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s22(1)(a)(ii)



PROBITY

14. A probity briefing was provided via email to members of the Evaluation Committee (EC), Pricing Evaluation Team (PET), Subject Matter Expert (SME), the Delegate, Tender Secretariat and the Tender Manager (**Attachment 3**) on the 24 January 2020.
15. The required signed individual Conflict of Interest and Confidentiality Declarations forms have been received.
16. One potential conflict of interest was reported due to the sale of a personal vehicle to the incumbent provider (Black Swan International).
17. The Tender Manager assessed the details of the transaction and noted that the valuation appeared to be reasonable for a late model, low kilometre vehicle and is not materially different to an independent third party valuation (from "Red Book").
18. The individual's role in this Tender is s47F with no evaluation, scoring or voting privileges i.e. they play no active role in selecting a Tenderer.
19. Given the facts above, the Tender Manager assessed this transaction should not present as a threat to the probity of this Tender and recommended to the Delegate that no further action should be taken.

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Australian Government
Department of Foreign Affairs and Trade

**Contract for the Provision of Protective Security
and Alarm Monitoring Services in PNG**

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

and

Black Swan PNG Limited
1-77527 Foreign Company Number

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
1.1 Definitions	1
1.2 Interpretation	8
1.3 Entire agreement	9
1.4 Multiple parties	10
1.5 Precedence of documents	10
2. TERM OF THIS AGREEMENT	10
2.1 Term	10
2.2 Option to extend	10
3. SERVICES AND RELATIONSHIP	10
3.1 Independent The Contractor	10
3.2 The Contractor to provide Goods and/or Services	11
3.3 Delivery of Goods and/or Services	11
3.4 Acceptance of Goods and/or Services	11
3.5 Price and Payment	12
3.6 Invoicing	12
3.7 No withholdings	13
3.8 Goods and/or Services to other Commonwealth Entities	13
3.9 Performance Standards	14
3.10 Travel	14
4. STANDARDS	15
4.1 Representations and warranties of The Contractor	15
4.2 Applicable Standards	15
4.3 Suspension of work	16
5. DELIVERABLES	16
5.1 Title	16
5.2 Risk	16
5.3 Warranty and Warranty Period	16
6. TAXES AND DUTIES	17
7. THE CONTRACTOR'S RESPONSIBILITY	17
7.1 DFAT not responsible	17
7.2 Indemnity for DFAT	17
7.3 Use of DFAT Property	18
8. RECORDKEEPING AND AUDIT	18
8.1 Records of work	18
8.2 Access and inspection	19
8.3 Audit	19
9. INSURANCE	21
9.1 Insurance policies	21
9.2 Evidence of policies	21
10. INTELLECTUAL PROPERTY	21
10.1 Intellectual Property in Goods and/or Deliverables	21
10.2 Intellectual Property Licence	21
10.3 No infringement	22

10.4	Registration assistance	22
11.	CONTRACT MANAGEMENT	22
11.1	Contract Management Group	22
11.2	Performance Guarantee	23
11.3	Specified Personnel	23
11.4	Subcontracting.....	24
11.5	Notification to DFAT	25
12.	POLICY AND LAW.....	26
12.1	Compliance with laws and policies	26
12.2	Compliance with DFAT policies.....	26
12.3	Preventing Sexual Exploitation, Abuse and Harassment (PSEAH) Policy.....	26
12.4	Family Sexual Violence policy (FSV)	27
12.5	Conflicts of Interest	27
12.6	Indigenous Procurement Policy	28
12.7	Gender equality	28
12.8	Accessibility requirement for DFAT websites.....	28
12.9	Counter-Terrorism	29
12.10	Fraud	29
12.11	False and misleading information	30
12.12	Anti-Corruption	30
12.13	Security	31
12.14	Work Health and Safety	32
12.15	Black Economy	33
13.	CONFIDENTIALITY	34
13.1	Use and disclosure of Confidential Information	34
13.2	Disclosures to Personnel and advisers.....	35
13.3	Disclosures required by law	35
13.4	Restrictions on public announcements	36
13.5	Return or destruction of documents.....	36
13.6	Security and control.....	36
14.	PRIVACY	36
14.1	Compliance with Privacy Laws and policies	36
14.2	The Contractor responsible for obtaining consent and giving notice to individuals.....	37
14.3	No disclosure outside Australia	37
14.4	DFAT access and requests.....	37
14.5	General Obligations of The Contractor	37
15.	DISPUTE RESOLUTION	38
16.	FORCE MAJEURE	39
16.1	Notice and suspension of obligations	39
16.2	Effort to overcome	39
16.3	Alternative supply	39
16.4	Termination	39
17.	TERMINATION OF THIS CONTRACT	39
17.1	Immediate termination by DFAT for default.....	39
17.2	Immediate termination by DFAT for Insolvency Event	40
17.3	Termination or reduction for convenience.....	40
17.4	Transition out	41
17.5	Transition to an Incoming Party.....	42
18.	NOTICES.....	42
18.1	How to give an effective notice	42

18.2	Addresses for notices	42
19.	AMENDMENT AND ASSIGNMENT.....	42
19.1	Amendment	42
19.2	Assignment.....	43
20.	GENERAL	43
20.1	Governing law	43
20.2	Liability for expenses	43
20.3	Right of DFAT to recover money	43
20.4	Giving effect to this Contract	43
20.5	Variation of rights	44
20.6	Operation of indemnities	44
20.7	Survival of obligations	44
20.8	Inconsistency with other agreements	44
20.9	Counterparts	44

The Contractor

Schedule

1	Contract details.....	45
2	Statement of Requirements	47
3	Payment.....	81
4	Confidential Information	88
5	Confidentiality Deed Poll.....	89
6	Commonwealth Entity Access Form	91
7	Performance Guarantee	93

THIS CONTRACT is made on 1 July 2020

BETWEEN:

- (1) **The Commonwealth of Australia** as represented by the Department of Foreign Affairs and Trade ABN 47 065 634 525 (DFAT); and
- (2) **Black Swan PNG Limited (The Contractor)**
1-77527 Foreign Company Number.

RECITALS:

- (A) DFAT has a requirement for the provision of security services for staff of the Australian High Commission (AHC), the families of Australian based officers, visitors and other designated individuals in Port Moresby, Papua New Guinea, as directed by DFAT. Security services are also required to ensure a secure and safe environment for the AHC compound and residences of Australian based officers. These services ("Services") will include:
 - static guarding (unarmed) and dog patrols;
 - mobile vehicle patrolling, escort and response units;
 - radio, telephone, CCTV and alarm monitoring;
 - GPS device tracking; and
 - Security intelligence reporting.
- (B) The Contractor is a provider of security services and is registered to provide such services in Papua New Guinea.
- (C) The Contractor agrees to provide the Services to DFAT in accordance with the terms of this Contract.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this Contract:

Acceptance means that the Goods and/or Services have been accepted by the DFAT Contract Manager (or its nominee) in accordance with clause 3.4. **Accept** has a corresponding meaning.

Background IP means Intellectual Property, other than Third Party IP, 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 Goods and/or Services or is otherwise necessarily related to the functioning or operation of the Goods and/or Services.

Business Day means in relation to the doing of an action in a place, means any day in that place other than:

- (a) a Saturday, Sunday or public holiday; and
- (b) any day within the period beginning 25 December in a given year and ending on 1 January the following year (inclusive of those days).

Commencement Date means the date specified in Schedule 1 (Contract Details), or if no date is specified, then the date the Contract is executed by both parties and if executed on different dates, the date of execution of the second party.

Commonwealth means the Commonwealth of Australia, as represented by DFAT.

Commonwealth Entity has the same meaning as in the PGPA Act.

Confidential Information means:

- (a) any information that is identified as confidential in Schedule 4 (Confidential Information); and
- (b) any other information:
 - (i) that is commercially sensitive (not generally known or ascertainable); and
 - (ii) the disclosure of which would cause unreasonable detriment to the owner of the information or another party; and
 - (iii) that was provided with an express or implied understanding that it would remain confidential,

but does not include information that:

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

Contract means this contract, including the Schedules and any document or materials referred to in the Contract and incorporated by reference.

Contract Manager means the person so named for either DFAT or The Contractor in Schedule 1 (Contract Details), or any other person appointed as the contract manager by either DFAT or The Contractor as notified in writing to the other party.

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

Contract Price means the amount set out in Schedule 3 (Payment) made up of the agreed price for provision of the Goods and/or Services and any Reimbursable Costs.

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.

Controller has the same meaning as in the *Corporations Act 2001* (Cth) or its equivalent under the laws of Papua New Guinea.

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

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

Deliverables means all materials that must be developed and/or supplied by The Contractor in the course of providing the Goods and/or Services.

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

DFAT Property means all information, equipment, materials and facilities made available by DFAT to The Contractor for the purpose of this Contract.

Escalation Representative means the person so named for either DFAT or The Contractor in Schedule 1 (Contract Details) or any other person appointed as the escalation representative by either DFAT or The Contractor as notified in writing to the other party.

Expiry Date is the Contract end date specified in Schedule 1 (Contract Details), or if no expiry date is specified, then the date by which The Contractor must deliver the Goods and/or Services to DFAT as specified in Schedule 2 (Statement of Requirements).

Foreground IP means Intellectual Property which is created under or otherwise in connection with this Contract, other than Third Party IP.

Force Majeure Event means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance other than in The Contractor's

workforce, currency restriction, embargo, action or inaction by a government body, a failure of a public utility or common carrier, computer disruption due to the effects of a virus or other malicious code introduced other than through the acts or omissions of the party seeking relief or any other event that prevents or adversely affects performance of this Contract and which was not preventable or capable of being mitigated by reasonable risk management measures by the party seeking relief.

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

Former DFAT Employee means a person who was previously employed by DFAT:

- (a) whose employment ceased within the last 9 months; and
- (b) who was substantially involved in the design, preparation, appraisal, review and or daily management of this Contract.

General Interest Charge has the meaning given to it under section 8AAD of the *Taxation Administration Act 1953* (Cth).

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

GST means goods and services tax or value added tax whether imposed in Australia or elsewhere, but does not include any related fines, interest or penalties.

GST Law has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any regulations made pursuant to that Act and also includes any law relating to the imposition of GST in a jurisdiction other than Australia.

Transition Plan is the document developed by The Contractor in accordance with clause **Error! Reference source not found.** and which includes all the activities to be performed to hand over all Contract Material, assets and any other information, documents and materials relevant to the Contract, to DFAT or an incoming service provider appointed by DFAT in accordance with clause 17.4.

Indigenous Enterprise means an organisation that is 50 per cent or more Indigenous owned that is operating a business.

Insolvency Event means, in respect of a person, the appointment of, or an application made to a court for, an administrator, Controller, provisional liquidator, trustee for creditors or in bankruptcy, or any analogous person, to the person or any of the person's property.

Intellectual Property or IP means all present and future rights conferred by law in or in relation to any copyright (other than Moral Rights), trade marks,

designs, patents, circuit layouts, plant varieties, business and domain names, inventions and Confidential Information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable.

These rights include:

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

Licence means a non-exclusive licence of Intellectual Property, being a licence that:

- (a) is fully paid-up and does not require any additional payment by the licensee, including by way of Royalty or any other fee;
- (b) cannot be revoked or terminated by the licensor for any reason except upon expiration of a statutory protection term;
- (c) operates in perpetuity without any action required on the part of the licensee to renew or extend the licence;
- (d) operates on a world-wide basis; and
- (e) binds each successor in title to the owner of the Intellectual Property.

Loss includes any loss, damage, liability or obligation, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense on a solicitor and own client basis or a full indemnity basis whichever is greater) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

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

Payment Milestone means a milestone identified in Schedule 3 (Payment) for which The Contractor is entitled to receive a payment in accordance with this Contract.

Personal Information has the meaning given in any applicable Privacy Law.

Personnel means The Contractor's employees, officers, agents, contractors or Subcontractors (including their respective personnel) and Specified Personnel of The Contractor.

Privacy Laws means the *Privacy Act 1988* (Cth) and any other legislation in any jurisdiction imposing an obligation in relation to the collection, use, disclosure, storage or transmission of personal information (including without

limitation health information), including any regulations, rules, codes, principles or guidelines contained in or arising out of such legislation.

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

Reimbursable Costs means any reasonable costs which The Contractor has incurred or will incur under or in connection with the Contract as set out in Schedule 3 (Payment) and for which DFAT has agreed to reimburse The Contractor as part of the Contract Price.

Related Entity means an entity:

- (a) that controls, or can materially influence, The Contractor's activities or internal affairs;
- (b) that has the capacity to determine or materially influence the outcome of The Contractor's financial and operating policies;
- (c) that is financially interested in The Contractor's success or failure or apparent success or failure;
- (d) in whose success or failure or apparent success or failure The Contractor is financially interested;
- (e) is a holding company of The Contractor;
- (f) is a subsidiary of The Contractor;
- (g) is a subsidiary of a holding company of The Contractor;
- (h) has 1 or more Directors who are also Directors of The Contractor;
- (i) where a familial or spousal relationship exists between any of the principals, owners, directors, officers or other like persons of that entity and any of the principals, owners, directors, officers or like persons of The Contractor; or
- (j) owned by an employee of The Contractor, or in which an employee holds an interest.

Relevant List means any similar list to the World Bank List maintained by any other multilateral or government organisation.

Security Interest means:

- (a) a security interest that is subject to the *Personal Property Securities Act 2009* (Cth);
- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Services means the services described in Schedule 1.

Specified Personnel means the personnel listed as specified personnel in Schedule 1.

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

Statement of Requirements or **SOR** means Schedule 2.

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

Tax means a tax, levy, duty, charge, deduction or withholding, however described, that is imposed by law, together with any related interest, penalty, fine or other charge and includes any tax notionally imposed on DFAT or any other Commonwealth entity.

Term has the meaning provided in clause 2.1 and any extension to that period exercised by DFAT in accordance with clause 2.2.

Third Party IP means that Intellectual Property which is owned by a party other than DFAT or The Contractor and:

- (a) is embodied in, or attaches to, or is otherwise necessarily related to the use of the Goods and/or Deliverables or
- (b) which is required for the purpose of providing the Services under this Contract.

Use means, in relation to a Licence of any Intellectual Property granted to a licensee, to:

- (a) use, reproduce, adapt, exploit and modify the Intellectual Property in accordance with the licence; and
- (b) disclose, transmit and communicate the Intellectual Property:
 - (i) to the licensee's employees, officers and agents; and
 - (ii) to a sublicensee under a sublicense granted in accordance with the licence.

Warranty Period means the period of time listed in Schedule 1 (Contract Details), or the warranty period provided by the manufacturer of the Goods and/or Deliverables.

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>.

1.2 Interpretation

The following rules apply in interpreting this Contract, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement or another instrument, or a provision of a document (including this document) or agreement or another instrument, is to that document, agreement, instrument or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this Contract or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of legal entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word that suggests 1 gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (g) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.

- (h) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document
- (i) A reference to **dollars**, \$ is to an amount in Australian currency.
- (j) Any right that a party may have under this Contract is in addition to, and does not replace or limit, any other right that the party may have.
- (k) Any provision of this Contract that is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Contract enforceable, unless this would materially change the intended effect of this Contract.
- (l) Headings are for convenience only, and do not affect interpretation.
- (m) 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.
- (n) A party will not be disadvantaged by application of a rule of construction solely as a result of having put forward or drafted this Contract or any provision of this Contract.
- (o) Words and terms defined in the GST Law have the same meaning in clauses concerning GST.
- (p) If a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled to claim include GST which the representative member of the GST group of which the party is a member must pay and input tax credits to which the representative member is entitled.
- (q) The parties acknowledge that DFAT is notionally liable to pay GST under the GST Law, and a reference in this Contract to a liability to pay GST or an entitlement to an input tax credit includes any notional GST liability or input tax credit entitlement.

All information delivered as part of the Goods and/or Services must be written in English. Measurements of physical quantity must be in Australian legal units as prescribed under the *National Measurement Act 1960* (Cth), or if the Goods and/or Services are imported, units of measurement as agreed by the DFAT Contract Manager.

1.3 Entire Agreement

This Contract contains the entire agreement between the parties about its subject matter. So far as the law allows, any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

1.4 Multiple Parties

If a party to this Contract is made up of more than 1 person, or a term is used in this Contract to refer to more than 1 party, then unless otherwise specified in this Contract:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking relates to each of them separately.

1.5 Precedence of Documents

If there is any inconsistency between the provisions of this Contract, a descending order of precedence will be accorded to:

- (a) the conditions of Contract (including Contract Details in Schedule 1);
- (b) the Statement of Requirements (Schedule 2);
- (c) any other Schedule (other than Schedules 1 and 2); and
- (d) any document incorporated by express reference as part of the Contract,

so that the term in the higher ranked document, to the extent of the inconsistency, will prevail.

2. TERM OF THIS AGREEMENT

2.1 Term

This agreement commences on the Commencement Date and ends on the Expiry Date.

2.2 Option to Extend

DFAT may extend the Term for the period specified in Schedule 1 (Contract Details) by giving The Contractor notice in writing:

- (a) not less than 30 days before the date on which this Contract would otherwise expire; or
- (b) as otherwise agreed by the Parties.

3. SERVICES AND RELATIONSHIP

3.1 Independent Contractor

- (a) The relationship of DFAT and The Contractor under this Contract is that of principal and independent contractor. This Contract does not make either party a joint venturer, partner, employee or agent of the other.

- (b) No act or omission of either party is to bind the other party except as expressly set out in this Contract.

3.2 The Contractor to Provide Goods and/or Services

- (a) The Contractor must provide the Goods and/or Services as described in Schedule 2 (Statement of Requirements), in accordance with the terms of this Contract.
- (b) In performing its obligations under clause 1.1(a), The Contractor must:
 - (i) follow any reasonable directions issued by DFAT (including those issued by an Australian Embassy or High Commission); and
 - (i) cooperate with any third party appointed by DFAT to assist in the provision of the Goods and/or Services.

3.3 Delivery of Goods and/or Services

The Contractor must deliver all Goods and/or Services and associated Deliverables to be delivered under this Contract, to:

- (a) DFAT at the address specified in Schedule 1 (Contract Details); or
- (b) a third party as:
 - (i) specified in Schedule 1 (Contract Details); or
 - (ii) as otherwise nominated by DFAT.

3.4 Acceptance of Goods and/or Services

- (a) DFAT may accept or reject the relevant Goods and/or Services within 14 days after the Goods and/or Services are delivered.
- (b) DFAT may reject the Goods and/or Services where the Goods and/or Services do not comply with the requirements of this Contract.
- (c) If DFAT rejects the Goods and/or Services, DFAT may:
 - (i) require The Contractor to provide, at The Contractor's cost, replacement or rectified Goods and/or Services which comply with the requirements of this Contract within a period notified by DFAT; or
 - (ii) terminate this Contract in accordance with clause 17.1.
- (d) Where DFAT requires The Contractor to provide replacement or rectified Goods and/or Services in accordance with clause 3.4(i), these replacement or rectified Goods and/or Services will be subject to the same acceptance process as described in this clause 3.4.
- (e) If The Contractor fails to deliver replacement or rectified Goods and/or Services to:

(iii) the requisite standard; and

(iv) within the period notified by DFAT under clause 3.4(i),

DFAT may terminate this Contract in accordance with clause 17.1.

3.5 Price and Payment

(a) The Contract Price for the Goods and/or Services is set out in Schedule 3 (Payment). Unless specified in Schedule 3, or as otherwise agreed by the parties in accordance with clause 19.1 (Amendment), all prices and rates listed in the Contract are unalterable for the Term.

(b) DFAT must pay The Contractor for the provision of Goods and/or Services within 20 days following:

(i) receipt of a correctly rendered invoice in accordance with clause 3.6; and

(ii) DFAT's Acceptance of the satisfactory completion or delivery of the:

(A) Goods and/or Services; or

(B) relevant Payment Milestone,

in accordance with clause 3.4 and Schedule 3 (Payment).

(c) If The Contractor:

(iii) fails to provide a correctly rendered invoice in accordance with clause 3.6; or

(iv) The Contractor's performance of the Contract is in dispute,

DFAT may withhold all or part of any payment due to The Contractor under this Contract, until the relevant issue is rectified.

3.6 Invoicing

(a) The Contractor must invoice DFAT for the provision of Goods and/or Services in accordance with the agreed pricing in Schedule 3 (Payment).

(b) For the purposes of this clause 3.6 and Schedule 3 (Payment), an invoice is correctly rendered if:

(i) it is in the form of a valid tax invoice under the GST Law (or, where the supply of the Goods and/or Services is not a taxable supply, in the form of an invoice approved by DFAT);

(ii) it is accompanied by supporting documentation in respect of the Goods and/or Services in the form, and containing the information, reasonably required by DFAT;

- (iii) it is correctly addressed to DFAT and is correctly calculated;
 - (iv) it relates only to Goods and/or Services that have been delivered to DFAT in accordance with this Contract;
 - (v) Reimbursable Costs, and amounts owing to suppliers or Sub Contractors have been paid before submission of the invoice to DFAT;
 - (vi) the invoice details all Goods and/or Services provided by The Contractor against the prices referred to in Schedule 3 and records the amount payable in respect of each category of Goods and/or Services described in this Contract;
 - (vii) the amount claimed on the invoice is inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by The Contractor in providing the Goods and/or Services;
 - (viii) it is in Australian dollars converted in accordance with Schedule 3 (Exchange Rate Variation); and
 - (ii) an authorised representative of The Contractor has certified that the invoice is accurate and represents the Goods and/or Services provided.
- (b) The Contractor must ensure that the charges for, and GST applicable to, the supply of Goods and/or Services are itemised separately on the relevant invoice.

3.7 No Withholdings

- (a) DFAT is not responsible for withholding or remitting any payment for an impost such as Tax or superannuation in respect of The Contractor or any of its Personnel.
- (b) The Contractor indemnifies DFAT against, and must pay DFAT on demand, the amount of any Loss, liability or Tax incurred as a result of DFAT becoming liable to pay any Tax or withhold any amount in respect of employees, contractors or personnel of The Contractor (including by being treated as the employer of any such persons).

3.8 Goods and/or Services to other Commonwealth Entities

- (a) The Contractor may provide the Services to any other Commonwealth Entity at its request provided the entity completes and signs Schedule 6 (Commonwealth Entity Access Form) and delivers it to The Contractor for counter-signing.
- (b) The Commonwealth Entity is required to detail in the Commonwealth Entity Access Form the type and quantity of the Services it requires from The Contractor, which must be consistent with the Services detailed in

Schedule 2 (Statement of Requirements). Any pricing contained in the Commonwealth Entity Access Form or agreed with The Contractor must not be higher than the pricing offered by The Contractor to DFAT under this Contract as specified in Schedule 3 (Payment).

- (c) Where The Contractor enters into an agreement in accordance with Schedule 6 the terms and conditions of this Contract must apply to the Contract entered into by that Commonwealth Entity.

3.9 Performance Standards

- (a) The Contractor must at all times achieve or exceed the performance standards described in Schedule 2 (Statement of Requirement).
- (b) If The Contractor fails to provide the Goods and/or Services in accordance with the performance standards set out in Schedule 2 (Statement of Requirement), DFAT may, without prejudice to any other rights it may have under this Contract or at law:
 - (i) itself perform the relevant Services, or engage a third party to perform the Services or provide the relevant Goods; and/or
 - (ii) claim a rebate from The Contractor in the amount specified in Schedule 3 (if any); and/or
 - (iii) suspend payment of any amount due to The Contractor until DFAT is reasonably satisfied that The Contractor has taken reasonable steps to ensure that the relevant performance standard will not be breached again.

3.10 Travel

- (a) DFAT may require The Contractor or its Personnel to undertake travel in connection with the provision of the Goods and/or Services.
- (b) Unless otherwise agreed in writing by the DFAT Contract Manager, The Contractor will be responsible for making and paying for all travel arrangements for its Personnel, including flights, accommodation, visas, vaccinations and ensuring that its Personnel have an adequate level of travel insurance.
- (c) The Contractor must ensure that Contractor Personnel undertaking travel outside of Australia are aware of, and comply with, DFAT's Code of Conduct for Overseas Service and do not bring the reputation of DFAT or the Australian Government into disrepute.
- (d) All travel by Contractor Personnel must be undertaken on their own passport or equivalent travel document.
- (e) Subject to this clause 3.10, DFAT will reimburse The Contractor for any reasonable travel and accommodation expenses (at cost less any input tax credit to which The Contractor may be entitled to claim) and the

payment of travel allowances to Contractor Personnel, which must not exceed the travel allowance rates payable by DFAT to its non-SES APS staff.

4. STANDARDS

4.1 Representations and Warranties of The Contractor

- (a) The Contractor represents and warrants that:
 - (i) **(law, standards)** in providing the Goods and/or Services it will comply with the law and with relevant industry standards;
 - (ii) **(approvals, compliance)** obtain and maintain in full force any licences, accreditations, permits, registrations or regulatory approvals required by law and necessary for the provision of the Goods and/or Services;
 - (iii) **(directions)** in providing the Goods and/or Services it will comply with DFAT's reasonable directions;
 - (iv) **(materials)** it will use only first class materials fit for the purpose required by DFAT;
 - (v) **(Goods, Deliverables)** Goods and associated Deliverables provided will be:
 - (A) of acceptable quality within the meaning of the Australian Consumer Law, safe and durable;
 - (B) free from defects in design, performance and workmanship; and
 - (C) fit for purpose.
 - (vi) **(Services, Deliverables)** Services and associated Deliverables provided must be provided with due care and skill and must be fit for purpose; and
 - (vii) **(work)** the work performed to provide the Goods and/or Services will be provided by appropriately qualified, skilled and experienced Personnel and be done to a high standard in accordance with best practice.
- (b) The Contractor must promptly notify DFAT if The Contractor becomes aware that The Contractor will be unable to provide all or part of the Goods and/or Services in accordance with the requirements of this Contract.

4.2 Applicable Standards

Where an Australian Standard (or in its absence, international) is applicable for the Goods and/or Services, The Contractor must:

- (a) provide evidence of relevant certifications; and
- (b) comply with periodic compliance auditing by an independent assessor if requested by DFAT to verify this.

4.3 Suspension of Work

- (a) DFAT may direct The Contractor to stop work at any time if any aspect of the Goods and/or Services is not acceptable to DFAT.
- (b) DFAT may direct The Contractor to recommence work at any time, if it considers that The Contractor has rectified those aspects of the Goods and/or Services which were considered unacceptable for the purposes of clause 1.1(a).

5. DELIVERABLES

5.1 Title

Title to any Deliverables used by The Contractor in providing the Goods and/or Services passes to DFAT on delivery in accordance with clause 3.3.

5.2 Risk

Risk of Loss, damage or destruction of Deliverables or caused by the Deliverables remains with The Contractor until title passes.

5.3 Warranty and Warranty Period

- (a) Where The Contractor provides Services under this Contract, it must remedy any errors or defects in the Services that are notified to The Contractor by the DFAT Contract Manager during the Warranty Period specified in Schedule 1 (Contract Details). The liability of The Contractor to remedy errors or defects in the Services under this clause 5.3(a) will not apply to the extent that the defect was caused by DFAT.
- (b) Where Goods delivered under this Contract are manufactured:
 - (i) by The Contractor, The Contractor must remedy by repair, replacement or modification, defects in design, materials, or workmanship in the Goods if the defect is notified to The Contractor by the DFAT Contract Manager during the Warranty Period specified in Schedule 1 (Contract Details); or
 - (ii) by a third party, The Contractor, unless the DFAT Contract Manager otherwise allows, must ensure that its passes through to DFAT all warranties provided by that third party that are applicable to the Goods and must ensure that DFAT is entitled and able to claim against that third party's warranties.
- (c) The Contractor, unless otherwise agreed by the DFAT Contract Manager, must meet all costs of, and incidental to, the performance of any remedial work under this clause 5.3, and in respect of the warranty

provided under clause 5.3(b)(i) and (ii), including any packing, freight, disassembly and reassembly of the Goods.

- (d) If The Contractor fails, within the period of 30 days after notification by the DFAT Contract Manager, to rectify a defect pursuant to this clause 5.3, DFAT may, without limiting The Contractor's warranties and obligations under this clause 5.3, 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 in accordance with clause 20.3.

6. Taxes and Duties

- (a) All Taxes imposed or levied in Australia or overseas in connection with the Contract must be paid by The Contractor and, unless otherwise indicated, are included in the Contract Price.
- (b) The Contract Price includes GST for the Goods and/or Services to be delivered under this Contract which are taxable supplies within the meaning of the GST Act.
- (c) Payment by DFAT to The Contractor of the GST is subject to The Contractor providing DFAT with a valid Tax Invoice issued in accordance with the relevant provisions of the GST Act and regulations.
- (d) The total amount of GST payable by The Contractor, and for which The Contractor seeks payment from DFAT in respect of the supply must be shown as a separate item on The Contractor's Tax Invoice.
- (e) If the additional amount differs from the amount of GST payable by The Contractor, the additional amount must be adjusted between the Parties.
- (f) 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.

7. THE CONTRACTOR'S RESPONSIBILITY

7.1 DFAT not Responsible

The Contractor agrees that DFAT is not responsible for any aspect of the delivery of the Goods and/or provision of the Services.

7.2 Indemnity for DFAT

- (a) The Contractor must indemnify DFAT (and each of DFAT's employees, officers and agents, for whom DFAT holds the benefit of this indemnity in trust) against, and must pay DFAT (and each of DFAT's employees, officers and agents) on demand the amount of, all Losses, liabilities, costs, expenses and Taxes incurred in connection with, or in relation to, or arising out of, or as a consequence of:

- (i) the provision of the Goods and/or Services, including Loss, liability or damage caused by negligence of any person whatever;
 - (ii) a breach of this Contract by The Contractor;
 - (iii) any unlawful act or omission on the part of The Contractor or its Personnel, or
 - (iv) a claim for breach of IP rights or Moral Rights arising from any activity permitted under any license or assignment referred to in clause 10 or otherwise under this Contract.
- (b) The Contractor's liability to indemnify DFAT under clause 7.2(a) is reduced proportionally to the extent that any unlawful or negligent act or omission on the part of DFAT or any person through whom DFAT is acting (but not including The Contractor or Contractor Personnel) contributed to the Loss, liability, cost or expense.

7.3 Use of DFAT Property

- (a) The Contractor must not, and must ensure that its Personnel and Subcontractors do not, use any DFAT Property for any purpose other than:
- (i) a purpose for which the DFAT Property was designed, manufactured or constructed; and
 - (ii) for the provision of the Goods and/or Services.
- (b) The Contractor must:
- (i) protect all DFAT Property from loss or damage;
 - (ii) maintain the DFAT Property in good order; and
 - (iii) promptly return the DFAT Property to DFAT, upon request by DFAT.

8. RECORDKEEPING AND AUDIT

8.1 Records of Work

The Contractor must:

- (a) keep full and accurate records relating to:
- (i) its performance and/or compliance with any of its obligations under this Contract; and
 - (ii) any other matters specified in Schedule 1 (Contract Details) or Schedule 2 (Statement of Requirements), as applicable;
- (b) maintain the records:

- (i) in a manner that enables them to be conveniently and properly audited; and
 - (ii) for a period of at least 7 years from the date on which the records were created; and
- (c) give DFAT access to those records on request.

8.2 Access and Inspection

- (a) The Contractor must permit each of DFAT, the Commonwealth Auditor-General, 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
 - (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.
- (b) In the exercise of the rights under this clause 8.2, DFAT must use reasonable endeavours not to unreasonably interfere with The Contractor's performance of the Contract in any material respect.

8.3 Audit

- (a) DFAT or a representative of DFAT may conduct audits relevant to the performance of this Contract and/or compliance by The Contractor with any of its obligations under this Contract, including audits of The Contractor's relevant:
 - (i) invoices and reports;
 - (ii) material (including records, books and accounts) in the possession of The Contractor; and/or
 - (iii) other matters determined by DFAT to be relevant to the performance of The Contractor's obligations.
- (b) Where DFAT has reasonable concerns regarding any item in clause 8.3(a), DFAT may issue The Contractor with written notification of those concerns including outlining action to be undertaken by The Contractor. These actions may include:
 - (i) a request that The Contractor provide DFAT with additional documentation relating to the item of concern;

- (ii) that a director of The Contractor provide a statutory declaration confirming that the director has taken the action requested by DFAT;
 - (iii) a direction that The Contractor participate in a DFAT conducted internal audit;
 - (iv) a direction that The Contractor engage an independent, suitable organisation to undertake an assurance audit of the item or concern. DFAT must approve the terms of reference, including the type of audit assurance sought. The Contractor must provide a copy of the audit report to DFAT within 7 days after receipt by The Contractor.
- (c) The Contractor must respond to any notice received under clause 8.3(b) above within 14 Business Days or such longer period agreed between the parties.
- (d) If DFAT directs The Contractor, in accordance with clause 8.3(b) to engage an independent, suitable organisation to undertake an assurance 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, including the type of assurance required from the audit appropriate to the circumstances. DFAT must approve the terms of reference.
- (e) Where a direction has been made under clause 8.3(d), DFAT may, at its discretion, not make any further payments owed to The Contractor pending certification of the reliability of The Contractor's management systems and the veracity of the invoicing procedures and practices, and the eligibility of claims for payment.
- (f) This clause 8.3 applies for the term of this Contract and for a period of 7 years from the date of its expiration or termination.
- (g) 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.
- (h) Each Party is to bear its own costs in relation to:
 - (i) any access and inspection of The Contractor's premises in accordance with clause 8.2; or
 - (ii) audit of The Contractor undertaken in accordance with this clause 8.3.

9. INSURANCE

9.1 Insurance Policies

During the Term, The Contractor must make sure that it and its Personnel are covered by insurance policies, for at least the minimum amounts specified in Schedule 1 (Contract details), for:

- (a) workers' compensation insurance, as required by law;
- (b) reasonable professional negligence, public liability insurance and product insurance;
- (c) insurance for loss of or damage to parts and materials left or stored on the DFAT's premises by The Contractor or its Personnel before use or installation; and
- (d) any other type of insurance as specified in Schedule 1 (Contract Details).

9.2 Evidence of Policies

The Contractor must give DFAT a certificate of currency for each insurance policy on request.

10. INTELLECTUAL PROPERTY

10.1 Intellectual Property in Goods and/or Deliverables

- (a) Nothing in this Contract affects the ownership of Background IP or Third Party IP.
- (b) Ownership of all Foreground IP vests on its creation in DFAT.
- (c) For any Foreground IP that vests in DFAT, DFAT has the exclusive right to apply for registration of that Foreground IP in all countries in the world.
- (d) The Contractor must ensure that, before a Subcontractor commences work in relation to the Goods and/or Services, the Subcontractor has agreed that all Foreground IP vests on its creation in DFAT and that DFAT has the exclusive right to apply for registration of that Foreground IP in all countries in the world.

10.2 Intellectual Property Licence

- (a) The Contractor grants to DFAT a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence in respect of all Background IP and any Foreground IP owned by The Contractor, including the right to sub-license:
 - (i) to Use and dispose of the Goods and/or Services;
 - (ii) to complete the Goods and/or Services if this Contract is terminated; and

- (iii) to remedy defects or omissions in the Goods and/or Services in accordance with clause 5.3.
- (b) The Contractor must ensure that before a Subcontractor commences work in relation to the Goods and/or Services, DFAT is granted a licence in respect of all Background IP and any Foreground IP owned by or licensed to a Subcontractor on the same terms as clause 10.2(a).
- (c) The Contractor must ensure that DFAT is granted a licence to exercise all Third Party IP on the best available commercial terms.

10.3 No Infringement

The Contractor warrants that DFAT's use of The Contractor's Background IP or Third Party IP will not infringe any Intellectual Property rights or Moral Rights of any person nor give rise to any liability to make royalty or other payments to any person or entity.

10.4 Registration Assistance

The Contractor must give DFAT all information and assistance DFAT reasonably requests to facilitate any application for registration or protection of any Intellectual Property in any Goods and/or Services or the Deliverables and must execute and deliver any documents required in connection with any such application.

11. CONTRACT MANAGEMENT

11.1 Contract Management Group

- (a) Each Party must identify:
 - (i) a Contract Manager and any other persons nominated by either party to be responsible for or involved in operational coordination and contract management; and
 - (ii) 1 Escalation Representative to assist in any Dispute Resolution, both to be listed in Schedule 1, and to be changed as necessary in accordance with clause 19.1 (Amendment) .
- (b) If required by DFAT, the Contract Management Group may meet on a weekly basis for the first 3 months commencing on the Commencement Date and then at a frequency (at least monthly) to be agreed between the parties.
- (c) The Contractor must:
 - (i) attend and participate in all Contract Management Group meetings as directed by DFAT;
 - (ii) consult, cooperate with, and promptly provide input, information and advice to the Contract Management Group on progress and

performance of the Contract (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

- (iii) suggest actions to mitigate 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, or assist in the prompt resolution of these.
- (d) A representative of The Contractor must:
 - (i) take Minutes of all Contract Management Group Meetings; and
 - (ii) distribute copies of the Minutes to each member of the Contract Management Group within 10 Business Days after the relevant meeting.

11.2 Performance Guarantee

The Contractor must, at its expense, provide to DFAT, within 10 Business Days after the Commencement Date, the performance guarantee set out in Schedule 7 executed by a guarantor acceptable to DFAT, guaranteeing The Contractor's performance of its obligations under this Contract.

11.3 Specified Personnel

- (a) It is a material term of this Contract that, if Specified Personnel are identified in Schedule 1 (Contract Details), the Goods and/or Services must be provided by those Specified Personnel in their designated roles.
- (b) If The Contractor becomes aware that any Specified Personnel are unable to perform their role for a period of more than 10 Business Days, The Contractor must:
 - (i) notify DFAT; and
 - (ii) seek DFAT's approval for proposed replacement personnel, at no additional cost to DFAT.
- (c) 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 10 Business Days.
- (d) The Contractor must only propose replacement personnel with suitable skills and qualifications to act as replacement Specified Personnel and able to commence providing the Goods and/or Services under this Contract immediately.

- (e) DFAT may give notice to The Contractor in accordance with clause 18 (Notices) requiring The Contractor to remove any Personnel from work in respect of the provision of the Goods and/or Services and propose new Personnel in accordance with clauses 11.3(b) and 11.3(c) above.
- (f) The Contractor must not engage a currently serving Commonwealth employee, or a Former DFAT Employee, in any capacity in connection with the Goods and/or Services without DFAT's prior written approval.
- (i) If The Contractor does not replace Specified Personnel satisfactory to DFAT, DFAT may terminate this Contract under clause 17.1 (Immediate termination by DFAT for default).

11.4 Subcontracting

- (a) The Contractor must not Subcontract:
 - (i) the provision of the whole of the Goods and/or Services under this Contract, whether through a formal Subcontract or other arrangement, without the prior written consent of DFAT; or
 - (ii) any part of the provision of the Goods or Services to a person who is, or an entity, that is:
 - (A) on the DFAT Consolidated List, the Criminal Code Act List, the World Bank List or a Relevant List; or
 - (B) directly or indirectly engaged in any terrorism-related activities.
- (b) The Contractor must obtain DFAT's prior written approval to Subcontract with any third party, except Specified Personnel, where:
 - (i) the Subcontract is valued at **PGK231,429** or more; or
 - (ii) the proposed Subcontract is with a Related Entity.
- (c) In granting its approval under this clause 11.4(b), DFAT may impose any conditions it considers appropriate.
- (d) If The Contractor Subcontracts its performance of any part of the Contract, The Contractor remains liable for the acts, defaults and omissions of the Subcontractor as if they were The Contractor's acts, defaults and omissions.
- (e) Any Subcontract entered into by The Contractor for the performance of any part of the Contract must contain clauses:
 - (i) that authorise the Commonwealth to publish details of the name of the Subcontractor and the nature of the Goods and/or Services that the Subcontractor is subcontracted to perform; and

- (ii) under which the Subcontractor assumes all The Contractor's obligations (including all obligations under Australian Law), and gives all the warranties The Contractor gives, under this Contract to the extent they are relevant to the provision of the Goods and/or Services the Subcontractor is subcontracted to provide or perform.

11.5 Notification to DFAT

- (a) The Contractor must immediately notify DFAT if The Contractor, including its Personnel or a Subcontractor, is:
 - (i) subject to a change in Control of its legal entity;
 - (ii) on the DFAT Consolidated List, the Criminal Code Act List, the World Bank List or a Relevant List;
 - (iii) subject to any proceedings or informal process that could lead to listing on the DFAT Consolidated List, the Criminal Code Act List, the World Bank List or a Relevant List;
 - (iv) temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process;
 - (v) temporarily suspended from tendering by a donor of development funding other than the World Bank; and/or
 - (vi) the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.
- (b) The Contractor must inform DFAT immediately if The Contractor becomes aware of any issue that may affect its performance of this Contract and in particular its compliance with any of the following clauses:
 - (i) clause 4.1 (Warranties);
 - (ii) clause 9 (Insurances);
 - (iii) clause 11.4 (Subcontracting), (including the use or disclosure of Sensitive, Personal or Confidential Information, or any Security Incident that arises),
 - (iv) clause 12.1 (Compliance with Laws and Policies);
 - (v) clause 12.4 (Conflict of Interest);
 - (vi) clause 12.9 (Counter-terrorism);
 - (vii) clause 12.10 (Fraud);
 - (viii) clause 12.12 (Anti-Corruption);
 - (ix) clause 12.13 (Security);

- (x) clause 12.15 (Confidentiality); and
- (xi) clause 14 (Privacy).

12. POLICY AND LAW

12.1 Compliance with Laws and Policies

- (a) The Contractor is responsible for ensuring that it and its Personnel comply with:
 - (i) applicable laws of the Commonwealth, any state, territory or local authority and applicable Commonwealth policies as set out in this Contract or as notified to The Contractor from time to time; and
 - (ii) the applicable laws of any jurisdiction in which any part of the Goods and/or Services are performed or are to be delivered.
- (b) With respect to any monies payable either to DFAT by The Contractor or to The Contractor by DFAT, The Contractor must:
 - (i) comply with all relevant provisions of Commonwealth legislation, financial regulations and directions, except to the extent that the relevant obligation is imposed on DFAT; and
 - (ii) if required by DFAT, comply with any recommendation by the Commonwealth Auditor-General concerning the handling of DFAT's money.
- (c) In performing any part of this Contract The Contractor and its Personnel and Subcontractors must conduct themselves in a manner consistent with the *Public Service Act 1999* (Cth) (including the Australian Public Service Values and Employment Principles and Code of Conduct).

12.2 Compliance with DFAT Policies

- (a) The Contractor must ensure that it, and its Personnel, comply with all DFAT policies as advised to it by DFAT from time to time.
- (b) The Contractor must comply with, and ensure that its Personnel comply with, DFAT's '*Child Protection Policy*', accessible on the DFAT website at: www.dfat.gov.au.

12.3 Preventing Sexual Exploitation, Abuse and Harassment (PSEAH) Policy

- (a) The Contractor must comply, and must ensure that its Personnel comply, with DFAT's Preventing Sexual Exploitation, Abuse and Harassment Policy, including the reporting obligations, accessible on the DFAT website at <http://www.dfat.gov.au/pseah>.
- (b) 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 participate co-operatively in any such review.

- (c) In reporting to DFAT as required by clause 12.3(a), The Contractor must comply with the *Privacy Act 1988* (Cth) and the privacy provisions in the DFAT Sexual Exploitation, Abuse and Harassment Incident Notification Form, available on DFAT's website.

12.4 Family Sexual Violence Policy (FSV)

- (a) The Contractor must provide its employees with access to support services to assist its staff address family and sexual violence (FSV) and help reduce its impact on job performance.
- (b) The Contractor must demonstrate it has an FSV policy in place, or if not already in existence, promulgate an FSV policy within six months. The aim of the policy is to ensure The Contractor:
 - (i) recognises the impact of family and sexual violence on its employees and how it affects the workplace;
 - (ii) encourages a supportive and non-judgmental workplace in which survivors of FSV feel safe to come forward and seek support;
 - (iii) articulates employer responses to employees whose work life is affected by FSV;
 - (iv) provides a safe and productive workplace for all its employees;
 - (v) provides a comprehensive set of support measures for affected employees; and
 - (vi) demonstrates best practice.

12.5 Conflicts of Interest

- (a) The Contractor warrants that, to the best of its knowledge after making diligent enquiries, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract by itself or by any of its Personnel.
- (b) The Contractor must notify DFAT promptly in writing if such a conflict of interest arises, or appears likely to arise.
- (c) The Contractor must:
 - (i) obtain conflict of interest declarations from its Personnel;
 - (ii) maintain a register of conflict of interest declarations received;
 - (iii) ensure that the register is updated every 12 months; and
 - (iv) make this register available upon request by DFAT.

- (d) Within 7 days after giving notice under clause 12.4(b), The Contractor must notify DFAT in writing of the steps it will take to resolve the issue. If DFAT considers those steps are inadequate, it may direct The Contractor to resolve the issue in a manner proposed by DFAT.
- (e) If The Contractor does not comply with a direction issued by DFAT under clause 12.4(d), DFAT may terminate this Contract in accordance with clause 17.1.

12.6 Indigenous Procurement Policy

- (a) It is Commonwealth policy to stimulate indigenous entrepreneurship and business development, providing indigenous Australians with more opportunities to participate in the economy.
- (b) The Contractor should use its reasonable endeavours to increase its:
 - (i) purchasing from Indigenous enterprises; and
 - (ii) employment of indigenous Australians,in provision of the Goods and/or Services.
- (c) Purchases from Indigenous enterprises may be in the form of:
 - (i) engagement of an Indigenous enterprise as a subcontractor; and
 - (ii) use of indigenous suppliers in The Contractor's supply chain.

12.7 Gender Equality

- (a) 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**).
- (b) If The Contractor is subject to the WGE Act and becomes non-compliant with the WGE Act during the Term, The Contractor must notify the DFAT Contract Manager and DFAT reserves the right to provide The Contractor with directions regarding compliance.
- (c) If the Term exceeds 18 months and the WGE Act applies to The Contractor, The Contractor must provide a current letter of compliance with the WGE Act within 18 months after the Commencement Date and following this, annually, to the DFAT Contract Manager.

12.8 Accessibility Requirement for DFAT Websites

If the Implementation 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.

12.9 Counter-Terrorism

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/or individuals subject to sanctions under the:
 - (i) *Charter of the United Nations Act 1945* (Cth) and any regulations made under that Act; and
 - (ii) *Autonomous Sanctions Act 2011* (Cth) and any regulations made under that Act; or
- (c) organisations and/or individuals on the World Bank List or on a Relevant List.

12.10 Fraud

- (a) The Contractor must not and must ensure that any Personnel do not, engage in any Fraud and must prevent and detect Fraud, including Fraud by its Personnel.
- (b) The Contractor is responsible for preventing and detecting Fraud including Fraud within those functions performed by any Subcontractor relating to the performance of this Contract.
- (c) The Contractor must ensure that Personnel are responsible and accountable to The Contractor for preventing, detecting and immediately reporting any Fraud as part of their routine responsibilities. The Contractor must ensure that Personnel who are not employed by The Contractor report suspected Fraud to The Contractor within 5 Business Days.
- (d) If The Contractor becomes aware of a Fraud relating to the performance of this Contract, it must report the matter to DFAT in writing within 5 Business Days of becoming aware of the Fraud.
- (e) The Contractor must in consultation with DFAT, develop and implement a strategy to investigate the Fraud, and must investigate the Fraud in accordance with any direction or standards required by DFAT.
- (f) If the investigation finds any personnel have engaged in Fraud The Contractor in consultation with DFAT must take all necessary action to recover, replace or return to DFAT any misappropriated funds or property. Such action may also include reporting the fraud or allegation of fraud to the appropriate authorities.
- (g) The Contractor must keep DFAT informed, in writing, on a monthly basis, of the progress of its efforts to recover any DFAT material or funds, including any recovery action.

- (h) If an investigation finds that The Contractor or any of its Personnel have engaged in suspected Fraud, or if DFAT discovers that a Fraud has not been reported to DFAT in accordance with clause 12.10(d), DFAT reserves the right to:
 - (i) terminate this Contract in accordance with clause 17.1; and
 - (ii) not enter into any further Contracts 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.
- (i) Without limitation to DFAT's rights under clauses 17.1 and 12.10(h), if The Contractor fails to comply with its obligations under this clause 12.8 with respect to a Fraud, DFAT may give The Contractor a written notice that specifies:
 - (i) the obligations with which The Contractor has not complied;
 - (ii) the action that The Contractor must take to rectify the failure; and
 - (iii) the date by which The Contractor must rectify the failure.
- (j) If The Contractor does not comply with a notice issued pursuant to clause 12.10(i), DFAT reserves the right to:
 - (i) terminate this Contract in accordance with clause 17.1; and/or
 - (ii) exercise its rights pursuant to clause 12.10(h);
 - (iii) withhold payments, or parts of payments, due to The Contractor under this Contract until The Contractor has complied with the notice; and/or
 - (iv) decline to enter into any further Contracts until The Contractor has rectified the failure.
- (k) This clause survives the termination or expiration of this Contract, including with respect to any Fraud which is not detected until after this Contract has expired.

12.11 False and Misleading Information

The Contractor acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth). The Contractor must ensure that any Subcontractors are made aware, in writing, of this information.

12.12 Anti-corruption

- (a) The Contractor warrants that neither it nor any of its Personnel will make or cause to be made, receive or seek to receive any offer, gift, payment

or benefit of any kind that could be construed as an illegal or corrupt act, either directly or indirectly to any party, in relation to the execution of this Contract.

- (b) The Contractor must not, and must ensure that its Personnel do not make or cause to be made, or receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to this Contract.
- (c) Any breach of this clause 12.12 will entitle DFAT to issue a notice under clause 17.1 (Termination for default) to terminate this Contract immediately.

12.13 Security

- (a) The Contractor is responsible for the security of Personnel and must ensure that both The Contractor and its Personnel comply with this clause 12.13.
- (b) If, during the Term, The Contractor is required to access or otherwise gains access to official information or security classified information, it must comply with:
 - (i) all relevant security requirements specified in the *Commonwealth Protective Security Policy Framework* as a minimum standards;
 - (ii) the security requirements specified in this Contract; and
 - (iii) any variations or additions to the security requirements under this clause 12.13 of which DFAT, in its absolute discretion, notifies The Contractor in accordance with clause 18 (Notices). Such changes to the security requirements must be implemented by The Contractor from the date specified in the notice, or, if no date is specified, 5 Business Days after the receipt of the notice.
- (c) 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.
- (d) Personnel engaged by or on behalf of The Contractor, must meet all necessary security assessments and standards required by DFAT. If requested by DFAT, The Contractor must ensure all nominated Personnel:
 - (i) undergo an identity check;
 - (ii) undergo a National Police Clearance check or equivalent;
 - (iii) sign any forms notified to The Contractor by DFAT from time to time;

- (iv) hold 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;
 - (v) attend and complete a DFAT Security Awareness Course prior to, or as soon as possible after, the Commencement Date at The Contractor's cost; and
 - (vi) comply with any other security awareness requirements reasonably requested by DFAT.
- (e) DFAT will facilitate the obtaining of security clearances for Personnel. The Contractor must bear the cost of security clearances for its Personnel. If the security requirements are redefined, The Contractor is entitled to apply to DFAT for a price variation.
- (f) The Contractor acknowledges that if any of its Personnel lose their security clearance or cause a security breach, DFAT may:
 - (i) after consultation with The Contractor, require the replacement of that Personnel; or
 - (ii) terminate this Contract in accordance with clause 17.1.
- (g) The Contractor must:
 - (i) notify DFAT immediately on becoming aware of any security incident or security breach and comply with all DFAT directions to rectify the security issue; and
 - (ii) 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.

12.14 Work Health and Safety

- (a) The Contractor must perform its, and must ensure that its Personnel, perform their, obligations under this Contract:
 - (i). in a manner which ensures that DFAT meets its obligations under the *Australian Work Health and Safety Act 2011* (Cth) (**WHS Act**);
 - (ii). in compliance with the WHS Act, to the full extent that the WHS Act applies to The Contractor; and
 - (iii) an accordance with any equivalent workplace health and safety legislation or regulations applying in Papua New Guinea.
- (b) The Contractor must participant in, and must ensure that DFAT Personnel are able to participate in:

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

12.15 Black Economy

- (a) In this clause 12.15:

Black Economy Procurement Connected Policy means the *Black economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019* available at <https://treasury.gov.au/publication/p2019-t369466>.

Satisfactory 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 of the Black Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Black Economy Procurement Connected Policy.

Statement of Tax Record means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process

set out at
[https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting an STR](https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting%20an%20STR).

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

- (b) 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 \$4 million (GST inclusive) that The Contractor either:
 - (i) 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
 - (ii) holds a Satisfactory Statement of Tax Record for the Subcontractor that was Valid at the time of entry into the subcontract by The Contractor and the Subcontractor.
- (c) If The Contractor is a partnership, The Contractor will ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the partner is provided to DFAT as soon as possible after they become a partner to the partnership.
- (d) The Contractor warrants that at the Contract Commencement Date it holds a Valid and Satisfactory Statement of Tax Record.
- (e) The Contractor must hold a Valid and Satisfactory Statement of Tax Record at all times during the Term (including any extension) and, on request by DFAT, provide to DFAT a copy of any such Statement of Tax Record.
- (f) Without limiting its other rights under this Contract or at law, any failure by The Contractor to comply with the requirements outlined in clauses 12.15(d) and 12.15(e) will be a breach of this Contract.
- (g) The Contractor must ensure that any first tier Subcontractor engaged to deliver Goods and/or Services with an estimated value of over \$4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant Subcontract.
- (h) The Contractor must retain a copy of any Statement of Tax Record held by any first tier Subcontractor in accordance with clause 12.15(g) and must, on request by DFAT, provide to DFAT a copy of any such Statement of Tax Record.

13. **CONFIDENTIALITY**

13.1 **Use and Disclosure of Confidential Information**

- (a) Each party must not:

- (i) use any Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Contract; or
 - (ii) disclose any of the Confidential Information except in accordance with clauses 13.2 or 13.3.
- (b) If requested by DFAT, The Contractor must ensure that Contractor Personnel engaged in the performance of this Contract give a written undertaking in the form of a deed of confidentiality as set out in Schedule 5. The Contractor must give DFAT properly executed deeds as required by this clause 13.1(b).

13.2 Disclosures to Personnel and Advisers

- (a) Each party may disclose Confidential Information to the Personnel or its legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the party to perform its obligations or to exercise its rights under this Contract; and
 - (ii) prior to disclosure, the party informs the person of the party's obligations in relation to the Confidential Information under this Contract and obtains an undertaking from the person to comply with those obligations.
- (b) Each party must ensure that any person to whom Confidential Information is disclosed under clause 13.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 13.2(a).

13.3 Disclosures Required by Law

- (a) Subject to clause 13.3(b), a party may disclose Confidential Information that the party is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Commonwealth Entity, stock exchange or other regulatory body; or
 - (iii) when disclosure is made by DFAT, a Minister or Parliament in accordance with statutory or portfolio duties or functions, or for public accountability reasons, including following a request by Parliament, a parliamentary committee or a Minister.
- (b) If a party is required to make a disclosure under clause 13.3(a), the party must:
 - (i) to the extent possible, notify the other party immediately it anticipates that it may be required to disclose any of the Confidential Information;

- (iii) consult with and follow any reasonable requests from the other party to minimise disclosure; and
- (iv) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

13.4 Restrictions on Public Announcements

Subject to clause 13.3, The Contractor must not directly or indirectly make a public announcement about or comment on the existence, subject matter or terms of this Contract without DFAT's prior written consent except to the extent that the disclosure is required by law.

13.5 Return or Destruction of Documents

On termination of this Contract and subject to any laws regarding the maintenance of records, each party must immediately:

- (a) deliver to the other party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of each party or of any person to whom the party has given access.

13.6 Security and Control

Each party must:

- (a) keep effective control of Confidential Information; and
- (b) ensure that the Confidential Information is secure from theft, loss, damage or unauthorised access or alteration.

14. PRIVACY

14.1 Compliance with Privacy Laws and Policies

The Contractor must ensure that all of its dealings with Personal Information in connection with this Contract:

- (a) conform with its obligations under the Privacy Laws;
- (b) to the extent that different Privacy Laws apply to each party, and without limiting clause 14.1(a), conform with the obligations applicable to DFAT as if they were binding upon The Contractor; and

- (c) conform, to the extent relevant to this Contract, with the requirements of DFAT's published privacy policies (as amended from time to time).

14.2 The Contractor Responsible for Obtaining Consent and Giving Notice to Individuals

- (a) To the extent (if at all) that The Contractor collects, directs another person to collect or is responsible for collecting Personal Information (other than from DFAT) which is provided to DFAT under this Contract, The Contractor is responsible for obtaining all relevant consents and providing all relevant notices so as to enable both The Contractor and DFAT to meet their respective obligations under any Privacy Laws.
- (b) Without limiting clause 14.2(a), if The Contractor gives DFAT Personal Information about a third party individual, or directs a third party individual to give their Personal Information to DFAT, The Contractor must show that individual a copy of DFAT's current published privacy policy so that they understand the manner in which their Personal Information may be used or disclosed by DFAT.

14.3 No Disclosure Outside Papua New Guinea

The Contractor must not disclose any Personal Information acquired from or on behalf of DFAT under this Contract outside Papua New Guinea without the prior consent of DFAT.

14.4 DFAT access and requests

- (a) The Contractor must, on reasonable request by DFAT, give DFAT access to any Personal Information acquired from DFAT or in connection with this Contract.
- (b) Without limiting clauses 14.1, 14.2 or 14.3 The Contractor must comply with any reasonable request by DFAT made for the purpose of ensuring either party's compliance with:
 - (i) obligations arising under the Privacy Laws;
 - (ii) any applicable guideline, recommendation, direction or determination issued by the Office of the Australian Information Commissioner (or such other privacy authority with jurisdiction over either party) or
 - (iii) DFAT's privacy policy.

14.5 General Obligations of The Contractor

The Contractor must:

- (a) ensure that its employees, officers, contractors and agents who deal with Personal Information in connection with this Contract are aware of and comply with BSI's obligations under this Contract in relation to such activities or practices;

- (b) immediately notify DFAT if The Contractor becomes aware of a breach or possible breach of its obligations in relation to Personal Information under this Contract; and
- (c) indemnify DFAT against any loss or damage suffered by DFAT as a result of a breach by The Contractor of its obligations in relation to Personal Information under this Contract.

15. **DISPUTE RESOLUTION**

- (a) If a dispute arises under this Contract, prior to commencing any arbitration or court proceedings, other than for:
 - (i) interlocutory relief;
 - (ii) where an authority of the Commonwealth, a state or territory is investigating a breach or suspected breach of the law by The Contractor; or
 - (iii) when 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:
 - (iv) the Party claiming that there is a dispute must give the other a written notice setting out the nature of the dispute;
 - (v) within 10 Business Days following notice, attempt to resolve the dispute through direct negotiation between The Contractor Contract Manager and the DFAT Contract Manager;
 - (vi) if still unresolved, refer the dispute to each Party's Escalation Representative, who must in good faith work to resolve the dispute within a further 10 Business Days or any other agreed period;
 - (vii) if still unresolved, the Parties have 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, or other form of alternative dispute resolution, rather than litigation or arbitration; and
 - (viii) if the dispute is not resolved in that time or there is no Contract to, or submission of the dispute to mediation or conciliation within a further 30 Business Days, then either Party may commence legal proceedings.
- (b) Subject to clause 3.5, 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.

16. FORCE MAJEURE

16.1 Notice and Suspension of Obligations

If a party to this Contract is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must immediately give the other party prompt written notice of that fact including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it; and
- (b) the obligations under this Contract of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

16.2 Effort to Overcome

A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. This does not require a party to settle any industrial dispute in any way that it considers inappropriate.

16.3 Alternative Supply

During any period in which a party to this Contract is not performing obligations because of a claimed Force Majeure Event, the other party may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the party claiming the Force Majeure Event is not performing without incurring any liability to that party.

16.4 Termination

If a Force Majeure Event continues for more than 1 month, the parties will confer on future management of the Contract and, failing a mutually agreed resolution, either party may terminate this Contract by giving at least 10 Business Days' notice to the other party.

17. TERMINATION OF THIS CONTRACT

17.1 Immediate Termination by DFAT for Default

DFAT may terminate this Contract immediately by notice to The Contractor if The Contractor breaches this Contract, and:

- (a) the breach is not capable of remedy; or

- (b) does not remedy a breach of this Contract which is capable of remedy within the period specified by DFAT in a notice of default issued by DFAT to The Contractor requiring The Contractor to remedy the breach.

17.2 Immediate Termination by DFAT for Insolvency Event

DFAT may terminate this Contract immediately by notice to The Contractor if an Insolvency Event occurs in respect of The Contractor.

17.3 Termination or Reduction for Convenience

- (a) DFAT has an unfettered discretion to, by notice to The Contractor to:
 - (i) terminate; or
 - (ii) reduce the scope of,this Contract for convenience from the time specified in that notice.
- (b) Without limiting DFAT's rights under this Contract, at law or in equity, DFAT's rights under this clause 17.3 include the discretion to terminate or reduce the scope of this Contract if DFAT determines that the continuation of this Contract, 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.
- (c) If DFAT exercises its right in clause 17.3(a), The Contractor must:
 - (i) comply with directions given by DFAT;
 - (ii) cease or reduce (as applicable) the performance of work; and
 - (iii) immediately do everything possible to mitigate its losses, and all other losses, costs and expenses arising out of termination, including by novating any Subcontracts to DFAT or its nominee, if required by DFAT.
- (d) If DFAT terminates or reduces the scope of this Contract under this clause 17.3, DFAT will only be liable to The Contractor for the following loss or damage incurred as a direct consequence of termination or reduction in scope of this Contract to the extent that they can be reasonably substantiated and are unable to be avoided or mitigated:
 - (i) fees and Reimbursable Costs as payable under Schedule 3 (Payment) earned before the effective date of termination (on a pro-rata basis, if applicable); and
 - (ii) any reasonable costs incurred by The Contractor that are directly attributable to the termination or reduction.

- (e) The Contractor is not entitled to any other loss or damage, including the cost of redundancies, the costs of terminating any Subcontracts, loss of profits and all other forms of expectation loss.
- (f) The Contractor must, in each Subcontract, reserve a right of termination to take account of DFAT's right of termination under this clause 17.3 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 17.3.
- (g) Subject to this Contract, on expiry or termination:
 - (i) 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;
 - (ii) all licences and authorisations granted by either party under this Contract terminate immediately unless the licence or authorisation provides to the contrary; and
 - (iii) The Contractor must provide DFAT with all reasonable assistance and information to assist DFAT in transitioning to DFAT's new Contract arrangements.
- (h) 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 17.3(a) except as expressly provided under this clause 17.3.

17.4 Transition Out

- (a) The Contractor shall develop and implement a Transition-Out Plan upon receiving Termination Notice from DFAT and shall, when implementing the Transition-Out Plan:
 - (i) ensure that there is no interruption to the Services by The Contractor;
 - (ii) ensure continuity of the Services, until take-over of responsibilities by the incoming Tenderer or DFAT;
 - (iii) hand full responsibility for the Services to the incoming Tenderer or DFAT at midnight on the last day of the term of the Agreement;
 - (iv) co-operate as reasonably necessary with the incoming Tenderer and DFAT;
 - (v) agree to take all reasonable steps to facilitate the transfer of Personnel who wish to transfer to the incoming Tenderer or DFAT and who are accepted for engagement by the incoming Tenderer or DFAT;
 - (vi) provide a Project Plan showing an outline of the Transition-Out tasks; and;

- (vii) include Transition-Out arrangements in its weekly report.

17.5 Transition to an Incoming Party

- (a) On termination of this Contract, The Contractor must provide all reasonable assistance and cooperation necessary to facilitate a smooth transition of provision of the Goods and/or Services from The Contractor to either DFAT or an incoming service provider appointed by DFAT, in a manner which ensures no interruption of the provision of the Goods and/or Services to DFAT.
- (b) Without limiting clause 17.4(a), The Contractor must:
 - (i) deliver to DFAT or its nominee complete copies of all the Data and Contract Material, in a form and on a media approved by DFAT;
 - (ii) if requested by DFAT, facilitate the assignment to the incoming service provider of Subcontracts relating to any support arrangements; and
 - (iii) co-operate with DFAT and, if requested, the relevant incoming service provider, and provide reasonable assistance relating to the transfer of any Subcontracts to the incoming service provider.

18. NOTICES

18.1 How to Give an Effective Notice

- (a) A notice, consent or other communication under this Contract is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, or electronic form such as email.
- (b) A notice, consent or other communication that complies with this clause 18 is regarded as given and received:
 - (i) if it is delivered, when it has been left at the addressee's address;
 - (ii) if it is sent by mail, 3 Business Days after it is posted; and
 - (iii) if it is sent in electronic form, on the day on which it was transmitted or, if transmitted after 5.00 pm, on the next Business Day.

18.2 Addresses for Notices

A party's address and contact details are those set out in Schedule 1 (Contract Details), or as the party notifies the sender from time to time.

19. AMENDMENT AND ASSIGNMENT

19.1 Amendment

This Contract can only be amended by another document executed by the parties.

19.2 Assignment

- (a) The Contractor may not assign any of its rights or obligations under this Contract without the prior written consent of DFAT.
- (b) DFAT may assign or otherwise deal with its rights under this Contract without the consent of The Contractor, and may disclose to any potential holder of the right, or an interest in the right, any information relating to this Contract or any party to it.

20. GENERAL

20.1 Governing Law

- (a) This Contract and any dispute arising out of this Contract is governed by the laws of the Australian Capital Territory.
- (b) Each party submits to the exclusive jurisdiction of the courts of the Australian Capital Territory and courts of appeal from them, in respect of any proceedings arising out of this Contract.

20.2 Liability for Expenses

- (a) Subject to clause 20.2(b), each party must pay its own expenses incurred in negotiating, executing and registering this Contract.
- (b) The Contractor will be liable for, and must indemnify DFAT against, any stamp duty, registration fees or similar charges (including any fines, penalties and interest) imposed in connection with this Contract.

20.3 Right of DFAT to Recover Money

Without limiting DFAT's other rights or remedies under the Contract or at law, if The Contractor owes any debt to DFAT in relation to this Contract, DFAT may do 1 or both of the following:

- (a) deduct the amount of the debt from payment of any claim; or
- (b) give The Contractor notice of the existence of the debt recoverable which must be paid by the Contractor within 30 days of the receipt of the notice.

If the sum of money owed to DFAT is not received by its due date for payment, The Contractor must pay DFAT interest at the ATO sourced General Interest Charged rate current at the date the payment was due for each day the payment is late.

20.4 Giving Effect to this Contract

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Contract.

20.5 Variation of Rights

The exercise of a right partially or on 1 occasion does not prevent any further exercise of that right in accordance with the terms of this Contract. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this Contract.

20.6 Operation of Indemnities

- (a) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives the expiry or termination of this Contract.
- (b) A party may recover a payment under an indemnity in this Contract before it makes the payment in respect of which the indemnity is given.
- (c) If a provision of this Contract is expressed to:
 - (i) indemnify;
 - (ii) exclude or limit any liability of; or
 - (iii) otherwise benefit,

a person who is not a party to this Contract, The Contractor agrees that DFAT holds the benefit of that indemnity, exclusion, limitation or other benefit on trust for that person and may enforce this Contract on their behalf and for their benefit.

20.7 Survival of Obligations

Any clause, right or obligation which by its terms or operation is intended to survive the expiry or termination of this Contract may be enforced after expiry or termination of this Contract.

20.8 Inconsistency with Other Agreements

If this agreement is inconsistent with any other agreement or agreement between the parties, this agreement prevails to the extent of the inconsistency.

20.9 Counterparts

This agreement may be executed in counterparts.

Schedule 1
Contract details

Item	Information	Details
1	Description of Services	The provision of Security Services as described in more detail in Schedule 2 (Statement of Requirement).
2	Commencement Date (clause 1.1)	1 July 2020
3	Expiry Date (clause 1.1)	30 June 2023
4	Option to extend (clause 2.2)	s47E(d)
5	DFAT Contract Manager (clause 1.1)	Counsellor – Australian High Commission Security Section, Regional Security Officer
6	The Contractor Contract Manager (clause 1.1)	s47F, General Manager
7	DFAT address (clause 18.2)	Locked Bag 129, Godwit Road, Waigani NCD, Port Moresby, Papua New Guinea.
8	DFAT contact details (clause 18.2)	Ph: 7090 0200
9	The Contractor address (clause 18.2)	Portion 443 Kanage St, 6mile, Port Moresby, NCD, PNG
10	The Contractor contact details (clause 18.2)	s47F(1)
11	DFAT Escalation Representative (clause 11.1)	Deputy Head of Mission – Australian High Commission
12	The Contractor Escalation Representative (clause 11.1)	s47F(1) Managing Director (Black Swan (PNG) Ltd)
13	Insurance amounts (clause 9.1)	s47E(d)

14	Additional insurance types (clause 9.1)	s47E(d)
15	Address of DFAT or third party for delivery of the Goods and/or Services (clause 3.3)	Australian High Commission Papua New Guinea Godwit Road Waigani NCD Port Moresby And Other locations as specified under Schedule 2
16	Specified Personnel (clause 11.3)	s47F(1) – Contract Manager. s47G s47F(1) – Operations Manager. s47G s47F(1) – Security Manager. s47G
17	Additional requirements for Transition Plan (clause 17.4)	[Insert any additional matters to be dealt with in the Transition Plan]
18	Warranty Period (clause 5.3)	[Insert warranty period applicable to Goods and/or Services]
19	INSERT ADDITIONAL CLAUSES IF REQUIRED	DELETE ROW IF NOT REQUIRED

Schedule 2

Statement of Requirements

1. BACKGROUND

- 1.1 The Department of Foreign Affairs and Trade's (DFAT) role is to advance the interests of Australia and Australians internationally. This involves working to strengthen Australia's security, enhancing Australia's prosperity, and helping Australian travellers and Australians overseas. DFAT provides foreign, trade and development policy advice to the government. DFAT works with other government agencies to ensure that Australia's pursuit of its global, regional and bilateral interests is coordinated effectively. DFAT is the Australian Commonwealth Government Agency with responsibility for protective security at Australia's foreign missions. The Australian High Commission (AHC), acts on behalf of DFAT in Port Moresby, Papua New Guinea.

Protective Security Services - Summary of Requirements

- 1.2 DFAT requires a professional security service provider to provide protective security and alarm monitoring services for staff of the AHC, the families of Australian based officers, visitors and other designated individuals in Port Moresby, Papua New Guinea, as directed by DFAT. Security services are also required to ensure a secure and safe environment for the AHC compound and residences of Australian based officers. These services will include:
- (a) static guarding (unarmed) and dog patrols;
 - (b) mobile vehicle patrolling, escort and response units;
 - (c) radio, telephone, CCTV and alarm monitoring;
 - (d) GPS device tracking; and
 - (e) Security intelligence reporting.

2. GENERAL REQUIREMENTS

The Montreux Document

- 2.1 The Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict ('Montreux Document') of 17 September 2008 identifies relevant legal obligations and contains good practices for States to implement when they select and contract private military and security companies.
- 2.2 Australia is a supporter of the Montreux Document and its underlying principles and best practices, and DFAT would expect The Contractor to provide the Services in the spirit of these principles and practices.

The International Code of Conduct for Private Security Providers

- 2.3 The International Code of Conduct for Private Security Providers (The Code) of 9 November 2010 establishes a set of principles for Private Security Providers to create better governance, compliance and accountability with principle

stipulations regarding respect for human rights, humanitarian law and respect of cultures. Australia is a supporter of The Code and The Contractor would be expected to provide the Services in the spirit of The Code's principles.

- 2.4 The Contractor would also be expected to work within any recognised international standard that provides best practice guidance or regimes for implementation and compliance with The Code, in providing the Services under any resultant Contract (if any).

Compliance with Relevant Laws

- 2.5 The Contractor and its officers, employees, sub-contractors and agents will comply with all relevant laws including those of Papua New Guinea, Australia, The Contractor's country of incorporation and any other relevant law.
- 2.6 The Contractor's Personnel must be all trained to the minimum standards required by the *Security (Protection) Industry Act 2004* (PNG) and the Papua New Guinea Security Industries Authority. The Contractor must notify DFAT of any breaches of any relevant law during the term of the Contract.

Code of Conduct

- 2.7 The Contractor shall develop a Code of Conduct – Papua New Guinea within 60 days of the Commencement Date and include that code of conduct in its Standard Operating Procedures.
- 2.8 The Code of Conduct – Papua New Guinea must cover the performance, dress, bearing and behaviour of all guards (including the Contract Manager, Security Managers and Security Supervisors).
- 2.9 The Contractor must ensure that all Personnel associated in the delivery of the service of this contract comply with a Code of Conduct-Port Moresby in that they shall:
- (a) be polite, courteous and respectful to staff, families and visitors;
 - (b) be well-groomed, maintain their personnel hygiene and wear a clean uniform correctly (not partially) at all times whilst on duty (refer separate section on Uniforms and equipment);
 - (c) be alert at all times and not sleep on duty or engage in excessive mobile phone usage;
 - (d) do not consume alcohol, drugs, buai or smoke at any time while on duty;
 - (e) maintain a clean and safe environment at their stations at all times;
 - (f) behave in a professional manner that reflects positively on the AHC, DFAT and the Australian Government;
 - (g) cooperate with Papua New Guinea Police and other relevant host nation authorities;
 - (h) abide by the laws and regulations of Papua New Guinea;
 - (i) treat the citizens of Papua New Guinea with dignity and respect;

- (j) not deal in, possess or use substances, including performance enhancing drugs, prohibited by Australian and/or Papua New Guinean law;
- (k) observe and maintain a high level of operational information security, consistent with the requirements of relevant DFAT information security policies and in the context of the work of the Australian mission in Papua New Guinea. This requirement applies to all of The Contractor's Personnel while on or off duty, in Papua New Guinea or when out of country on leave and in social media and or other platforms of public comment;
- (l) refrain from making any comments about any aspect of the AHC, DFAT or the Australian Government. This includes comment in specific reference to AHC personnel, AHC work routines/events, or AHC layout. Guards must notify DFAT's Senior Operations Manager in the event a member of the public or a representative of the media approaches them for comment; and
- (m) take immediate preventative action to stop any abuse of or by security staff including any form of sexual harassment, as well as drunken or illicit drug induced behaviour.

Probity Checks

- 2.10 When requested to do so by DFAT, The Contractor shall provide assurances, within available means, that:
- (a) The Contractor and its officers, employees, Sub-contractors and agents have no reliably attested record of involvement in serious crime (including organised crime, violent crime, sexual offences, violations of international humanitarian law, bribery and corruption) and, insofar as The Contractor or officers, employees, Subcontractors and agents had engaged in past unlawful conduct, appropriate remedial action has been taken, including by effectively cooperating with official authorities, taking disciplinary measures against those involved, and, where appropriate and consistent with findings of wrongdoing, providing individuals injured by their conduct with appropriate reparation; and
 - (b) The Contractor has conducted comprehensive inquiries under applicable law and vetting standards regarding the extent to which any of its Personnel, including those employed by its Subcontractors or agents, have a reliably attested record of not having been involved in serious crime or have not been dishonourably discharged from armed or security forces.
- 2.11 If requested by DFAT, this assurance will be provided by The Contractor as part of its recruitment process (see Clauses 4.3 to 4.8 – Personnel Recruitment & Screening).

Accountability Mechanisms

- 2.12 The Contractor shall provide for non-criminal accountability mechanisms for improper or unlawful conduct of their Personnel, including those employed by their sub-contractor or agents, including:

- (a) removal of individual personnel for determined breaches from the performance of the Contract where appropriate; and
- (b) referral of the matter to investigative authorities, where appropriate.

2.13 The Contractor must:

- (a) ensure procedural fairness and natural justice principles underpin its non-criminal accountability processes, and that those processes are consistent with best practice; and
- (b) include its non-criminal accountability mechanisms in its Standard Operating Procedures.

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DFAT-278

Attachment 6 - Performance Management Framework

Ref	Performance Measure	Performance Description	Performance Measurement	Performance target/KPI %	Achieved Score (Month)	OSS/Post Comments/ Supporting Evidence	Service Rebate Potentially Applicable
1	Delivery of Services as described in Statement of Requirements (SOR)	All positions are filled and onsite as per the requirements of the SoR.	Actual monthly level of effort against contracted level of effort expressed as a percentage.	100%			

DFAT-278

Ref	Performance Measure	Performance Description	Performance Measurement	Performance target/KPI %	Achieved Score (Month)	OSS/Post Comments/ Supporting Evidence	Service Rebate Potentially Applicable
2	Surge Capability	Contractor is able to meet ad hoc requirements	Ad Hoc surge requirements for special functions or visits are delivered within 3 days of request.	100%			
3	Reception Provision	Level of professional courtesy provided to DFAT staff	The Contractor's personnel comply with the Code of Conduct outlined in the SOR at all times.	100%			

DFAT-278

Ref	Performance Measure	Performance Description	Performance Measurement	Performance target/KPI %	Achieved Score (Month)	OSS/Post Comments/ Supporting Evidence	Service Rebate Potentially Applicable
4	Service Provider Personnel	All Contractor Personnel achieve medical, fitness and other training requirements	Contractor Personnel actual against Contract requirements, expressed as a percentage.	100%			
5	WHS Incidents	All WHS Incidents are reported in accordance with the DFAT's WHS Incident Reporting Procedure within 24 hours of occurrence.	Actual number reported accurately against all incidents, expressed as a percentage.	100%			
6	Reporting	All reporting requirements are met as described in the SOR.	All reporting requests from Customer are met within 2 weeks of request.	100%			
7	Invoicing	Contractor submits correctly rendered monthly invoices and associated substantiation requirements	All invoices are correctly rendered in accordance with Contract requirements, and submitted no later than the first full week of each month.	100%			

DFAT-278

Ref	Performance Measure	Performance Description	Performance Measurement	Performance target/KPI %	Achieved Score (Month)	OSS/Post Comments/ Supporting Evidence	Service Rebate Potentially Applicable
Scoring Matrix							
1			EXCELLENT: The Contractor is performing excellently and fully meeting the expected performance target				
2			<p>SATISFACTORY: The Contractor has failed to meet the expected performance target during the current period. Improvement measures have been put in place. "There is no impact on service delivery" Or "There is a significant impact on service delivery".</p> <p>Explanation: This would allow a score to be raised directly from 1 (excellent) to 3 (some concerns)</p>				
3			<p>SOME CONCERNS: The Contractor has failed to meet the expected performance target during the current and previous period- measures to rectify this have not been effective. "This has impacted on Service delivery"</p> <p>Explanation: This would allow a score to be raised directly from 1 (excellent) to 3 (some concerns). Otherwise a score rises to the next level as described in this Scoring Matrix. From 2 to 3: From 3 to 4: When The Contractor has failed to meet the expected performance target during the last three (3) periods.</p>				
4			<p>CONCERNS: The Contractor has failed to meet the expected performance target during the last three periods and has been given a last chance to reach the required performance target before escalation.</p>				
5			<p>SERIOUS CONCERNS: Unsatisfactory Performance. Escalation procedure invoked and Contract termination under consideration.</p> <p>Reviews against Performance Framework will be completed quarterly by the SA/Security Manager and Service Provider's Representative and submitted to the Department's Contract Manager by 10 Business Days after the quarter immediately following the quarter in which the review was undertaken. The Department Contract Manager will write a quarterly letter to appraise The Contractor's achievement of the Performance Framework. Meetings of the Contract Management Group are held bi-annually</p>				

DFAT-278

Meetings

The Contractor must attend the following meetings with DFAT during the Term:

Meeting type	Location	Date
Introduction	DFAT Offices – PNG	During Transition Period
Transition Progress Meetings	DFAT Offices – PNG	Weekly throughout the Transition Phase dates
Performance Meetings	DFAT Offices – PNG	Monthly throughout contract Term
Annual Performance Review	DFAT Offices – PNG	Annually in May

REPORTS

The Contractor must provide DFAT with the reports s47E(d) set out in table below by the date, in the format and number of copies indicated:

s47E(d)

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 Goods and/or Services in achieving DFAT's objectives;
- (d) be provided in Microsoft Word format (or Microsoft Excel format for spread sheets), unless otherwise approved or requested by DFAT;
- (e) not incorporate either DFAT or The Contractor's logo; and
- (f) be provided at the time specified in the table above.

Schedule 3

Payment

Note to Tenderers: *this Schedule will be consist of an amalgam of the contents of this Schedule, pricing from the successful Tenderer's tender and any negotiated adjustments.*

Payments

All amounts payable by DFAT for provision of the Goods and/or Services (including the Deliverables) and the fulfilment of all The Contractor's other obligations under this Contract are set out in this Schedule.

Except where this Contract expressly provides to the contrary:

- (a) no other amounts are payable by DFAT to The Contractor for the performance of any obligation imposed on The Contractor under this Contract; and
- (b) all payments are payable in arrears or upon delivery and Acceptance of the Goods and/or Services against the Payment Milestones.

Contract Price

1. The maximum Contract Price payable by DFAT to The Contractor for provision of the Goods and/or Services is PGK19,339,841 (for Year 1 to Year 3) including GST.
2. A breakdown of the amount shown above is detailed in the following tables:

s47E(d) & s47G



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s47E(d) & s47G



NOTE: ALL RATES ARE IN PAPUA NEW GUINEA KINA of 2.31429 to the AUSTRALIAN DOLLAR (based on Budget Exchange Rate 2020-21)

The Contractor must keep records to enable verification of actual time spent undertaking provision of the Services.

All Services delivered under the Contract are subject to Acceptance by DFAT.

Reimbursable Costs

No expenses are reimbursable under this Contract.

Payment Schedule

Subject to Acceptance by DFAT, DFAT will pay The Contractor monthly in arrears on receipt of a correctly rendered invoice.

Price Review

- (a) s47G
- (b)
- (c) To claim the adjustment, The Contractor must submit a revised version of the hourly rates table to DFAT for consideration no earlier than 30 days prior to, and no later than 30 days after, the Adjustment Date.
- (d) If the proposed changes is determined by DFAT to be in accordance with this Price Review section, DFAT will issue an amendment to the Contract to amend the hourly rates. If the proposed changes are determined by DFAT not to be in accordance with this Price Review section, then DFAT shall make any adjustments it thinks necessary and shall issue an amendment to the Contract to amend the hourly rates.
- (e) If DFAT exercises any option to extend the Term of the Contract pursuant to clause 2.2 of the Contract, then The Contractor shall be entitled to an adjustment of s47G to the hourly rates specified in this Schedule 3 to reflect changes to the cost of labour and materials from the Expiry Date specified in the Contract Details (Schedule 1). This date shall be known as the Extension Adjustment Date.
- (f) To claim the Contract extension adjustment, The Contractor must submit a revised version of the hourly rates table to DFAT for consideration no earlier than 30 days prior to, and no later than 30 days after, the Extension Adjustment Date. Once received, DFAT will follow the process set out in sub-paragraph (d) above.
- (g) If DFAT extends the Contract and provides The Contractor with an adjustment to the hourly rates from the Extension Adjustment Date in accordance with this Price Review mechanism, then The Contractor agrees to increase the hourly rate or salary that it pays to its Personnel by the same percentage amount that DFAT adjusts the hourly rates specified in this Schedule 3, with such increase to its Personnel hourly rate or salary commencing on the same date that DFAT's price review adjustment to The Contractor takes effect.
- (h) For avoidance of doubt, the effective date of any adjustment to the hourly rates shall be the Adjustment Date or the Extension Adjustment Date, as applicable.
- (i) Any reference to the CPI Index shall mean the IMF CPI Index reference, as the mechanism to determine any subsequent increase for the relevant period. In particular, the rates as published on <https://data.imf.org/regular.aspx?key=61015892> for PNG. See table summary below:

s47G

Exchange Rate Variation

The Contract Price is subject to variations in the value of foreign exchange and will be converted into Australian Dollars utilising the applicable rate for PNG Kina reported by the Reserve Bank of Australia (RBA) at the time the service was provided. The fx variation is calculated using the following formula: Average fx = (fx rate on first day of month + fx rate on last day of month), divided by 2.

Claims for payment

The Contractor's tax invoice must be submitted when due pursuant to this Schedule 3 in a form identifiable with the Goods and/or Services and in accordance with Clause 3.5 (Payment). Invoices must also contain any payment number(s) notified by DFAT.

All claims for payment must be sent to: port-moresby.security@dfat.gov.au and copy in the DFAT Contract Manager.

Alternatively, DFAT will accept invoices sent to:

AHC Security Section
Locked Bag 129
Godwit Road, Wagani NCD
Port Moresby
Papua New Guinea

Invalid invoices will be returned to The Contractor.

Information on what constitutes a valid tax invoice can be found at
<https://www.ato.gov.au/Business/GST/Tax-invoices>

Specific Invoicing Requirements

The Contractor must supply invoices in accordance with the following requirements:

- (a) invoices must be provided by the end of the first full week of each month;
- (b) separate invoices must be provided for
 - (i) static guarding and guard dogs in;
 - (ii) Alarm Monitoring;
 - (iii) Bus Escorts;
 - (iv) Escort and Patrol Services;
 - (v) GPS and Vehicle tracking and monitoring Services.

Invoices for additional Services are to be provided, in arrears, in a separate invoice for each Service requested and are to quote the reference number associated with that service request.

Schedule 4

Confidential Information

Confidential Information identified by DFAT

Clause number	Clause description or information to be kept confidential	Reason for classification	Period of Confidentiality
N/A			

Confidential Information Identified by the Contractor

Clause number	Clause description or information to be kept confidential	Reason for classification	Period of Confidentiality
s47G		Commercial-in-Confidence	Life of Contract
		Commercial-in-Confidence	Life of Contract

Schedule 5

Confidentiality Deed Poll

THIS DEED POLL is dated 1 July 2020

I, **s47F(1)**, General Manager, Black Swan PNG Limited, irrevocably covenant and agree for the benefit of the Commonwealth as represented by the Department of Foreign Affairs & Trade (DFAT) that:

1. I understand that in the course of performing duties in relation to the Contract DFAT-278 for the provision of Protective Security and Alarm Monitoring Services in PNG, that I may have access to:
 - a. personal information, being information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; and
 - b. confidential information, being information which is by its nature confidential, which is designated by DFAT or any law as confidential or is provided DFAT in confidence, and includes commercial, financial and taxation information of corporations and other entities.
2. I acknowledge and agree that I may not access, use, disclose, publish, communicate or retain, or otherwise deal in any way, with personal information or confidential information except in the course of performing my duties in relation to the Deed.
3. I agree to comply with the provisions of the *Privacy Act 1988* (Cth) (**the Privacy Act**), including the Australian Privacy Principles set out in that Act, in respect of both personal information and confidential information, whether or not I am legally bound to comply with that Act and as if the definition of personal information in that Act includes confidential information.
4. I acknowledge that failure by me to comply with the obligations under the Privacy Act in may result in The Contractor taking action against me (including, without limitation, disciplinary action).
5. I acknowledge in respect of personal information and confidential information that:
 - a. the *Criminal Code Act 1995* (**the Criminal Code**) makes it an offence for a person to unlawfully obtain, access, destroy, erase, alter or add to, data stored in a computer on behalf of the Commonwealth and that a penalty of up to 10 years' imprisonment may be imposed (Part 10.7 of the Criminal Code);
 - b. the *Crimes Act 1914* (**the Crimes Act**) makes it an offence for an employee of a person who has contracted with the Commonwealth to unlawfully disclose or otherwise deal with information, documents or data entrusted to them, or to fail to comply with a lawful direction in respect of the retention or disposal of such information, and that serious penalties for a breach apply (sections 70 and 79 of the Crimes Act); and
 - c. if I am not an employee of The Contractor, a Commonwealth officer or a former Commonwealth officer I agree to act in accordance with the obligations in sections 70 and 79 of the Crimes Act as if I was bound by those provisions.

Schedule 5

6. I agree to treat all personal information and confidential information with the utmost care and to protect that information at all times.
7. I acknowledge and agree that this Deed poll survives the termination or expiry of my contract providing for the performance of services by me (whether directly or indirectly) in relation to the Deed.
8. This Deed poll will be governed by and construed in all respects in accordance with, the law of the Australian Capital Territory and I agree to submit to the applicable jurisdiction of the Courts of that Territory in respect of all matters arising under, or in relation to, this Deed poll.

EXECUTED as a Deed poll

SIGNED by s47F(1) in the
presence of:

s47F(1)

Signature of witness

s47F(1)

Signature of person giving undertaking

s47F(1)

Name of witness (print)

Date: 1 July 2020

Date: 1 July 2020

Schedule 6

Commonwealth Entity Access Form

Deed of Agreement

This Commonwealth Entity Access Form is placed by the Commonwealth Entity named below for the provision of <insert Goods and/or Services required> under the Contract between the **Commonwealth of Australia** as represented by the Department of Foreign Affairs and Trade (ABN 47 065 634 525) and <insert name of The Contractor>, ABN <insert ABN> ("The Contractor") for the provision of <insert title of Contract> dated <insert date> ("Contract").

Pursuant to clause 3.8 of the Contract, by giving this notice, the Commonwealth Entity elects to utilise the Contract to obtain <insert Goods and/or Services required>, and confirms that it accepts the terms and conditions of the Contract.

The parties agree that by executing this Commonwealth Entity Access Form:

- a. a separate contractual arrangement is created between The Contractor and the Commonwealth as represented by the Commonwealth Entity for the provision of the Goods and/or Services to the Commonwealth Entity;
- b. a reference to "Department of Foreign Affairs and Trade" or "DFAT" in the Contract is taken to be a reference to the Commonwealth Entity; and
- c. the terms of the separate contractual arrangement are the terms and conditions of the Contract as modified by this Commonwealth Entity Access Form.

This Commonwealth Entity Access Form is effective on and from the date it is signed by the parties, or if signed on separate dates, the date of last signature.

Details:

Commonwealth Entity	[insert name of entity, ABN and address details]
Representative	[insert name and contact details]
Position	[insert]
Goods and/or Services required	[insert details]
Contract Price	[insert; note: may require discussion with The Contractor, but any Contract Price must be consistent with the prices agreed to by The Contractor under the Contract (Schedule3)]
Date Goods and/or Services required	Start date: [insert] End date: [insert]

Executed as a Contract

**SIGNED, SEALED AND
DELIVERED** for the
Commonwealth of Australia as
represented by <insert name of
department or agency>, ABN
<insert ABN>, by its authorised
representative:

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

.....
Signature of witness

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

Date:
.....

.....
Signature of authorised DFAT
representative

In accordance with clause 3.8 of the Contract, and by executing this Deed of Agreement, The Contractor agrees to provide to the Commonwealth Entity the Goods and/or Services in accordance with the terms of the Contract.

SIGNED, SEALED AND DELIVERED
by [**insert name of The Contractor**]
in accordance with section 127(1) of
the *Corporations Act 2001* (Cth) by
authority of its directors:

.....
Signature of director

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

Date:
.....
.....

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

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

Date:
.....
.....

Schedule 7

Performance Guarantee

~~THIS DEED OF GUARANTEE is made the [] day of [] 20[]~~

~~BETWEEN COMMONWEALTH OF AUSTRALIA represented by the Department of Foreign Affairs and Trade, ABN 47 065 634 525 ('DFAT')~~

~~AND [Insert name of Guarantor], ABN [Insert Guarantor's ABN] Address [Insert Guarantor's Address] ('Guarantor')~~

RECITALS

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

AGREEMENT

- ~~1. The Guarantor guarantees to DFAT the performance of the obligations undertaken by The Contractor under the Contract on the conditions set out in this Deed.~~
- ~~2. If The Contractor (unless relieved from the performance of the Contract by DFAT expressly or by statute or by a decision of a Court or tribunal of competent jurisdiction) fails to execute and perform its obligations under the Contract, the Guarantor shall, if required to do so by DFAT, complete or cause to be completed the obligations set out in, and in accordance with the conditions of, the Contract. If The Contractor commits any breach of its obligations, and such breach is not remedied by the Guarantor under this Deed and the Contract is then terminated for default, the Guarantor shall indemnify DFAT against losses, damages, costs and expenses directly incurred by reason of that default.~~
- ~~3. The Guarantor shall not be discharged or released or excused from this Deed by an arrangement made between The Contractor and DFAT with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by The Contractor or by any forbearance whether as to payment, time, performance or otherwise. The guarantee by the Guarantor in this Deed to assume the obligations of The Contractor shall continue in force and effect until completion of all The Contractor's obligations under the Contract or until the completion of the undertakings under this Deed by the Guarantor.~~
- ~~4. The undertakings of the Guarantor under this Deed shall not exceed the obligations of The Contractor under the Contract. Any liability of the Guarantor shall be coextensive, but not in excess of any liability of The Contractor to DFAT under the Contract. The Guarantor shall be entitled to all rights, privileges and defences otherwise available, to The Contractor with respect to any such liability, including without limitation all provisions of the Contract relating to the limitation of liability and the resolution of disputes.~~
- ~~5. This Deed is subject to, and is to be construed in accordance with, the laws in force in the Australian Capital Territory and the parties agree that the courts of that Territory have jurisdiction to entertain any action in respect of, or arising out of, this Deed and the parties submit themselves to the jurisdiction of those courts.~~

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

Executed as a Deed

**SIGNED, SEALED AND
DELIVERED** for the
Commonwealth of Australia as
represented by the Department of
Foreign Affairs and Trade, ABN 47
065 634 525, by its authorised
representative:

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

.....
Signature of witness

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

Date:
.....
.....

SIGNED, SEALED AND DELIVERED
by **[insert name of Guarantor]** in
accordance with section 127(1) of the
Corporations Act 2001 (Cth) by
authority of its directors:

.....
Signature of director

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

Date:
.....
.....

.....
Signature of authorised DFAT
representative

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

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

DFAT-278

EXECUTED as a Contract

Each person who executes this agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

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

as represented by the Department of
Foreign Affairs and Trade by its duly
authorised officer, in the presence of:

s47F(1)

Signature of witness

s22(1)(a)(ii)

First Secretary (PN 8876)
Australian High Commission
Port Moresby

Name

01 July 2020
Date

s47F(1)

Signature of PGPA
Delegate/authorised DFAT
representative

CAITLIN WILSON
Name

DEPUTY HEAD OF MISSION
01 July 2020
Date

SIGNED for Black Swan PNG Limited
by its duly authorised officer, in the
presence of:

s47F(1)

Signature of witness

Legal Officer - s47F(1)
Name of witness (print)

01 . 07 . 2020
Date

s47F(1)

Signature of officer

General Manager - s47F(1)
Name (print)

01. 07 . 2020
Date