



Australian Government

Department of Foreign Affairs and Trade

20 August 2008

Richard Woolcott AC
Woolcott Associates
PO Box 3926
MANUKA ACT 2603

Dear Mr Woolcott,

Department of Foreign Affairs and Trade - Supply of Goods and Services

The Commonwealth of Australia, represented by the Department of Foreign Affairs and Trade ("DFAT") is pleased to engage Woolcott Associates ABN: 93 986 246 291 ("you") as an independent contractor to provide the following goods and services, on the terms of this letter and the attached Standard Terms (including any Schedules):

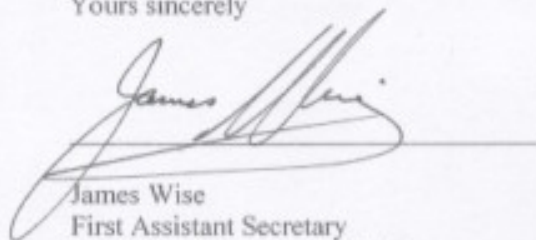
| | | |
|---|-----------------------------|--|
| 1 | Term: | This agreement commences on the date of signing, or where signed on separate days, the date of last signature, and continues until 27 February 2009. DFAT may extend this Term for further periods of up to 30 June 2009 by giving you reasonable notice before the end of the Term. |
| 2 | Services: | The <i>services</i> required to be supplied by you are set out in Schedule 1 (or in each Work Order given by DFAT under this agreement). You must provide these services in accordance with the performance standards specified in Schedule 1. |
| 3 | Goods: | The <i>goods</i> required to be supplied by you are set as set out in Schedule 1 (or in each Work Order given by DFAT under this agreement). The goods must meet the specifications set out in Schedule 1. |
| 4 | Charges: | Payments for Mr Woolcott Services <ul style="list-style-type: none">- \$1,500 (GST inclusive) per day up to a maximum of \$100,000 (GST inclusive) Reimbursement for Expenses as detailed in Schedule 1 Clause 10 OR As set out in the relevant Work Order. |
| 5 | Specified Personnel: | The services must be provided by: Mr Richard Woolcott AC. |

| | |
|--------------|--|
| 6 Insurance: | Public liability: \$10 million per event, unlimited in aggregate. Professional indemnity: \$5 million per event, unlimited in aggregate. Workers compensation: as required by law. (see also clause 1.3(i) of the Standard Terms) |
| 7 Other: | You must, and must ensure that <i>your personnel</i> , comply with the attached Standard Terms. |

If these terms are acceptable, please sign, date and initial the bottom of each page of the two original versions of this letter and return one original copy to me. The other version should be retained for your records.

If you have any queries, please do not hesitate to contact *Kate Duff* on (02) 6261 1345.

Yours sincerely



James Wise
First Assistant Secretary
Corporate Management Division
Department of Foreign Affairs and Trade

Accepted for and on behalf of Woolcott Associates:

By:

Richard Woolcott
Signed by R. Woolcott
as authorised representative for Woolcott Associates.

By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of Woolcott Associates.

Dated: 27. 08. 2008.

By executing this letter, you acknowledge that you have received and agreed to the terms and conditions set out in this letter and the attached Standard Terms.

Standard Terms - Goods and Services

1 Your obligations

1.1 General

In performing the *services* and providing the *goods* (as applicable), you must (and where appropriate, ensure that *your personnel*):

- (a) comply with the performance standards for the *services*, and the specifications for the *goods*, set out in Schedule 1;
- (b) deliver the *goods* in accordance with the requirements set out in Schedule 1;
- (c) comply with *applicable law*, applicable Australian standards (except to the extent inconsistent with any international standards referred to in Schedule 1) and relevant professional standards;
- (d) exercise due care, diligence and skill;
- (e) avoid any conflict of interest; and
- (f) act in a timely and professional manner.

1.2 Non-compliance

If you do not comply with clause 1.1, DFAT may do any or all of the following (as applicable):

- (a) refuse to accept the provision of the *services*;
- (b) require you to resupply the *services* at your expense, as required by DFAT;
- (c) refuse to accept delivery of the *goods*; or
- (d) require you to repair or replace, and re-deliver, the *goods* at your expense,

and DFAT will be under no obligation to pay any *charges* (whether or not DFAT accepts the provision of the *goods* or *services* (as applicable)) until the relevant *goods* and *services* have been provided to DFAT's satisfaction.

1.3 Specific obligations

You must (and where appropriate, ensure that *your personnel*):

- (a) **policies, procedures, directions:** comply with DFAT's practices, policies, procedures and reasonable directions, as notified by DFAT from time to time, including:
 - (i) DFAT's security requirements;
 - (ii) any request to enter your premises and inspect and copy your records, at reasonable times and on reasonable notice;
 - (iii) the Values and Code of Conduct of the Australian Public Service, the DFAT Code of Conduct for Overseas Service (where applicable), the

Commonwealth Protective Security Manual and DFAT's Security Instructions;

- (b) **official information:** comply with the security requirements for the protection of official information:
 - (i) detailed in the Commonwealth Protective Security Manual as minimum standards; and
 - (ii) as advised by DFAT from time to time during the *term* of this agreement;
- (c) **standard of security obligations:** perform security obligations to the highest professional standards described or indicated in the requirements of the Commonwealth Protective Security Manual as amended from time to time;
- (d) **Auditor-General:** do all things necessary to ensure that DFAT is able to comply with any lawful request of the Auditor-General relating to the *goods* and *services* (as applicable), and this agreement, including allowing the Auditor-General to inspect, copy or remove documents, and access your premises;
- (e) **recordkeeping:** keep adequate, up-to-date records concerning the *goods* and *services* (as applicable), and the performance of this agreement, in a manner that enables them to be conveniently audited and, for financial records, in accordance with any relevant generally accepted accounting standards. You must also comply with any standards prescribed by DFAT from time to time for the creation, care, access, storage, preservation and return or legal destruction of its records (including *contract material*) and any DFAT material. This obligation continues until 7 years after termination or expiry of this agreement or completion of any legal action arising out of or in connection with this agreement, whichever occurs later;
- (f) **return of records:** on the expiry or termination of this agreement, promptly return all DFAT records and material (including *contract material*) to DFAT, provided that you may keep a single copy for your records;
- (g) **reports:** give DFAT any oral or written information and any reports reasonably requested by it from time to time in relation to this agreement, the *goods* or the *services* (as applicable);
- (h) **meetings:** attend meetings with *DFAT personnel* to discuss the *goods* and *services* (as applicable) when required, for no additional *charges*;
- (i) **insurance:** take out and maintain throughout the *term* (or such other period as required by DFAT) the *insurance* and provide DFAT with evidence of the currency and amount of cover under those insurance policies, promptly on request;
- (j) **invoicing:** submit invoices in the form of a valid tax invoice (or, where the supply of *goods* and *services* is not a *taxable supply*, in the form of an invoice approved by DFAT) to DFAT for payment of the *charges*;
- (k) **confidential information:** not use or disclose (directly or indirectly) any of DFAT's confidential information except for the purposes of this agreement, with DFAT's consent or where required to do so by law;

- (l) **privacy:** in respect of personal information held by you in connection with this agreement:
 - (i) comply with the Information Privacy Principles in the *Privacy Act 1988*, the National Privacy Principles, and any other applicable privacy law; and
 - (ii) use that information only for the purposes of this agreement, and disclose that information only as permitted by DFAT;
- (m) **moral rights consent:** not enforce, and use reasonable endeavours to obtain from each author their agreement that they not enforce, any moral rights in the *contract material*;
- (n) **change of control:** notify DFAT if you undergo a change in *control* (not applicable if you are an individual);
- (o) **security clearances:** *specified personnel* must hold a security clearance to the level specified in Schedule 1 at all times during the Term. The cost of obtaining each security clearance will be borne by you. You must ensure that *specified personnel* promptly provide to DFAT relevant details to assist with the security clearance process, and notify DFAT promptly in writing of any change in circumstances which is likely to affect DFAT's assessment of the *specified personnel's* entitlement to hold a security clearance.
- (p) **specified personnel:** ensure that any *specified personnel* perform their designated role under this agreement (as detailed in Schedule 1), and not remove or replace (temporarily or permanently) *specified personnel*, or appoint a person as *specified personnel*, without DFAT's consent; and
- (q) **travel:** international travel (flights, accommodation, ground transport overseas) undertaken in fulfilment of any part of this agreement, and travel insurance, will be arranged and paid for by DFAT. Except as otherwise required by DFAT, any of *your personnel* travelling outside Australia to perform any part of this agreement must travel on a private passport.

2 DFAT's obligations

DFAT must:

- (a) **access to premises:** give you access to its premises, on such terms and at such times as DFAT considers reasonably necessary, for the provision of the *goods* and *services* (as applicable) under this agreement as specified in Schedule 1; and
- (b) **payment of invoices:** subject to Acceptance by DFAT with the supply of the *goods* or provision of the *services* (as applicable), pay any properly rendered invoice within 30 days of receipt into an account nominated by you. Unless otherwise agreed specified in Schedule 1, all payments will be paid in arrears.

3 Intellectual property

You:

- (a) agree that the title to and all intellectual property rights in *contract material* vests in DFAT on its creation. This does not affect the rights of either party with respect to material in existence at the date of this agreement; and

- (b) grant DFAT a non-exclusive, irrevocable, perpetual, worldwide, royalty-free licence (including a right to sublicense) to use and modify the *contract material* for any purpose other than commercial exploitation, to the extent that material embodies any of your or a third party's intellectual property rights.

4 Acknowledgements, warranties and indemnity

4.1 Acknowledgements

You acknowledge that:

- (a) **no employment, agency etc:** you perform your obligations under this agreement as an independent contractor, and nothing in this agreement constitutes you or *your personnel* as an employee, agent, partner or joint venturer to DFAT. You retain sole responsibility for the management and direction of *your personnel*, and must ensure that you and *your personnel* do not represent yourselves as being DFAT's employees, agents, partners or joint venturers;
- (b) **no minimum volume:** DFAT has no obligation to acquire any minimum volume of *goods* and *services* (as applicable) from you and that DFAT may obtain the *goods* and *services* from any third party; and
- (c) **confidentiality:** subject to the *Privacy Act 1988*, DFAT will not and is under no obligation to keep any of your information confidential.

4.2 Warranties

You represent and warrant that:

- (a) **authority:** you have full capacity and authority to enter into and perform this agreement;
- (b) **capability:** you have the capability to lawfully perform your obligations under this agreement; and
- (c) **no conflict:** at the date of this agreement, no conflict of interest exists or is likely to arise in the performance of your obligations under this agreement. You will immediately inform DFAT if you become aware that such a conflict exists or is likely to arise during the *term*.

4.3 Indemnity

You indemnify DFAT and *DFAT's personnel* against all loss, claims, liability, damages, costs and expenses arising out of or in connection with:

- (a) any wilful, unlawful or negligent act or omission of you or *your personnel*;
- (b) any breach of this agreement by you or *your personnel*;
- (c) any personal injury (including death) to you or *your personnel*;
- (d) any damage to your property or the property of *your personnel*;
- (e) any claim or demand against DFAT under which you or *your personnel* are claimed to be an employee of the Commonwealth; and

- (f) any claim by a third party that the *contract material*, or the use of the *contract material* by DFAT or *DFAT's personnel*, infringes their intellectual property rights.

It is not necessary for DFAT to incur expenses or make payment before enforcing this right of indemnity.

5 Termination

5.1 For default or insolvency: DFAT may terminate this agreement:

- (a) by written notice to you if you commit a breach of this agreement that is not capable of remedy, or where the breach is capable of remedy you fail to remedy the breach within 10 *business days* of receiving a notice from DFAT requesting you to do so; and
- (b) by written notice to you if you become *insolvent*.

No compensation is payable by DFAT for termination under this clause.

5.2 For convenience: DFAT may terminate this agreement, in whole or in part, at any time by giving you not less than 10 business days notice. If DFAT gives you a notice under this clause, you must stop work as specified in the notice and comply with any conditions or directions reasonably required by DFAT. In the event DFAT terminates the agreement under this clause 5.2, you may only claim:

- (a) amounts due on outstanding invoices or for *goods* or *services* provided up to the date of termination for which no invoice has been issued prior to the termination; and
- (b) subject to paragraph 5.3, any reasonable unavoidable costs incurred by you which are directly related to the termination of this agreement. This amount must not be greater than the total amount of *charges* payable under this agreement, and must not include any compensation for loss of prospective profits.

If the agreement is only partially terminated, the *charges* will abate proportionally to the reduction in *goods/services*.

5.3 Upon termination, you must stop work on the *goods/services* which have been terminated, take all reasonable steps to mitigate your loss, and continue work on any part of the *goods/services* which has not been terminated.

6 General

- (a) **GST and other taxes:** All *charges* are inclusive of GST and other taxes and duties.
- (b) **Time of essence:** Time is of the essence for your obligations under this agreement.
- (c) **Assignment and subcontracting:** You must not assign or otherwise deal with your rights under this agreement, or subcontract any part of your obligations under this agreement, without DFAT's prior written consent.
- (d) **Governing law and jurisdiction:** This agreement is governed by the laws of the Australian Capital Territory and the parties submit to the non-exclusive jurisdiction of the courts in the Australian Capital Territory.

- (e) **Discretion:** DFAT 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 DFAT is required to be satisfied as to a matter, it must be satisfied in its sole and absolute discretion.
- (f) **Further steps:** You will promptly, at your expense, do anything required by law or that DFAT reasonably requests to give effect to this agreement (such as obtaining consents, or signing and producing documents in a form and content satisfactory to DFAT).
- (g) **Survival:** Without limitation, clauses 1.3(a)-(c), 1.3(d)-(g), 1.3 (i), 1.3(k)-(m), 3, 4.1(c), 4.2 and 4.3 survive the expiry or termination of this agreement.

7 Dictionary

7.1 Definitions

In this agreement:

Acceptance means the written verification by the DFAT representative that *you* have fulfilled *your* contractual obligations with respect to the supply of the Goods or provision of the Services, and that those Goods / Services conform with the requirements of this agreement. Acceptance is not a waiver of rights.

applicable law means all laws, regulations and instruments made under them from time to time in Australia and any other relevant jurisdiction that is relevant to the performance of your obligations under this agreement.

business day means a day (other than a Saturday or Sunday) on which banks are open for general banking business in Canberra.

contract material means any material brought into existence as part of or for the purpose of providing the *services* under this agreement and includes, without limitation, documents, equipment, information, reports or data stored by any means.

control¹ 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's personnel includes DFAT's officers, employees, contractors (other than you and *your personnel*) and agents.

GST has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999*.

insolvent means being an insolvent under administration or insolvent or having a controller appointed (each as defined in the Corporations Act), or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction.

¹ This definition assumes the contractor is a company. If the contractor is some other type of entity (eg a partnership or trustee), this definition will need to be updated to reflect the type of entity involved. It is not relevant if the contractor is an individual.

moral rights means the right of attribution, the right against false attribution and the right of integrity as defined in the *Copyright Act 1968*.

taxable supply has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999*.

your personnel includes you, your officers, employees, subcontractors and agents (including *specified personnel*).

7.2 Interpretation

- (a) In this agreement, unless the contrary intention appears:
 - (i) a document (including these Standard Terms) includes any variation or replacement of it;
 - (ii) the words "include" and "including" are not used as, or should be interpreted as, words of limitation; and
 - (iii) terms that are defined, either in clause 7.1 or the letter, appear in italics.
- (b) Headings are for convenience only and do not affect interpretation of this agreement.
- (c) Unless otherwise specified in Schedule 1, where there is a conflict between the laws of Australia and another relevant jurisdiction, the parties intend for the laws made in Australia to prevail.

Schedule 1 - Goods and Services

1. Introduction

1.1 The Commonwealth of Australia, represented by the Department of Foreign Affairs and Trade ("DFAT"), requires the services of a suitably qualified and experienced organisation ("you") to provide consultancy services ("Services") as set out in this Schedule.

2. Background to the Requirement

2.1 In a speech on 4 June 2008, the Prime Minister outlined a proposal for an Asia Pacific Community which would bring together countries across the Asia-Pacific region to discuss political, economic and security issues affecting the region, and consider common action. The Prime Minister also announced that the Government would take the proposal forward by dispatching a high-level envoy (you) to the capitals of the wider region to undertake consultations on the proposal.

2.2 The objective will be to obtain a snap-shot of regional views in relation to the Asia Pacific Community through a broad consultation process across the region.

3. Services/Goods

3.1 You are required to provide DFAT with the following Services/Goods:

(a) You will be required to consult with key representatives of Governments and relevant non-Government bodies, according to programs to be arranged by Australian Embassies and High Commissions in each country. Travel will be roughly in accordance with the attached itinerary (Attachment A), but may be subject to minor variations in response to developments or availability of key contacts in particular countries.

(b) You will provide interim reports in the lead-up to the APEC Leaders' Forum and the East Asia Summit Leaders' Forum in November and December 2008 respectively.

(c) A final report should be submitted to the Prime Minister and Minister for Foreign Affairs within thirty days of the completion of consultations.

4. Security Clearances:

4.1 The Secretary of the Department has agreed to waive the provisions of Part D (Personal Security Policy) of the Australian Government Protective Security Manual to enable you to access relevant DFAT classified material and resources, both in Canberra and at our overseas missions for this activity only.

5. Commonwealth Material and other Commonwealth facilities and assistance

5.1 DFAT will provide you with the following materials, facilities or assistance in order for you to provide the Services / Goods:

- (i) diplomatic passport to travel on while travelling overseas to undertake this activity;
- (ii) unescorted access to the R G Casey Building;
- (iii) use of an office within the R G Casey Building; and
- (iv) use of an office within the NSW State Office of the Department, with timing to be agreed with the State Office in advance.

5.2 DFAT will arrange all of your travel and travel insurance, and will provide a liaison officer who will accompany you on your overseas travel, and provide appropriate assistance towards meeting the objectives of this project.

6. Contract Deliverables

6.1 You must provide the following deliverables:

- (a) Services to the standard set out in this Schedule; and
- (b) Deliver such reports and attend such meetings as set out in this Schedule.

7. Reports

7.1 You are required to provide the following Reports to DFAT on the date specified:

| Report Type | Indicative Content | Due Date |
|---------------------|--|---|
| Progress Report # 1 | A summary of your consultations up until the end of October | 12 November 2008 |
| Progress Report # 2 | A summary of your consultations up until the end of November | 8 December 2008 |
| Final Report | A final report should be submitted to the Prime Minister and Minister for Foreign Affairs. | Within thirty days of the conclusion of consultations |

8. Payment Schedule

8.1 DFAT will pay you the amount specified for services rendered within 30 days of receipt of a correctly rendered tax invoice, in accordance with the agreement.

9. Invoices:

9.1 Invoices should be forwarded to:

Assistant Secretary
South-East Asia (South) and Regional Issues Branch
South-East Asia Division
Department of Foreign Affairs and Trade
RG Casey Building
BARTON ACT 0221

10. Performance Standards:

| Contractor obligation | Performance Standard |
|-----------------------|--|
| Compliance | You and your personnel must comply with the terms of this agreement (including any Work Orders) and DFAT's policies and procedures. |
| Goods and Services | You must ensure that the goods and services (as applicable) are provided on time and in accordance with the requirements set out in this Schedule (or a Work Order if applicable). |

| Contractor obligation | Performance Standard |
|-----------------------------------|--|
| Security | You and <i>your personnel</i> must comply with all DFAT security policies and procedures notified by DFAT from time to time. |
| Records, processes and procedures | All records, processes and procedures must be maintained in an accurate and accountable manner, as reasonably determined by DFAT. |
| Reports | All reports must be provided on time in accordance with this agreement, and to a standard satisfactory to DFAT. |
| Meetings | You must attend meetings as required by DFAT, and <i>your personnel</i> who attend meetings must be suitably qualified and informed of the matters to be considered and have the authority to make relevant decisions, as reasonably determined by DFAT. |
| Invoicing | All invoices must be submitted in accordance with the invoicing requirements in this agreement. |

11. Expenses

11.1 The Department will cover the costs associated with accommodation, airfares, travel insurance, taxi charges, use of private vehicle expenses, parking charges, passports, visas and associated photograph costs where you and *your personnel* are required to travel in order to perform the services described at Clause 3 of Schedule 1.

11.2 Travel allowance will be provided as per the Department's Senior Executive Service (SES) rates to cover meals and incidentals.

11.3 The standard of air travel will be provided as per the Department's SES entitlement.

11.4 The Department will be responsible for organising you and *your personnel's* air travel and accommodation and will utilise the services of the Department's current travel provider.

11.5 You and *your personnel* are responsible for organising taxis and will invoice the Department for the costs. Reimbursement of taxis and parking costs will be paid upon receipt of a correctly rendered invoice with substantiating evidence of the amount claimed. In the event that you travel using your own vehicle to a DFAT sponsored meeting, the Department will reimburse you for the applicable expenses in line with the Departmental entitlements.

11.6 You are required to submit your relevant expenses, along with appropriate substantiation (i.e. invoices for accommodation, parking and or taxi receipts and statutory declarations where necessary), for payment within 30 days of the completion of the travel for which it relates.

Standard Terms - Goods and Services

Your obligations

GENERAL

In performing the *services* and providing the *goods* (as applicable), you must (and where appropriate, ensure that *your personnel*):

comply with the performance standards for the *services*, and the specifications for the *goods*, set out in Schedule 1;

deliver the *goods* in accordance with the requirements set out in Schedule 1;

comply with *applicable law*, applicable Australian standards (except to the extent inconsistent with any international standards referred to in Schedule 1) and relevant professional standards;

exercise due care, diligence and skill;

avoid any conflict of interest; and

act in a timely and professional manner.

NON-COMPLIANCE

If you do not comply with clause 1.1, DFAT may do any or all of the following (as applicable):

refuse to accept the provision of the *services*;

require you to resupply the *services* at your expense, as required by DFAT;

refuse to accept delivery of the *goods*; or

require you to repair or replace, and re-deliver, the *goods* at your expense,

and DFAT will be under no obligation to pay any *charges* (whether or not DFAT accepts the provision of the *goods* or *services* (as applicable)) until the relevant *goods* and *services* have been provided to DFAT's satisfaction.

SPECIFIC OBLIGATIONS

You must (and where appropriate, ensure that *your personnel*):

policies, procedures, directions: comply with DFAT's practices, policies, procedures and reasonable directions, as notified by DFAT from time to time, including:

DFAT's security requirements;

any request to enter your premises and inspect and copy your records, at reasonable times and on reasonable notice;

the Values and Code of Conduct of the Australian Public Service, the DFAT Code of Conduct for Overseas Service (where applicable), the Commonwealth Protective Security Manual and DFAT's Security Instructions;

official information: comply with the security requirements for the protection of official information:

detailed in the Commonwealth Protective Security Manual as minimum standards; and

as advised by DFAT from time to time during the *term* of this agreement;

standard of security obligations: perform security obligations to the highest professional standards described or indicated in the requirements of the Commonwealth Protective Security Manual as amended from time to time;

Auditor-General: do all things necessary to ensure that DFAT is able to comply with any lawful request of the Auditor-General relating to the *goods* and *services* (as applicable), and this agreement, including allowing the Auditor-General to inspect, copy or remove documents, and access your premises;

recordkeeping: keep adequate, up-to-date records concerning the *goods* and *services* (as applicable), and the performance of this agreement, in a manner that enables them to be conveniently audited and, for financial records, in accordance with any relevant generally accepted accounting standards. You must also comply with any standards prescribed by DFAT from time to time for the creation, care, access, storage, preservation and return or legal destruction of its records (including *contract material*) and any DFAT material. This obligation continues until 7 years after termination or expiry of this agreement or completion of any legal action arising out of or in connection with this agreement, whichever occurs later;

return of records: on the expiry or termination of this agreement, promptly return all DFAT records and material (including *contract material*) to DFAT, provided that you may keep a single copy for your records;

reports: give DFAT any oral or written information and any reports reasonably requested by it from time to time in relation to this agreement, the *goods* or the *services* (as applicable);

meetings: **attend meetings with *DFAT personnel* to discuss the *goods and services* (as applicable) when required, for no additional *charges*;**

insurance: **take out and maintain throughout the *term* (or such other period as required by DFAT) the *insurance* and provide DFAT with evidence of the currency and amount of cover under those insurance policies, promptly on request;**

invoicing: **submit invoices in the form of a valid tax invoice (or, where the supply of *goods and services* is not a *taxable supply*, in the form of an invoice approved by DFAT) to DFAT for payment of the *charges*;**

confidential information: **not use or disclose (directly or indirectly) any of DFAT's confidential information except for the purposes of this agreement, with DFAT's consent or where required to do so by law;**

privacy: **in respect of personal information held by you in connection with this agreement:**

comply with the Information Privacy Principles in the *Privacy Act 1988*, the National Privacy Principles, and any other applicable privacy law; and

use that information only for the purposes of this agreement, and disclose that information only as permitted by DFAT;

moral rights consent: **not enforce, and use reasonable endeavours to obtain from each author their agreement that they not enforce, any moral rights in the *contract material*;**

change of control: **notify DFAT if you undergo a change in *control* (not applicable if you are an individual);**

security clearances: ***specified personnel* must hold a security clearance to the level specified in Schedule 1 at all times during the Term. The cost of obtaining each security clearance will be borne by you. You must ensure that *specified personnel* promptly provide to DFAT relevant details to assist with the security clearance process, and notify DFAT promptly in writing of any change in circumstances which is likely to affect DFAT's assessment of the *specified personnel's* entitlement to hold a security clearance.**

specified personnel: **ensure that any *specified personnel* perform their designated role under this agreement (as detailed in Schedule 1), and not remove or replace (temporarily or permanently) *specified personnel*, or appoint a person as *specified personnel*, without DFAT's consent; and**

travel: international travel (flights, accommodation, ground transport overseas) undertaken in fulfilment of any part of this agreement, and travel insurance, will be arranged and paid for by DFAT. Except as otherwise required by DFAT, any of *your personnel* travelling outside Australia to perform any part of this agreement must travel on a private passport.

DFAT's obligations

DFAT must:

access to premises: give you access to its premises, on such terms and at such times as DFAT considers reasonably necessary, for the provision of the *goods* and *services* (as applicable) under this agreement as specified in Schedule 1; and

payment of invoices: subject to Acceptance by DFAT with the supply of the *goods* or provision of the *services* (as applicable), pay any properly rendered invoice within 30 days of receipt into an account nominated by you. Unless otherwise agreed specified in Schedule 1, all payments will be paid in arrears.

Intellectual property

You:

agree that the title to and all intellectual property rights in *contract material* vests in DFAT on its creation. This does not affect the rights of either party with respect to material in existence at the date of this agreement; and

grant DFAT a non-exclusive, irrevocable, perpetual, worldwide, royalty-free licence (including a right to sublicense) to use and modify the *contract material* for any purpose other than commercial exploitation, to the extent that material embodies any of your or a third party's intellectual property rights.

Acknowledgements, warranties and indemnity

ACKNOWLEDGEMENTS

You acknowledge that:

no employment, agency etc: you perform your obligations under this agreement as an independent contractor, and nothing in this agreement constitutes you or *your personnel* as an employee, agent, partner or joint venturer to DFAT. You retain sole responsibility for the management and direction of *your personnel*, and must ensure that you and *your personnel* do not represent yourselves as being DFAT's employees, agents, partners or joint venturers;

no minimum volume: DFAT has no obligation to acquire any minimum volume of *goods and services* (as applicable) from you and that DFAT may obtain the *goods and services* from any third party; and

confidentiality: subject to the *Privacy Act 1988*, DFAT will not and is under no obligation to keep any of your information confidential.

WARRANTIES

You represent and warrant that:

2. authority: you have full capacity and authority to enter into and perform this agreement;
3. capability: you have the capability to lawfully perform your obligations under this agreement; and

no conflict: at the date of this agreement, no conflict of interest exists or is likely to arise in the performance of your obligations under this agreement. You will immediately inform DFAT if you become aware that such a conflict exists or is likely to arise during the *term*.

INDEMNITY

You indemnify DFAT and *DFAT's personnel* against all loss, claims, liability, damages, costs and expenses arising out of or in connection with:

any wilful, unlawful or negligent act or omission of you or your personnel;

any breach of this agreement by you or your personnel;

any personal injury (including death) to you or your personnel;

any damage to your property or the property of your personnel;

any claim or demand against DFAT under which you or your personnel are claimed to be an employee of the Commonwealth; and

any claim by a third party that the *contract material*, or the use of the *contract material* by DFAT or *DFAT's personnel*, infringes their intellectual property rights.

It is not necessary for DFAT to incur expenses or make payment before enforcing this right of indemnity.

Termination

- 5.1 For default or insolvency: DFAT may terminate this agreement:

by written notice to you if you commit a breach of this agreement that is not capable of remedy, or where the breach is capable of remedy you fail to remedy the breach within 10 *business days* of receiving a notice from DFAT requesting you to do so; and

by written notice to you if you become *insolvent*.

No compensation is payable by DFAT for termination under this clause.

5.2 For convenience: DFAT may terminate this agreement, in whole or in part, at any time by giving you not less than 10 business days notice. If DFAT gives you a notice under this clause, you must stop work as specified in the notice and comply with any conditions or directions reasonably required by DFAT. In the event DFAT terminates the agreement under this clause 5.2, you may only claim:

- (a) amounts due on outstanding invoices or for *goods* or *services* provided up to the date of termination for which no invoice has been issued prior to the termination; and
- (b) subject to paragraph 5.3, any reasonable unavoidable costs incurred by you which are directly related to the termination of this agreement. This amount must not be greater than the total amount of *charges* payable under this agreement, and must not include any compensation for loss of prospective profits.

If the agreement is only partially terminated, the *charges* will abate proportionally to the reduction in *goods/services*.

5.3 Upon termination, you must stop work on the *goods/services* which have been terminated, take all reasonable steps to mitigate your loss, and continue work on any part of the *goods/services* which has not been terminated.

General

GST and other taxes: All *charges* are inclusive of GST and other taxes and duties.

Time of essence: Time is of the essence for your obligations under this agreement.

Assignment and subcontracting: You must not assign or otherwise deal with your rights under this agreement, or subcontract any part of your obligations under this agreement, without DFAT's prior written consent.

Governing law and jurisdiction: This agreement is governed by the laws of the Australian Capital Territory and the parties submit to the non-exclusive jurisdiction of the courts in the Australian Capital Territory.

Discretion: DFAT 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 DFAT is required to be satisfied as to a matter, it must be satisfied in its sole and absolute discretion.

Further steps: You will promptly, at your expense, do anything required by law or that DFAT reasonably requests to give effect to this agreement (such as obtaining consents, or signing and producing documents in a form and content satisfactory to DFAT).

Survival: Without limitation, clauses 1.3(a)-(c), 1.3(d)-(g), 1.3 (i), 1.3(k)-(m), 3, 4.1(c), 4.2 and 4.3 survive the expiry or termination of this agreement.

Dictionary

DEFINITIONS

In this agreement:

Acceptance means the written verification by the DFAT representative that you have fulfilled your contractual obligations with respect to the supply of the Goods or provision of the Services, and that those Goods / Services conform with the requirements of this agreement. Acceptance is not a waiver of rights.

applicable law means all laws, regulations and instruments made under them from time to time in Australia and any other relevant jurisdiction that is relevant to the performance of your obligations under this agreement.

business day means a day (other than a Saturday or Sunday) on which banks are open for general banking business in Canberra.

contract material means any material brought into existence as part of or for the purpose of providing the services under this agreement and includes, without limitation, documents, equipment, information, reports or data stored by any means.

control² 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's personnel includes DFAT's officers, employees, contractors (other than you and your personnel) and agents.

GST has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999*.

insolvent means being an insolvent under administration or insolvent or having a controller appointed (each as defined in the Corporations Act), or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition,

² This definition assumes the contractor is a company. If the contractor is some other type of entity (eg a partnership or trustee), this definition will need to be updated to reflect the type of entity involved. It is not relevant if the contractor is an individual.

protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction.

moral rights means the right of attribution, the right against false attribution and the right of integrity as defined in the *Copyright Act 1968*.

taxable supply has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999*.

your personnel includes you, your officers, employees, subcontractors and agents (including *specified personnel*).

INTERPRETATION

In this agreement, unless the contrary intention appears:

a document (including these Standard Terms) includes any variation or replacement of it;

the words "include" and "including" are not used as, or should be interpreted as, words of limitation; and

terms that are defined, either in clause 7.1 or the letter, appear in italics.

Headings are for convenience only and do not affect interpretation of this agreement.

Unless otherwise specified in Schedule 1, where there is a conflict between the laws of Australia and another relevant jurisdiction, the parties intend for the laws made in Australia to prevail.

Schedule 1 - Goods and Services

1. Introduction

1.1 The Commonwealth of Australia, represented by the Department of Foreign Affairs and Trade ("DFAT"), requires the services of a suitably qualified and experienced organisation ("you") to provide consultancy services ("Services") as set out in this Schedule.

2. Background to the Requirement

2.1 In a speech on 4 June 2008, the Prime Minister outlined a proposal for an Asia Pacific Community which would bring together countries across the Asia-Pacific region to discuss political, economic and security issues affecting the region, and consider common action. The Prime Minister also announced that the Government would take the proposal forward by dispatching a high-level envoy (you) to the capitals of the wider region to undertake consultations on the proposal.

2.2 The objective will be to obtain a snap-shot of regional views in relation to the Asia Pacific Community through a broad consultation process across the region.

3. Services/Goods

3.1 You are required to provide DFAT with the following Services/Goods:

(a) You will be required to consult with key representatives of Governments and relevant non-Government bodies, according to programs to be arranged by Australian Embassies and High Commissions in each country. Travel will be roughly in accordance with the attached itinerary (Attachment A), but may be subject to minor variations in response to developments or availability of key contacts in particular countries.

(b) You will provide interim reports in the lead-up to the APEC Leaders' Forum and the East Asia Summit Leaders' Forum in November and December 2008 respectively.

(c) A final report should be submitted to the Prime Minister and Minister for Foreign Affairs within thirty days of the completion of consultations.

4. Security Clearances:

4.1 THE SECRETARY OF THE DEPARTMENT HAS AGREED TO WAIVE THE PROVISIONS OF PART D (PERSONAL SECURITY POLICY) OF THE AUSTRALIAN GOVERNMENT PROTECTIVE SECURITY MANUAL TO ENABLE YOU TO ACCESS RELEVANT DFAT CLASSIFIED MATERIAL AND RESOURCES, BOTH IN CANBERRA AND AT OUR OVERSEAS MISSIONS FOR THIS ACTIVITY ONLY.

5. Commonwealth Material and other Commonwealth facilities and assistance

5.1 DFAT will provide you with the following materials, facilities or assistance in order for you to provide the Services / Goods:

- (i) diplomatic passport to travel on while travelling overseas to undertake this activity;
- (ii) unescorted access to the R G Casey Building;

- (iii) use of an office within the R G Casey Building; and
- (iv) use of an office within the NSW State Office of the Department, with timing to be agreed with the State Office in advance.

5.2 DFAT will arrange all of your travel and travel insurance, and will provide a liaison officer who will accompany you on your overseas travel, and provide appropriate assistance towards meeting the objectives of this project.

6. Contract Deliverables

6.1 You must provide the following deliverables:

- (a) Services to the standard set out in this Schedule; and
- (b) Deliver such reports and attend such meetings as set out in this Schedule.

7. Reports

7.1 You are required to provide the following Reports to DFAT on the date specified:

| Report Type | Indicative Content | Due Date |
|---------------------|--|---|
| Progress Report # 1 | A summary of your consultations up until the end of October | 12 November 2008 |
| Progress Report # 2 | A summary of your consultations up until the end of November | 8 December 2008 |
| Final Report | A final report should be submitted to the Prime Minister and Minister for Foreign Affairs. | Within thirty days of the conclusion of consultations |

8. Payment Schedule

8.1 DFAT will pay you the amount specified for services rendered within 30 days of receipt of a correctly rendered tax invoice, in accordance with the agreement.

9. Invoices:

9.1 Invoices should be forwarded to:

Assistant Secretary
South-East Asia (South) and Regional Issues Branch
South-East Asia Division
Department of Foreign Affairs and Trade
RG Casey Building
BARTON ACT 0221

10. Performance Standards:

| Contractor obligation | Performance Standard |
|-----------------------|--|
| Compliance | You and <i>your personnel</i> must comply with the terms of this agreement |

| Contractor obligation | Performance Standard |
|-----------------------------------|--|
| | (including any Work Orders) and DFAT's policies and procedures. |
| Goods and Services | You must ensure that the <i>goods and services</i> (as applicable) are provided on time and in accordance with the requirements set out in this Schedule (or a Work Order if applicable). |
| Security | You and <i>your personnel</i> must comply with all DFAT security policies and procedures notified by DFAT from time to time. |
| Records, processes and procedures | All records, processes and procedures must be maintained in an accurate and accountable manner, as reasonably determined by DFAT. |
| Reports | All reports must be provided on time in accordance with this agreement, and to a standard satisfactory to DFAT. |
| Meetings | You must attend meetings as required by DFAT, and <i>your personnel</i> who attend meetings must be suitably qualified and informed of the matters to be considered and have the authority to make relevant decisions, as reasonably determined by DFAT. |
| Invoicing | All invoices must be submitted in accordance with the invoicing requirements in this agreement. |

11. Expenses

11.1 The Department will cover the costs associated with accommodation, airfares, travel insurance, taxi charges, use of private vehicle expenses, parking charges, passports, visas and associated photograph costs where you and *your personnel* are required to travel in order to perform the services described at Clause 3 of Schedule 1.

11.2 Travel allowance will be provided as per the Department's Senior Executive Service (SES) rates to cover meals and incidentals.

11.3 The standard of air travel will be provided as per the Department's SES entitlement.

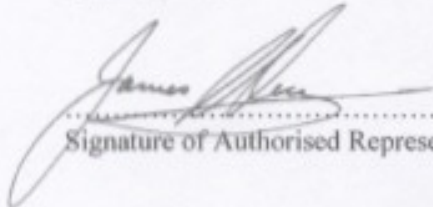
11.4 The Department will be responsible for organising you and *your personnel's* air travel and accommodation and will utilise the services of the Department's current travel provider.

11.5 You and *your personnel* are responsible for organising taxis and will invoice the Department for the costs. Reimbursement of taxis and parking costs will be paid upon receipt of a correctly rendered invoice with substantiating evidence of the amount claimed. In the event that you travel using your own vehicle to a DFAT sponsored meeting, the Department will reimburse you for the applicable expenses in line with the Departmental entitlements.

11.6 You are required to submit your relevant expenses, along with appropriate substantiation (i.e. invoices for accommodation, parking and or taxi receipts and statutory declarations where necessary), for payment within 30 days of the completion of the travel for which it relates.

WORK ORDER SIGNATURE PAGE

**SIGNED FOR AND ON BEHALF
OF THE COMMONWEALTH OF
AUSTRALIA** by its authorised
representative:


.....
Signature of Authorised Representative

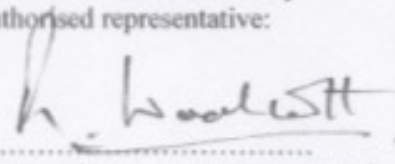

.....
Signature of Witness

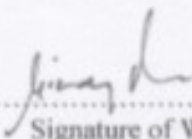
JAMES WISE
.....
Name of Authorised Representative

JENNIFER PULLEN
.....
Name of Witness

Date: 28/8/08
.....

**SIGNED FOR AND ON BEHALF
OF THE CONTRACTOR** by
its authorised representative:


.....
Signature of Authorised Representative


.....
Signature of Witness

RICHARD WOOLCOTT
.....
Name of Authorised Representative

CINDY ROSE
.....
Name of Witness

Date: 27-08-2008
.....

Proposed travel schedule for high-level envoy, Mr Richard Woolcott

2-12 September: Wellington, Jakarta, Singapore, Kuala Lumpur, Bangkok

16 September: South-East Asia HOMs meeting, Canberra

(UNGA, 22 September-3 October)

1-10 October: Tokyo, Beijing, Seoul

18-25 October: Mexico City, Lima, Santiago

3-8 November: New Delhi, Moscow

11-20 November: Washington, Manila, Hanoi, Bandar Seri Begawan

(22-23 November: APEC Leaders' Meeting, Lima)

1-5 December: Phnom Penh, Vientiane

10-12 December: Port Moresby

(17 December: EAS Leaders' Meeting, Bangkok)

January: Ottawa