



Commonwealth of Australia

***DFAT Corporate Simple Contract***

**CONTRACT** made                                      day of                                      [ 20]

**BETWEEN:**

**COMMONWEALTH OF AUSTRALIA** represented by the Department of Foreign Affairs and Trade ("DFAT") **ABN 47 065 634 525**.

**AND**

[**Contractor's Name**], **ABN XX XXX XXX XXX** of [insert address] (the "**Contractor**").

**RECITALS:**

- A. DFAT requires the provision of certain Services for the purposes of Australian Embassy Tokyo Guarding Services – 2015/1 (the "Project").
- B. The Contractor has expertise in the provision of the Services and has offered to provide the Services to DFAT subject to the terms and conditions of this Contract.

**OPERATIVE:**

DFAT and the Contractor promise to carry out and complete their respective obligations in accordance with the attached **Parts 1 -2** and any Annexes.

**SIGNED** for and on behalf of the

**COMMONWEALTH OF AUSTRALIA**

represented by the

Department of Foreign Affairs and Trade by:

in the presence of:

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

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

\_\_\_\_\_  
Name of Delegate  
(Print)

\_\_\_\_\_  
Name of witness  
(Print)

**SIGNED** for and on behalf of  
**CONTRACTOR'S NAME** by:

\_\_\_\_\_  
Name and Position  
(Print)

\_\_\_\_\_  
Signature

By executing this Contract the signatory warrants that the signatory is duly authorised to execute this Contract on behalf of the Contractor.

in the presence of:

\_\_\_\_\_  
Name of Witness  
(Print)

\_\_\_\_\_  
Signature of Witness

**Part 1 - Statement of Requirements and Payment Provisions**

**1. GENERAL**

- 1.1 The Contractor agrees to provide the Services to the Commonwealth and the Commonwealth agrees to purchase the Services in accordance with the terms and conditions of this Contract.
- 1.2 The Contractor must comply with the terms and conditions set out in this **Part 1** (Statement of Requirements and Payment Provisions) and in **Part 2** (Standard Contract Conditions).

**2. BACKGROUND**

- 2.1 DFAT has the requirement for guarding services at the Australian Embassy, Tokyo. Guards are stationed in the Guard House during Embassy business hours and during after-hours functions, however, occasionally additional guards will be required to work elsewhere during larger functions, in front of the Head of Mission's residence and at other compound entrance gates.

**3. TERM OF CONTRACT**

- 3.1 The Contractor must commence provision of the Services by **1 August 2015** and complete the provision of Services by **31 July 2017**.
- 3.2 The Commonwealth may extend the Term of this Contract for a further period of one (1) year plus one (1) year by giving the Contractor reasonable notice before the end of the Term.

**4. CONTRACT MANAGERS AND ADDRESSES FOR NOTICES**

- 4.1 In accordance with **Clause 39** (Notices) of the Standard Contract Conditions, details of the respective Contract Manager of each Party for the purpose of any notice or communication under the Contract are as set out below.

**DFAT's Contract Manager:**

**Name/position title:** The person occupying the position of Property and Security Manager, currently Gus Swanton.

**Postal Address:** Australian Embassy, Mita 2-1-14, Minato-ku, Tokyo 108-8361

**Telephone:** (03)-5232 4093

**Email Address:** gus.swanton@dfat.gov.au

**Contractor's Contract Manager:**

**Name/position title:** The person occupying the position of [insert position title], currently [insert name].

**Postal Address:** [insert postal address including postcode]

**Telephone:** [insert telephone area code and telephone number]

**Mobile:** [insert mobile number]

**Email Address:** [insert email address]

## REQUIREMENTS

4.2 **The Contractor** must provide DFAT with the following Services in accordance with the Terms and Conditions of this Contract:

- identifying and engaging appropriately qualified and experienced personnel;
- managing preparation and briefing of personnel;
- meeting quality assurance obligations
- establishing regular and effective communications with stakeholders;
- reporting and liaison requirements;
- requirements for any travel or site visits;
- complying with requirements relating to financial management, audit and asset management;
- ensuring appropriate risk management and quality control procedures are in place;
- comprehensive details of monitoring and reporting requirements;
- comprehensive details of key deliverables including details of any quality or performance standards that will be applied;
- full description of phasing and scheduling requirements with a particular focus on scheduling of key deliverables and outputs.

## 5. CONTRACT DELIVERABLES

5.1 The Contractor must provide DFAT with the following Contract deliverables:

- (a) the Services to the standards set out in this **Part 1**;
- (b) deliver such reports and attend such meetings as set out in this **Part 1** or elsewhere in the Contract;

**6. MILESTONES**

6.1 The Contractor is required to meet the Contract Milestones as set out in **Table 1** (Milestones) below:

**Table 1: Milestones**

| <b>Milestone number</b> | <b>Milestone Description</b>  | <b>Due Date</b>  |
|-------------------------|---|------------------|
| 1                       | Delivery of work schedules for use by the Contractor's staff            | July 20, 2015    |
| 2                       | Satisfactory performance during the first month of the contract.        | August 31, 2015  |
| 3                       | Satisfactory performance during the first three months of the contract. | October 31, 2015 |
| 4                       | Satisfactory performance during the first year of the contract.         | July 31, 2016    |
| 5                       | Satisfactory performance during the second year of the contract.        | July 31, 2017    |

**7. MEETINGS**

7.1 The Contractor must attend meetings with DFAT during the Term of the Contract as set out in Table 2 (Meetings) below:

**Table 2: Meetings**

| <b>Meeting type</b>                      | <b>Location</b>  | <b>Date</b>   |
|--|--|---|
| <b>Introduction</b>                      | Australian Embassy, Tokyo<br>Introduction of contractor key staff and inspection of the Embassy areas. | Last week in July   |
| <b>Progress and Performance Meetings</b> | Australian Embassy, Tokyo<br>Discuss progress and any problems during this period.                     | Monthly for first six months of contract and then every three months for remainder of contract. |
| <b>Project completion and transition</b> | Australian Embassy, Tokyo<br>Discuss possible contract extensions and/or completion and transition     | In the 18th month of the contract.  |

8. **SPECIFIED PERSONNEL**

8.1 The Contractor must provide the Specified Personnel as set out in **Table 3** (Specified Personnel) below in accordance with **Clause 10** (Specified Personnel) in **Part 2** of the Contract:

**Table 3: Specified Personnel**

| Position                | Name                                 |
|-------------------------|--------------------------------------|
| [insert position title] | [insert name of Specified Personnel] |
|                         |                                      |
|                         |                                      |

8.2 Specified Personnel must meet all security assessments and standards at all times during the Term of the Contract:

- i. an identity check;
- ii. a Japanese National Police clearance or equivalent; and
- iii. sign a “Declaration of Secrecy” form and any other form notified to the Contractor by the embassy.

**Note:** Items (a), (b) and (c) above must be provided by the Contractor prior to the Commencement Date or on commencement of work, whichever is earlier taking precedence.

- iv. cooperating fully with the Embassy’s vetting staff in undergoing the Embassy’s mandatory probity check, including the timely provision of all requested information and supporting documentation. Any of the Contractor’s staff who fail to cooperate with the probity check or whose check returns a negative result, will not be allowed to work in the Embassy’s premises. This staff member must be replaced by the Contractor with another staff member.

The cost of obtaining each of the above will be borne by the Contractor. The Contractor must ensure that Specified Personnel promptly provide to the Commonwealth relevant details to assist with the security clearance process, and notify the Embassy promptly in writing of any change in circumstances which is likely to affect the Commonwealth’s assessment of the Specified Personnel

9. **REPORTS**

9.1 The Contractor must provide DFAT with the reports set out in Table 4 (Reports) below by the date, in the format and number of copies indicated:

**Table 4: Reports**

| <b>Report Type</b>                | <b>Indicative Content</b>   | <b>Due Date</b>   | <b>Format</b> | <b>Qty</b> |
|-----------------------------------|---|---|---------------|------------|
| <b>Report # 1</b>                 | Prior to the commencement of work under this contract, the Contractor shall prepare work schedules for use by the Contractor's staff. These schedules should list the Embassy's business hours and who will be doing which guarding shift.  | July 20, 2015   |               |            |
| <b>Supervisor Liaison</b>         | The Contractor's appointed Supervisor shall maintain daily liaison with the Embassy's Property Manager and Compound Security Supervisor throughout the execution of the contract.   | Daily reports in the first month and then on an 'as needed basis'.  |               |            |
| <b>Progress Report # 1 and #2</b> | <p>A summary of the following information for the reporting period:</p> <ul style="list-style-type: none"> <li>• the Services provided;</li> <li>• the amounts invoiced to DFAT;</li> <li>• any problems encountered and the actions taken to resolve those problems and prevent re-occurrence;</li> <li>• updates and issues relating to the future delivery of Services; and</li> <li>• tasks or jobs not completed in accordance with the Contract.</li> </ul> | <p>The report must be provided to the DFAT Representative</p> <p>Report #1<br/>September 1, 2015</p> <p>Report #2<br/>October 1, 2015</p> |               |            |
| <b>Continued Progress Report</b>  | As Progress report #1 and #2  | To be decided   |               |            |

9.2 All reports must:

- (a) be submitted in English;
- (b) be accurate and not misleading in any respect;
- (c) be prepared in accordance with directions provided by DFAT;
- (d) incorporate sufficient information to allow DFAT to monitor and assess the success of the Services in achieving DFAT’s objectives;
- (e) be provided in Microsoft Word format (or Microsoft Excel format for spread sheets), unless otherwise approved or requested by DFAT;
- (f) not incorporate either DFAT or the Contractor’s logo;
- (g) be provided at the time specified in **Table 4** (Reports) of above; and
- (h) be provided in accordance with the specification under **Clause 38** (Meetings, Reports and Travel) in **Part 2**.

10. **PERSONNEL FEES**

10.1 DFAT shall reimburse the Contractor at actual cost up to a maximum of **JPY[insert amount] plus Consumption Tax** for Personnel Fees as set out in **Table 5** (Specified Personnel Fees) below:

**Table 5: Specified Personnel Fees**

| Position                      | Name | Maximum Number of<br>(Days/Weeks) Payable | Remuneration<br>Rate | Maximum<br>Amount<br>Payable (JPY) |
|-------------------------------|------|---|----------------------|------------------------------------|
| Guard 1<br>8:30 – 18:00       |      |   |                      |                                    |
| Guard 2<br>8:30 – 18:00       |      |   |                      |                                    |
| Guard 3<br>9:00 – 14:00       |      |   |                      |                                    |
| Guard 4<br>8:30 – 18:00       |      |   |                      |                                    |
| <b>Total Personnel Fees:</b>  |      |   |                      |                                    |
| <b>Total Consumption Tax:</b> |      |   |                      |                                    |
| <b>Grand Total Payable:</b>   |      |   |                      |                                    |



- 10.2 Remuneration Rates are based on a working day from 8:30 to 18:00 for a full time guard and 09:00 to 14:00 for a part time guard. The Contractor is not entitled to claim additional Personnel Fees if they work more than the hours listed in **Table 5 (Specified Personnel Fees)** unless additional hours are requested by DFAT.
- 10.3 The Contractor must keep records to enable verification of actual time spent undertaking the Services.
- 10.4 DFAT shall pay the Contractor's Personnel Fees in accordance with **Part 1** at the end of each four (4) **week** period in arrears subject to receipt of a correctly rendered invoice and DFAT's confirmation that the Services have been provided as required by this Contract.

## 11. INVOICES

- 11.1 The Contractor's tax invoice must be submitted to DFAT when due in accordance with **Clause 4 (Invoice)** of **Part 2**. Invoices must also contain the Agreement number on this Contract and reference the Payment Event number(s) as notified by DFAT.
- 11.2 All Contractor claims for payment must be made to:
- Finance Officer  
Australian Embassy  
Mita 2-1-14  
Minato-ku  
Tokyo  
Japan, 108-8361
- 11.3 Tax invoices should be sent to the above address. Alternatively DFAT shall accept electronic tax invoices. These can be sent to [accounts.tokyo@dfat.gov.au](mailto:accounts.tokyo@dfat.gov.au) and copy in the DFAT Contract Manager.

## 12. TOTAL AMOUNT PAYABLE

- 12.1 The maximum amount payable by DFAT to the Contractor for the provision of the Services shall not exceed the sum of **JPY [insert amount] including Consumption Tax** if any up to a maximum amount of **JPY [insert amount]**.
- 12.2 DFAT shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.
- 12.3 DFAT shall pay the Contractor for the items listed in **Table 5 (Specified Personnel Fees)** above in arrears subject to receipt of a correctly rendered invoice and subject to DFAT's written confirmation that the have been delivered and meet the requirements outlined in the Statement of Requirement.

## **Part 2: Standard Contract Conditions**

### **1. Provision of Services**

1.1 The Contractor must provide the Services to the Commonwealth at the delivery location on the delivery date and in accordance with any instructions for the delivery of the Services specified in writing. The Contractor must promptly notify the Commonwealth if the Contractor becomes aware that it will be unable to provide all or part of the Services by the relevant delivery date and advise the Commonwealth as to when it will be able to do so.

1.2 Any Services must be provided to the standard that would be expected of an experienced and professional supplier of similar services and any other standard specified in the Statement of Requirements.

### **2. Acceptance**

2.1 The Commonwealth may accept or reject the relevant Services within **21 days** after delivery of the Services to the delivery location. If the Commonwealth does not notify the Contractor of acceptance or rejection within the **21 day** period, the Commonwealth will be taken to have accepted the Services on the expiry of the **21 day** period.

2.2 The Commonwealth may reject the Services where the Services do not comply with the requirements of the Contract, including any acceptance tests specified in the Standard Contract Conditions. If the Commonwealth rejects the Services the Commonwealth may:

- (a) require the Contractor to repair or modify the Services within a period determined by the Commonwealth at the Contractor's cost, so that the Services meet the Requirements of the Contract; or
- (b) require the Contractor to provide at the Contractor's cost, replacement Services which meet the Requirements of the Contract, within a period determined by the Commonwealth; or
- (c) terminate the Contract in accordance with **Clause 42** (Termination).

2.3 In any case, at the Commonwealth's request, the Contractor must, at its own cost, promptly remove any rejected Services from the Commonwealth's premises. Replacement Goods or repaired or modified Services are subject to acceptance under this **Clause 2**. The Contractor must refund all payments related to the rejected Services unless replacement or repaired Services are accepted by the Commonwealth.

### **3. Title and Risk**

3.1 Title to the Services transfers to the Commonwealth upon acceptance by the Commonwealth in accordance with **Clause 2** (Acceptance) and payment of the Contractor. The risk of any loss or damage to the Services remains with the Contractor until title passes.

### **4. Invoice**

4.1 The Contractor must submit a correctly rendered invoice to the Commonwealth. An invoice is correctly rendered if:

- (a) it is correctly addressed and calculated in accordance with the Contract;
- (b) it relates only to Services that have been accepted by the Commonwealth in accordance with **Clause 2**(Acceptance).
- (c) it is for an amount which, together with all previously corrected rendered invoices does not exceed the Contract Price.
- (d) it includes the DFAT agreement number and the name and telephone number of the Contract Manager; and

4.2 Approval and payment of an amount of an invoice is not evidence of the value of the obligations performed by the Contractor, an admission of liability or evidence the obligations under the Contract have been completed satisfactorily, but is payment on account only.

4.3 The Contractor must promptly provide to the Commonwealth such supporting documentation and other evidence reasonably required by the Commonwealth to substantiate performance of the Contract by the Contractor.

## **5. Payment**

5.1 Subject to **Clause 2** (Acceptance) and **Clause 38** (Meetings, Reports and Travel), the Commonwealth must pay the invoiced amount to the Contractor within **30 days** after receiving a correctly rendered invoice or if this **30 day** period ends on a day that is not a business day, payment is due on the next business day. The last day of this period is referred to as the 'due date'.

## **6. Price Basis**

6.1 The Contract Price is the maximum price payable for the Services and is inclusive of all taxes, duties (including any customs duty) and government charges imposed or levied in Australia or overseas.

6.2 The Commonwealth is not required to pay any amount in excess of the Contract Price including, without limitation, the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges.

## **7. Offset**

7.1 If the Contractor owes any amount to the Commonwealth in connection with the Contract, the Commonwealth may set off that amount, or part of it, against its obligation to pay any correctly rendered invoice.

## **8. Quality Assurance**

8.1 Upon request by the Commonwealth the Contractor must provide the Commonwealth and its nominees with access to the Contractor's premises to undertake quality audits and quality surveillance as defined in the relevant Australian Quality Standards of the Contractor's quality system and/or the production processes related to the Services.

## **9. Approvals**

9.1 The Contractor must obtain and maintain any licences or other approvals required for the lawful provision of the Services and arrange any necessary customs entry for the Services

## **10. Specified Personnel**

10.1 The Contractor must ensure that the Specified Personnel provide the Services and are not replaced without the prior consent of the Commonwealth.

10.2 At the Commonwealth's request, the Contractor, at no additional cost to the Commonwealth, must promptly replace any Specified Personnel that the Commonwealth reasonably considers should be replaced with personnel acceptable to the Commonwealth.

10.3 The Contractor must not engage any current DFAT employee or Former DFAT Employee as Specified Personnel.

## **11. Subcontracting**

11.1 Subcontracting the whole or part of the Contractor's obligations under the Contract will not relieve the Contractor from any of its obligations under the Contract.

11.2 The Contractor must make available to the Commonwealth the details of all subcontractors engaged to provide the Services under the Contract. The Contractor acknowledges that the Commonwealth is required to disclose such information.

11.3 The Contractor must ensure that any subcontract entered into by the Contractor for the purpose of fulfilling its obligations under the Contract imposes on the subcontractor the same obligations that the Contractor has under the Contract (including this requirement in relation to subcontracts).

## **12. Record Keeping and Audit**

12.1 The Contractor must maintain proper business and accounting records relating to the supply of the Services and allow the Commonwealth or its authorised representative to inspect or audit those records when requested. The Contractor will provide any assistance and information required should the Australian National Audit Office wish to conduct an audit of the Contractor's accounts and records. Each Party must bear its own costs of any audit.

12.2 The Contractor must comply with any standards prescribed by the Commonwealth from time to time for the creation, care, access, storage, preservation and return or legal destruction of its records (including Material) and any Commonwealth material. This obligation continues for seven (7) years after termination or expiry of this Contract or completion of any legal action arising out of or in connection with this Contract, whichever occurs later.

12.3 Where applicable, all Parties to this Contract should be aware of, and comply with the recordkeeping, transfer of custody and disposal requirements as expressed in “Records Issues for Outsourcing including General Disposal Authority 25”. Please refer to [www.naa.gov.au/Images/GDA25\\_tcm16-47736.pdf](http://www.naa.gov.au/Images/GDA25_tcm16-47736.pdf)

12.4 On the expiry or termination of this Contract, the Contractor must promptly return all Commonwealth records and material (including Material) to the Commonwealth, provided that the Contractor may keep a single copy for its records.

### **13. Access to Contractor Premises**

13.1 The Contractor agrees to give the Commonwealth, or its nominee, all assistance reasonably requested for any purpose associated with this Contract or any review of the Contractor’s performance under the Contract. This will include, but is not limited to, access to premises, material and personnel associated with the Services and the Contract.

### **14. Conduct at DFAT Premises**

The Contractor must, when using Commonwealth provided premises or facilities, comply with all reasonable directions of the Commonwealth, and act consistently with the behaviours set out in **Section 13** of the *Public Service Act 1999* (Commonwealth).

### **15. Security**

15.1 The Contractor must comply with the security requirements for the protection of official information:

- (i) as detailed in the Commonwealth Protective Security Policy Framework as minimum standards; and
- (ii) as advised by the Commonwealth from time to time during the Term of this Contract;

15.2 When accessing any Commonwealth place, area or facility, the Contractor must comply with any security requirements notified to the Contractor by the Commonwealth or of which the Contractor is, or should reasonably be aware. The Contractor must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security requirements.

15.3 The Contractor must ensure that any material and property (including security-related devices and clearances) provided by the Commonwealth for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and returned as directed by the Commonwealth.

15.4 The Contractor must perform its security obligations to the highest professional standards described or indicated in the requirements of the Commonwealth Protective Security Policy Framework as amended from time to time.

15.5 Where security clearances are required under Part 1, the cost of obtaining each security clearance will be borne by the Contractor. The Contractor must ensure that its Specified Personnel promptly provide to the Commonwealth relevant details to assist with the security clearance process, and the Contractor must notify the Commonwealth promptly in writing of any change in circumstances which is likely to affect the Commonwealth’s assessment of the Specified Personnel’s entitlement to hold a security clearance;

## **16. Work Health and Safety**

16.1 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* (Commonwealth) ('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 Services.

16.2 The Contractor agrees, when using DFAT's premises or facilities, to comply with all reasonable directions and procedures relating to work health and safety in effect at those premises or in regard to those facilities, as notified by DFAT or as might be inferred from the use to which the premises or facilities are being put.

16.3 Without limiting any other provision of this Contract, the Contractor agrees to, 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.

16.4 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.

## **17. Contractor Performance**

17.1 DFAT may conduct an assessment of the Contractor's performance at any time in a form that DFAT deems appropriate.

## **18. Accessibility Requirements for DFAT websites**

18.1 If the Statement of Requirements requires the Contractor to develop or maintain a website on behalf of DFAT, the Contractor must ensure that the website complies with the Web Content Accessibility Guidelines (WCAG) Version 2.0, Level AA available at: <http://australia.gov.au/accessibility>

## **19. Australian Taxation Requirements**

19.1 Except as provided in this clause, all taxes, duties and charges imposed or levied in Australia or in the relevant country in connection with the performance of this Contract shall be borne by the Contractor or its subcontractors as the case requires.

19.2 Payment by DFAT to the Contractor of the Consumption Tax shall be subject to the Contractor providing DFAT with a valid Invoice issued in accordance with the relevant provisions and regulations. The total amount of Consumption Tax payable by the Contractor, and for which the Contractor seeks payment from DFAT, in respect of the Services must be shown as a separate item on the Contractor's Invoice.

19.3 If the Contractor does not have an Australian Business Number (ABN) and is required to in accordance with Australian law, DFAT shall, in accordance with relevant provisions of the Pay as You Go ('PAYG') legislation shall be required to withhold a prescribed proportion of the amount payable to the Contractor under the Contract, unless the exceptions under **Division 12** of the PAYG legislation apply. The Contractor may provide DFAT with a completed "Statement by a Supplier" ('Statement') if it considers that it is covered by one of the exceptions under the PAYG legislation and that DFAT will not be required to withhold any part of the amounts due under this Contract. The Statement is available as a form on the Australian Tax Office ('ATO') website at:  
<http://www.ato.gov.au/business/content.asp?doc=/content/38509.htm>

19.4 If a Changed Tax occurs which affects the cost to the Contractor of providing the Services, the Contractor must give DFAT written notice of the amount of the Changed Tax and the net effect on the cost of the Contractor's provision of the Services together with any supporting evidence as soon as practicable after the change in the Changed Tax is announced or the Contractor becomes aware of any increase, decrease or removal of relevant taxes.

## **20. Compliance with Laws and Policies**

20.1 The Contractor and its Personnel and subcontractors must comply with applicable laws of the Commonwealth, any State, Territory or local authority and all DFAT policies as set out in this Contract or as notified to the Contractor from time to time including but not limited to:

- (a) the *Commonwealth Procurement Rules* 1 July 2012;
- (b) the Commonwealth's security requirements; and

20.2 Except where otherwise stated, the laws are available at [www.comlaw.gov.au](http://www.comlaw.gov.au) and the policies are available at [www.dfat.gov.au](http://www.dfat.gov.au)

## **21. Intellectual Property and Moral Rights**

21.1 The Contractor grants the Commonwealth a non-exclusive, irrevocable, perpetual, worldwide, royalty-free licence (including a right to sublicense) to use, modify, adapt and publish the Services and any Material and any adaptation of the Services or any Material for any purpose other than commercial exploitation, to the extent that Material embodies any of the Contractor's Intellectual Property Rights.

21.2 The Contractor warrants that it owns all Intellectual Property Rights necessary to grant this licence, provide the Services and Material to the Commonwealth and to allow the Commonwealth to use the Services for their usual purpose and in the manner contemplated by the Statement of Requirements.

21.3 The Contractor warrants that the provision of the Services in accordance with the Contract will not infringe any third party's Intellectual Property Rights or Moral Rights.

21.4 To the extent permitted by laws and for the benefit of the Commonwealth, the Contractor consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by the Commonwealth of Material, even if the use may otherwise be an infringement of their Moral Rights.

## 22. Insurances

22.1 The Contractor must take out and maintain throughout the Term of the Contract (or such other period as required by the Commonwealth) the following insurances:

- (i) **Public liability: \$20 million** per event, unlimited in aggregate;
- (ii) **Property damage:** adequate to cover any Contract Material, Goods and the reinstatement of any data while in the care, custody or control of the Contractor for its full replacement value;
- (iii) **Professional indemnity:** adequate to cover the Contractor's obligations under this Contract maintained each year until the expiration of three (3) years after the full Term of the Contract or earlier termination of the Contract;
- (iv) **Workers' Compensation** insurance to the amount required by the relevant State or Territory legislation.

and provide the Commonwealth with a certificate of currency, a list of exclusions and the amount of excess payable , within fourteen (14) **Business Days** of request by DFAT.

## 23. Indemnity

23.1 The Contractor indemnifies the Commonwealth, its officers, employees and contractors against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense arising out of or in any way in connection with:

- (a) a default or any unlawful, wilful or negligent act or omission on the part of the Contractor, its officers, employees, agents or subcontractors; or
- (b) any action, claim, dispute, suit or proceeding brought by any third party in respect of any use, infringement or alleged infringement of that third party's Intellectual Property Rights or Moral Rights;

in connection with the Services. The Contractor's liability to indemnify the Commonwealth under paragraph (a) is reduced to the extent that any wilful default or unlawful or negligent act or omission of the Commonwealth, its officers, employees or contractors contributed to the liability, loss, damage, cost, compensation or expense.

23.2 The Commonwealth holds the benefit of this indemnity on trust for its officers, employees and contractors.

## 24. Warranties

24.1 The Contractor must ensure that the Commonwealth receives all relevant third party warranties in respect of the Services.

24.2 If the Contractor is a manufacturer, the Contractor must provide the Commonwealth with all standard manufacturer's warranties in respect of the Services it has manufactured.



## **25. Contractor Representations and Warranties**

25.1 The Contractor represents and warrants that:

- (a) it has full capacity and authority to enter into and perform this Contract;
- (b) it has the capability to lawfully perform its obligations under this Contract;
- (c) at the date of this Contract, no judicial decision, or pending judicial decision, relating to employee entitlements exists or is likely to arise, that has not been met in full by it.
- (d) that the Services provided under this Contract are provided in accordance with Australian consumer laws.

25.2 The Contractor must not represent itself, and must ensure that its officers, employees, agents or subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

25.3 The Contract does not create a relationship of employment, agency or partnership between the Parties.

## **26. Force Majeure**

26.1 If a Party is unable to perform or is delayed in performing an obligation under the Contract by reason of a Force Majeure Event the affected Party must give the other Party a written notice detailing the Event and setting out the likely period during which the Party will not be able to perform and arrange a meeting with DFAT within 24 hours of the notice and take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on performance of the Contract.

## **27. Criminal Code Acknowledgement**

27.1 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* (Commonwealth). The Contractor must ensure that any subcontractor engaged in connection with the Contract acknowledges the information contained in this clause.

## **28. Conflict of Interest**

28.1 The Contractor warrants that no real or perceived conflicts of interest exist or is anticipated relevant to the performance of its obligations under the Contract. If a conflict of that kind arises, the Contractor must notify the Commonwealth immediately. The Commonwealth may decide in its absolute discretion, without limiting its other rights under the Contract, that the Contractor may continue to provide the Services under the Contract.

## **29. Privacy Requirements**

29.1 The Contractor agrees to comply and ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Commonwealth) and do (or refrain from doing) anything required to ensure that the Commonwealth is able to comply with its obligations under that Act.

29.2 The Contractor will immediately notify the Commonwealth if the Contractor becomes aware of a breach or possible breach of any of its obligations under this **Clause 39**.

### **30. Confidential Information**

30.1 The Contractor agrees not to disclose to any person, other than the Commonwealth, any confidential information relating to the Contract or the Services, without the prior written approval of the Commonwealth.

30.2 This obligation will not be breached where the Contractor is required by law or a Stock Exchange to disclose the relevant information.

30.3 At any time, the Commonwealth may require the Contractor to arrange for its employees agents or subcontractors to give a written undertaking relating to non-disclosure of the Commonwealth's confidential information in the form acceptable to the Commonwealth.

30.4 The Commonwealth is not bound to keep any information in connection with the Contract confidential except to the extent it has agreed in writing to keep specified information confidential. The Commonwealth will not be in breach of any confidentiality agreement where the Commonwealth is required by Parliament to disclose the information.

### **31. Freedom of Information (FOI) Act Requirements**

31.1 Where the Commonwealth has received an FOI request for access to a document created by, or in the possession of the Contractor or its subcontractors that relates to the Contract and is required to be provided under the FOI Act, the Contractor must promptly provide the document to the Commonwealth, on request, at no cost.

### **32. Commonwealth Records and Archives Act Requirements**

32.1 The Contractor must not transfer, or permit the transfer of, custody or the ownership of any Commonwealth record (as defined in the *Archives Act 1983* (Commonwealth)) without the prior written consent of the Commonwealth.

### **33. Counter – Terrorism**

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

- (a) organisations and individuals associated with terrorism; and
- (b) Organisations and individuals for whom Australia has imposed sanctions under: the *Charter of the United Nations Act 1945* (Commonwealth) and regulations made under that Act; the *Autonomous Sanctions Act 2011* (Commonwealth) and regulations made under that Act, or the World Bank List or a Relevant List. If during the course of this Contract the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform DFAT immediately.

### **34. Anti-Corruption**

34.1 The Contractor warrants that neither it nor its Personnel will make or cause to be made, receive or seek to receive any offer, gift or payment or benefit of any kind, which could be construed as an illegal or corrupt act, either directly or indirectly to any Party in relation to the execution of this Contract. Any breach of this **Clause 34** will entitle DFAT to issue a notice under **Clause 42** (Termination) to terminate this Contract immediately.

### **35. Fraud**

35.1 This clause applies to any fraud which relates to the Services or this Contract.

35.2 The Contractor must not, and must ensure that its subcontractors do not, engage in any fraudulent activity. The Contractor is responsible for preventing and detecting fraud.

35.3 If the Contractor becomes aware of a fraud, it must report the matter to DFAT in writing within 5 Business Days. The Contractor must investigate the fraud at the Contractor's cost and in accordance with any directions or standards required by DFAT.

35.4 After the investigation is finished, if a suspected offender has been identified, the Contractor must promptly report the fraud to the local police and any other appropriate law enforcement agency in the country where the incident occurred, unless the Director of DFAT's Fraud Section agrees otherwise in writing.

35.5 If the investigation finds the Contractor or Contractor Personnel have engaged in fraudulent activity, the Contractor must:

- (a) if DFAT funds have been misappropriated, pay to DFAT the full value of the DFAT funds that have been misappropriated;
- (b) if DFAT-funded property has been misappropriated, either return the property to DFAT or, if the property cannot be recovered or has been damaged so that it is no longer usable, replace the property with property of equal quality; and
- (c) keep DFAT informed, in writing, on a monthly basis, of the progress of the recovery action.

35.6 If the investigation finds that a person other than the Contractor or Contractor Personnel has engaged in fraudulent activity, the Contractor must, at the Contractor's cost:

- (a) take all reasonable action to recover any DFAT funds or DFAT-funded property acquired or distributed through fraudulent activity; and
- (b) keep DFAT informed, in writing, on a monthly basis, of the progress of the recovery action.

### **36. Waiver**

36.1 If a Party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

### **37. Publicity**

37.1 The Contractor must not make any media or other announcements or releases relating to this Contract without DFAT's prior written approval except to the extent that the announcement or release is required to be made by law.

### **38. Meetings, Reports and Travel**

38.1 The Contractor must, and must ensure that its Personnel and subcontractors (where applicable) comply with the following further obligations:

- (a) attend meetings with the Commonwealth to discuss the Services when required, at no additional cost to the Commonwealth;
- (b) give the Commonwealth any oral or written information and any reports reasonably requested by it from time to time in relation to this Contract and the Services. DFAT may reject and withhold payment of Fees for any report which does not, in the opinion of DFAT, meet the requirements or standards outlined in Part 1 until the Contractor rectifies the report; and
- (c) make travel arrangements in consultation with the Commonwealth if the Commonwealth requires the Contractor or its Personnel to undertake travel to perform any part of this Contract. Travel insurance must be arranged and separately paid for by the Contractor. Except as otherwise required by the Commonwealth, any of the Contractor's Personnel travelling outside Australia to perform any part of this Contract must travel on a private passport.

### **39. Notices**

39.1 Any notice or communication under the Contract will be effective if it is in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, or email address, or facsimile number set out in the Statement of Requirements.

### **40. Amendment**

40.1 No agreement or understanding to vary, amend or extend the Contract, including in particular the scope of the Services, is legally binding upon either Party unless in writing in the form of a Deed of Amendment and agreed by both Parties.

### **41. Assignment, Early Notification and Change of Control**

41.1 The Contractor must:

- (a) not assign any of its rights under the Contract without the prior written consent of the Commonwealth;
- (b) notify the Commonwealth if there is a change in Control of the Contractor's legal entity (not applicable if the Contractor is an individual); and
- (c) immediately notify DFAT if the Contractor or its Personnel or one of its sub-contractors is listed on a World Bank List or Relevant List or is subject to investigation, proceedings or temporary suspension by the World Bank or another

donor of development funding.

## **42. Termination**

42.1 Failure by the Contractor to notify DFAT under **Subclause 41.1(c)** (Assignment, Early Notification and Change of Control) may result in immediate termination for breach under this **Clause 42**.

42.2 The Commonwealth may terminate this Contract by notice to the Contractor in accordance with **Clause 39** (Notices), in whole or in part, if:

- (a) the Contractor does not deliver all of the Services to the delivery location by the relevant delivery date, or notifies the Commonwealth that it will be unable to deliver the Services to the delivery location by the relevant delivery date;
- (b) the Commonwealth rejects any of the Services in accordance with **Clause 2** (Acceptance).
- (c) the Contractor breaches the Contract and the breach is not capable of remedy;
- (d) the Contractor does not remedy a breach of the Contract which is capable of remedy within the period specified by the Commonwealth in a notice of default issue to the Contractor;
- (e) the Contractor:
  - (i) is unable to pay all its debts when they become due;
  - (ii) if incorporated, has a liquidator, administrator or equivalent appointed to it under legislation other than the *Corporations Act 2001* (Commonwealth); or
  - (iii) if an individual, becomes bankrupt or enters into an arrangement under **Part IX** or **Part X** of the *Bankruptcy Act 1966* (Commonwealth).
- (f) The Contractor or its Personnel is listed on a World Bank List or Relevant List or is the subject of an investigation or temporary suspension which may lead to it becoming so listed.

## **43. Termination or Reduction for Convenience**

43.1 In addition to any other rights it has under the Contract, the Commonwealth, acting in good faith, may at any time terminate the Contract or reduce the scope or quantity of the Services by notifying the Contractor in writing. If the Commonwealth issues such a notice, the Contractor must stop or reduce work in accordance with the notice, comply with any directions given by the Commonwealth and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination or reduction in scope.

43.2 Where the Contract is terminated under this clause, the Commonwealth will be liable for payments to the Contractor only for Services accepted in accordance with **Clause 2** (Acceptance), before the effective date of termination (to a maximum of the Contract Price less any payments already made), and any reasonable costs incurred by the Contractor that are directly attributable to the termination, if the Contractor substantiates these amounts to the satisfaction of the Commonwealth.

43.3 The Contractor will be entitled to profits for the proportion of the Services accepted before the effective date of termination but will not be entitled to profit anticipated on any part of the Contract that is terminated or subject to a reduction in scope.

#### **44. Dispute Resolution**

44.1 For any dispute arising under the Contract:

- (a) both Contract Managers will try to settle the dispute by direct negotiation;
- (b) if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a notice setting out the details of the dispute;
- (c) within **5 Business days**, each Contract Manager will nominate a senior representative, not having prior direct involvement in the dispute;
- (d) the senior representatives will try to settle the dispute by direct negotiation; and
- (e) failing settlement within a further **10 Business days**, either the Commonwealth or the Contractor may commence legal proceedings.

44.2 The Commonwealth and the Contractor will each bear its own costs for dispute resolution.

44.3 Despite the existence of a dispute, the Contractor will (unless requested in writing by the Commonwealth not to do so) continue its performance under the Contract.

44.4 The procedure for dispute resolution does not apply to action relating to termination or to legal proceedings for urgent interlocutory relief.

#### **45. Applicable Law**

45.1 The laws of the Japan and the Australian Capital Territory apply to the Contract.

#### **46. Contract Interpretation and General obligations**

46.1 The Contract is to be interpreted in accordance with the following terms and the Contractor must comply with the following general terms and conditions:

- (i) **Entire Agreement:** The Contract represents the Parties' entire agreement in relation to the subject matter and supersedes all tendered offers (except to the extent they are incorporated into the Contract in writing) and prior representations, communications, agreements, statements and understandings whether oral or in writing.
- (ii) **Time of essence:** time is of the essence for the Contractor's obligations under this

Contract.

- (iii) **Discretion:** the Commonwealth may exercise a right or remedy or give or refuse to give its consent in any way it considers appropriate (including by imposing conditions). Where the Commonwealth is required to be satisfied as to a matter, it must be satisfied in its sole and absolute discretion.
- (iv) **Further steps:** The Contractor will promptly, at its expense, do anything required by law or that the Commonwealth reasonably requests to give effect to this Contract (such as obtaining consents, or signing and producing documents in a form and content satisfactory to the Commonwealth).
- (v) **Minimum Volume:** The Contractor acknowledges that the Commonwealth has no obligation to acquire any minimum volume of Services from the Contractor and the Commonwealth may obtain the Services from any third party;
- (vi) **Counterparts:** This Contract may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument; and
- (vii) **Inconsistency:** If there is any ambiguity or inconsistency between **Part 1** and **Part 2** to the Contract, each Part in the order nominated in this subparagraph will take precedence to the extent of any ambiguity or inconsistency.
- (viii) **Severance:** If any term or condition of this Contract is not enforceable, other terms or conditions of the Contract that are self – sustaining and capable of separate enforcement are to continue in operation.

#### 47. Survival

47.1 The following clauses survive termination or expiry of the Contract:

**Clause 12**(Record Keeping), **Clause 21** (Intellectual Property and Moral Rights), **Clause 22** (Insurances), **Clause 23** (Indemnity), **Clause 25** (Contractor Representations and Warranties), **Clause 29** (Privacy Requirements), **Clause 30** (Confidential Information), **Clause 31** (Freedom of Information Act Requirements), **Clause 32** (Commonwealth Records and Archives Act Requirements) and **Clause 35** (Fraud).

#### 48. Definitions

48.1 The following Definitions apply to this Contract:

**Commonwealth** means the Commonwealth of Australia or the Department of Foreign Affairs and Trade ('DFAT').

**Commonwealth Protective Security Policy Framework** means the Commonwealth Protective Security Policy Framework, or any replacement, in force from time to time available on the Attorney General's website, <http://www.ag.gov.au/pspf>

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

**Contract** means the Contract as signed by the Parties.

**Contract Manager** means the contract manager specified in the Statement of Requirements at **Part 1**.

**Contract Price** means the total contract price specified in the Statement of Requirements at **Part 1**, including any tax component payable, but for the purposes **Clause 5**(Payment), does not include any simple interest payable on late payments.

**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.

**DFAT** means the Department of Foreign Affairs and Trade.

**Encumbrance** means a security interest as defined in **Section 12** of the *Personal Property Securities Act 2009* (Commonwealth).

**Former DFAT Employee** means a person who was previously employed by DFAT, whose employment ceased within the last **nine (9) months** and who was substantially involved in the design, preparation, appraisal, review, and or daily management of this Contract.

**Force Majeure Event** includes acts of god or war, pandemic, act of public enemy, terrorist act, civil unrest, nationalisation, expropriation, embargo, restraint of property by government, strike or other form of industrial dispute, provided that they are outside the reasonable control of the affected Party and could not have been prevented or avoided by that Party taking all reasonable steps.

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

**General Interest Charge Rate** means the general interest charge rate determined under **Section 8AAD** of the *Taxation Administration Act 1953* (Commonwealth) on the day payment is due, expressed as a decimal rate per day.

**Services** means:

- (a) the Goods, Services or Goods and Services specified in the Statement of Requirements at Part 1; and
- (b) all such incidental Goods and Services that are reasonably required to achieve the purposes of the Commonwealth as specified in the Statement of Requirements.

**Intellectual Property Rights** means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

**Material** means any material brought into existence as part of or for the purposes of providing the Services and includes, without limitations, documents, equipment, information, reports or data stored by any means.

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

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

**Party** means DFAT or the Contractor.

**PAYG** means *Pay as You Go Withholding Non-Compliance Tax Act 2012* (Commonwealth)



**Personnel** means the Contractor and its officers, employees, subcontractors and agents (including Specified Personnel).

**Standard Contract Conditions** means the provisions in **Part 2** of the Contract.

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

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