

CONTRACT DETAILS

| Item No. | Information | Reference | Details |
|-----------------|---------------------------|--------------------------|--|
| 1. | Project | clause 1 of Schedule 3 | <p>Samoa Human Development and Social Inclusion Program (SHDSI) will deliver Australia's commitments in the latter phase of the Samoa COVID-19 Development Response Plan (2020-2022) and help build on the human development foundations required for Samoa's economic recovery and continued stability. The three End-Of-Investment Outcomes (EOIOs) are:</p> <ul style="list-style-type: none"> a) Government and non-government providers delivering higher quality essential services and programs. b) More people have access to essential services and programs, including women, girls, people with disabilities and vulnerable people. c) Australian assistance incentivises the Government of Samoa to address policy reform system bottlenecks and pursue collaborative partnerships and innovation to maximise resources and improve service delivery outcomes. |
| 2. | Project Start Date | clause 2 of Schedule 3 | 16 November 2021 |
| 3. | Project End Date | clause 2 of Schedule 3 | 15 November 2025 |
| 4. | Project Value | Clause 1.1 of Schedule 2 | AUD18,500,000 exclusive of GST |

| Item No. | Information | Reference | Details |
|-----------------|---|--------------------------|--|
| 5. | Specified Confidential Information | clause 12 of Schedule 3 | <p>Description or details of information to be kept confidential</p> <p>The Contractor must consider the Department of Finance four criteria which comprise the 'Confidentiality Test' for a delivery partner's commercial information to be considered confidential. Confidentiality throughout the Procurement Cycle Department of Finance.</p> <p>The Contractor must seek DFAT agreement before any material is to be marked as Commercial in Confidence. Any proposed Specified Confidential Information must not impede DFAT's rights of ownership and usage of Project Material/Data/Reports under the Contract or hinder in any manner of compliance with Confidentiality, Audit, Policy and Law.</p> <p>All evaluation/strategic review/design documents, annual plan, annual report, and handover plans should be 'released in full' with no redactions unless agreed with DFAT that the information is to be annexed to any documentation so it can be easily redacted.</p> |
| 6. | Contract | clause 1.1 of Schedule 3 | <p>The contract comprises of these Contract Details:</p> <ul style="list-style-type: none"> a) Schedule 1 (Statement of Requirements). b) Schedule 2 (Payment). c) Schedule 3 (Standard Contract Terms and Conditions). d) Schedule 4 (Interpretation and Definitions). e) Schedule 5 (Performance Guarantee) – if required. f) Schedule 6 (Bank Guarantee) – if required. g) Schedule 7 (Indigenous Participation Plan) h) Schedule 8 (Localisation Participation Plan) i) Schedule 9 (Diversity and Inclusion Plan) j) Schedule 10 (Partner Performance Assessment Template). k) Schedule 11 (Individual Performance Assessment Template). l) Schedule 12 (Deed of Novation) |
| 7. | Option period(s) | clause 2.2 of Schedule 3 | Up to 4 years |
| 8. | Value of subcontracts requiring approval | clause 7.5 of Schedule 3 | AUD100,000.00 |

| Item No. | Information | Reference | Details |
|----------|----------------------------|--------------------------|---|
| 9. | Additional insurance types | clause 9.1 of Schedule 3 | <p>[Insert any additional insurance types]</p> <p>Note: if the Contractor's activities are performed or the Contractor's employees perform work, are employed or normally reside in any jurisdiction outside Australia, the Contractor will obtain a policy of insurance covering the liability of the Contractor to its employees at common law, for death or injuries arising out of or in connection with their employment]</p> |
| 10. | Applicable Standards | | <p>a) DFAT's Monitoring and Evaluation Standards, https://www.dfat.gov.au/about-us/publications/Pages/dfat-monitoring-and-evaluation-standards</p> <p>b) ISO 30405:2016 (Human resource management -- Guidelines on recruitment)</p> <p>c) ISO 30408:2016 (Human resource management -- Guidelines on human governance)</p> <p>d) ISO 15489 (Records management)</p> |
| 11. | DFAT Standards | | <p>e) AusConnect: All relevant subcontracting, granting, and recruitment opportunities must be advertised on AusConnect, https://ausconnect.dfat.gov.au/</p> <p>f) PERFORMS: The contractor must enter project data into PERFORMS as required by DFAT.</p> <p>g) Milestone: DFAT will specifically undertake a quality assurance of the contractor's performance against the contract at 6 months after the contract start date and annually thereafter to coincide with DFAT's performance management cycle.</p> <p>h) Milestone: DFAT will specifically undertake a quality assurance of the contractor's Design and Handover Plan at 24 months after the contract start date against DFAT's Monitoring and Evaluation Standards. And routinely thereafter, indicatively annually.</p> <p>i) Milestone: DFAT will specifically undertake a quality assurance of the contractor's Monitoring and Evaluation system at 12 months after the implementation phase against DFAT's Monitoring and Evaluation Standards. And routinely thereafter, indicatively annually.</p> |

SCHEDULE 1

Statement of Requirements

To be inserted following negotiations

SCHEDULE 2

Payment Schedule

1. TOTAL AMOUNT PAYABLE

- 1.1 The maximum amount payable by DFAT to the Contractor for the provision of the Goods and/or Services shall not exceed the sum of **AUD00.00** plus GST if any up to a maximum amount of **AUD00.00**. DFAT shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.
- 1.2 The maximum amount payable is comprised of the following items:
- (a) Management Fees not exceeding the sum of **AUD00.00** plus GST;
 - (b) Personnel Fees including:
 - (i) Long term Personnel Costs up to a maximum of **AUD00.00** plus GST;
 - (ii) Short term Personnel Costs up to a maximum of **AUD00.00** plus GST;
 - (c) Long term Personnel Support Costs up to a maximum of **AUD00.00** plus GST;
 - (d) Reimbursable Costs up to a maximum of **AUD00.00** plus GST; and
 - (e) Program Activity Costs up to a maximum of **AUD00.00** plus GST.
- 1.3 Funds may be moved between **Clause 1.2 (b) to (e)** above with prior written approval from DFAT prior to the Contractor making any commitments above those in this Contract. Any increase to the Management Fees above will require a Contract Amendment.

2. MANAGEMENT FEE

- 2.1 The maximum amount payable to the Contractor in Management Fees shall not exceed the sum of **AUD00.00** plus GST.
- 2.2 The Management Fee is comprised of the following:
- (a) profits, including commercial margins and mark-up for personnel and project management;
 - (b) financial management costs; including the cost of financial charges;
 - (c) costs of head office corporate contract administration resources;
 - (d) insurance costs as required by this Contract;
 - (e) taxation, as applicable;
 - (f) costs of complying with the Contractor's reporting and liaison obligations under this Contract;
 - (g) costs associated with any subcontracting to the nominated consortium partners associated for the procurement of goods and services;
 - (h) any other overheads required to perform the Services in accordance with this Contract;
 - (i) all escalators for the management fees for the term of this Contract; and
 - (j) any applicable allowance for risks and contingencies.
- 2.3 DFAT shall pay the Contractor's Management Fees as follows on receipt of a correctly rendered invoice:

- (a) Management Fees of **AUD00.00** paid by Contract Milestones.
- (b) Management Fees of **AUD00.00** paid by Program Outcomes / Results; and
- (c) Management Fees of **AUD00.00** paid by Partner Performance Assessments.

Payment by Contract Milestones

- 2.4 DFAT shall pay the Management Fees by Milestones subject to the Contractor's satisfactory achievement of the relevant milestone(s) based on the verifiable indicators, as set out in **Table 1** in **Annex 1** of this Schedule 2 on receipt of a correctly rendered invoice.
- 2.5 If a Milestone is DFAT's acceptance of a report, DFAT shall not be obliged to make the Milestone Payment until all of the outputs to be achieved by the Contractor in the period covered by the report have been achieved

Payment by Program Outcome/Results

- 2.6 The Program Outcomes/Results will build on those identified by the Contractor listed in **Table 1** in **Annex 1** of this Schedule 2 and as agreed to by DFAT. These shall be documented in the relevant Annual Work Plan, as well as outlining the indicator based on DFAT's *Monitoring and Evaluation Standards*, the process for determining achievement of the result; and the due date for achievement of the result, payment amount and threshold for partial payments, if applicable.
- 2.7 Payment by Program Outcomes/Results will rely on the Monitoring and Results Measurement System for validation, and any annual reviews, audits, evaluations including independent assessments DFAT agrees.
- 2.8 If the total target is not achieved, no payment may be made, or partial payments may be considered at DFAT's discretion. Alternatively, targets may be rolled over to the following reporting period, although a fee penalty may apply at DFAT's discretion.
- 2.9 In the event DFAT deems there to have been significant external events such as natural disasters, civil unrest etc., that are outside of DFAT and the Contractor's control, alternative milestones and indicators will be agreed.
- 2.10 DFAT shall pay the Management Fees by Program Outcomes/Results progressively, within one month of a correctly rendered invoice following satisfactory achievement of results as specified in **Table 1** in **Annex 1** of this Schedule 2.

Payment by Partner Performance Assessments

- 2.11 **Payment by Partner Performance Assessments** is subject to the Partner Performance Assessments (PPA) to be conducted during the term of this Contract with the applicable payable amount subject to the scoring matrix in Table 1 below:

Table 1: PPA Scoring Matrix

(to be inserted from tenderers response)

Table: PPA Ratings

| PPA rating | 6 | 5 | 4 | 3 or below |
|--|------|--|--|--|
| Percentage of applicable amount Contractor will receive | 100% | <i>[to be inserted from successful supplier's bid]</i> | <i>[to be inserted from successful supplier's bid]</i> | <i>[to be inserted from successful supplier's bid]</i> |

- 2.12 The average PPA rating will be determined by calculating the sum of all performance ratings and dividing it by the total number of performance criteria.

3. PERSONNEL FEES

- 3.1 Contractor Personnel Rates must be exclusive of any profit, overheads, administration or management fee, or any other mark-up/margins by the Contractor.
- 3.2 Annual Leave accrued by Contractor Personnel during the Project shall be deemed to be taken in the twelve (12) month period it falls due and cannot be accumulated or paid out unless local labour law requires otherwise. Personal Leave may be accrued over the term of the Contract; however, will not be paid out unless local labour law requires. The Contractor will manage its resourcing, including personnel and its leave, so as to not affect the delivery of the Services.
- 3.3 Personnel Rates are based on a working day of at least eight (8) hours. The Contractor is not entitled to claim for additional Personnel Costs if they work more than eight (8) hours per working day.
- 3.4 The Contractor shall be paid for the lesser of actual number of days/months' work undertaken by its Personnel or the maximum values specified in **Annex 1, Table 2** to this **Schedule 2**. The Contractor must keep verifiable records to enable verification of actual time spent undertaking the Services.
- 3.5 Personnel inputs in **Table 2** of **Annex 1** to **Schedule 2** may be reallocated between positions and across years within the maximum amount payable limit with prior written approval from DFAT.
- 3.6 DFAT shall pay the Contractor for Personnel Fees at the end of each one (1) month period on a reimbursable basis in arrears subject to receipt of a correctly rendered invoice.
- 3.7 DFAT shall reimburse the Contractor at actual cost up to a maximum of **AUD00.00** plus GST for Personnel Fees as follows:

LONG TERM PERSONNEL

- 3.8 DFAT shall reimburse the Contractor at actual cost up to a maximum of **AUD00.00** plus GST for the Long-Term Personnel Costs as specified in **Table 2** in **Annex 1** to this **Schedule 2**.
- 3.9 For each Long-term Personnel DFAT shall pay the Contractor an All-Inclusive Monthly Fee including:
- (a) Base salary and any entitlements in accordance with local labour laws.
 - (b) Superannuation Guarantee or equivalent local contribution, in accordance with local labour law, if any.
 - (c) Paid annual leave allowances of up to twenty (20) days per annum and personal leave allowances of up to ten (10) days per annum, to accrue on a pro rata basis per twelve (12) months' continuous engagement on the Project or as such higher entitlement in accordance with local labour law.
 - (d) Public holidays (agreed holidays in-country providing services).
 - (e) costs associated with living in-country; and
 - (f) all escalators for the term of this Contract.

LONG TERM PERSONNEL – SUPPORT COSTS

- 3.10 DFAT shall reimburse the Contractor at actual cost up to a maximum of **AUD00.00 plus GST** for Long Term Personnel Support Costs as specified in **Table 2A** in **Annex 1** to this **Schedule 2**.
- 3.11 The categories of payment for the Long-Term Personnel Support Costs are as follows:

- (a) Mobilisation/Demobilisation costs: all reasonable one-off costs or expenses including: any necessary medical clearances and inoculations; uplift of effects; storage; and the cost of one return international flight, economy class, from home location for Personnel and dependents via the most direct and cost effective route.
 - (b) Housing Costs: expenses associated with accommodation for the Personnel. (Personnel with partners who are already in receipt of an expatriate accommodation allowance will not be eligible for reimbursement of Housing Costs);
 - (c) Dependants: expenses associated with the costs of dependent children including education; and
 - (d) Associated costs: medical insurances costs; and expenses associated with any adaption adjustments for personnel or dependants with a disability.
- 3.12 If requested by DFAT, for payment verification purposes, the Contractor shall provide DFAT with appropriate documentation to support all claims.
- 3.13 DFAT shall pay the Contractor for Long Term Personnel Support Costs at the end of each one (1) month period on a reimbursable basis in arrears subject to receipt of a correctly rendered invoice.

SHORT TERM PERSONNEL COSTS

- 3.14 DFAT shall reimburse the Contractor at actual cost up to a maximum of **AUD00.00** plus GST for **Short Term Personnel Costs** as specified in **Table 2** in **Annex 1** to this **Schedule 2**.
- 3.15 DFAT shall reimburse the Contractor at actual cost up to a maximum of **AUD00.00** plus GST for **Short Term Personnel Pool Costs** as specified in **Table 2** in **Annex 1** of this Schedule 2.
- 3.16 Short Term Personnel Pool inputs must be approved through the Annual Plan. On exception, inputs can also be approved with written (email) prior agreement by DFAT. Costs shall be drawn down from the Short-Term Personnel Pool allocation listed in **Clause 3.7** and **Table 2, Annex 1** of this Schedule 2.

For each Short Term Personnel, DFAT shall pay the Contractor an All-inclusive Daily Fee including:

- (a) base salary and any entitlements in accordance with local labour laws;
- (b) Superannuation Guarantee Contribution, if any; and
- (c) all escalators for the term of this Contract.

4. REIMBURSABLE COSTS

- 4.1 DFAT shall pay the Contractor for Reimbursable Costs up to maximum of **AUD00.00** plus GST as specified in **Table 3** in **Annex 1** to this **Schedule 2** and will be paid at the end of each one (1) month period on a reimbursable basis in arrears subject to receipt of a correctly rendered invoice.
- 4.2 If requested by DFAT, for payment verification purposes, the Contractor shall provide DFAT with appropriate documentation to support all Reimbursable Costs claimed.

5. PROGRAM COSTS

- 5.1 DFAT shall reimburse the Contractor at actual cost up to a maximum of **AUD00.00** plus GST for the expenditure associated with the Program Costs categories listed at **Table 3** in **Annex 1** to this **Schedule 2**.
- 5.2 The Program Activity Costs allocated at Table 3 in Annex 1 to this Schedule 2 are indicative and may be changed with prior written approval from DFAT.

- 5.3 The Contractor will retain all receipts for all expenditure items claimed for reimbursement for audit purposes.
- 5.4 The Contractor will keep up to date records of allocation and expenditure for Program Costs.
- 5.5 DFAT shall pay the Contractor for Program Costs at the end of each one (1) month period on a reimbursable basis in arrears subject to receipt of a correctly rendered invoice.

6. **CLAIMS FOR PAYMENT**

- 6.1 The Contractor's tax invoice must be submitted when due pursuant to this **Schedule 2** in a form identifiable with the Goods and/or Services and in accordance with **Clause 3.5** (Payment) in **Schedule 3**. Invoices must also reference the Payment Event number(s) as notified by DFAT.
- 6.2 All claims for payment must be made to:
 - Financial Operations Section
 - Department of Foreign Affairs and Trade
 - RG Casey Building
 - John McEwen Crescent
 - Barton ACT 0221
 - AUSTRALIA
- 6.3 Tax invoices should be sent to the above address. Alternatively, DFAT shall accept **electronic tax invoices**. These can be sent to accounts@dfat.gov.au and copy in the DFAT Activity Manager/Contact Person.
- 6.4 Invalid invoices will be returned to contractors. Information on what constitutes a valid tax invoice can be found at www.ato.gov.au

ANNEX 1 TO SCHEDULE 2

Table 1: Management Fee Applicable (AUD, excluding GST)

| Payment Type | Percentage (%) | Item | Year 1 16 Nov 2021 to 30 Jun 2022 [7.5 months] (AUD) | Year 2 1 Jul 2022 to 30 Jun 2023 [12 months] (AUD) | Year 3 1 Jul 2023 to 30 Jun 2024 [12 months] (AUD) | Year 4 1 Jul 2024 to 30 Jun 2025 [12 months] (AUD) | Year 5 1 Jul 2025 to 15 Nov 2025 (4.5 months) (AUD) | Maximum Amount Payable (AUD) |
|---|----------------|--|---|--|---|--|--|---|
| Milestone | | <i>MEL Framework</i> | | | | | | |
| | | <i>(Milestone 2 description onwards etc)</i> | | | | | | |
| Payment by Results / Deliverables | | <i>(PBR item 1)</i> | | | | | | |
| | | <i>(PBR item 2 etc)</i> | | | | | | |
| Partner Performance Assessment (PPA) | | <i>PPA based payment*</i> | | | | | | |
| TOTAL | 100% | | | | | TOTAL | TOTAL | AUDx |
| <i>Yearly breakdown</i> | | | <i>AUDx</i> | <i>AUDx</i> | <i>AUDx</i> | <i>AUDx</i> | <i>AUDx</i> | |

*PPA payments will be paid in accordance with the percentage (%) payable based on the overall PPA rating for that eligible period.

- 5 or above the payment will be [xx%] of the amount due;
- 4 to 5 the payment will be [xx%] of the amount due; and
- 3 or below the payment will be [xx%] of the amount due.

Table 2A: Tenderer Personnel/Associate Costs (AUD, excluding GST)

| Position Title | Inputs (Months/ Days) | Year 1 16 Nov 2021 to 30 Jun 2022 [7.5 months] (AUD) | | | Year 2 1 Jul 2022 to 30 Jun 2023 [12 months] (AUD) | | | Year 3 1 Jul 2023 to 30 Jun 2024 [12 months] (AUD) | | | Year 4 1 Jul 2024 to 30 Jun 2025 [12 months] (AUD) | | | Year 5 1 Jul 2025 to 15 Nov 2025 (4.5 months) (AUD) | | | Maximum Amount Payable (AUD) |
|---------------------------------|-------------------------------|--|------|---------|--|------|-------|--|------|-------|--|------|-------|---|------|----------|---------------------------------------|
| | | Inputs | Rate | Total | Inputs | Rate | Total | Inputs | Rate | Total | Inputs | Rate | Total | Inputs | Rate | Total | |
| Long-Term Personnel | | | | | | | | | | | | | | | | | |
| (Position 1) | Months | | | | | | | | | | | | | | | | |
| Novated Personnel* | Months | 7.5 | | 150,000 | | | | | | | | | | | | | 150,000 |
| Any other LT position titles | Months | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | Sub-tota | AUDx |
| Short-Term Personnel | | | | | | | | | | | | | | | | | |
| (Position 1) | Days | | | | | | | | | | | | | | | | |
| Any other ST position titles | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | Sub-tota | AUDx |
| Short-Term Personnel Pool | | | | | | | | | | | | | | | | | |
| N/A | Paid as a daily rate | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | Sub-tota | AUDx |
| | | | | | | | | | | | | | | | | TOTAL | AUDx |
| | Yearly breakdo wn (AUD) | | | AUDx | | | AUDx | | | AUDx | | | AUDx | | | AUDx | |

*The two novated personnel should be costed at an upper limit of AUD150,000 over the 7.5 months in Year 1. Novated Personnel costs will be discussed and agreed with the preferred tenderer.

Table 2 Notes:

- <insert relevant notes if required>

Table 2B: Tenderer Personnel – Long Term Personnel Support Costs (AUD, excluding GST)

| Pos. Title Acronym | Year 1 16 Nov 2021 to 30 Jun 2022 [7.5 months] (AUD) | | | | | Year 2 1 Jul 2022 to 30 Jun 2023 [12 months] (AUD) | | | | | Year 3 1 Jul 2023 to 30 Jun 2024 [12 months] (AUD) | | | | | Year 4 1 Jul 2024 to 30 Jun 2025 [12 months] (AUD) | | | | | Year 5 1 Jul 2025 to 15 Nov 2025 [4.5 months] (AUD) | | | | | Maximum Amount Payable (AUD) |
|-------------------------------------|--|---|---|---|-------|--|---|---|---|-------|--|---|---|---|-------|--|---|---|---|-------|---|---|---|---|-------|---------------------------------------|
| | M/D | H | D | A | Total | M/D | H | D | A | Total | M/D | H | D | A | Total | M/D | H | D | A | Total | M/D | H | D | A | Total | |
| (Position 1 e.g. Team Leader) | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Any other LT positions | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | TOTAL AUDxxx | | | | | |
| Yearly breakdown | (AUD) | | | | | | | | | | | | | | | | | | | | | | | | | |

* Reimbursable costs can be adjusted between financial years with prior written approval from DFAT (via email). Any changes must then be reflected into the next amendment.

**M/D: Mobilisation/Demobilisation Costs

H: Housing Costs

D: Dependents

A: Associated Costs as per Schedule 2, clause 3.11 in the Draft Contract.

Table 3: Reimbursable Costs (AUD, excluding GST)

| Items | Year 1 16 Nov 2021 to 30 Jun 2022 [7.5 months] (AUD) | Year 2 1 Jul 2022 to 30 Jun 2023 [12 months] (AUD) | Year 3 1 Jul 2023 to 30 Jun 2024 [12 months] (AUD) | Year 4 1 Jul 2024 to 30 Jun 2025 [12 months] (AUD) | Year 5 1 Jul 2025 to 15 Nov 2025 (4.5 months) (AUD) | Maximum Amount Payable (AUD) |
|---|--|--|--|--|---|---|
| Operational costs including: <ul style="list-style-type: none"> Office set up Office ongoing costs Travel costs | x | x | x | x | x | x |
| <i>[Tenderers to insert additional rows and amend line items listed as required]</i> | | | | | | |
| MIS establishment (excluding personnel costs) | x | x | x | x | x | x |
| MIS ongoing maintenance costs | x | x | x | x | x | x |
| | | | | | | |
| Program Activity Costs | x | x | x | x | x | x |
| | | | | | TOTAL | AUDx |
| <i>[Yearly breakdown (AUD)]</i> | x | x | x | x | x | |

Table 3 Notes:

- <insert relevant notes if required

SCHEDULE 3>

Standard Contract Terms and Conditions

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THE PARTIES AGREE AS FOLLOWS:

1. Interpretation and definitions

The definitions and rules of interpretation in Schedule 4 apply in this Contract.

1.1 Entire agreement

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

1.2 Precedence of documents

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

- (a) the Contract Details;
- (b) the Standard Terms and Conditions of Contract (Schedule 3);
- (c) the Statement of Requirements (Schedule 1);
- (d) any other Schedule (other than Schedule 1 and Schedule 3); and
- (e) any document incorporated by express reference as part of this Contract,

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

2. TERM OF THIS AGREEMENT

2.1 Term

- (a) This Contract takes effect upon execution by both parties and, unless terminated earlier in accordance with this Contract, ends on the Expiry Date (the **Term**).
- (b) The Contractor must commence work on the Project on the Project Start Date and complete the Project by the Project End Date.

2.2 Option(s) to extend

- (a) DFAT may extend the Term by the duration of the period specified in the Contract Details in any increment DFAT chooses, on the terms and conditions then in effect, by giving the Contractor notice in writing not less than 30 days before the date on which this Contract would otherwise expire, or as otherwise agreed by the Parties.
- (b) Any extensions exercised in accordance with clause 2.2(a) takes effect from the end of the date the Contract was due to otherwise expire.

3. SERVICES AND RELATIONSHIP

3.1 Independent contractor

- (a) The relationship of DFAT and the Contractor under this Contract is that of principal and independent contractor. This Contract does not make either party a joint venturer, partner, employee or agent of the other.
- (b) No act or omission of either party is to bind the other party except as expressly set out in this Contract.

3.2 Contractor to provide Goods and/or Services

- (a) The Contractor must provide the Goods and/or Services as described in Schedule 1, in accordance with the terms of this Contract.
- (b) In performing its obligations under clause 3.2(a), the Contractor must:
 - (i) follow any reasonable directions issued by DFAT (including those issued by an Australian Embassy or High Commission); and
 - (ii) cooperate with any third party appointed by DFAT to assist in the provision of the Goods and/or Services.

3.3 Delivery of Goods and/or Services

The Contractor must deliver all Goods and/or Services and associated Deliverables to be delivered under this Contract in accordance with Schedule 1, to DFAT or a third party as nominated by DFAT.

3.4 Acceptance of Goods and/or Services

- (a) DFAT (or its nominee) may accept or reject the relevant Goods and/or Services within 14 days after the Goods and/or Services are delivered.
- (b) DFAT (or its nominee) may reject the Goods and/or Services where the Goods and/or Services do not comply with the requirements of this Contract.
- (c) If DFAT (or its nominee) rejects the Goods and/or Services, DFAT may:
 - (i) require the Contractor to provide, at the Contractor's cost, replacement or rectified Goods and/or Services which comply with the requirements of this Contract within a period notified by DFAT; or
 - (ii) terminate this Contract in accordance with clause 18.1.
- (d) Where DFAT requires the Contractor to provide replacement or rectified Goods and/or Services in accordance with clause 3.4(c)(i), these replacement or rectified Goods and/or Services will be subject to the same acceptance process as described in this clause 3.4.
- (e) If the Contractor fails to deliver replacement or rectified Goods and/or Services to:
 - (i) the requisite standard; and
 - (ii) within the period notified by DFAT under clause 3.4(c)(i),

DFAT may terminate this Contract in accordance with clause 18.1.

3.5 **Payment**

- (a) DFAT must pay the Contractor for the provision of Goods and/or Services within 20 days, following:
 - (i) receipt of a correctly rendered invoice in accordance with clause 3.6; and
 - (ii) DFAT's acceptance of the satisfactory completion or delivery of the:
 - (A) Goods and/or Services; or
 - (B) relevant Payment Milestone,in accordance with clause 3.4 and Schedule 2.
- (b) If the Contractor:
 - (i) fails to provide a correctly rendered invoice in accordance with clause 3.6; or
 - (ii) the Contractor's performance of the Contract is in dispute,DFAT may withhold all or part of any payment due to the Contractor under this Contract, until the relevant issue is rectified.

3.6 **Invoicing**

- (a) The Contractor must invoice DFAT for the provision of Goods and/or Services on a monthly basis, or as otherwise described in Schedule 2.
- (b) For the purposes of this clause 3.6 and Schedule 2, an invoice is correctly rendered if:
 - (i) it is in the form of a valid tax invoice under the relevant GST Law (or, where the supply of the Goods and/or Services is not a taxable supply, in the form of an invoice approved by DFAT);
 - (ii) it is accompanied by supporting documentation in respect of the Goods and/or Services in the form, and containing the information, reasonably required by DFAT;
 - (iii) it is correctly addressed to DFAT and is correctly calculated;
 - (iv) it relates only to Goods and/or Services that have been delivered to DFAT in accordance with this Contract;
 - (v) Reimbursable Costs, and amounts owing to suppliers or subcontractors have been paid before submission of the invoice to DFAT;
 - (vi) the invoice details all Goods and/or Services provided by the Contractor against the Fees referred to in Schedule 2 and records the amount payable in respect of each category of Goods and/or Services described in this Contract;

- (vii) the Fees claimed in the invoice are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Contractor in providing the Goods and/or Services;
 - (viii) it is in Australian dollars or converted into Australian dollars at the exchange rate incurred by the Contractor at the time of making the payment; and
 - (ix) an authorised representative of the Contractor has certified that the invoice is accurate and represents the Goods and/or Services provided.
- (c) The Contractor must ensure that the charges for, and GST applicable to, the supply of Goods and/or Services are itemised separately on the relevant invoice.
- (d) Where:
- (i) the Contractor has been granted an exemption from paying GST in another country, whether entirely or in part; or
 - (ii) where GST in another country does not apply to Goods and/or Services delivered under this Contract,
- the Contractor must not include any amount on account of GST on the invoice.
- (e) Where:
- (i) the Contractor has not been granted an exemption from paying GST in another country, whether entirely or in part;
 - (ii) the Contractor has recovered the amount of GST payable in connection with its supply of Goods and/or Services from DFAT; and
 - (iii) the Contractor is subsequently granted an exemption from paying GST or receives a refund of all or part of the GST paid in connection with the supply,
- the Contractor must promptly reimburse DFAT the amount of GST for which the Contractor is exempt or not liable.
- (f) The Contractor must exercise due diligence and make reasonable efforts in seeking an exemption.

3.7 **No withholdings**

- (a) Subject to clause 4(f), DFAT is not responsible for withholding or remitting any payment for an impost such as Tax or superannuation in respect of the Contractor or any of its Personnel.
- (b) The Contractor indemnifies DFAT against, and must pay DFAT on demand, the amount of any Loss, liability or Tax incurred as a result of DFAT becoming liable to pay any Tax or withhold any amount in respect of employees, contractors or personnel of the Contractor (including by being treated as the employer of any such persons).

3.8 **Taxes**

Unless expressly stated otherwise:

- (a) all amounts payable, consideration provided or monetary limits in this Contract are inclusive of any taxes, duties or other government charges; and
- (b) all taxes, duties or other government charges levied in connection with this Contract (both within Australia or overseas) are to be borne by the Contractor.

3.9 Goods and/or Services to other Commonwealth Entities

- (a) The Contractor may provide the Goods and/or Services to any other Commonwealth Entity at its request provided it notifies the Contractor of its intention to purchase the Goods and/or Services.
- (b) Where a Contractor enters into an arrangement with another Commonwealth Entity, the terms and conditions of this Contract must apply to the Contract entered into by that Commonwealth Entity.

4. GST

- (a) Unless expressly provided otherwise, all amounts and other consideration payable under or in connection with this Contract are exclusive of GST.
- (b) If GST is payable on a taxable supply made by a Party (**supplier**) under or in connection with this Contract, the supplier may recover from the recipient of the supply (**recipient**) the amount of that GST (**GST Amount**) in addition to any consideration otherwise payable or provided for the supply.
- (c) The recipient must make payment of the GST Amount to the supplier at the same time and in the same manner as it provides the consideration, or any part of it, for the relevant supply subject to the recipient receiving a tax invoice on or before the due date for payment.
- (d) If the amount of GST on a supply varies from the GST Amount, the supplier must issue an adjustment note to the recipient, and:
 - (i) may recover from the recipient, by giving 7 days written notice, the amount by which the GST on the supply exceeds the GST Amount; or
 - (ii) must refund to the recipient, within 7 days of becoming aware of the adjustment event, the amount by which the GST Amount exceeds the amount of GST on the supply.
- (e) If a Party is entitled to be reimbursed or indemnified under this Contract for an amount, the amount reimbursed or indemnified is reduced by the amount of GST for which the party has an entitlement to claim an input tax credit.
- (f) All payments made under this Contract are subject to any withholding required by law. No additional amounts shall be payable by DFAT in respect of any such withholding.
- (g) The Contractor will provide such evidence as is reasonably requested by DFAT to confirm the residency, status and compliance of the Contractor for the purposes of any Tax law.

5. STANDARDS

5.1 Representations and warranties of the Contractor

- (a) The Contractor represents and warrants that:
- (i) **(law, standards)** in providing the Goods and/or Services it will comply with the law, the Applicable Standards and with relevant industry standards;
 - (ii) **(approvals, compliance)** obtain and maintain in full force any licences, accreditations, permits, registrations or regulatory approvals required by law and necessary for the provision of the Goods and/or Services;
 - (iii) **(directions)** in providing the Goods and/or Services it will comply with DFAT's reasonable directions;
 - (iv) **(materials)** it will only use materials that are new, fit for the purpose and required by DFAT;
 - (v) **(Goods, Deliverables)** Goods and/or Deliverables provided will be:
 - (A) of acceptable quality within the meaning of the Australian Consumer Law, safe and durable;
 - (B) free from defects in design, performance and workmanship; and
 - (C) fit for purpose.
 - (vi) **(Services, Deliverables)** Services provided must be provided with due care and skill and must be fit for the purpose described in Schedule 1; and
 - (vii) **(work)** the work performed to provide the Goods and/or Services will be provided by appropriately qualified, skilled and experienced Personnel and be done to a high standard in accordance with best practice.
- (b) The Contractor must promptly notify DFAT if the Contractor becomes aware that the Contractor will be unable to provide all or part of the Goods and/or Services in accordance with the requirements of this Contract.

5.2 Standards

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

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

5.3 Suspension of work

- (a) DFAT may direct the Contractor to stop work at any time if any aspect of the Goods and/or Services is not acceptable to DFAT.

- (b) DFAT may direct the Contractor to recommence work at any time, if it considers that the Contractor has rectified those aspects of the Goods and/or Services which were considered unacceptable for the purposes of clause 5.3(a).

6. DELIVERABLES

6.1 Title

Title to any Deliverables used by the Contractor in providing the Goods and/or Services passes to DFAT (or its nominee) on delivery to DFAT's (or its nominee's) premises.

6.2 Risk

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

6.3 Use of DFAT Property

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

6.4 Procurements and Grants

- (a) In procuring all Assets for the Project (including entering subcontracts), the Contractor must:
 - (i) implement procedures that are consistent with the principles of the Commonwealth Procurement Rules and RMG411, in particular observing the core principles of achieving value for money and the supporting principles;
 - (ii) maintain complete and accurate records documenting the particulars of Assets and the procedures followed in procuring these Assets;
 - (iii) use its best endeavours to ensure Assets are maintained, including taking appropriate steps to ensure that manufacturers' warranties of Assets are secured and warranty conditions followed;
 - (iv) use its best endeavours to ensure Assets are free from defects in design, material, manufacture or workmanship. The Contractor must replace defective Assets under warranty provisions or at its own cost; and
 - (v) use the Assets only for the purposes permitted under this Contract.

7. CONTRACT MANAGEMENT

7.1 Performance Review

- (a) At any time DFAT may itself, or may appoint an independent person or persons, to conduct a review of any matter capable of affecting the performance of this Contract.
- (b) During the course of a review initiated under clause 7.1(a), the Contractor and its Personnel must:
 - (i) participate cooperatively in the review; and
 - (ii) continue to perform their obligations under this Contract.
- (c) Each party must bear its own costs of any such reviews conducted by or on behalf of DFAT.

7.2 Performance Assessment

- (a) The Contractor acknowledges and agrees that DFAT may issue performance assessments in relation to the Project.
- (b) Within 15 days after receiving a performance assessment from DFAT, the Contractor must:
 - (i) sign and return to DFAT the performance assessment together with any response; and
 - (ii) ensure that all other performance assessments together with any response from the subcontractor or any personnel wishes to include are signed and returned to DFAT.

7.3 Individual Performance Assessment

- (a) The Contractor will:
 - (i) ensure all Personnel are adequately managed for performance, have regular performance appraisals, and are subject to appropriate remedies and support for any identified performance issues; and if needed to advise DFAT of any significant issues with Personnel performance on an exception basis.
 - (ii) conduct (at least annually and in consultation with DFAT) performance appraisals for all long-term personnel, using the DFAT *Individual Performance Assessment (IPA)* template shown as **Schedule 11** of the Contract (and available from the DFAT representative).
 - (iii) IPAs are not required to be submitted to DFAT via the Contractor Performance mailbox unless the IPA shows an Individual is underperforming (a rating of 3 or below). Only IPAs with rating of 3 or below will be filed on a centrally maintained register.
- (b) DFAT reserves the right to sit in on or co-facilitate the APA discussion for the Partnership Director.

7.4 Personnel

- (a) DFAT may give notice to the Contractor in accordance with clause 15 requiring the Contractor to remove any Personnel from work in respect of the provision of the Goods and/or Services and propose new Personnel in accordance with clauses (b) and (c) below.

- (b) The Contractor must not, without DFAT's prior written approval, engage:
 - (i) a currently serving Commonwealth employee; or
 - (ii) a Former DFAT Employee,in any capacity in connection with the Goods and/or Services.
- (c) When engaging Personnel for work, the Contractor will use its best endeavours to ensure they are:
 - (i) certified as fit and healthy by a legally qualified medical practitioner to work; and
 - (ii) have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in a safe manner.

7.5 Subcontracting

- (a) The Contractor must not subcontract:
 - (i) any part of the provision of the Goods and/or Services to a person who is, or an entity, that is:
 - (A) on the DFAT Consolidated List, the Criminal Code Act List, the World Bank List or a Relevant List; or
 - (B) directly or indirectly engaged in any terrorism-related activities.
- (b) The Contractor must obtain DFAT's prior written approval to subcontract with any third party where the proposed subcontract is with a Related Entity.
- (c) In granting its approval under this clause 7.5, DFAT may impose any conditions it considers appropriate.
- (d) If the Contractor subcontracts its performance of any part of the Project, the Contractor remains liable for the acts, defaults and omissions of the subcontractor as if they were the Contractor's acts, defaults and omissions.
- (e) Any subcontract entered into by the Contractor for the performance of any part of the Project must contain clauses:
 - (i) that authorise the Commonwealth to publish details of the name of the subcontractor and the nature of the Goods and/or Services that the subcontractor is subcontracted to perform;
 - (ii) under which the subcontractor assumes all the Contractor's obligations (including all obligations under Australian Law and development policies), and gives all the warranties the Contractor gives, under this Contract to the extent they are relevant to the Project the subcontractor is subcontracted to perform; and
 - (iii) that give the Contractor the right to terminate the subcontract for convenience as set out in clause 18.3(c).

7.6 Grant Recipients

- (a) If, in the performance of the Services, the Contractor undertakes the administration of Grants, the Contractor must:
 - (i) implement procedures so that the administration of the Grants is undertaken in a manner that is consistent with the Commonwealth Grants Rules and Guidelines and RMG411;
 - (ii) maintain complete and accurate records documenting the procedures followed in selecting Grant Recipients;
 - (iii) ensure that no Grants are provided to any person or organisation:
 - (A) on the DFAT Consolidated List, the Criminal Code Act List, the World Bank List or a Relevant List; or
 - (B) directly or indirectly engaged in any terrorism-related activities; and
 - (iv) unless otherwise agreed in writing by DFAT, grant DFAT an irrevocable, perpetual, non-exclusive, world-wide, royalty-free licence (including the right to sublicense) to use, reproduce, adapt, exploit and modify for any purpose, any Intellectual Property created by the Grant Recipient under the relevant Grant agreement.
- (b) The Contractor will not be liable to DFAT for the acts, defaults and omissions of Grant Recipients in acquitting their Grants, except where such acts, defaults and omissions of Grant Recipients are due to:
 - (i) the Contractor's failure to exercise due diligence when issuing Grants; or
 - (ii) any other failure of the Contractor to perform its Services with respect to Grant Recipients in accordance with this Contract.
- (c) Any agreement entered into by the Contractor for the provision of Grants to Grant Recipients must contain clauses:
 - (i) that authorise DFAT to publish details of the name of the Grant Recipient and the nature of the Grant that the Grant Recipient has received;
 - (ii) in respect of Intellectual Property, that:
 - (A) vest in the Grant Recipient all Intellectual Property created under the Grant agreement immediately upon its creation; and
 - (B) unless otherwise agreed in writing by DFAT, require the Grant Recipient to grant the Contractor an irrevocable, perpetual, non-exclusive, world-wide, royalty-free licence (including the right to sublicense to the Commonwealth) to use, reproduce, adapt, exploit and modify the Intellectual Property for any purpose; and
 - (iii) under which the Grant Recipient is required to comply with the obligations imposed under clause 10 (Policy and Law), clause 14 (Recordkeeping and Audit) and clause 17 (Termination of this Contract).

7.7 Notification to DFAT

- (a) The Contractor must immediately notify DFAT if the Contractor, including its Personnel is:
 - (i) subject to a change in Control of its legal entity;
 - (ii) on the DFAT Consolidated List, the Criminal Code Act List, the World Bank List or a Relevant List;
 - (iii) subject to any proceedings or informal process that could lead to listing on the DFAT Consolidated List, the Criminal Code Act List, the World Bank List or a Relevant List;
 - (iv) temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process;
 - (v) temporarily suspended from tendering by a donor of development funding other than the World Bank; and/or
 - (vi) the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.
- (b) The Contractor must inform DFAT immediately if the Contractor becomes aware of any issue that may affect its performance of, or compliance, with this Contract.

8. CONTRACTOR'S RESPONSIBILITY

8.1 DFAT not responsible

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

8.2 Indemnity for DFAT

- (a) The Contractor must indemnify DFAT (and each of the DFAT's employees, officers and agents, for whom DFAT holds the benefit of this indemnity in trust) against, and must pay DFAT (and each of the DFAT's employees, officers and agents) on demand the amount of, all Losses, liabilities, costs, expenses and Taxes incurred in connection with, or in relation to, or arising out of, or as a consequence of:
 - (i) the provision of the Goods and/or Services, including Loss, liability or damage caused by negligence of any person whatever;
 - (ii) a breach of this Contract by the Contractor;
 - (iii) any unlawful act or omission on the part of the Contractor or its Personnel; or
 - (iv) a claim for breach of IP rights or Moral Rights arising from work carried out on the Project.
- (b) The Contractor's liability to indemnify DFAT under clause 8.2(a) is reduced proportionally to the extent that any unlawful or negligent act or omission on the part of DFAT or any person through whom DFAT is acting (but not including the Contractor or Personnel) contributed to the Loss, liability, cost or expense.

8.3 **No claims for Consequential Loss**

To the extent permitted by law, neither party will be liable to the other party for any Consequential Loss arising under or in connection with this Contract.

9. **INSURANCE**

9.1 **Insurance policies**

The Contractor must arrange and maintain for the Term of the Contract unless otherwise specified:

- (a) Public Liability insurance with a limit of at least AUD20 million for each and every claim which covers Loss of, or damage to, or Loss of Use of any real or personal property and/or any personal injury to, illness or death of any person arising from the performance of the Contract;
- (b) Motor vehicle third party property damage insurance;
- (c) Workers' Compensation which:
 - (i) fully insures the Contractor for any amount it becomes liable to pay under any statute relating to workers' or accident compensation or for employer's liability at common law;
 - (ii) is effected in the Partner Country as well as every state or territory in Australia where its Personnel normally reside or in which their contract of employment was made; and
 - (iii) where possible at law, extends to indemnify DFAT as principal for DFAT's liability to persons engaged by the Contractor.

Where there is no workers compensation legislation in force in the Partner Country, the Contractor should arrange adequate personal accident and illness insurance (accidental death and weekly benefits) for any of its Personnel not otherwise covered for the Term of the Contract.

- (d) Adequate property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value;
- (e) Adequate Professional Indemnity insurance to cover the Contractor's obligations under this Contract. The Contractor must maintain the necessary insurance each year until the expiration of three (3) years after the full Term of the Contract or earlier termination of the Contract;
- (f) Adequate medical and dental insurance for its Personnel who are engaged to operate outside their country of permanent residence; and
- (g) Adequate insurance for medical evacuation and evacuation resulting from an insured event for all its Personnel.

9.2 **Evidence of policies**

- (a) For each insurance policy required under clause 9.1, the Contractor must give DFAT a certificate of currency at the commencement of this Contract and each time a policy is renewed.

- (b) Neither the arrangement and maintenance of insurance nor any failure to arrange and maintain such insurance shall in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the contractor under the other provision of this contract or at law.
- (c) Failure by the contractor to maintain all necessary insurances will entitle DFAT to terminate this contract immediately in accordance with clause 18 (Termination for Breach).
- (d) In the event of an insurance claim any deductible or excess payable will be the responsibility of the contractor

9.3 **No infringement**

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

10. **POLICY AND LAW**

10.1 **Compliance with laws and policies**

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

10.2 Compliance with DFAT policies

The Contractor must ensure that it, and its Personnel, **comply** with DFAT policies and guidance as identified on the DFAT website: <https://www.dfat.gov.au/aid/australias-development-program>, including,

- (a) the Disability Inclusive Strategy;
- (b) the Child Protection Policy;
- (c) the Preventing Sexual Exploitation, Abuse and Harassment Policy;
- (d) the Family Planning and the Aid Program: Guiding Principles;
- (e) the Environment Protection Policy;
- (f) the Displacement and Resettlement of People in Development Activities Policy; and
- (g) the Gender Equality and Women's Empowerment Policy.

10.3 Black Economy

It is Commonwealth Policy to increase the integrity of government procurement, as listed in the procurement connected policy guidelines: Black Economy – increasing the integrity of government procurement.

In this clause the Contractor warrants in relation to any first-tier subcontractor it has engaged to deliver goods and/or services with an estimated value of over AUD4 million (GST inclusive) that the Contractor either:

- (a) provided a valid and satisfactory Statement of Tax Record for the subcontractor as part of its response for the approach to market that resulted in the entry of this contract; or
- (b) holds a satisfactory Statement of Tax Record for the Subcontractor that was Valid at the time of entry into the subcontract by the supplier and the subcontractor.

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

10.4 Conflicts of Interest

- (a) The Contractor warrants that, to the best of its knowledge after making diligent enquiries, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract by itself or by any of its Personnel.
- (b) The Contractor must notify DFAT promptly in writing if such a conflict of interest arises or appears likely to arise.
- (c) Within 7 days after giving notice under clause 10.4(b), the Contractor must notify DFAT in writing of the steps it will take to resolve the issue. If DFAT considers those steps are inadequate, it may direct the Contractor to resolve the issue in a manner proposed by DFAT.
- (d) If the Contractor does not comply with a direction issued by DFAT under clause 10.4(c), DFAT may terminate this Contract in accordance with clause 18.1.

10.5 Gender equality

- (a) The Contractor must comply with its obligations, if any, to promote gender equality in the workplace under *the Workplace Gender Equality Act 2012* (Cth) (**WGE Act**).
- (b) If the Contractor becomes non-compliant with the WGE Act during the Term of the Contract, the Contractor must notify the DFAT Representative nominated in clause 20.2 and DFAT reserves the right to provide the Contractor with directions regarding compliance.
- (c) If the Term of this Contract exceeds 18 months, the Contractor must provide a current letter of compliance with the WGE Act within 18 months after the Project Start Date and following this, annually, to the DFAT Representative.

10.6 Branding

The Contractor must identify, and with prior DFAT prior written approval and in accordance with DFAT Logos and style guides (<https://www.dfat.gov.au/about-us/corporate/Pages/logos-and-style-guides>) *Branding Australia Aid projects and initiatives*, implement appropriate opportunities for publicising the Project, including through signage at each Project site that acknowledges the funding of the Project.

10.7 Counter-Terrorism and Sanctions

The Contractor must ensure that funds provided under this Contract (whether through a subcontract, grant or not) do not provide direct or indirect support or resources to:

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

10.8 Fraud

- (a) The Contractor must not, and must ensure that its Personnel do not, engage in any Fraud.
- (b) The Contractor must take steps prevent and detect Fraud, including in relation to any part or parts of the Project performed by a subcontractor.
- (c) Within one month after the Project Start Date, the Contractor must:
 - (i) conduct a Fraud risk assessment; and
 - (ii) produce a Fraud control strategy that:
 - (A) complies with the Commonwealth Fraud Control Framework; and

- (B) which must contain appropriate Fraud prevention, detection, investigation and reporting processes and procedures that comply with the Australian Government Investigations Standards.
- (d) The Contractor must immediately notify DFAT if the Contractor becomes aware of any actual or suspected Fraud.
- (e) If the Contractor becomes aware of any actual or suspected Fraud, the Contractor must:
 - (i) comply with any direction given by DFAT;
 - (ii) either conduct its own investigation, or appoint an investigator to conduct the investigation;
 - (iii) ensure that the person conducting the investigation possesses the minimum qualifications specified in the Australian Government Investigation Standards or an equivalent if agreed by DFAT; and
 - (iv) investigate the suspected Fraud at its own cost and in accordance with any directions or standards required by DFAT.
- (f) DFAT reserves the right to appoint its own investigator, conduct its own investigation and/or report suspected Fraud to the appropriate law enforcement agencies or any other person or entity DFAT deems appropriate in Australia or in the Partner Country for investigation. If DFAT exercises its rights under this clause 10.8(f), the Contractor must provide all reasonable assistance that may be required at its own expense.
- (g) If an investigation finds the Contractor or any of its Personnel have in all likelihood engaged in Fraud or if DFAT discovers that a Fraud has not been reported in accordance with this clause 10.8:
 - (i) the Contractor, in consultation with DFAT, must:
 - (A) pay to DFAT the full value of any misappropriated DFAT funds; and
 - (B) either return any misappropriated DFAT property to DFAT or, if the property cannot be recovered or has been damaged, replace the property with property of equivalent value or quality, or repair the property, at no cost to DFAT; and
 - (ii) DFAT may terminate this Contract immediately by issuing a notice under clause 18.1.
- (h) If the investigation finds that a person other than the Contractor or its Personnel has in all likelihood engaged in Fraud, the Contractor must, at the Contractor's cost, take all reasonable action, including civil litigation or other recovery actions as available in the Partner Country, to recover any DFAT funds or DFAT funded property acquired or distributed through the Fraud, unless DFAT otherwise directs in writing.
- (i) The Contractor must keep DFAT informed, in writing, on a monthly basis, of the progress of its efforts to recover the DFAT funds or DFAT funded property, including any recovery action.

10.9 False and misleading information

The Contractor acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth). The Contractor must ensure that any subcontractors are made aware, in writing, of the information in this clause 10.9.

10.10 Anti-Corruption

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

- (i) offer;
- (ii) gift;
- (iii) payment; or
- (iv) benefit of any kind,

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

(b) Any breach of this clause 10.10 will entitle DFAT to issue a notice under clause 18.1 (Termination for default) to terminate this Contract immediately.

10.11 Security and Cyber Security

- (a) The Contractor is responsible for the security of Personnel and must ensure that both the Contractor and its Personnel comply with this clause 10.11.
- (b) If the Contractor is required to access or otherwise gains access to official information or security classified information, it agrees to comply and manage its system in accordance with all relevant security requirements specified in the *Commonwealth Protective Security Policy Framework*.
- (c) The Contractor must take reasonable and prudent steps consistent with good industry practice to reduce the risk of a Security Incident or Cyber Attack on the Contractor's information technology systems that accesses, transmits or stores any DFAT Confidential Information or any other data connected with this Deed, including but not limited to, Deed Material, a Services Order or Personal Information.
- (d) At DFAT's request in a notice, the Contractor must provide details of the Contractor's security measures in place to reduce the risk of a Security Incident or Cyber Attack on the Contractor's information technology systems.
- (e) If the Contractor becomes aware of a Security Incident or Cyber Attack on the Contractor's information technology systems, the Contractor must immediately notify:

- (i) DFAT (and, if this notification is not done by notice, by notice within one (1) business day); and
 - (ii) if required by DFAT, advise the Australian Cyber Security Centre (ACSC).
- (f) The Contractor must:
- (i) notify DFAT immediately on becoming aware of any security incident, Cyber Security Incident or security breach and comply with all DFAT directions to rectify the security issue, which may include notifying the Australian Cyber Security Centre or any other relevant body; and
 - (ii) participate in security reviews of its procedures at least annually as requested by DFAT and participate in any security audit in relation to the Contract, providing full co-operation to DFAT or its independent auditors, including the Australian National Audit Office.

10.12 Work Health and Safety

- (a) The Contractor must perform its, and must ensure that its Personnel, perform their, obligations under this Contract in strict compliance with the *Work Health and Safety Act 2011* (Cth) (**WHS Act**) and are able to participate in:
 - (i) any necessary inspections of work in progress;
 - (ii) any necessary consultation with DFAT regarding implementation of the WHS Act provisions; and
 - (iii) tests and evaluations of the Goods and/or Services.
- (b) The Contractor agrees, when using DFAT's premises or facilities, to comply with all reasonable directions and procedures relating to:
 - (i) work health and safety; and
 - (ii) security,

in effect at those premises or in regard to those facilities, as notified by DFAT or as might be reasonably inferred from the use to which the premises or facilities are being put.
- (c) Without limiting any other provision of this Contract, the Contractor must, on request, give all reasonable assistance to DFAT, by way of provision of information and documents, to assist DFAT and its officers as defined in the WHS Act to comply with the duties imposed on them under the WHS Act.
- (d) The Contractor acknowledges that DFAT may direct it to take specified measures in connection with the Contractor's work under this Contract that DFAT considers reasonably necessary to deal with an event or circumstance that has or is likely to have, an adverse effect on the health or safety of persons. The Contractor must comply with the direction at its own cost.

10.13 Indigenous Procurement Policy

- (a) It is Commonwealth policy to stimulate indigenous entrepreneurship and business development, providing indigenous Australians with more opportunities to participate in the economy.
- (b) The Contractor must use its reasonable endeavours to increase its purchasing from Indigenous Enterprises; and employment of indigenous Australians, in the delivery of the Goods and/or Services.
- (c) Purchases from Indigenous Enterprises may be in the form of engagement of an Indigenous Enterprise as a subcontractor and use of indigenous suppliers in the Contractor's supply chain.
- (d) Without limiting Clause 10.13, the Contractor must comply with the Indigenous Participation Plan (Schedule 7).
- (e) In this Clause 10.13, "Indigenous Enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating a business.

10.14 Payment Times Procurement Connected Policy

PT PCP Subcontracts

- (a) The Contractor must comply with the PT PCP.
- (b) If the Contractor enters into a PT PCP Subcontract, the Contractor must include in that subcontract:
 - (i) a requirement for the Contractor to pay the PT PCP Subcontractor:
 - (A) subject to clause 10.14.(d), within 20 calendar days after the Acknowledgement of the Satisfactory Delivery of the Goods or Services and receipt of a Correctly Rendered Invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day; and
 - (B) subject to clause 10.14.(e), for payments made by the Contractor after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with clause 10.14.(e);
 - (ii) a statement that the PT PCP applies to that subcontract; and
 - (iii) a statement that the subcontractor may make a complaint to the PT PCP Policy Team or to the Commonwealth as represented by DFAT in accordance with the PT PCP if there has been non-compliance with the requirements of this clause 10.14.(b).
- (c) If the Contractor enters into a Reporting Entity Subcontract in anticipation of (or after) entering the Contract, the Contractor must use reasonable endeavours to include in that subcontract:
 - (i) obligations equivalent to those in clause 10.14.(a); and
 - (ii) a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract will include:
 - (A) obligations equivalent to those in clause 10.14.(a); and

- (B) obligations equivalent to this clause 10.14.(b).(ii) (such that the obligations in this clause 10.14.(b).(ii) are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- (d) Clause 10.14.(b).(i).A does not limit any obligation to comply with applicable legislation that provides for a shorter payment period than the period in clause 10.14.(b).(i).A.
- (e) The Contractor is not required to pay interest in accordance with clause 10.14.(b).(i).B if either:
- (i) the Commonwealth has failed to pay the Contractor in accordance with the timeframes and requirements under this Contract; or
 - (ii) the amount of the interest payable is less than \$100 (GST inclusive).
- (f) Interest payable under clause 10.14.(b).(i).B will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Contractor effects payment as represented by the following formula:

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

Where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge Rate daily rate; and

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

PT PCP Evaluation Questionnaire

- (g) If requested in writing by the Commonwealth, the Contractor must properly complete and return a PT PCP Evaluation Questionnaire within 30 Calendar Days of the request.
- (h) **Non Compliance and Remediation** If the Commonwealth considers or becomes aware that the Contractor has not or may not have complied with:
- (i) the requirements of clause 10.14; or
 - (ii) the payment requirements of a PT PCP Subcontract,
- the Commonwealth may direct the Contractor to provide to the Commonwealth either or both of the following within the timeframes specified by the Commonwealth:
- (iii) information to enable the Commonwealth to review the Contractor's compliance; or
 - (iv) a properly completed PT PCP Remediation Plan.
- (i) The Contractor must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under clause 10.14.(h).(iv).

- (j) If the Commonwealth considers that the Contractor has failed to comply with any of its obligations under this clause 10.14, without limiting the Commonwealth's rights and remedies at law or otherwise under the Contract, the Commonwealth may do either or both of the following:
 - (i) take the failure or non-compliance into account as part of the Commonwealth's monitoring of the Contractor's performance under the Contract; or
 - (ii) report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the Policy Team.
- (k) The Contractor agrees that if it is the subject of a complaint in relation to its compliance with clause 10.14 or the associated payment provisions of a PT PCP Subcontract:
 - (i) it will not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
 - (ii) it will cooperate in good faith with the Commonwealth in connection with any investigation or inquiry and any attempt to resolve the complaint

Consent

- (l) For any PT PCP Purpose, the Contractor consents to the Commonwealth:
 - (i) using and sharing with any other Commonwealth Entity the information provided by the Contractor as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan, or otherwise received or obtained by the Commonwealth in connection with this Contract or a PT PCP Subcontract; and
 - (ii) receiving information obtained under, or in accordance with, the PTR Act ('Protected Information') from an Entrusted Person and using such Protected Information.
- (m) By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other document in connection with the PT PCP that includes any personal information within the meaning of *Privacy Act 1988* (Cth), the Contractor warrants and represents that it has obtained all necessary consents in accordance with relevant privacy laws to the collection, use and disclosure of such information in the manner contemplated by this clause 10.14. The Contractor will provide evidence of such consents to the Commonwealth on request.

Interpretation

- (n) A reference to the Commonwealth in clauses 10.14 includes the Policy Team.

11. INTELLECTUAL PROPERTY

11.1 Intellectual Property in Goods and/or Deliverables

- (a) Nothing in this Contract affects the ownership of Intellectual Property, except as expressly provided for in clause 7.6 and this clause 11.

- (b) Subject to clause 7.6 and the other provisions of this clause 11, the parties agree that all Intellectual Property created under this Contract or a subcontract in respect of the Goods and/or Deliverables is vested in the Commonwealth (or its nominee) immediately upon its creation.
- (c) To the extent that the Contractor may at any time acquire any right, title or interest in any Goods and/or Deliverables or any Intellectual Property in the Goods and/or Deliverables, the Contractor, by this Contract, assigns to the Commonwealth all such right, title and interest.
- (d) The Contractor acknowledges that the Contractor has no right, title or interest in the Goods and/or Deliverables or the Intellectual Property in the Goods and/or Deliverables and may not use or reproduce the Goods and/or Deliverables other than for the purposes of providing the Goods and/or Services.

11.2 **Contractor's Background IP**

- (a) DFAT acknowledges that the Contractor retains ownership of all the Contractor's Background IP.
- (b) The Contractor grants DFAT a non-exclusive, royalty-free, transferrable and perpetual licence to the Contractor's Background IP (including the right to sublicense) to Use the IP for any purpose related to a policy objective of DFAT.

11.3 **Third Party IP**

- (a) Nothing in this Contract affects the ownership of Third Party IP.
- (b) The Contractor will use its reasonable endeavours to ensure DFAT is granted a licence to exercise all Third Party IP incorporated in, attached to or otherwise necessarily related to the functioning or operation of the Goods and/or Deliverables, on the best available commercial terms.

12. **CONFIDENTIALITY**

12.1 **Use and disclosure of Confidential Information**

- (a) Each party must not:
 - (i) use any of Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Contract; or
 - (ii) disclose any of the Confidential Information except in accordance with clauses 12.2 or 12.3.
- (b) If requested by DFAT, the Contractor must ensure that Personnel engaged in the performance of this Contract execute a deed of confidentiality in the form stipulated by DFAT prior to disclosing any Confidential Information in accordance with clause 12.2(a).

12.2 **Disclosures to Personnel and advisers**

- (a) Each party may disclose Confidential Information to the Personnel or its legal, financial or other professional adviser if:

- (i) the disclosure is necessary to enable the party to perform its obligations or to exercise its rights under this Contract; and
 - (ii) prior to disclosure, the party informs the person of the party's obligations in relation to the Confidential Information under this Contract and obtains an undertaking from the person to comply with those obligations.
- (b) Each party must ensure that any person to whom Confidential Information is disclosed under clause 12.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 12.2(a).

12.3 Disclosures required by law

- (a) Subject to clause 12.3(b), a party may disclose Confidential Information that the party is required to disclose:
- (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Commonwealth Entity, stock exchange or other regulatory body; or
 - (iii) when disclosure is made by DFAT, a Minister or Parliament in accordance with statutory or portfolio duties or functions, or for public accountability reasons, including following a request by Parliament, a parliamentary committee or a Minister.
- (b) If a party is required to make a disclosure under clause 12.3(a), the party must:
- (i) to the extent possible, notify the other party immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (ii) consult with and follow any reasonable requests from the other party to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

12.4 Return or destruction of documents

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

- (a) deliver to the other party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information (with the exception of offline copies created by an automatic back-up of the party's computer facilities used in connection with this Contract),

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

13. **PRIVACY**

13.1 **Compliance with Privacy Laws and policies**

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

- (a) conform with its obligations under the Privacy Laws;
- (b) to the extent that different Privacy Laws apply to each party, and without limiting clause 13.1(a), conform with the obligations applicable to DFAT as if they were binding upon the Contractor; and
- (c) conform, to the extent relevant to this Contract, with the requirements of DFAT's published privacy policies (as amended from time to time).

13.2 **DFAT access and requests**

- (a) The Contractor must, on reasonable request by DFAT, give DFAT access to any Personal Information acquired from DFAT or in connection with this Contract.
- (b) Without limiting clauses 13.1, **Error! Reference source not found.** or 13.2 the Contractor must comply with any reasonable request by DFAT made for the purpose of ensuring either party's compliance with:
 - (i) obligations arising under the Privacy Laws;
 - (ii) any applicable guideline, recommendation, direction or determination issued by the Office of the Australian Information Commissioner (or such other privacy authority with jurisdiction over either party) or
 - (iii) DFAT's privacy policy.

13.3 **General Obligations of the Contractor**

The Contractor must:

- (a) ensure that its employees, officers, contractors and agents who deal with Personal Information in connection with this Contract are aware of and comply with the Contractor's obligations under this Contract in relation to such activities or practices; and
- (b) immediately notify DFAT if the Contractor becomes aware of a breach or possible breach of its obligations in relation to Personal Information under this Contract.

14. **RECORDKEEPING AND AUDIT**

14.1 **Records of work**

The Contractor must:

- (a) keep full and accurate records relating to its performance and compliance with any of its obligations under this Contract, including:
 - (i) the prevention, detection and investigation of Fraud;

- (ii) the disposition of supplies as agreed to by DFAT, such as replacement, write-off or transfer to the Partner Country;
 - (iii) receipts and expenses for Reimbursable Costs; and
 - (iv) supporting documentation with sufficient detail to enable the amounts payable by DFAT to be determined;
- (b) maintain the records:
 - (i) in a manner that enables them to be conveniently and properly audited; and
 - (ii) for a period of at least 7 years from the date on which the records were created; and
- (c) give DFAT access to those records on request.

14.2 Access and inspection

- (a) The Contractor must permit each of DFAT, the Commonwealth Auditor-General, the Information Privacy Commissioner or Privacy Commissioner as appropriate at reasonable times and on reasonable notice, through their officers, agents or advisers authorised on their behalf, to:
 - (i) access the Contractor's premises;
 - (ii) examine, inspect, audit and copy any accounts and records relating to this Contract or the Project;
 - (iii) provide all necessary facilities for this purpose; and
 - (iv) in the case of documents or records stored on a medium other than in writing, make available to DFAT on request reasonable facilities necessary to enable a legible reproduction to be created.
- (b) In the exercise of the rights under this clause 14.2, DFAT must use reasonable endeavours not to unreasonably interfere with the Contractor's performance of the Project in any material respect.

14.3 Audit

- (a) DFAT or a representative of DFAT, including DFAT internal Audit where relevant may conduct audits relevant to the performance of this Contract and/or compliance by the Contractor with any of its obligations under this Contract, including audits of the Contractor's relevant:
 - (i) operational practices and procedures;
 - (ii) project and financial management governance;
 - (iii) oversight practices and procedures;
 - (iv) invoices and reports;
 - (v) Material (including records, books and accounts) in the possession of the Contractor; and/or

- (vi) other matters determined by DFAT to be relevant to the performance of the Contractor's obligations.
- (b) Where DFAT has reasonable concerns regarding any item in clause 14.3(a), DFAT may issue the Contractor with written notification of those concerns including outlining action to be undertaken by the Contractor. These actions may include:
 - (i) a request that the Contractor provide DFAT with additional documentation relating to the item of concern;
 - (ii) that a director of the Contractor provides a statutory declaration confirming that the director has taken the action requested by DFAT;
 - (iii) a direction that the Contractor participate in a DFAT conducted internal audit;
 - (iv) a direction that the Contractor engage an independent, suitable organisation to undertake an assurance audit of the item or concern. The Contractor must provide a copy of the audit report to DFAT within 7 days after receipt by the Contractor.
- (c) The Contractor must respond to any notice received under clause 14.3(b) above within 14 Business Days or such longer period agreed between the parties.
- (d) If DFAT directs the Contractor, in accordance with clause 14.3(b) to engage an independent, suitable organisation to undertake an assurance audit, it must do so at the Contractor's cost, and the Contractor must comply with any directions given by DFAT regarding terms of reference or required auditing standards, including the type of assurance required from the audit appropriate to the circumstances. DFAT must approve the terms of reference.
- (e) Where a direction has been made under clause 14.3(d), DFAT may, at its discretion, not make any further payments owed to the Contractor pending certification of the reliability of the Contractor's management systems and the veracity of the invoicing procedures and practices, and the eligibility of claims for payment.
- (f) This clause 14.3 applies for the term of this Contract and for a period of 7 years from the date of its expiration or termination.
- (g) The requirement for access and participation in audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.
- (h) Each Party is to bear its own costs in relation to:
 - (i) any access and inspection of the Contractor's premises in accordance with clause 14.2; or
 - (ii) audit of the Contractor undertaken in accordance with this clause 14.3.

15. **DISPUTE RESOLUTION**

- (a) If a dispute arises under this Contract, prior to commencing any arbitration or court proceedings, other than for:
 - (i) interlocutory relief;

- (ii) where an authority of the Commonwealth, a state or territory is investigating a breach or suspected breach of the law by the Contractor; or
- (iii) when DFAT is exercising a right to terminate,

the Parties must act in good faith and use their reasonable endeavours to resolve the dispute as follows:

- (iv) the Party claiming that there is a dispute must give the other a written notice setting out the nature of the dispute;
 - (v) within 10 Business Days following notice, attempt to resolve the dispute through direct negotiation between the Contractor Representative and the DFAT Representative;
 - (vi) if still unresolved, refer the dispute to each Party's Escalation Representative, who must in good faith work to resolve the dispute within a further 10 Business Days or any other agreed period;
 - (vii) if still unresolved, the Parties have 30 Business Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or conciliation, or other form of alternative dispute resolution, rather than litigation or arbitration; and
 - (viii) if the dispute is not resolved in that time or there is no Contract to, or submission of the dispute to mediation or conciliation within a further 30 Business Days, then either Party may commence legal proceedings.
- (b) Subject to clause 3.5, the Contractor and Personnel must continue to comply with its obligations under this Contract, notwithstanding that there is a dispute between the Parties, or that legal proceedings are pending or current.

16. **FORCE MAJEURE**

16.1 **Notice and suspension of obligations**

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

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

16.2 Effort to overcome

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

16.3 Alternative supply

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

16.4 Termination

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

17. COVID-19 EVENTS

17.1 COVID-19 Events dealt with separately

The parties acknowledge and agree that the COVID-19 Pandemic and COVID-19 Events are not Force Majeure Events.

17.2 COVID-19 Events

This clause 17 ("COVID-19 Events") applies to COVID-19 Events and not to any other events or circumstances that arise as a consequence of a different pandemic.

17.3 Notice of a COVID-19 Event

- (a) Despite any other provision of this Contract, if the Contractor is unable to perform or is delayed in performing an obligation under this Contract by reason of a COVID-19 Event ("Affected Obligation"), the affected party ("Affected Party") must give DFAT a written notice ("COVID-19 Event Notice") as soon as possible, and in any event no later than two (2) Days after becoming aware of the COVID-19 Event, which:
- (i) sets out details of the COVID-19 Event (including the effect of the event on the Services);
 - (ii) estimates the likely period of time that the Affected Party will not be able to perform, or will be delayed in performing, the Affected Obligation;
 - (iii) provides details of any action that the Affected Party has taken, or proposes to take, to remedy the effect of the COVID-19 Event on the Affected Obligation and any likely cost or time consequences under the Contract;
 - (iv) provides details of insurance available to mitigate the effect (if any); and
 - (v) provides details of any remedy being sought by the Affected Party in relation to the Affected Obligation, including under the Contract.

- (vi) Upon receipt of a COVID-19 Event Notice from the Contractor, DFAT will advise the Contractor in writing whether the Grantor agrees that a COVID-19 Event has occurred, in which case clause 17.4 (“Actions if a COVID-19 Event has occurred”) will apply.
- (vii) If DFAT is the Affected Party, DFAT will advise the Contractor that a COVID-19 Event has occurred and clause 17.4 (“Actions if a COVID-19 Event has occurred”) will apply.

17.4 Actions if a COVID-19 Event has occurred

- (a) The Affected Party must:
 - (i) arrange a meeting with the other party within 24 hours’ of receipt of a COVID-19 Event Notice;
 - (ii) take all reasonable steps to avoid, remove or limit the effects of the COVID-19 Event on the Affected Obligation or Services as quickly as possible and re-commence performing the Affected Obligation or Services as soon as possible;
 - (iii) give weekly written notice to the other parties on the status of the COVID-19 Event and its effect on the Affected Obligation and Services; and
 - (iv) notify the other parties in writing as soon as the COVID-19 Event and its effect on the Affected Obligation and/or the Services ceases.
- (b) Provided that the Affected Party has complied, or is continuing to comply, with the obligations in clause 17.3 (“Notice of a COVID-19 Event”) and this clause 17.4 (“Actions if a COVID-19 Event has occurred”), no failure or omission by the Affected Party to perform the Affected Obligation will be a breach of the Contract in so far as the failure or omission in the performance of such obligation by the Affected Party is caused by the COVID-19 Event specified in the COVID-19 Event Notice.
- (c) In response to a COVID-19 Event Notice, DFAT may, in its discretion:
 - (i) direct a suspension of the Affected Obligation under the Contract, so far and for so long as it is affected by the COVID-19 Event;
 - (ii) reduce the scope of the Services, in which case the provisions in clause 18 (“Termination”) of this Contract will apply;
 - (iii) suspend part or all of the Services immediately by giving the Contractor written notice; and/or
 - (iv) terminate the Contract for its convenience if, in the DFAT’s view, the performance by the Affected Party in accordance with the terms of the Contract, become, or are likely to become, impracticable or inconsistent with Australian government policy, in which case the provisions in clause 18 (“Termination”) of this Contract will apply.
- (d) During the period of the COVID-19 Event, DFAT may, but is not obliged to, make alternative arrangements for the performance of any Affected Obligation under the Contract, including engaging another person to perform the Affected Obligation without incurring any liability to the other parties. Where DFAT exercises its rights under this clause, DFAT will notify the

Affected Party in writing that the Affected Obligation is no longer required and the Contract will be deemed to have been varied accordingly.

- (e) The Contractor waives any right to make any claim under the Contract, whether for time, Loss, profit or loss of profit or opportunity, for any disruptions or restrictions to the party, or for any directions issued or actions taken by DFAT, in relation to the COVID-19 Pandemic or any COVID-19 Event except as expressly permitted under this clause.

18. TERMINATION OF THIS CONTRACT

18.1 Immediate termination by DFAT for default

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

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

18.2 Immediate termination by DFAT for Insolvency Event

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

18.3 Termination or reduction for convenience

- (a) DFAT has an unfettered discretion to, by notice to the Contractor to:
 - (i) terminate; or
 - (ii) reduce the scope of,this Contract for convenience from the time specified in that notice.
- (b) Without limiting DFAT's rights under this Contract, at law or in equity, DFAT's rights under this clause 18.3 include the discretion to terminate or reduce the scope of this Contract if DFAT determines that the continuation of this Contract, or the continuation of the Project, does not support the achievement of value for money by DFAT. The parties acknowledge and agree that such a determination by DFAT may be made in the absence of a breach of this Contract by the Contractor and due to circumstances beyond the Contractor's control.
- (c) If DFAT exercises its right in clause 18.3(a), the Contractor must:
 - (i) comply with directions given by DFAT;
 - (ii) cease or reduce (as applicable) the performance of work; and
 - (iii) immediately do everything possible to mitigate its losses, and all other losses, costs and expenses arising out of termination, including by novating any subcontracts to DFAT or its nominee, if required by DFAT.

- (d) If DFAT terminates or reduces the scope of this Contract under this clause 18.3, DFAT will only be liable to the Contractor for the following loss or damage incurred as a direct consequence of termination or reduction in scope of this Contract to the extent that they can be reasonably substantiated and are unable to be avoided or mitigated:
- (i) fees and any Reimbursable Costs, as payable under Schedule 2 earned before the effective date of termination (on a pro-rata basis, if applicable);
 - (ii) lease termination costs for early termination of leases required specifically and exclusively for the performance of the Contract;
 - (iii) the Contractor's finance termination costs required specifically and exclusively for performance of this Contract; and
 - (iv) payments made to subcontractors which are not Related Entities of the Contractor and which were payable prior to the date of notice of termination of this Contract by DFAT,
- but excluding all other loss or damage, including the cost of redundancies, the costs of terminating any subcontracts, loss of profits and all other forms of expectation loss.
- (e) The Contractor must, in each subcontract, reserve a right of termination to take account of DFAT's right of termination under this clause 18.3 and the Contractor must make use of such rights to mitigate losses in the event of termination by DFAT under the provisions of this clause 18.3.
- (f) Subject to this Contract, on expiry or termination:
- (i) the Parties are relieved from future performance of this Contract, without prejudice to any right of action that has accrued at the date of termination;
 - (ii) all licences and authorisations granted by either party under this Contract terminate immediately unless the licence or authorisation provides to the contrary; and
 - (iii) the Contractor must provide DFAT with all reasonable assistance and information to assist DFAT in transitioning to DFAT's new provision of Project arrangements.
- (g) DFAT is not obliged to make any further payments to the Contractor (whether under this Contract, at law or in equity) if DFAT exercises its rights in clause 18.3(a) except as expressly provided under this clause 18.3.

19. TRANSITION OUT

19.1 Handover Plan

- (a) The Contractor must provide DFAT with a draft Handover Plan within 12 months after the Project Start Date.
- (b) The Handover Plan must be prepared in a manner which ensures the Incoming Party is able to:
 - (i) complete a smooth transition from the Contractor;

- (ii) benefit from the Project; and
 - (iii) manage ongoing Project requirements.
- (c) The Contractor must make changes to the Handover Plan as:
 - (i) reasonably requested by DFAT; and
 - (ii) update the Handover Plan:
 - (A) annually;
 - (B) 6 months before the end of this Contract; and
 - (C) as necessary during the Project.
- (d) The Contractor must ensure that a finalised Handover Plan is provided to DFAT within:
 - (i) 7 days after any early termination of the Project; or
 - (ii) one month prior to the expected completion of the Project.

19.2 Contractor obligations prior to transition

The Contractor must:

- (a) bear the loss or damage in respect of the Assets until handover of Assets to the Incoming Party;
- (b) establish and maintain a register of Assets which records:
 - (i) any non-consumable Assets valued at AUD2,000 or more; and
 - (ii) all Portable and Attractive Items valued at or below AUD5,000,which at a minimum records the type of Asset and its identification number, current condition, date of procurement, cost, location and disposal or handover details; and
- (c) submit to DFAT to audit, or to another entity nominated by DFAT to undertake the audit on its behalf, the Contractor's register of Assets and associated documentation such as import documents, invoices and warranties at any time and from time to time.

19.3 Transition to an Incoming Party

- (a) On expiry or termination of this Contract, the Contractor must provide all reasonable assistance and cooperation necessary to facilitate a smooth transition of the Project from the Contractor to an Incoming Party, in a manner which ensures no interruption of the Project.
- (b) Without limiting clause 19.3(a), the Contractor must:
 - (i) deliver to DFAT or its nominee complete copies of all the Data and Contract Material, in a form and on a media approved by DFAT, and any other DFAT property including the Assets;

- (ii) either destroy or deliver to DFAT all copies of DFAT Confidential Information as required by DFAT;
- (iii) if requested by DFAT, facilitate the assignment to the Incoming Party of sub-contracts relating to Assets, including for licensing and support of information technology and any construction work maintenance;
- (iv) vacate the Project Office where this has been supplied by DFAT or a Partner Country; and
- (v) co-operate with DFAT and, if requested, the relevant Incoming Party, and provide reasonable assistance relating to the transfer of any subcontracts or Grants to the Incoming Party.

20. NOTICES

20.1 How to give an effective notice

- (a) A notice, consent or other communication under this Contract is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or electronic form such as email.
- (b) A notice, consent or other communication that complies with this clause 20 is regarded as given and received:
 - (i) if it is delivered, when it has been left at the addressee's address;
 - (ii) if it is sent by mail, 3 Business Days after it is posted;
 - (iii) if it is sent in electronic form, on the day on which it was transmitted or, if transmitted after 5.00 pm, on the next Business Day.

20.2 Addresses for notices

A party's address and contact details are those set out on the first page of this Contract, or as the party notifies the sender from time to time.

21. AMENDMENT AND ASSIGNMENT

21.1 Amendment

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

21.2 Assignment

- (a) The Contractor may only assign, encumber, declare a trust over or otherwise deal with its rights under this Contract with the written consent of DFAT.
- (b) DFAT may assign or otherwise deal with its rights under this Contract without the consent of the Contractor, and may disclose to any potential holder of the right, or an interest in the right, any information relating to this Contract or any party to it.

22. GENERAL

22.1 Governing law

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

22.2 Liability for expenses

- (a) Subject to clause 22.2(b), each party must pay its own expenses incurred in negotiating, executing and registering this document.
- (b) The Contractor will be liable for any stamp duty, registration fees or similar charges (including any fines, penalties and interest) imposed in connection with this Contract in any jurisdiction outside of Australia.

22.3 Right of DFAT to recover money

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

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

22.4 Giving effect to this Contract

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

22.5 Variation of rights

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

22.6 Operation of indemnities

- (a) Each indemnity in this Contract survives the expiry or termination of this Contract.
- (b) A party may recover a payment under an indemnity in this Contract before it makes the payment in respect of which the indemnity is given.
- (c) If a provision of this Contract is expressed to:
 - (i) indemnify;

- (ii) exclude or limit any liability of; or
- (iii) otherwise benefit,

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

22.7 Survival of obligations

The following are intended to survive the expiry or termination of this Contract and the relevant rights and obligations may continue to be enforced:

- (a) clause 3.2 (Contractor to provide Goods and/or Services);
- (b) clause 3.5 (Payment);
- (c) clause 8 (Contractor's Responsibility);
- (d) clause 9 (Insurance)
- (e) clause 10.8 (Fraud);
- (f) clause 10.11 (Security)
- (g) clause 11 (Intellectual Property);
- (h) clause 12 (Confidentiality);
- (i) clause 13 (Privacy);
- (j) clause 14 (Recordkeeping and Audit);
- (k) clause 15 (Dispute Resolution); and
- (l) any other clause, right or obligation which by its terms, operation or by implication is intended to survive the expiry or termination of this Contract.

22.8 Inconsistency with other agreements

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

22.9 Counterparts

This agreement may be executed in counterparts.

SCHEDULE 4

Interpretation and Definitions

1. INTERPRETATION

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

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

- (k) Any provision of this Contract that is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Contract enforceable, unless this would materially change the intended effect of this Contract.
- (l) Headings are for convenience only, and do not affect interpretation.
- (m) If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (n) A party will not be disadvantaged by application of a rule of construction solely as a result of having put forward or drafted this Contract or any provision of this Contract.
- (o) Words and terms defined in the GST Law have the same meaning in clauses concerning GST.
- (p) If a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled to claim include GST which the representative member of the GST group of which the party is a member must pay and input tax credits to which the representative member is entitled.
- (q) The parties acknowledge that DFAT is notionally liable to pay GST under the GST Law, and a reference in this Contract to a liability to pay GST or an entitlement to an input tax credit includes any notional GST liability or input tax credit entitlement.

2. DEFINITIONS

The following definitions apply to this Contract, except where the context makes it clear that a definition is not intended to apply:

Applicable Standards means the standards specified in the Contract Details.

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

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

Business Day means:

- (a) for determining when a notice, consent or other communication is given, the day of communication that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, the day of communication (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the jurisdiction specified in the Contract Details.

Commonwealth means the Commonwealth of Australia.

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

Confidential Information means:

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

but does not include this Contract (unless and to the extent it is identified as confidential in the Contract Details) or information that:

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

Consequential Loss means any:

- (a) Loss in relation to a breach of this Contract which does not arise naturally from, and in the usual course of, the breach; and
- (b) Loss of profit, Loss of reputation and Loss of income.

Contract means this agreement, including all the elements identified at item 6 of the Contract Details.

Contractor's Background IP means all Intellectual Property rights owned by the Contractor incorporated in, or used in association with, the Goods and/or Services and associated Deliverables.

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

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

Controller has the same meaning as in the *Corporations Act 2001* (Cth).

COVID-19 Event means an event or disruption which has a material adverse effect on the Services that was caused as a direct result of the COVID-19 Pandemic, provided that the material adverse effect is one Contractor could not have avoided or overcome by the taking of all reasonable steps (including expending additional costs).

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

Cyber Security Incident means a single or series of unwanted or unexpected identified occurrences of a system, service or network state indicating a potential or actual breach of cyber security procedures, process or requirements and threatening security.

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

Deliverables means all materials developed or supplied by the Contractor in the course of providing the Goods or Services.

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

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

DFAT Representative means the person nominated by DFAT as set out in the Contract Details.

Escalation Representative means the representative nominated by either DFAT or the Contractor from time to time.

Expiry Date is the date on which all obligations under this Contract have been fulfilled, excluding those obligations that survive the expiry of this Contract.

Fees means the fees for the Goods and/or Services as set out in Schedule 2, not including Reimbursable Costs.

Force Majeure Event means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance other than in the Contractor's workforce, currency restriction, embargo, action or inaction by a government body, a failure of a public utility or common carrier, computer disruption due to the effects of a virus or other malicious code introduced other than through the acts or omissions of the party seeking relief or any other event that prevents or adversely affects performance of this Contract and which was not preventable or capable of being mitigated by reasonable risk management measures by the party seeking relief.

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

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

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

Fraud Control Framework means the framework available on the Attorney-General's Department's website:

<https://www.ag.gov.au/Integrity/FraudControl/Pages/FraudControlFramework.aspx>.

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

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

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

Grant Recipient means the recipient of a Grant.

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

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

Handover Plan is the document developed by the Contractor in accordance with clause 19.1 and which includes all the activities to be performed to hand over all Contract Material, Assets and any other information, documents and materials relevant to the Project, to an Incoming Party in accordance with clause 19.3.

Incoming Party means either:

- (a) an alternative incoming contractor;
- (b) a Partner Country; or
- (c) DFAT,

as the case may be.

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

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

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

- (a) is fully paid-up and does not require any additional payment by the licensee, including by way of Royalty or any other fee;
- (b) cannot be revoked or terminated by the licensor for any reason except upon expiration of a statutory protection term;

- (c) operates in perpetuity without any action required on the part of the licensee to renew or extend the licence;
- (d) operates on a world-wide basis; and
- (e) binds each successor in title to the owner of the Intellectual Property.

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

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

Partner Country means the country or countries in which the Project is to be performed.

Payment Milestone means a milestone identified in Schedule 2 for which the Contractor is entitled to receive a payment in accordance with this Contract.

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

Personnel means the Contractor's employees, officers, agents, contractors or subcontractors (including their respective personnel) and Specified Personnel of the Contractor other than Grant Recipients who receive Grants that are administered by the Contractor.

Portable and Attractive Items means all non-consumable Assets valued below AUD 5,000 that are susceptible to theft or loss due to their portable nature and attractiveness for personal use or resale, including laptop computers, tablets, cameras, GPS devices, mobile phones, and other personal electronic devices, label printers, power tools, televisions, lite-pros/projectors, DVD/video/CD players, and other audio-visual equipment.

Privacy Laws means the *Privacy Act 1988* (Cth) and any other legislation imposing an obligation in relation to the collection, use, disclosure, storage or transmission of personal information (including health information), including any regulations, rules, codes, principles or guidelines contained in or arising out of such legislation.

Project means the project as described in the Contract Details.

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

Project End Date means the date by which the Contractor must complete the Services, as specified in the Contract Details.

Project Start Date means the date by which the Contractor must commence the Services, as specified in the Contract Details.

Project Supplies means Goods provided in the Partner Country by the Contractor during the course of the Project as required by this Contract.

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

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

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

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

Reimbursable Costs means any costs incurred by the Contractor for which DFAT must reimburse the Contractor as specified in Schedule 2.

Related Entity means an entity:

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

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

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

Security Interest means:

- (a) a security interest that is subject to the *Personal Property Securities Act 2009 (Cth)*;

- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Services means the services described in Schedule 1.

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

Statement of Tax Record means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at:
www.ato.gov.au/Business/Bus/Statement-of-tax-record

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

Term has the meaning provided in clause 2.1(a).

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

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

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

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

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

World Bank List means a list of organisations maintained by the World Bank in its 'Listing of Ineligible Firms' or 'Listings of Firms, Letters of Reprimand' available on the World Bank's website at:
<http://web.worldbank.org>.

SCHEDULE 5

Performance Guarantee

To be inserted following negotiations if required

SCHEDULE 6

Bank Guarantee

To be inserted following negotiations if required

SCHEDULE 7

Indigenous Participation Plan

To be inserted from the bidder's tender response

SCHEDULE 8

Localisation Participation Plan

To be inserted from the bidder's tender response

SCHEDULE 9

Diversity and Inclusion Plan

To be inserted from the bidder's tender response

SCHEDULE 10

Partner Performance Assessment – Template

(detail to be agreed between FP and DFAT upon implementation <https://www.dfat.gov.au/about-us/publications/Pages/partner-performance-assessment>)

SCHEDULE 11

Individual Performance Assessment – Template

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

SCHEDULE 12

Deed of Novation

This **DEED OF NOVATION AND SUBSTITUTION** made the day of

BETWEEN:

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

AND:

[ABN of] (the
"Subcontractor") of the second part;

AND:

[Contractor] (ABN xx xxx xxx xxx) of [Address] (the "Contractor").

WHEREAS:

- A. DFAT is concerned to ensure that the Services under the Contract are properly delivered.
- B. The Subcontractor is a subcontractor to the Contractor for the Services.
- C. The Subcontractor and Contractor have agreed with DFAT to novate the Sub-contract to DFAT in the event that DFAT exercises its right under **Clause 7.4** (Personnel) and **Clause 7.5** (Subcontracting) of Schedule 3 of the Contract.
- D. The Subcontractor agrees that DFAT may novate the Subcontract to another Contractor at its sole and absolute discretion in the event that DFAT has exercised its right under **Clause 7.4** and **Clause 7.5 of Schedule 3** of the Contract.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

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

"**Commencement Date**" has the same meaning as in the Contract;

"**Contract**" means the Contract for the provision of Services between DFAT and the Contractor dated on or about [];

"**Deed**" means this Deed of Novation;

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

"**Party**" means DFAT, the Subcontractor or the Contractor;

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

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

2. APPLICATION OF DEED

2.1 The Contractor and the Sub-contractor agree that:

- (a) this Deed is entered into for the benefit of DFAT; and
- (b) DFAT may exercise the rights granted to it under this Deed.

2.2 This Deed commences on the Commencement Date of the Subcontract.

3. NOVATION

3.1 DFAT may issue a notice of substitution to the Subcontractor if DFAT is entitled to exercise its rights under **Clause 7.5** (Subcontracting) and **Clause 7.4** (Personnel) of Schedule 3 of the Contract.

3.2 The Parties agree that on and from the date of issue of a notice of substitution:

- (a) DFAT is substituted for the Contractor under the Subcontract in respect of the Subcontractor Services as if DFAT was originally the Party to the Subcontract instead of the Contractor, and all references in the Subcontract to the Contractor are to be read and construed as if they were references to DFAT;
- (b) DFAT is to pay any amount due to the Subcontractor under the Subcontract to the Subcontractor and the receipt of the Subcontractor shall be full and sufficient discharge for any such payments;
- (c) subject to paragraph (a), DFAT is bound by, and must fulfil, comply with and observe all the provisions of the Subcontract and enjoys all the rights and benefits of the Contractor under the Subcontract; and
- (d) the performance by the Subcontractor of services under the Subcontract, is instead of, and not in addition to, any performance by the Contractor of its obligations under that Subcontract.

3.3 If DFAT exercises its rights of novation under this deed, DFAT may further novate the Subcontract by substituting a new contractor in place of the Contractor on the terms of this deed with appropriate alterations. In the event of such novation, the rights and obligations of the Subcontractor with respect to the Contractor shall become the rights and obligations of the Subcontractor with respect to the new contractor.

3. RELEASE

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

4. FURTHER ASSURANCES

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

5. DISCHARGE

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

6. NOTICES

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

3. ADDRESS OF PARTY

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

DFAT

To: **Desk Name**

Attention: Country Program Manager

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

Facsimile: Desk Fax

Contractor

To: Contractor's Name

Attention:

Address: Contractor's Address

Facsimile: Contractor's Fax

Subcontractor

To:

Attention:

Address:

Facsimile:

8. LAWS

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

9. WARRANTY

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

10. GENERAL

Counterparts

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

Attorneys

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

Further Assurance

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

Assignment

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

EXECUTED as a Deed.

SIGNED for and on behalf of the)
COMMONWEALTH OF AUSTRALIA in the)
presence of:)
) Signature

.....
Signature of witness

.....
Name of witness
(Print)

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

| | |
|------------------|----------------------------|
| | |
| Director | Director/Secretary |
| Name of Director | Name of Director/Secretary |
| (Print) | (Print) |

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

| | |
|------------------|----------------------------|
| | |
| Director | Director/Secretary |
| Name of Director | Name of Director/Secretary |
| (Print) | (Print) |