

Department of Foreign Affairs and Trade

Complex Grant Agreement number 71999

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

Transparency International Secretariat (TI) (**Recipient**)

Details

Parties

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

Name	Transparency International, of Alt-Moabit 96, 10559 Berlin, Germany
Short form name	Recipient

Background

- A DFAT provides grant funding to support activities for overseas development assistance.
- B The Recipient applied for grant funding to perform the Activity.
- C DFAT is required by law to ensure accountability for the grant funding and accordingly the Recipient is required to be accountable for all grant funding received.
- D DFAT has agreed to provide an amount of grant funding to the Recipient for the purposes of the Activity, subject to the terms and conditions of this Agreement.
- E The Recipient accepts the grant funding for the purposes of the Activity, and subject to the terms and conditions of this Agreement.

DFAT Complex Grant Agreement

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General Conditions

Interpretation

1. Definitions and interpretation

1.1 Defined terms

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

Abandoned	not having carried on any work or activities on the Activity for sixty (60) consecutive days, except where relieved of the obligation to do so under this Agreement. Abandon has a corresponding meaning.
Activity	the Activity described in Item 1 of the Activity Proposal.
Activity End Date	the date specified in Item 7 of Schedule 1 .
Activity Event	any promotional event conducted by the Recipient relating to the Activity, including the award of grant funding, the attainment of a Milestone or launch of the completed Activity.
Activity Proposal	as described in Schedule 2 .
Activity Start Date	the date specified in Item 6 of Schedule 1 .
Agreement	this Agreement which is a Deed between DFAT and the Recipient, as varied from time to time in accordance with Clause 37.4 , including the Schedules and any attachments.
Agreement Material	any Material created by, for or on behalf of the Recipient on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Agreement including any modifications that may be required under Clause 21.6(b) .
Agreement Period	the period from the Commencement Date to the date DFAT accepts the final report provided in accordance with Item 4 of Schedule 4 .
Applicable Auditing Procedures	the internal and external auditing procedures in the rules and regulations applicable to the Recipient.
Application	the application submitted by, for or on behalf of the Recipient for grant funding in relation to the Activity.
Assets	(a) items described in Item 5.1 of the Activity Proposal; and (b) any items of tangible property which are purchased, leased, created or otherwise brought into existence by, for or on behalf of the Recipient either wholly or in part with use of the Funds, not including Agreement Material.

Asset Register	the register of Assets set out in Item 5 of the Activity Proposal.
Asset Threshold	means the amount set out in Item 5.2 of the Activity Proposal.
Australian Privacy Principles	the Australian Privacy Principles (APPs) as defined in the <i>Privacy Act 1988</i> (Cth).
Authority	any Commonwealth, State, Territory, local or foreign government or semi-governmental authority, court, administrative or other judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality, including the Partner Government.
Budget	the Budget (if any) set out in Item 4 of the Activity Proposal, as varied from time to time in accordance with this Agreement.
Business Day	a day that is a working day in the place where the act is to be performed or where the Notice is received.
Change in Control	<p>in relation to an entity, a change in the direct or indirect power or capacity of a person to:</p> <p>(a) determine the outcome of decisions about the financial and operating policies of the entity; or</p> <p>(b) control the membership of the board of directors of the entity, whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the entity or otherwise, not including a change in control resulting from ordinary course trading on a stock exchange in the shares of the entity.</p>
Commencement Date	the date specified in Item 5 of Schedule 1 .
Commonwealth	the Commonwealth of Australia.
Confidential Information	<p>information that is by its nature confidential and:</p> <p>(a) is designated by a Party as confidential; or</p> <p>(b) a Party knows or ought to know is confidential,</p> <p>but does not include information which is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation.</p>
DFAT	the Party specified in Item 1 of Schedule 1 .
DFAT Material	any Material provided to the Recipient by DFAT, including the Material (if any) specified in Item 13 of Schedule 1 .

DFAT Representative	the person identified in Item 3 of Schedule 1 .
Depreciation	depreciation calculated for income tax purposes under, and in accordance with, the <i>Income Tax Assessment Act 1997</i> (Cth).
Force Majeure Event	has the meaning given in Clause 32.1.
Former DFAT Employee	a person who was previously employed by DFAT, whose employment ceased within the last nine (9) months and who was substantially involved in the design, preparation, appraisal, review, and or daily management of this Activity.
Fraudulent Activity, Fraud or Fraudulent	dishonestly obtaining a benefit, or causing a loss, by deception or other means, and includes incidents of attempted, alleged, suspected or detected fraud.
Funds	the grant funding paid by DFAT to the Recipient under this Agreement and any interest earned by, for or on behalf of the Recipient on that grant funding, proceeds from the disposal or write-off of any Asset and any exchange rate gains made on that grant funding by the Recipient.
General Conditions	Clauses 1 to 37 of this Agreement.
GST Law	has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Independent Auditor	<p>a person who is:</p> <ul style="list-style-type: none"> (a) a certified financial professional registered under the <i>Corporations Act 2001</i> (Cth); or (b) an appropriately qualified member of the Institute of Chartered Accountants in Australia, of CPA Australia, of the Australian National Institute of Accountants or of an equivalent recognised foreign institution; and (c) is in no way linked or associated with the Project/Program or the Parties.
Insolvency Event	<p>in relation to an entity:</p> <ul style="list-style-type: none"> (a) the entity disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business; (b) the entity ceases to carry on business; (c) the entity ceases to be able to pay its debts as they become due; (d) proceedings are initiated with a view to obtaining an order for the winding up of the entity, or any person convenes a meeting for the purpose of considering or passing any resolution for the

	winding up of the entity;
	<p>(e) the entity applies to come under, the entity receives a notice requiring it to show cause why it should not come under, an order has been made for the purpose of placing the entity under, or the entity otherwise comes under one of the forms of external administration referred to in Chapter 5 of the <i>Corporations Act 2001</i> (Cth) or Chapter 11 of the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth) or equivalent provisions in State or Territory legislation or the laws of the Partner Country in relation to incorporated entities;</p> <p>(f) where the entity is a natural person, the entity is declared bankrupt or assigns his or her estate for the benefit of creditors;</p> <p>(g) where the entity is a partnership, any step is taken to dissolve that partnership; or</p> <p>(h) anything analogous to an event referred to in paragraph (d), (e), (f) or (g) occurs in relation to the entity.</p>
Intellectual Property Rights	<p>all intellectual property rights, including:</p> <p>(a) copyright, patents, trade marks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names and any right to have confidential information kept confidential;</p> <p>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</p> <p>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,</p> <p>whether or not such rights are registered or capable of being registered.</p>
Law	<p>any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in:</p> <p>(a) Australia, whether made by a State, Territory, the Commonwealth, or a local government; and</p> <p>(b) the Partner Country.</p>
Material	includes property, equipment, information, data, documentation or other material in whatever form, including any software, reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
Milestone	a milestone set out in Item 3 of the Activity Proposal in Schedule 2 .
Modify	to add to, enhance, reduce, change, replace, vary or improve. Modification and Modified have corresponding meanings.
Moral Rights	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).

Notice	a notice, demand, consent, approval or communication issued under this Agreement.
Outcomes	the outcomes for the Activity, as set out in Item 2 of the Activity Proposal.
Partner Country	the country or countries in which the Activity is to be undertaken in whole or in part.
Partner Government	the government of the Partner Country.
Party	DFAT and the Recipient who are listed in the Details section of this Agreement. Parties have a corresponding meaning.
Payment Claim	has the meaning given in Clause 8(a).
Payment Criteria	the payment criteria specified in Item 3 of Schedule 3 .
Performance Improvement Plan	has the meaning given in Clause 15(b).
Performance Issue	has the meaning given in Clause 15(a).
Personal Information	has the same meaning as in the <i>Privacy Act 1988</i> (Cth).
Personnel	in relation to a Party, any employee, officer, agent, volunteer, subcontractor or professional adviser of that Party.
Pre-existing Recipient Material	Material developed by the Recipient that: <ul style="list-style-type: none"> (a) is in existence at the Commencement Date or is subsequently brought into existence other than as a result of the performance of the Agreement; and (b) is embodied in or attached to the Agreement Material, or otherwise necessarily related to the performance of the Activity.
Recipient	the Party specified in Item 2 of Schedule 1 .
Recipient Representative	the person identified in Item 4 of Schedule 1 .
Related Agreement	any other agreement between the Parties under which DFAT provides grant funding to the Recipient, whether entered into before or after this Agreement.
Relevant List	the lists of terrorist organisations made under Division 102 of the <i>Criminal Code Act 1995</i> (Cth), posted at: http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx ; and organisations listed under the <i>Charter of the United Nations Act 1945</i> (Cth), posted at: http://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx .

Reports	the reports to be provided under Clause 14.2(a) and any Performance Improvement Plan.
Schedules	the schedules to this Agreement.
Similar List	any similar list to the World Bank List maintained by any other donor of development funding.
Special Conditions	the terms and conditions (if any) set out in Item 17 of Schedule 1 .
Third Party Material	any Material made available by the Recipient for the purpose of the Agreement Material or the Activity in which a third party holds Intellectual Property Rights.
Total Funds	the amount specified in Item 1 of Schedule 3 , as reduced in accordance with this Agreement.
Warranted Materials	<p>(a) Pre-existing Recipient Material;</p> <p>(b) Third Party Material; and</p> <p>(c) Agreement Material.</p>
World Bank List	<p>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/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984.</p>

1.2 Interpretation

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

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Agreement;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **AUD, A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a Party is to a Party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it;
- (l) if the last day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (m) headings are for ease of reference only and do not affect interpretation.

2. Priority of documents

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

3. Duration of Agreement

- 3.1 This Agreement begins on the Commencement Date and continues until the end of the Agreement Period unless terminated in accordance with Clause 322 or Clause 344.

Activity

4. Activity

4.1 Undertaking the Activity

- (a) The Recipient must:
 - (i) undertake the Activity to achieve the Outcomes;
 - (ii) undertake the Activity diligently, effectively, safely and to a professional standard;
 - (iii) comply with all applicable Laws, guidelines and policies, including as set out in **Clause 16**;
 - (iv) ensure that in its performance of the Activity, all of the Recipient's subcontractors and Personnel, while in the Partner Country, respect and comply with the Laws and regulations in force in the Partner Country;
 - (v) meet the completion dates for the Milestones, as specified in the Activity Proposal;
 - (vi) start the Activity by the Activity Start Date and complete the Activity by the Activity End Date;
 - (vii) ensure that any statement or information given or made to DFAT by the Recipient from time to time under this Agreement (including information or

statements contained in any Report) is true and correct (except where the information is provided to the Recipient by another person in which case the Recipient must ensure that it has made reasonable endeavours to verify the accuracy of the information);

- (viii) take responsibility for the security of all of its Personnel and for taking-out and maintaining all appropriate insurances;
 - (ix) not, by act or omission, place DFAT in breach of its obligations under the *Work Health and Safety Act 2011* (Cth); and
 - (x) not engage a Former DFAT Employee in any capacity in connection with the Activity unless DFAT has approved the engagement.
- (b) The Recipient must advise DFAT immediately in writing of any difficulties or delays in implementation of the Activity.

4.2 Warranties

The Recipient represents and warrants that:

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

5. Variation to the Activity

- (a) If the Recipient wants to seek a variation to the Activity, including postponement of the completion date for a Milestone or change in an intended Outcome as specified in the Activity Proposal, the Recipient must submit a notice to DFAT in writing setting out:
 - (i) details of the proposed variation to the Activity or relevant Milestone completion date or change in an intended Outcome and reasons for the request;
 - (ii) in relation to requests to postpone a Milestone completion date, reasons why the Activity cannot be performed in such a way as to meet the given date; and
 - (iii) the impact the proposed variations will have on:

- (A) effective delivery of the Activity;
 - (B) the Budget; and
 - (C) the Milestones.
- (b) DFAT will give the Recipient a written notice accepting or rejecting the Recipient's request.
- (c) Notwithstanding DFAT's acceptance of a proposed variation, it will not vary this Agreement or be binding unless and until a variation to this Agreement is made in accordance with **Clause 37.4** (Variation).

Funds

6. Use of Funds by Recipient

6.1 What Funds can be used for

- (a) The Recipient must spend the Funds only for the purposes of undertaking the Activity and purposes that are incidental to the Activity, including for the independent audit of acquittal reports as set out in **Schedule 4**.
- (b) The Recipient must spend the Funds only in accordance with the Budget.
- (c) Any increase or decrease in the amount allocated to an item of expenditure in the Budget cannot be made without DFAT's prior written approval.

6.2 When Funds cannot be used

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

6.3 Bank account

The Recipient must:

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

- (d) notify DFAT, prior to the receipt of any Funds, of details sufficient to identify the account;
- (e) if the account changes, notify DFAT within **14 days** after the change occurring, providing DFAT with details of the new account, and comply with **Clause 6.3(a) to 6.3**~~Error! Reference source not found.~~ in respect of the new account; and
- (f) identify the receipt and expenditure of the Funds separately within the Recipient's accounting records so that at all times the Funds are identifiable, traceable and ascertainable.

7. Payment of Funds by DFAT

7.1 Payment

- (a) Subject to this Agreement (including satisfaction of the Payment Criteria in Schedule 3) and sufficient grant funding being available to DFAT, DFAT will provide grant funding to the Recipient as set out in **Schedule 3**.
- (b) DFAT's liability under this Agreement is limited to:
 - (i) the Total Funds; or
 - (ii) the amount of grant funding paid under this Agreement (and any amount of grant funding for which DFAT is liable under **Clause 32.5(a)** or **Clause 34.1(c)(i) and (ii)**),
 whichever is the lesser.

7.2 Suspension

- (a) Without limiting any other right or remedy of DFAT, DFAT may suspend payment of grant funding under this Agreement in whole or in part:
 - (i) if the Recipient has not provided a Report due to be provided before the date for payment, until the Report is provided;
 - (ii) if a Report provided by the Recipient is not acceptable to DFAT, until a replacement Report that is acceptable to DFAT is provided;
 - (iii) if the Recipient has not achieved a Milestone that was due to be achieved before the date for payment, until the Milestone is achieved;
 - (iv) if the Recipient has not otherwise undertaken a Milestone or the Activity to the satisfaction of DFAT, until the Recipient remedies its performance;
 - (v) if the Recipient has not spent Funds in accordance with the Agreement, until the Recipient has done so;
 - (vi) if the Recipient has not satisfied the Payment Criteria in **Schedule 3**; or
 - (vii) if the Recipient is in breach of this Agreement or a Related Agreement, until that breach is remedied.
- (b) Despite any suspension, the Recipient must continue to perform its obligations under this Agreement, unless otherwise agreed to in writing by the Parties.

7.3 Reduction

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

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

7.4 Due date for payment

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

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

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

7.5 Incorrect invoices, under/over payment

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

7.6 Taxes

The Recipient must pay:

- (a) all stamp duty (including penalties and interest) assessed or payable in respect of this Agreement and the Activity; and
- (b) subject to **Clause 9** (GST and PAYG tax), all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

8. Claims for payment

- (a) If the Recipient has achieved the Payment Criteria in respect of the applicable instalment, then not earlier than the due date specified in item 3 of Schedule 3, the Recipient must submit to DFAT a claim for payment of the relevant instalment of the grant funding (**Payment Claim**).
- (b) A Payment Claim submitted under clause 8(a) must include a correctly rendered invoice to DFAT in accordance with the requirements specified in clause **Error! Reference source not found.** and item 4 of **Schedule 3**.

9. GST and PAYG tax – Not Used

10. Repayment

10.1 Misspent Funds

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

10.2 Unspent Funds

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

10.3 Repayment notice

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

10.4 Interest

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

- (a) at the rate set out in Item 2 of **Schedule 3** on a daily compounding basis upon the amount specified in the notice as payable to DFAT; and
- (b) from the date the payment was due, for the period it remains unpaid.

10.5 DFAT's rights

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

11. Procurement

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

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

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

12. Assets

12.1 Ownership

- (a) The Recipient must not use the Funds to acquire any Assets, apart from those Assets specified in Item 5.1 of the Activity Proposal.
- (b) Subject to the requirements of this Clause 12 and the terms of any lease, the Recipient will own the Assets unless otherwise specified in Item 5.3 of the Activity Proposal.

12.2 Use and dealings

- (a) During the Agreement Period, the Recipient must use any Asset only for the purposes of the Activity, or other purposes consistent with the Outcomes approved by DFAT.
- (b) During the Agreement Period, the Recipient must:
 - (i) obtain good title to all Assets (other than Assets which the Recipient leases);
 - (ii) hold all Assets securely and safeguard them against Fraud, theft, loss, damage, or unauthorised use;
 - (iii) maintain all Assets in good working order;
 - (iv) maintain all appropriate insurances in respect of any Assets;
 - (v) if required by Law, maintain registration and licensing of all Assets;
 - (vi) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets; and
 - (vii) maintain an Asset Register containing the details as described in item 5.4 of the Activity Proposal and provide a copy of the Assets Register to DFAT on request.
- (c) The Recipient must reconcile, the Asset Register with the Assets at least on each anniversary of the Activity Start Date and include the results of that reconciliation in the annual report to be provided to DFAT set out in Item 2 of **Schedule 4**.
- (d) The Asset Register and other relevant documents such as import papers and manufacturers' warranties relating to the Assets must be available for audit or review as required by DFAT.

12.3 Sale or disposal

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

- (ii) the market value of the Asset.

12.4 Termination

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

12.5 Lost or damaged Assets

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

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

Grant administration

13. Grant administration – Not Used

Performance and compliance

14. Monitoring progress

14.1 Progress meetings

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

14.2 Reporting

- (a) The Recipient must provide DFAT with Reports in accordance with **Schedule 4**.
- (b) When the Recipient provides DFAT with a Report, DFAT will notify the Recipient in writing within 30 days after receiving the Report that it has either:
 - (i) accepted the Report; or
 - (ii) rejected the Report, providing reasons for its rejection.
- (c) If DFAT rejects a Report, excluding a Performance Improvement Plan in accordance with **Clause 15** (Performance Improvement Plan), the Recipient must reissue the Report in a form that addresses the reasons for the earlier rejection and DFAT will comply with **Clause 14.2(b)** in relation to any reissued Report. Deadline for resubmission of the Report will be mutually agreed in writing by the Parties.
- (d) Acceptance of a Report by DFAT does not constitute a release of the Recipient in respect of any matter, an admission or acceptance that the Recipient's performance complies with this Agreement, or acceptance of the accuracy of the Report.

14.3 Evaluation

- (a) DFAT may at any time undertake, or engage an expert to undertake a review or evaluation of the Activity or DFAT's grant programs.

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

15. Performance Improvement Plan

- (a) If there is a potential failure or failure to meet a Milestone, perform the Activity or achieve the Outcomes in accordance with this Agreement, other than due to a Force Majeure Event (in this **Clause 15** a 'Performance Issue'), the Recipient must immediately notify DFAT of the Performance Issue.
- (b) If the Recipient notifies DFAT of a Performance Issue in accordance with **Clause 15** (a), or if DFAT notifies the Recipient of a Performance Issue, then without limitation to any of DFAT's rights or the Recipient's obligations under this Agreement, the Recipient must, if requested by DFAT, within **7 days** (or such longer period as determined by DFAT) prepare and submit to DFAT a report ('Performance Improvement Plan') identifying:
 - (i) the nature and extent of the Performance Issue;
 - (ii) the consequences of the Performance Issue and in particular the Milestones and Outcomes that are likely to be affected; and
 - (iii) steps the Recipient will take to rectify the Performance Issue,

Performance Improvement Plan

- (c) After receiving the Recipient's Performance Improvement Plan in accordance with **Clause 15(b)**, DFAT will within **30 days** review the Performance Improvement Plan and give the Recipient notice that:
 - (i) DFAT approves the Performance Improvement Plan; or
 - (ii) DFAT does not approve the Performance Improvement Plan.
- (d) If DFAT rejects the Performance Improvement Plan, the Recipient must amend and resubmit its proposed Performance Improvement Plan (again within the timeframe determined in accordance with **Clause 15(b)**), to take account of any concerns that DFAT may have with it, including in relation to matters such as the steps proposed to be taken by the Recipient, and the timeframe in which any steps are proposed to occur.
- (e) If a Performance Improvement Plan is rejected and resubmitted, the process described in **Clauses 15(c)** and (d) will apply to the resubmitted Performance Improvement Plan.
- (f) Once a Performance Improvement Plan is approved by DFAT, the Recipient must complete all of the steps and activities in the approved Performance Improvement Plan within the timeframes specified in the approved Performance Improvement Plan.
- (g) If the Recipient:

- (i) does not submit a Performance Improvement Plan that DFAT is prepared to approve; or
 - (ii) does not comply with the requirements of any approved Performance Improvement Plan,
- then DFAT may immediately suspend payment in accordance with **Clause 7.2(a)(ii)** (Suspension) or terminate this Agreement in accordance with **Clause 34.2** (Termination for default).
- (h) The exercise of DFAT's rights under this **Clause 15**, including the approval of a Performance Improvement Plan, will:
 - (i) not operate as a waiver of the obligations (or any breach thereof) that the Recipient may have under this Agreement; and
 - (ii) not limit DFAT's rights or remedies it may have against the Recipient in connection with the Performance Issue (for example, to claim damages for breach or terminate this Agreement).

16. Compliance with Laws

- (a) The Recipient must, and must ensure that its subcontractors and Personnel, have regard to and comply with, relevant and applicable Laws, guidelines and policies, including those in Australia and in the Partner Country.
- (b) The Recipient must ensure:
 - (i) that individuals or organisations involved in implementing the Activity are in no way linked, directly or indirectly, to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in **Division 102** of the *Criminal Code Act 1995* (Cth) and listed in regulations made under that Act and regulations made under the *Charter of the United Nations Act 1945* (Cth); and
 - (ii) that the Funds are not used in any way to provide direct or indirect support or resources to organisations and individuals associated with terrorism.
- (c) The Recipient must in carrying out its obligations under this Agreement:
 - (i) comply with Laws in relation to sanctions, including the *Charter of the United Nations Act 1945* (Cth) and regulations made under the Act and the *Autonomous Sanctions Act 2011* (Cth) and regulations made under that Act; and
 - (ii) ensure that Funds provided under this Agreement do not provide direct or indirect support or resources to organisation and individuals for whom Australia has imposed sanctions under the *Charter of the United Nations Act 1945* (Cth) and regulations made under that Act or the *Autonomous Sanctions Act 2011* (Cth) and regulations made under that Act.
- (d) If during the Agreement Period, the Recipient discovers any link whatsoever with any organisation or individual listed in **sub-clauses 16(b)** and **16(c)** above, it must inform DFAT immediately.
- (e) The Recipient must have regard to the Australian Government guidance "*Safeguarding your organisation against terrorism financing: a guidance for non-profit organisations*", available at

[http://www.nationalsecurity.gov.au/agd/WWW/nationalsecurity.nsf/Page/What_Governments_are_doing_Risk_of_Misuse - Terrorism Financing](http://www.nationalsecurity.gov.au/agd/WWW/nationalsecurity.nsf/Page/What_Governments_are_doing_Risk_of_Misuse_-_Terrorism_Financing).

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

17. Child protection

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

18. Compliance with DFAT policies

- (a) The Recipient must, and must ensure that its subcontractors and Personnel comply with all DFAT policies as listed on DFAT's website <http://aid.dfat.gov.au>.
- (b) A list, as amended from time to time, of Australian laws and guidelines that may apply to the delivery of developmental aid to foreign countries can be found on the DFAT website: <http://aid.dfat.gov.au>. This list is not exhaustive and is provided for information only.
- (c) The provision of the list referenced at **sub-clause 18(b)** above does not relieve the Recipient from complying with the obligations contained in this **Clause 18**.
- (d) The Recipient must have regard to and comply with the Statement of International Development Practice Principles in **Schedule 5**.

19. Acknowledgement and publicity

19.1 Acknowledgment by Recipient

The Recipient must, in all publications, promotional and advertising materials, public announcements, events and activities in relation to the Activity, or any products, processes or inventions developed as a result of it, **obtain DFAT's prior approval before acknowledging** the financial and other support received from DFAT. **Where approval is provided, the Recipient must** acknowledge the financial and other support received from DFAT in the manner specified on the DFAT website: Branding aid projects and initiatives or otherwise approved by DFAT.

19.2 DFAT rights

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

19.3 Announcements

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

19.4 Activity Events

- (a) The Recipient must not undertake, or participate in any way in, any Activity Event, without providing DFAT with 21 days prior written notice.
- (b) The Recipient must:

- (i) notify DFAT of a proposed Activity Event at least **21 days** before the proposed date for the Activity Event and submit all details of the Activity Event to DFAT in the format required by DFAT;
 - (ii) if required by DFAT, invite a representative of DFAT to the Activity Event; and
 - (iii) if required by DFAT, provide the DFAT representative an opportunity to speak at the Activity Event.
- (c) The Recipient must notify DFAT of any change to Activity Event details as soon as possible.

Subcontracting

20. Subcontractors

- (a) The Recipient must notify DFAT of the details of its subcontractors on request from DFAT.
- (b) The Recipient must obtain any subcontractor's express consent for the disclosure to DFAT of the subcontractor's identity (and their Personal Information, if the subcontractor is an individual). The consent obtained must extend to allowing DFAT to disclose for reporting purposes the subcontractor's identity and the existence and nature of the subcontract.
- (c) The Recipient must not enter into a subcontract with a subcontractor named as an organisation that has not complied with the *Workplace Gender Equality Act 2012* (Cth). *[Note to Recipients: The Workplace Gender Equality Act 2012 (Cth) applies to employers who employ 100 or more employees in Australia and provides for certain reporting obligations by those employers. Failure to comply with this Act may mean that the Director of Workplace Gender Equality may name a person as non-compliant with this Act.]*
- (d) The Recipient must ensure that any subcontractor complies with all Laws and:
 - (i) **Clause 16** (Compliance with Laws);
 - (ii) **Clause 17** (Child protection);
 - (iii) **Clause 18** (Compliance with DFAT policies);
 - (iv) **Clause 23** (Confidentiality);
 - (v) **Clause 29** (Insurance);
 - (vi) **Clause 24** (Protection of Personal Information);
 - (vii) **Clause 30** (Conflict of interest);
 - (viii) **Clause 25** (Records, books and accounts);
 - (ix) **Clause 26** (Audit and access); and
 - (x) **Clause 31** (Fraud).
- (e) The Recipient is fully responsible for:

- (i) undertaking the Activity and performing this Agreement even if the Recipient subcontracts any aspect of the Activity; and
 - (ii) the performance of all of the Recipient's obligations under this Agreement.
- and will not be relieved of that responsibility because of any:
- (iii) involvement by DFAT or any third party in the performance of the Activity; or
 - (iv) payment of any Funds.

Information management

21. Intellectual Property Rights

21.1 Pre-existing Recipient Material and Third Party Material

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

21.2 Selecting an ownership model for Intellectual Property Rights in Agreement Material

- (a) The ownership model for Intellectual Property Rights in Agreement Material is the model set out in Item 10 of **Schedule 1**.
- (b) If no ownership model is selected in Item 10 of **Schedule 1**, **Clause 21.3** applies and **Clause 21.4** in its entirety, does not apply to this Agreement.
- (c) Each Party must, at its own cost, do all things and execute all documents necessary or convenient to give effect to the ownership model.

21.3 Recipient ownership of Intellectual Property Rights in Agreement Material

- (a) All Intellectual Property Rights in the Agreement Material vest in the Recipient on creation.
- (b) Unless otherwise specified in Item 11 of **Schedule 1**:
 - (i) the Recipient grants to, or must obtain for, DFAT, a perpetual, irrevocable, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, Modify, distribute and communicate:
 - (A) the Agreement Material; and
 - (B) any Third Party Material and Pre-Existing Recipient Material, required to receive the full benefit of the Agreement Material and the Activity, and for any other DFAT or Commonwealth purpose; and
 - (ii) to the extent that the Recipient needs to use any of the DFAT Material for the purpose of performing its obligations under this Agreement, DFAT grants to the Recipient for the Agreement Period, subject to any conditions or restrictions specified in item 13 of Schedule 1 and any direction by DFAT, a revocable, world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce,

adapt, Modify and communicate such Material solely for the purpose of performing the Activity.

21.4 DFAT ownership of Intellectual Property Rights in Agreement Material

- (a) All Intellectual Property Rights in the Agreement Material vest in DFAT on creation.
- (b) Unless otherwise specified in Item 12 of **Schedule 1**, to the extent that:
 - (i) DFAT needs to use any of the Pre-Existing Recipient Material or Third Party Material to receive the full benefit of the Activity, and for any other DFAT or Commonwealth purpose, the Recipient grants to, or must obtain for, DFAT, a perpetual, irrevocable, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, Modify and communicate that Pre-Existing Recipient Material or Third Party Material; or
 - (ii) the Recipient needs to use any of the:
 - (A) DFAT Material; or
 - (B) Agreement Material,for the purpose of performing its obligations under this Agreement, DFAT grants to the Recipient for the term of this Agreement, subject to any conditions or restrictions specified in Item 13 of **Schedule 1** and any direction by DFAT, a revocable, world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, Modify, distribute and communicate such Material solely for the purpose of performing the Activity.

21.5 Warranty

The Recipient warrants that:

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

21.6 Remedy for breach of warranty

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

- (a) use its best efforts to secure the rights for DFAT to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

22. Moral Rights

22.1 Obtaining consents

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

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

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

22.2 Specified Acts

- (a) In this **Clause 22**, unless otherwise specified in Item 14 of **Schedule 1, Specified Acts** means:
 - (i) failing to attribute or falsely attributing the authorship of any Agreement Material, or any content in the Agreement Material (including literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
 - (ii) materially altering the style, format, colours, content or layout of the Agreement Material and dealing in any way with the altered Agreement Material;
 - (iii) reproducing, communicating, adapting, publishing or exhibiting any Agreement Material; and
 - (iv) adding any additional content or information to the Agreement Material.
- (b) For the purposes of this **Clause 22**, Agreement Material includes any Pre-existing Recipient Material and Third Party Material to the extent that it is included in, forms part of or is attached to the Agreement Material.

23. Confidentiality

23.1 Prohibition on disclosure

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

23.2 Exceptions to obligations

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

- (a) is disclosed by a Party to its Personnel or advisers solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of activities related to this Agreement;

- (c) is disclosed by DFAT, to the responsible Minister, a House or a Committee of the Parliament of the Commonwealth of Australia;
- (d) is shared by DFAT within DFAT, or with another Commonwealth agency, State or Territory Government or Partner Government, where this serves the Commonwealth's legitimate interests, the State's or Territory's legitimate interests or the Partner Government's legitimate interests;
- (e) is authorised or required by Law to be disclosed or required in connection with legal proceedings; or
- (f) is in the public domain otherwise than due to a breach of this Agreement.

23.3 Transfer of data

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

23.4 Return of information

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

24. Protection of Personal Information

24.1 Privacy

The Recipient to the extent it deals with personal information for the purpose of conducting the Activity, agrees to:

- (a) comply with the Australian Privacy Principles as they apply to DFAT, including:
 - (i) to use or disclose personal information only for the purposes of this Activity;
 - (ii) take necessary steps to ensure adequate security measures are in place to protect personal information from misuse, interference and loss and from unauthorised access, modification or disclosure;
 - (iii) comply with the requirements of Australian Privacy Principle 8 regarding the disclosure of personal information to an overseas recipient;
- (b) not do any act, or engage in any practice, that would – if done or engaged in by DFAT – breach the Australian Privacy Principles;
- (c) comply with any reasonable request or direction of DFAT or the Privacy Commissioner in relation to access to, or handling of, personal information;
- (d) immediately notify DFAT if it becomes aware of a breach or possible breach of any obligations referred to in this clause, or the initiation of any action by the Privacy Commissioner relevant to this Activity; and
- (e) investigate any complaint arising out of a breach or possible breach of any obligations referred to in this clause, and notify DFAT of that investigation and outcome.

The Recipient agrees to indemnify DFAT in respect of any loss, liability or expense suffered or incurred by DFAT which arises directly or indirectly from a breach by the Recipient of any obligations referred to in this clause.

24.2 Disclosure

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

25. Records, books and accounts

25.1 Recipient to keep records, books and accounts

The Recipient must:

- (a) at all times maintain, and must ensure that its subcontractors maintain, full, true, separate and up-to-date records, books and accounts in relation to the Activity, Funds and this Agreement, including operational records, financial records and records in relation to the Funds. Such records, books and accounts must, without limitation:
 - (i) record all operational activities in relation to the Activity, including to enable the prevention, detection and investigation of Fraud as required by **Clause 31** (Fraud and Anti-Corruption);
 - (ii) record all receipts and expenses related to the Activity, including those involving foreign exchange transactions;
 - (iii) enable all receipts and expenses related to the Activity to be identified and reported in accordance with this Agreement;
 - (iv) enable the amounts payable by DFAT under this Agreement to be determined;
 - (v) be kept in a manner that permits them to be conveniently and properly audited or reviewed;
 - (vi) enable the extraction of all information relevant to this Agreement; and
- (b) retain and require its subcontractors to retain for a period of seven years after the expiry or termination of this Agreement, all records, books and accounts relating to the Activity, the Funds and this Agreement.

25.2 Costs

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

25.3 Survival

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

26. Audit and access

26.1 Right to conduct audits or reviews

- (a) DFAT or a representative may conduct audits or reviews relevant to the performance of the Recipient's obligations under this Agreement. Audits or reviews may be conducted of:
 - (i) the use of the Funds;
 - (ii) the Assets;
 - (iii) the Recipient's operational practices and procedures as they relate to this Agreement;
 - (iv) the accuracy of the Recipient's invoices and Reports;
 - (v) the Recipient's compliance with its confidentiality and privacy obligations under this Agreement;
 - (vi) the Recipient's compliance with Laws, guidelines and policies including the policies listed at **Clause 16** (Compliance with Laws) and **18** (Compliance with DFAT Policies);
 - (vii) the Recipient's compliance with its child protection policy obligations under **Clause 17** (Child Protection);
 - (viii) the Recipient's compliance with its Fraud control strategy and policies including Fraud prevention, reporting and investigation obligations under this Agreement;
 - (ix) Material (including records, books and accounts) in the possession of the Recipient relevant to the Activity or this Agreement; and
 - (x) any other matters determined by DFAT to be relevant to the Activity or this Agreement.
- (b) If DFAT decides to conduct or commission audits or reviews, it will give reasonable notice to the Recipient. The Recipient must participate co-operatively in any audit or review conducted by DFAT or a representative.

26.2 Access by DFAT

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

external to DFAT), any request for information directed to DFAT, and any inquiry conducted by Parliament or any Parliamentary committee.

- (b) The Recipient must provide access to its computer hardware and software to the extent necessary for DFAT to exercise its rights under this **Clause 26**, and provide DFAT with any reasonable assistance requested by DFAT to use that hardware and software.

26.3 Conduct of audit and access

DFAT must use reasonable endeavours to ensure that:

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

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

26.4 Costs

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

26.5 DFAT officers and experts

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

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

26.6 Recipient to comply with DFAT officers' requirements

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

26.7 No reduction in responsibility

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

26.8 Subcontractor requirements

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

26.9 No restriction

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

26.10 Survival

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

Risk management

27. Risk management

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

28. Indemnity

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

29. Insurance

29.1 Obligation to maintain insurance

- (a) In connection with the Activity, the Recipient must have and maintain for the Agreement Period, valid and enforceable appropriate insurance policies relevant to the performance of the Activity including where appropriate, the amount of any professional indemnity insurance specified in Item 15 of **Schedule 1**.
- (b) If it is specified in Item 15 of **Schedule 1** that the Recipient is required to have and maintain professional indemnity insurance, the Recipient must continue to maintain such insurance for a period of seven years following the expiry or termination of the Agreement.

29.2 Confirmation of insurance

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

30. Conflict of interest

30.1 Warranty

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

30.2 Notification of a conflict of interest

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

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

31. Fraud and anti-corruption

31.1 Bribery of Foreign Officials and Facilitation Payment

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

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

31.2 Warranty

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

31.3 Prevention of Fraud and anti-corruption

- (a) The Recipient must not, and must ensure that its subcontractors and Personnel do not, engage in any Fraudulent Activity.
- (b) The Recipient is responsible for preventing and detecting Fraud.
- (c) Within one month following the Commencement Date, the Recipient must prepare a fraud risk assessment and zero tolerance fraud control strategy for the Activity. The risk assessment and strategy must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures that comply with the Commonwealth Fraud Control Framework (<http://www.ag.gov.au>). The Recipient's strategies must include:
 - (i) preparation and implementation of a Fraud control strategy, policy and relevant procedures applicable to the Recipient, its subcontractors and Personnel;
 - (ii) development of guidance on anti-corruption and bribery and delivery of materials and training to the Recipient's subcontractors and Personnel;
 - (iii) provision of mandatory fraud control awareness training to all of the Recipient's subcontractors and Personnel and implementation of procedures to track attendance; and
 - (iv) development and implementation of procedures to record and maintain books, accounts and records relating to the Activity that are required to be kept in accordance with **Clause 25** (Records, books and accounts).

31.4 Investigation of Fraud and anti-corruption

- (a) The Recipient must report in writing within **five Business Days** to DFAT any suspicion or detection of Fraudulent Activity involving the Activity including any Fraudulent Activity involving or relating to the Recipient's subcontractors and Personnel.
- (b) In the event of a Fraud and in consultation with DFAT, the Recipient must develop and implement a strategy to investigate the Fraud, based on the principles set out in the Australian Government Investigations Standards (<http://www.ag.gov.au/RightsAndProtections/FOI/Pages/Freedomofinformationdisclosurelog/AustralianGovernmentInvestigationStandards2011andAustralianGovernmentInvestigationsStandards2003.aspx>). The Recipient must undertake the investigation at the Recipient's cost.

- (c) In addition to the investigation carried out by the Recipient under **sub-clause 31.4 (b)** above, DFAT or its nominee may conduct its own investigation. If DFAT exercises its rights under this clause, the Recipient must provide all reasonable assistance that may be required at the Recipient's sole expense.
- (d) Following the conclusion of an investigation (whether by the Recipient or by DFAT) if the investigation finds that:
 - (i) the Recipient, its subcontractors or Personnel have acted in a Fraudulent manner, the Recipient must:
 - (A) where money has been misappropriated, pay to DFAT the full value of the Funds that have been misappropriated or reinstate such amount to the use of the Activity;
 - (B) where an Asset has been misappropriated, either return the item to DFAT or for use in the Activity or if the Asset cannot be recovered or has been damaged so that it is no longer usable, replace the Asset with one of equal value at the time of original purchase and of at least equal quality to the Asset at the time of original purchase;
 - (C) refer the matter to the relevant Partner Country police or other authorities responsible for prosecution of Fraudulent Activity, unless an exemption has been sought and granted by the relevant DFAT delegate; and
 - (D) keep DFAT informed, in writing, on a monthly basis, of the progress of the investigation and recovery action; or
 - (ii) a Party other than the Recipient, its subcontractors or Personnel have acted in a Fraudulent manner, the Recipient must, at the Recipient's cost make every effort to recover any Funds or Assets acquired or distributed through Fraudulent Activity, including the following:
 - (A) take recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country;
 - (B) refer the matter to the relevant Partner Country police or other authorities responsible for prosecution of fraudulent activity, unless an exemption has been sought and granted by the relevant DFAT delegate; and
 - (C) keep DFAT informed, in writing, on a monthly basis, of the progress of the recovery action.
- (e) If the Recipient considers that after all reasonable action has been taken to recover the Funds or Assets and full recovery has not been achieved or recovery has only been achieved in part, the Recipient may seek approval from DFAT that no further recovery action be taken.
- (f) The Recipient must provide to DFAT all information, records and documents required by DFAT to enable DFAT to make a decision on whether or not to approve non-recovery of losses arising from Fraudulent Activity or misappropriated Funds or Assets.

31.5 Subcontractor and Personnel requirements

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

31.6 Survival

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

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

Dispute resolution and termination

32. Force Majeure Events

32.1 Occurrence of Force Majeure Event

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

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

32.2 Notice of Force Majeure Event

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

32.3 **Payment**

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

32.4 **Termination**

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

32.5 **Consequences of termination**

If this Agreement is terminated under **sub-clause 32.4** above:

- (a) DFAT is liable only for:
 - (i) payments under **Clause 7** (Payment of Funds by DFAT) in accordance with this Agreement before the effective date of termination, but only to the extent that those monies have been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement and are payable by the Recipient as a current liability, by the date the Recipient receives the notice of termination (written evidence of which will be required); and
 - (ii) where the Recipient has undertaken work on but not completed a Milestone by the date the Recipient receives the notice of termination, grant funding in accordance with this Agreement to the extent that those monies have been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement and payable by the Recipient as a current liability, on that Milestone by the date the Recipient receives the notice of termination (written evidence of which will be required); and
- (b) each Party will bear its own costs and neither Party will incur further liability to the other.

33. **Dispute resolution**

33.1 **No arbitration or court proceedings**

If a dispute arises in relation to this Agreement ('Dispute'), a Party must comply with this **Clause 33.3** before starting arbitration or court proceedings, except proceedings for urgent interlocutory relief. After a Party has sought or obtained any urgent interlocutory relief, that Party must follow this **Clause 33.3**.

33.2 **Notification**

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

33.3 **Parties to resolve Dispute**

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

33.4 **Breach of this clause**

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

33.5 Exception

For the purpose of this **Clause 333**, a Dispute does not include a dispute arising in relation to DFAT:

- (a) suspending payment of grant funding under **Clause 7.2** (Suspension);
- (b) reducing the amount of an instalment of grant funding under **Clause 7.3** (Reduction) ;
- (c) requiring payment under **Clause 10** (Repayment); or
- (d) terminating this Agreement or reducing the scope of the Activity under **Clause 344** (Termination).

34. Termination

34.1 Termination for convenience

- (a) Without limiting any other rights or remedies DFAT may have arising out of or in connection with this Agreement, DFAT may, by notice, terminate this Agreement or reduce the scope of the Activity for any reason.
- (b) On receipt of a notice of termination or reduction the Recipient must:
 - (i) take all available steps to minimise loss resulting from that termination or reduction and to protect Agreement Material; and
 - (ii) in the case of a reduction in scope, continue to undertake any part of the Activity not affected by the notice (unless the Recipient, acting reasonably, notifies DFAT that it is not commercially viable to do so).
- (c) If this Agreement is terminated under this **sub-clause 34.1**, DFAT is liable only for:
 - (i) payments under **Clause 7** (Payment of funds by DFAT) in accordance with this Agreement before the effective date of termination, but only to the extent that those monies have been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement and are payable by the Recipient as a current liability, by the date the Recipient receives the notice of termination (written evidence of which will be required);
 - (ii) where the Recipient has undertaken work on but not completed a Milestone by the date the Recipient receives the notice of termination, grant funding in accordance with this Agreement to the extent that those monies have been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement and payable by the Recipient as a current liability, on that Milestone by the date the Recipient receives the notice of termination (written evidence of which will be required); and
 - (iii) subject to **sub-clause 34.1(e)**, reasonable costs actually incurred by the Recipient and directly attributable to the termination.
- (d) If the scope of the Activity is reduced, DFAT's liability to pay the grant funding under this Agreement abates in accordance with the reduction in the Activity.
- (e) DFAT is not liable to pay compensation under **sub-clause 34.1(c)(iii)** that exceeds an amount equal to the Total Funds less any amounts paid or due, or becoming due, to the Recipient under this Agreement.

- (f) The Recipient is not entitled to compensation for loss of prospective profits.

34.2 Termination for default

- (a) Without limiting any other rights or remedies DFAT may have arising out of or in connection with this Agreement, DFAT may terminate this Agreement or reduce the scope of the Activity effective immediately by giving notice to the Recipient if:
 - (i) the Recipient breaches a material provision of this Agreement where that breach is not capable of remedy;
 - (ii) the Recipient breaches any provision of this Agreement and fails to remedy the breach within 14 days after receiving notice requiring it to do so;
 - (iii) in the opinion of DFAT, a conflict of interest exists which would prevent the Recipient from performing its obligations under this Agreement;
 - (iv) in DFAT's reasonable opinion, one or more of the circumstances described in **Clause 15(g)**(Performance Improvement Plan) apply;
 - (v) the Recipient:
 - (A) Abandons the Activity;
 - (B) notifies DFAT of an intention to Abandon the Activity; or
 - (C) states an intention to Abandon the Activity,and does not, when requested by DFAT, demonstrate to DFAT's satisfaction within **14 days** that the Recipient will proceed with the Activity;
 - (vi) in DFAT's reasonable opinion, it is unlikely that the Recipient will be able to achieve a Milestone to DFAT's satisfaction;
 - (vii) DFAT is satisfied that any statement made in the Application is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the provision of the grant funding under this Agreement;
 - (viii) the organisation is listed in the World Bank list or Similar List;
 - (ix) the organisation is listed on a Relevant List;
 - (x) a Related Agreement is terminated by DFAT for default by the Recipient;
 - (xi) there is a Change in Control of the Recipient; or
 - (xii) an Insolvency Event occurs in relation to the Recipient.
- (b) Without limitation, for the purposes of **Clause 34.2(a)(i)**, each of the following constitutes a breach of a material provision:
 - (i) breach of warranty under **Clause 4.2** (Warranties);
 - (ii) a failure to comply with **Clause 6.1** (What Funds can be used for);
 - (iii) a failure to comply with **Clause 16** (Compliance with Laws) including a failure to notify DFAT **under sub-clause 16(g)**;
 - (iv) a failure to comply with **Clause 17** (Child protection);
 - (v) a failure to comply with **Clause 18** (Compliance with DFAT policies);

- (vi) a failure to comply with **Clause 20** (Subcontractors);
 - (vii) a failure to comply with **Clause 21** (Intellectual Property Rights);
 - (viii) a failure to comply with **Clause 24** (Protection of Personal Information);
 - (ix) a failure to comply with **Clause 29** (Insurance);
 - (x) a failure to notify DFAT of a conflict of interest under **Clause 30** (Conflict of interest); and
 - (xi) a breach of warranty or a failure to comply with **Clause 31** (Fraud and anti-corruption).
- (c) If the scope of the Activity is reduced under this **sub-clause 34.2**:
- (i) DFAT's liability to pay the grant funding under this Agreement abates in accordance with the reduction in the Activity; and
 - (ii) the Recipient must continue to undertake any part of the Activity not affected by the notice (unless the Recipient, acting reasonably, notifies DFAT that it is not commercially viable to do so).

34.3 DFAT rights

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

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

34.4 Termination does not affect accrued rights

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

General obligations

35. Survival

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

- (a) **Clause 6** (Use of Funds by Recipient);
- (b) **Clause 9** (GST);
- (c) **Clause 10** (Repayment);
- (d) **Clause 12** (Assets);
- (e) **Clause Error! Reference source not found.** (Repayment of administered grant funds);
- (f) **Clause 14.2** (Reporting);
- (g) **Clause 14.3** (Evaluation);
- (h) **Clause 19** (Acknowledgment and publicity);
- (i) **Clause 21** (Intellectual Property Rights);
- (j) **Clause 22** (Moral Rights);

- (k) **Clause 23** (Confidentiality);
- (l) **Clause 24** (Protection of Personal Information);
- (m) **Clause 25** (Records, books and accounts);
- (n) **Clause 26** (Audit and access);
- (o) **Clause 28** (Indemnity);
- (p) **Clause 29** (Insurance);
- (q) **Clause 31** (Fraud and anti-corruption);
- (r) **Clause 34.3** (DFAT rights); and
- (s) **Clause 37.2** (Amounts due to DFAT),

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

36. Notices and other communications

36.1 Service of Notices

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sending Party; and
- (b) hand delivered or sent by prepaid post, facsimile or email to the recipient's address for Notices specified in Item 16 of **Schedule 1**, as varied by any Notice given by the recipient to the sender.

36.2 Effective on receipt

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

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the third Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within one Business Day after the transmission, the recipient informs the sender that it has not received the entire Notice,

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

36.3 Notices by email

- (a) A Notice relating to a matter under **Clause 32.4** (Termination), **Clause 333** (Dispute Resolution) or **Clause 344** (Termination) must not be sent by email.

- (b) Subject to **sub-clause 36.3(c)** below, a Notice given in accordance with **sub-clause 36.1** above delivered by email is taken to be received on the first to occur of:
 - (i) receipt by the sender of an email acknowledgement from the recipient's information system showing that the notice has been delivered to the email address specified in the recipient's address for Notices specified in Item 16 of **Schedule 1** as varied by any Notice given by the recipient to the sender;
 - (ii) the time that the notice enters an information system which is under the control of the recipient; and
 - (iii) the time that the notice is first opened or read by the intended addressee.
- (c) If the sender receives an out of office reply that states the recipient is out of the office until a later date, the Notice will only be taken to be given on that later date. If the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is after **5.00pm (AEST)** on a Business Day in the place where the Notice is sent, it will be taken to have been duly given or made at the start of business on the next Business Day in that place.

37. Miscellaneous

37.1 No security

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

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

37.2 Amounts due to DFAT

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

37.3 Notice of certain events

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

37.4 Variation

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

37.5 Approvals and consents

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

37.6 Assignment and novation

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

37.7 Costs

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

37.8 Counterparts

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

37.9 No merger

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

37.10 Entire agreement

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

37.11 Further action

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

37.12 Severability

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

37.13 Waiver

Waiver of any provision of or right under this Agreement:

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

37.14 Relationship

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

37.15 Governing law and jurisdiction

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

37.16 False or misleading information

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

37.17 No reliance

The Recipient:

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

37.18 No further grant funding

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

Schedule 1 – Agreement details

Item number	Description	Clause reference	Details
1.	DFAT	1.1	Commonwealth of Australia as represented by the Department of Foreign Affairs and Trade ABN 47 065 634 525 Department of Foreign Affairs and Trade – Australian Aid Program GPO Box 887 CANBERRA ACT 2601 AUSTRALIA
2.	Recipient	1.1	Transparency International Alt-Moabit 96, 10559 Berlin, Germany
3.	DFAT Representative	1.1 and 14.1	Elise Cole, Policy and Program Officer, Law and Justice Section
4.	Recipient Representative	1.1 and 14.1	Kate Hanlon, Asia-Pacific Regional Programme Manager
5.	Commencement Date	1.1 and 3	The date this Agreement is signed by the last Party.
6.	Activity Start Date	1.1 and 3	15 December 2015
7.	Activity End Date	1.1 and 3	31 December 2019
8.	GST registration status	9Error! Reference source not found.	<input type="checkbox"/> the Recipient is not registered for GST
9.	Administered Grant Scheme	13	Not applicable
10.	Ownership of Intellectual Property Rights	21.2	<input type="checkbox"/> Clause 21.3 (Recipient ownership of Intellectual Property Rights in Agreement Material) is to apply.
11.	Recipient ownership of Intellectual Property in Agreement Material	21.3	Not applicable
12.	DFAT ownership of Intellectual Property Rights in Agreement Material	21.4	Not applicable
13.	DFAT Material	1.1	Nil
14.	Moral Rights – Specified Acts	22	Nil
15.	Insurance	29	Company Liability Insurance: €4 m

Item number	Description	Clause reference	Details
			Directors and Officers Insurance: €1m
16.	Address for Notices	366	<p>DFAT: Elise Cole, Policy and Program Officer, Law and Justice Section</p> <p>Postal address: Department of Foreign Affairs and Trade – Australian Aid Program GPO Box 887 CANBERRA ACT 2601 AUSTRALIA</p> <p>Physical address: 255 London Circuit CANBERRA ACT 2601 AUSTRALIA</p> <p>Email: elise.cole@dfat.gov.au</p> <p>Recipient: Kate Hanlon Asia Pacific Regional Programme Manager</p> <p>Postal address: Alt-Moabit 96, 10559 Berlin, Germany</p> <p>Physical address: Alt-Moabit 96, 10559 Berlin, Germany</p> <p>Facsimile: + 49 30 3470 39 12</p> <p>Email: khanlon@transparency.org</p>
17.	Special Conditions	1.1 and 2	Nil

Schedule 2 – Activity Proposal

1. Activity description (clause 1.1)

Transparency International's (TI) *Asia Pacific Regional Program: Effective and Accountable Governance for Sustainable Growth* ('the program') aims to support 'effective and accountable governance for sustainable growth'. The program will support policy and behavioural change across the region, with a focus on supporting effective implementation and enforcement of anti-corruption mechanisms.

The program will focus on four goals during the Activity period:

1. Enhanced Social Accountability and Role of Civil Society
2. Strengthened Anti-Corruption Legislation
3. Strengthened Enforcement of Anti-Corruption Systems and Organisations
4. Demonstrated Business Integrity

Annual work plans will be developed each year outlining the activities TI national chapters and the TI Asia Pacific Department (TI-APD) will pursue consistent with these four goals. The type and mix of activities will be developed taking into account the contextual factors and priorities that exist at the country level. The number and scope of activities may also be impacted by changes in the value of the Australian dollar against the Euro (the operative currency of the Recipient).

The type and mix of activities (including any implications resulting from currency fluctuations) will be finalised in annual work plans. Indicative activities that may be supported under each of the four goal areas include:

Goal	Activities
Enhanced Social Accountability and Role of Civil Society	<ul style="list-style-type: none"> - Providing legal advice and support to victims and witnesses of corruption through TI Advocacy and Legal Advice Centres (ALACs) - Facilitating exchanges and dialogues between governments and citizens - Supporting citizen monitoring of government commitments to open governance and public service delivery (for example, through budget tracking, social audits and citizen report cards) - Gathering and analysing complaints and corruption case data (for example, through ALACS) - Surveying public opinion and experiences of corruption (for example, through the Global Corruption Barometer, report card surveys) - Targeted actions, petitions and social media campaigns - Regional campaigns - Advocating for civil society space and protection - Coordinating protection efforts for TI actors under threat
Strengthened Anti-Corruption Legislation	<ul style="list-style-type: none"> - Identifying gaps in national legislation - Advocating for effective integrity and anti-corruption legislation - Providing policy input to legislative processes and advice on international standards and best practice - Sharing knowledge and experiences across TI chapters - Assessing the implementation of existing anti-corruption laws and developing recommendations for reform - Advocating for legislative reform through regional platforms and mechanisms

Strengthened Enforcement of Anti-Corruption Systems and Organisations	<ul style="list-style-type: none"> - Assessing and benchmarking key institutions and developing recommendations for reform - Supporting key institutions responsible for implementing anti-corruption reforms (for example, by supporting engagement with other stakeholders, helping with advocacy or media campaigns) - Regional campaigns - Engaging with anti-corruption agencies (ACAs) and facilitating communities of practice among ACAs - Assessing and benchmarking ACAs and conducting regional analysis of ACA effectiveness - Supporting ACAs develop action plans (in response to reform recommendations), lobby policy makers, and advocate for reforms - Assessing and monitoring government commitments to open governance and public service delivery
Demonstrated Business Integrity	<ul style="list-style-type: none"> - Assessing the effectiveness of the regulatory environment (for example, using TI tools like the Transparency in Corporate Reporting report) - Advocating for improved business regulations, business transparency on enforcement of regulations and other reforms - Conducting comparative assessments of business regulations across the region and advocating for minimum international standards - Developing internal capacity and expertise on illicit financial flows and foreign bribery issues - Advocating for improved enforcement of business integrity regulations at the regional level - Engaging with groups of companies interested in promoting best practice

In addition to activities pursued under the four goal areas, a key part of the program (over 50% of the funding) is focused on ensuring there is a sufficiently strong and skilled network of TI national chapters in the region – that will be able to deliver relevant activities and contribute to policy and behavioural change. Key activities that will be supported under this component include:

- Providing ongoing support to TI chapters on advocacy and campaign efforts
- Developing and strengthening leadership, management and governance capacity within TI chapters
- Developing new partnerships in countries without a TI presence and supporting transparency and accountability efforts in countries where TI chapters have limited outreach capacity
- Strengthening the TI network in the region through facilitating knowledge exchange

- Contributing to regional and global anti-corruption campaigns and supporting TI chapters to engage people via national and regional platforms, social media and other mechanisms
- Supporting TI chapters develop a sustainable and diversified support base.

Further information on the Activity is contained in the Project Document annexed to this agreement at Attachment A. The annexed Project Document also contains an assessment of risks to the Activity and TI's mitigation strategies.

2. Outcomes (clauses 1.1 and 4.1(a)(i))

The overall aim of the program is to support 'effective and accountable governance for sustainable growth'.

The program will focus on four goals (or end-of-program outcomes) that will support the overall aim by promoting policy and behavioural change across the region, with a focus on supporting effective implementation and enforcement of anti-corruption mechanisms. The four goals are:

1. Enhanced Social Accountability and Role of Civil Society
2. Strengthened Anti-Corruption Legislation
3. Strengthened Enforcement of Anti-Corruption Systems and Organisations
4. Demonstrated Business Integrity

Several intermediate outcomes are also expected to be achieved under each of the four goals – the extent of progress against intermediate outcomes will depend on the type and mix of activities prioritised each year by TI national chapters and by TI-APD.

The intermediate outcomes are:

Under Enhanced Social Accountability and Role of Civil Society:

- Citizens supported to voice their corruption complaints and seek redress for their grievances (for example, through TI's Advocacy and Legal Advice Centres (ALACs) or through targeted anti-corruption campaigns)
- Space for civil society in legislation, policy and practice is preserved, and mechanisms to protect civil society activists are strengthened

Under Strengthened Anti-Corruption Legislation:

- New anti-corruption legislation (where relevant and critical) is tabled and passed
- Existing anti-corruption legislation (where weak or ineffective) is strengthened

Under Strengthened Enforcement of Anti-Corruption Mechanisms:

- Relevant public institutions are supported to be more transparent and accountable
- Anti-corruption agencies are strengthened to be more effective
- Improved public service delivery is supported (for example, through assessment and monitoring of open governance measures)

Under Demonstrated Business Integrity:

- Improved business regulation is supported (for example, TI will conduct relevant assessments and work with private sector stakeholders, and advocate and support reform through relevant anti-corruption fora)

Further information on Activity goals, intermediate outcomes and the indicators that will be used to monitor and measure progress is contained in the Project Document annexed to this agreement at attachment A. A 'basket approach' will be adopted, where TI will report against some (but not necessarily all) indicators based on the activities prioritised and undertaken each year.

3. Milestones (clauses 1.1 and 4.1(a)(v))

	Milestone	Completion date
1.	Description Following signing of this Agreement, reports detailed below are provided and accepted by DFAT. Reports to be provided by the Recipient as part of this Milestone <ul style="list-style-type: none"> - 2016 Work Plan (outlining activities to be conducted during the 2016 calendar year) 	15 December 2015
2.	Description First year of activities are delivered in accordance with agreed work plan, and reports detailed below are provided and accepted by DFAT. Reports to be provided by the Recipient as part of this Milestone <ul style="list-style-type: none"> - 2016 Annual Report (reviewing implementation against 2016 Work Plan and progress and expenditure to date) - 2017 Work Plan (outlining activities to be conducted during the 2017 calendar year) 	28 February 2017
3.	Description Provision of financial acquittal report for 2016. Reports to be provided by the Recipient as part of this Milestone <ul style="list-style-type: none"> - Financial Acquittal Report for the period of January to December 2016 	30 June 2017
4.	Description Second year of activities are delivered in accordance with agreed work plan, and reports detailed below are provided and accepted by DFAT. Reports to be provided by the Recipient as part of this Milestone	28 February 2018

	Milestone	Completion date
	<ul style="list-style-type: none"> - 2017 Annual Report (reviewing implementation against 2017 Work Plan and progress and expenditure to date) - 2018 Work Plan (outlining activities to be conducted during the 2018 calendar year) 	
5.	Description Provision of financial acquittal report for 2017. Reports to be provided by the Recipient as part of this Milestone Financial Acquittal Report for the period of January to December 2017	30 June 2018
6.	Description Independent mid-term review completed. Reports to be provided by the Recipient as part of this Milestone Independent Mid-Term Review of the program (covering the activity period of January 2016 to December 2017)	30 September 2018
7.	Description Third year of activities are delivered in accordance with agreed work plan, and reports detailed below are provided and accepted by DFAT. Reports to be provided by the Recipient as part of this Milestone <ul style="list-style-type: none"> - 2018 Annual Report (reviewing implementation against 2018 Work Plan and progress and expenditure to date) - 2019 Work Plan (outlining activities to be conducted during the 2019 calendar year) 	28 February 2019
8.	Description Provision of financial acquittal report for 2018. Reports to be provided by the Recipient as part of this Milestone Financial Acquittal Report for the period of January to December 2018	30 June 2019
9.	Description Final year of activities are delivered in accordance with agreed work plan, and reports detailed below are provided and accepted by DFAT. Reports to be provided by the recipient as part of this Milestone	28 February 2020

	Milestone	Completion date
	<ul style="list-style-type: none"> - Final Report (reviewing implementation against 2019 Work Plan and progress and expenditure of the entire program) - Financial Acquittal Report for the project (from January 2016 to December 2019) 	
10.	Description Provision of Final Evaluation. Reports to be provided by the Recipient as part of this Milestone <ul style="list-style-type: none"> - Independent Final Evaluation 	20 April 2020

4. Budget (clauses 1.1 and 6.1)

Item	Description	Price (ex GST)
Enabling impact	National funding: \$1,960,483.29 Regional funding: \$1,684,795.95 (includes \$1,517,500.00 specifically for M&E)	\$3,645,279.24
Goal 1 – Enhanced Social Accountability	National funding: \$449,023.09 Regional Funding: \$709,465.58	\$1,158,488.67
Goal 2 – Strengthened A/C legislation	National funding : \$283,102.22 Regional funding: \$316,664.48	\$599,766.70
Goal 3 – Strengthened enforcement of A/C mechanisms	National funding: \$243,549.82 Regional Funding: \$918,615.42	\$1,162,165.24
Goal 4 – Business Integrity	National funding: \$100,040.72 Regional funding: \$224,259.42	\$324,300.14

5. Assets (clauses 1.1 and 12)

5.1 Assets to be acquired with the Funds

None specified unless previously agreed to in writing by DFAT.

5.2 Asset Threshold

AUD\$2,000 (inclusive of GST) (or equivalent).

5.3 Ownership of Assets

Default position to apply.

5.4 Asset Register

The Recipient must maintain the Asset Register which must record:

- a. non-consumable items of a portable nature with a value below the Asset Threshold;
- b. all Assets with a value at or above the Asset Threshold;
- c. Asset description;
- d. purchase price or total lease cost;
- e. date of purchase or lease and date of payment;
- f. reason for acquisition;
- g. type and term of lease (if applicable);
- h. date of receipt of the Asset at the Activity site;
- i. identification number for the Asset;
- j. location of Asset;
- k. disposal date;
- l. disposal method; and
- m. reason for disposal.

6. Personnel positions

Personnel	Role	Directly working with /contact with children
Kate Hanlon	Asia Pacific Regional Program Director	No
Srirak Pilpat	Regional Director, Asia Pacific	No

Schedule 3 – Funds

1. Total Funds (clause 1.1)

Subject to this Agreement, the maximum amount of grant funding payable by DFAT under this Agreement is AUD \$6,890,000 inclusive of GST. No other amount of grant funding is payable by DFAT.

2. Interest rate (clause 10.4)

The general interest charge rate as defined in section 8AAD of the *Taxation Administration Act 1953* (Cth).

3. Payment (clauses 1.1, 7 and 8)

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

No.	Payment Criteria	Payment Claim Due Date	Instalment (GST exclusive)
1.	<ul style="list-style-type: none"> achievement of Milestone No. 1 receipt and acceptance of the 2016 Work Plan and 	15 December 2015	\$1,790,000
2.	<ul style="list-style-type: none"> achievement of Milestone No.2 receipt and acceptance of the Milestone 2 reports expenditure of at least 80% of payment No. 1 	28 February 2017	\$1,700,000
3.	<ul style="list-style-type: none"> achievement of Milestone No.3 and Milestone No.4 receipt and acceptance of the Milestone 3 and Milestone 4 reports expenditure of at least 80% of payment No. 2 	28 February 2018	\$1,700,000
4.	<ul style="list-style-type: none"> achievement of Milestone No. 5, Milestone No.6 and Milestone No.7 receipt and acceptance of the Milestone 5, Milestone 6 and Milestone 7 reports expenditure of least 80% of total payments made to-date 	28 February 2019	\$1,700,000

No.	Payment Criteria	Payment Claim Due Date	Instalment (GST exclusive)
Total			\$6,890,000

4. Invoicing requirements (clause 8)

- a. To be a correctly rendered invoice the invoice must include:
 - i. the agreement number and Activity title;
 - ii. the payment event number(s) notified by DFAT;
 - iii. the amount of grant funding to be paid by DFAT together with any substantiating material required;
 - iv. the name of the DFAT Representative;
 - v. be accompanied by any supporting documentation and other evidence specified in item 3 of Schedule 3 for that instalment; and
 - vi. such other information as DFAT requires.
- b. Where Australian GST applies to this Agreement all invoices must be in the form of a valid tax invoice. Invalid tax invoices will be returned to the Recipient. Information on what constitutes a valid tax invoice can be found at:
<http://www.ato.gov.au/businesses/content.asp?doc=/content/50913.htm>
- c. Invoices must be submitted to:

Department of Foreign Affairs and Trade – Australian Aid Program
 GPO Box 887
 Canberra ACT 2601 Australia

or

accountsprocessing@dfat.gov.au and a copy sent to the DFAT Representative.

Schedule 4 – Reporting

1. Milestone reports

- a. The Recipient must provide a Milestone report as required by the item 3 of Schedule 2.
- b. Each Milestone report must include:
 - i. the name of the Recipient and all subcontractors;
 - ii. a contact name, telephone number and email address;
 - iii. the Activity title and number;
 - iv. the Milestone and period to which the report relates;
 - v. a Budget update (including cost to completion);
 - vi. a statement of the Funds provided or spent ;
 - vii. the amount remaining in the account referred to in clause 6.3;
 - viii. a technical report of the Milestone activities, including:
 - (A) a description and analysis of the technical progress of the Activity;
 - (B) evidence that the activities within the Milestone have been achieved;
 - (C) any major issues or risks which have arisen in the course of achieving the Milestone and the effect they will have on the Activity and what will be done to address any ongoing issues or risks; and
 - (D) any proposed changes to the Activity; and
 - ix. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity.

2. Annual reports

- a. The Recipient must provide an annual progress report as required by item 3 of Schedule 2 and if not specified at item 3 of Schedule 2, within [60 days] of each anniversary of the Commencement Date.
- b. Each annual progress report must include:
 - i. the name of the Recipient and all subcontractors;
 - ii. the Activity title and number;
 - iii. the period to which the report relates;
 - iv. a Budget update (including cost to completion);
 - v. a statement of the Funds provided or spent;
 - vi. the amount remaining in the account referred to in clause 6.3;
 - vii. the reconciliation of Assets required under clause 12.2(c) and a copy of the Assets Register; and

- viii. a description and analysis of the progress of the Activity, including:
 - (A) whether the Activity is proceeding in accordance with the Budget and, if it is not, an explanation of why the Budget is not being met, the effect this will have on the Activity and the action the Recipient proposes to take to address this;
 - (B) progress on achieving the Outcomes;
 - (C) any major issues or developments which have arisen and the effect they will have on the Activity; and
 - (D) any proposed changes to the Activity.
- c. If the Recipient administers an Administered Grant Scheme, the annual report must include a summary of all new Administered Grant Arrangements the Recipient will enter into, or has entered into, in relation to the upcoming calendar year, including details of:
 - i. the identity of the Administered Grant Recipient;
 - ii. the value of the Administered Grant Arrangement;
 - iii. the subject matter of the Administered Grant Arrangement; and
 - iv. the expected completion date for the Administered Grant Arrangement.

3. Acquittal reports

- a. The Recipient must provide acquittal reports:
 - i. as required by item 3 of Schedule 2; and
 - ii. within 40 days after the earlier of the Activity End Date, expiry or termination of this Agreement.
- b. Each acquittal report must include the following:

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

	Content	Prepared by
	clause 6.3.	

4. Final report

- a. Unless stated otherwise in item 3 of Schedule 2, the Recipient must within 60 days of the completion of the Activity provide a report which includes:
- i. the name of the Recipient and all subcontractors;
 - ii. the Activity title and number;
 - iii. a statement of the Funds provided and spent;
 - iv. the amount (if any) remaining in the account referred to in clause 6.3;
 - v. a description and analysis of the progress of the Activity, including:
 - (A) evidence that the Activity has been completed, and the Milestones have been achieved;
 - (B) details of the extent to which the Activity achieved the Outcomes;
 - (C) any highlights, breakthroughs or difficulties encountered; and
 - (D) conclusions or recommendations (if any) arising from the Activity;
 - vi. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity; and
 - vii. reconciliation of Assets and a copy of the Asset Register.

5. Ad hoc reports

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

Schedule 5 – Statement of International Development Practice Principles

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

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

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

International Development Principles

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

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

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

Organisational Integrity and Accountability for Development

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

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

Not-for-profit organisations working with DFAT should:

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

DFAT Grant Agreement Requirements

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

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

Additional Information and Related Links

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

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

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

http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html#3

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

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

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

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

Further information on Aid Effectiveness can be found at:

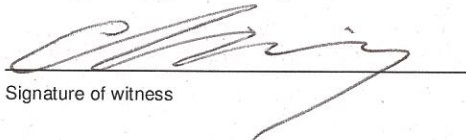
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Signing page

EXECUTED as a deed.


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


Signature of witness

CLAIRE McEVILLY
Name of witness (print)

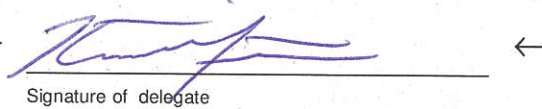
22/12/15
Date

The common seal of Transparency International is fixed to this document in accordance with its constitution in the presence of


Signature of director

MIKLOS MARSHALL
Name of director (print)

16.12.2015.
Date

←  ←
Signature of delegate

Kristian Futoi
Name of delegate (print)

Director a/g, Law & Justice
Position of delegate and section (print) Section 7

← _____ ←
Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Attachment A – Project Document

[Proposal attached here]

