspectives in the delivery of all aspects of our business, and for those employees that identify as Aboriginal and Torres Strait Islander we are building solid foundations for capitalising on opportunities across our organisation.

In December 2018, DT Global established a Reconciliation Action Plan Working Group and developed a Reconciliation Action Plan (RAP). Our RAP allows us to advance practical action plans focused on relationships, respect, and opportunities to make social change and enhance Indigenous communities' economic prospects.

DT Global recognises that the reconciliation journey involves a continuous reflection and realignment process. The initial theme of 'Reflect' in DT Global's first RAP has allowed us to spend time developing and deepening relationships with a broad range of Aboriginal and Torres Strait Islander stakeholders, and refining our vision for reconciliation.

# 2 Key achievements to date

DT Global has already realised the following achievements as part of our reconciliation journey.

- In partnership with CareerTrackers, a national not-for-profit social enterprise that supports Indigenous students to undertake internship during the summer breaks from their studies. DT Global hosted seven CareerTracker Interns and two of our most recent interns successfully transitioned to employees within the business.
- Reviewed our Indigenous procurement policy and engaged a dedicated Indigenous procurement adviser to further increase Aboriginal and Torres Strait Islander participation in the delivery of DT Global-managed programs, with 100% of our domestic procurements targeting Indigenous businesses where they exist; and all DT Global-managed programs.
- In 2020, DT Global raised \$3,500 in support of Gunawirra's Christmas drive which reached 400 children in Indigenous communities.
- DT Global is a Supply Nation member and has established a database of Traditional Owners and Elders on the lands and waters for each of our offices nationally
- We commence all our meetings with an Acknowledgement of Country, and have integrated Indigenous cultural learnings, including Dreamtime stories, and engaged guest speakers to raise awareness and pride in Indigenous culture across our organisation.
- We have successfully embedded several policies, including for Cultural and Ceremonial Leave and Recognition of Culturally Significant Days, ensuring a culturally sensitive, inclusive and secure workplace for Indigenous employees.
- Developed online Learning Management System modules to support all personnel and project staff with Indigenous cultural awareness training.
- The Australian Volunteers Program, implemented by AVI and DT Global, has introduced Indigenous Pathways, an Indigenous led program that focuses on expanding and strengthening Aboriginal and Torres Strait Islander participation in international volunteering. Indigenous Pathways promotes inclusive, flexible and strength-based approaches.

# 3 What's Next?

Through 2022, we have been transitioning our Reflect RAP into an Innovate RAP, where we will articulate innovative strategies that align with our business needs, engage with Indigenous clients, employees and stakeholders.

DT Global takes a long-term, strategic approach to our engagement with Aboriginal and Torres Strait Islander communities. We work with DFAT to strengthen our efforts as it develops its First Nations foreign policy. We are fortunate to have developed strong relationships with Indigenous organisations including Ninti One Limited, Towcha Technology, Jabin Project and the Kinawy Chamber of Commerce as part of our international development programs. s 22(1)(a)(ii) a proud Bundjalung man, acts as adviser to our RAP Working Group. DT Global has entered a strategic partnership with Kennelly Constructions, a Supply Nation registered organisation, with the shared aim of setting a new benchmark for facilitating Indigenous participation outcomes.

## 4 How DT Global's organisational learning will be applied to ESIP

We appreciate and support Indigenous individuals, organisations, and networks in Australia and across our programs globally. ESIP explores potential partnerships and supply arrangements with Indigenous firms. We use specific strategies, informed by our existing relationships with Indigenous organisations such as Ninti One Limited and Coolamon Advisors, to promote Indigenous engagement opportunities and to encourage participation. To promote cultural awareness and participation of Aboriginal and Torres Strait Islander peoples and businesses across all components of ESIP, the SMT will take BlackCard training, to develop further their understanding and appreciation of Australia's diverse Aboriginal and Torres Strait Islander culture.