Australian Government

AusAID

9 May 2009

Request for Tender

Australian Scholarships for Development in Vietnam

REQUEST FOR TENDER

AusAID Australian Scholarships for Development in Vietnam

AusAID is seeking proposals from organisations interested in providing services for the AusAID South Asia Scholarships Program (the "**Project**"). If your organisation chooses to lodge a proposal (the "**Tender**") it must be submitted on the terms of this document and the attached Parts (together referred to as the "**Request for Tender**" or "**RFT**"). The required services (the "**Services**") are described in detail in **Part 3** - Scope of Services.

STRUCTURE OF THE RFT

The RFT is separated into two (2) Sections and several Parts. References in the RFT to Parts and Sections are to Parts and Sections of this RFT.

Section 1 details the Project Specific Tender Conditions (**Part 1**) and the Project Specific Contract Conditions (**Part 2**), the Scope of Services (**Part 3**), and the Basis of Payments (**Part 4**).

Section 2 details the Standard Tender Conditions (**Part 5**) and the Standard Contract Conditions (**Part 6**).

Tenderers are encouraged to fully inform themselves of the Contract Conditions (both Project Specific and Standard) when preparing their Tenders and to make any enquiries before the Tender enquiry closing time, referred to in **Clause 2, Part 5**.

This RFT supersedes any other information or advice provided by AusAID in relation to the Services.

It is AusAID's intention to contract on the basis of the Contract Conditions provided in this RFT.

AusAID Contracts Charter

AusAID has published a Contracts Charter describing AusAID's approach to contracting aid activities, expectations of contractors and what contractors may expect from AusAID. Tenderers are encouraged to access and inform themselves of the Charter which is available on URL: http://www.ausaid.gov.au/business/pdf/charter.pdf

SECTION 1 – PROJECT SPECIFIC TENDER AND CONTRACT CONDITIONS

PART 1 – PROJECT SPECIFIC TENDER CONDITIONS

1. TENDER PARTICULARS

Closing Time: (Clauses 1.11 and 1.14, Part 5)	**2.00 pm** local time in Canberra Australian Capital Territory, **Tuesday 23 June 2009**.
Mode of submission: (Clause 1.1, Part 5)	**Either:** Electronically, via AusTender at https://tenders.gov.au before the tender **Closing Time**; **or** in hard copy, by depositing by hand in the Canberra Tender Box before the tender **Closing Time**.
Electronic Tender Lodgement Address: (Clause 1.11, Part 5)	Via AusTender at https://tenders.gov.au
Canberra Tender Box Address: (Clause 1.14, Part 5)	Tender Box, Ground Floor, AusAID, 255 London Circuit, Canberra ACT 2601, AUSTRALIA.
Business Hours for hard copy lodgement: (Clause 1.15, Part 5)	Monday to Friday, 8.30 am to 5.00 pm local time in Canberra, Australian Capital Territory excluding Public holidays.
File Format for Electronic Tenders: (Clause 4.3, Annex C to Part 5)	PDF (Portable Document Format)
Number of Copies of Tender: (Clause 1.6, Part 5)	**For electronic tender lodgement** **Tenderer Declaration**: One (1) electronic copy in a separate file. **Tender Schedule A - Technical Proposal**: One (1) electronic copy containing all parts and annexes. The Tenderer's contact name, position and contact details (phone, email and fax) must be listed on the front cover of the Technical Proposal. **Tender Schedule B – Specified Personnel:** One (1) electronic copy in a separate file. The Tenderer's contact name, position and contact details (phone, email and fax) must be listed on the front cover of this Tender Schedule. **Tender Schedule C - Financial Proposal**: One (1) electronic copy in a separate file. The Tenderer's contact name, position and contact details (phone, email and fax) must be listed on the front cover of the Financial Proposal.

	Tender Schedule D - Financial Assessment material: One (1) electronic copy in a separate file. **<u>For hard copy tender lodgement</u>** **Tenderer Declaration**: One (1) signed original, to be included with the Financial Proposal. **Tender Schedule A - Technical Proposal:** One (1) printed Original containing all parts and annexes. The Tenderer's contact name, position and contact details (phone, email and fax) must be listed on the front cover of the Technical Proposal. **Tender Schedule B – Specified Personnel:** One (1) printed Original. The Tenderer's contact name, position and contact details (phone, email and fax) must be listed on the front cover of this Tender Schedule. **Tender Schedule C - Financial Proposal:** One (1) printed Original, in a separate, sealed envelope. The Tenderer's contact name, position and contact details (phone, email and fax) must be listed on the front cover of the Financial Proposal. **Tender Schedule D - Financial Assessment material**: One (1) printed copy in a separate sealed envelope. **One CD**, containing the files specified as for electronic lodgement.
Endorsement of hard copy Tenders: (Clause 1.16, Part 5)	"**Tender for the Australian Scholarships for Development in Vietnam**"
Tender Validity Period: (Clause 1.8, Part 5)	180 days
Contact Person: (Clause 2.1, Part 5)	Janene Hallpike Fax: + 61 2 6206 4885 Email address: ASDiV@ausaid.gov.au
Tender Enquiries: (Clause 2, Part 5)	Tender enquiries must be made before 5.00pm local time Canberra Australian Capital Territory **Tuesday 9 June 2009**.
Page limits: (Clauses 7.15 and 7.17, Part 5)	Tender Schedule A - 12 pages plus annexes. Tender Schedule B - Curriculum Vitae 5 pages each
Information:	The following documents are attached: Design Document (DD) Word Versions of: 1. Tenderers Declaration; 2. Past Experience Form (Tender Schedule A, Annex 1); and 3. Financial Tables (Tender Schedule C). The Request for Tender and any associated documents are available from the AusTender website https://tenders.gov.au

2. TENDER BRIEFING

2.1 AusAID intends to hold a briefing for interested tenderers in **Hanoi, Vietnam** on **Friday 22 May 2009, 10.00am, location to be confirmed**.

2.2 Tenderers planning to attend the pre-tender briefing are requested to send advanced notification to the Contact Person by fax or email, indicating the name of the organisation and the number of people planning to attend, by 5.00pm **Thursday 14 May 2009**.

3. ALTERNATIVE TENDERS

3.1 AusAID reserves the right to accept and consider alternative Tenders providing they:

(a) are submitted with a conforming Tender;

(b) clearly identify the differences and improvements offered in the alternative Tender;

(c) are fully costed; and

(d) are clearly marked with the name of the Project and the words "Alternative Tender".

3.2 Alternative Tenders will be considered only after completion of the technical assessment of conforming Tenders.

3.3 Only the alternative Tender of the preferred tenderer (following TAP assessment of conforming Tenders) will be assessed.

3.4 Alternative Tenders will be technically assessed against the selection criteria contained in this RFT.

4. SCORE WEIGHTINGS AND TENDER ASSESSMENT

4.1 The technical assessment of the proposal will account for **85**% of the overall score using the following formula:

$$\textit{Technical Score} = \frac{\textit{Tenderer's Weighted Technical Score (out of 100)}}{\textit{Highest Weighted Technical Score (out of 100)}} \text{ X } \textit{85\%}$$

4.2 Following consideration of the technical merit of Tenders, AusAID may invite selected tenderers' key personnel to interview. If AusAID were to conduct interviews, the following personnel would be required to attend: Team Leader and a Tenderer representative. Tenderers may bring one observer if they so wish. Tenderers are required to attend interview at their own cost and may attend via teleconference. AusAID does not intend to interview personnel from any more than four (4) tenderers, and tenderers not invited to interview will be notified that their bid will not be further considered.

4.3 Following the technical assessment, and interviews, if any, like-for-like price assessment will be undertaken by AusAID of the proposals that are assessed by the Technical Assessment Panel (TAP) as technically suitable.

4.4 The like-for-like price assessment will represent **15**% of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

$$\textit{Price Score} = \frac{\textit{Bid Price of Lowest Priced Technically Suitable Bid}}{\textit{Tenderer's Bid Price}} \text{ X } \textit{15\%}$$

4.5 Following the final assessment and calculation of the final aggregate scores, confirmation of the Tenderer's financial capacity to meet the contractual obligations referred to in **Clause 8 of this Part** and consideration of other factors referred to in **Clause 7.8, Part 5**, a recommendation for further action will be made to the appropriate AusAID delegate. Tenderers should be aware that the delegate is not bound to accept the TAP recommendation and may direct that other action be taken in accordance with this RFT.

5. TENDER SCHEDULE A – TECHNICAL PROPOSAL (RESPONSE TO SELECTION CRITERIA)

5.1 **Tender Schedule A** of the Tender must contain all information required in the following format:

(a) a technical proposal that substantively and individually addresses the selection criteria provided in **Clause 5.2 of this Part** taking into consideration "other factors" under **Clause 7.8, Part 5**; and

(b) the required annexes included in **Clause 5.3 of this Part**.

5.2 **Selection Criteria**

(1) Appropriate Management Capabilities **Weighting 25%**

Well demonstrated systems and management capability, including financial management, administration, logistics, human resource management, performance management and monitoring and evaluation.

(2) Quality of Approach to Program Implementation **Weighting 50%**

Approach to achieving program objectives and ensuring a focus on development outcomes, including:

- promotion of the scholarship program to achieve targets for applicant profiles;
- management of the selection processes (including the use of the Human Resource and Academic Advisers), enrolment and monitoring of student progress and coordination with stakeholders;

- maintaining contact with and assisting graduates on return to promote effective reintegration into work; and
- implementation of a Monitoring and Evaluation plan that enables the provision of analytical reporting and strategic advice on operational policy and measurement of scholarship outcomes.

(3) Appropriateness of Team Composition to Implement the Program **Weighting 25%**

- Demonstrated skills and relevant experience of Team Leader; and (10%)
- Demonstrated skills and experience mix of other key team members. (15%)

5.3 **Annexes**

Annex 1 – Past Experience Form

Details of relevant activities or projects in which the Tenderer has been involved which demonstrate the Tenderer's ability to fulfil the objectives of the Project must be presented in the format outlined below. This annex must not contain more than three **(3)** examples and details of each activity must not exceed one (1) A4 page.

Tenderers must provide information in the Referees section of the Past Experience Forms in accordance with **Clauses 7.18 – 7.21**, **Part 5** of the RFT.

PAST EXPERIENCE FORM

Activity Name:			
Activity Value:			
Activity Location(s):			
Activity Duration:			
Client/Donor:			
Year Completed:			
Brief description of the activity and the Organisation's role:			
Brief description of activity outcomes:			
Statement of the similarities between this activity and the requirements of the activity currently being tendered and how this activity supports your statements addressing the Selection Criteria:			
Nominated Activity Referees:			
1. Name:		2. Name:	

Address:		Address:	
Email:		Email:	
Phone:		Phone:	

Annex 2 – Work Plan

A Work Plan (of not more than two (2) pages) for the first three **(3)** months of the Project. The Work Plan must include provision for:

(a) Mobilisation of key personnel;

(b) establishment of communication channels with AusAID, the Australian Diplomatic Mission and stakeholders;

(c) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including but not limited to;

(i) establishment of report preparation and delivery mechanisms;

(ii) establishment of all other management and administration requirements relevant to the first twelve (12) months; and

(d) any other matters specified in the Scope of Services, **Part 3** of this RFT.

Annex 3 – Conflict of Interest

The Tenderer must indicate whether it has any contractual or other relationship with any Australian training provider eligible to receive Australian scholarship awardees.

Annex 4 – Letters of Association

Clause 9.2, **Part 5** requires that AusAID is provided with assurance of the Associate's corporate commitment and involvement in the Project in the form of a single page Letter of Association.

Annex 5 – Commonwealth Government Policies Compliance

Tenderers are required to disclose in this annex if they are non compliant and/or have (or have had) issues associated with policies named in **Clause 17**, **Part 5**. It is not necessary to submit this Annex unless the Tenderer is non-compliant or has had issues associated with these policies.

6. TENDER SCHEDULE B – SPECIFIED PERSONNEL

6.1 **Tender Schedule B** must contain all information on proposed Specified Personnel in the following format:

(a) a list of proposed team members in the table format provided and in accordance with the instructions included in **Clauses 6.2 - 6.5** below;

(b) a skills matrix providing a summary illustration of the skills of the proposed Project team as a whole (broken down by individual team members) in the key skills areas required for the Project's implementation; and

(c) a curriculum vitae for each proposed team member that conforms with the requirements outlined in **Clauses 7.16 and 7.17, Part 5**.

6.2 Tenderers must provide the information in the Referees column of the Specified Personnel table in accordance with **Clauses 7.18 - 7.21, Part 5**.

6.3 The Commitments column in the Specified Personnel table must include details of proposed team members' commitments to other projects (both AusAID and others) for the period of the Project. In addition to existing commitments, tenderers must detail potential commitments. Potential commitments include nominations in any contemporaneous AusAID or other tenders. Where a proposed team member has an existing commitment to another AusAID project, Tenderers must also detail the duration of the position in the other AusAID project as reflected in the AusAID contract for that project.

6.4 Tenderers are reminded of the requirements of **Clause 8, Part 6** particularly in relation to the availability of specified personnel. AusAID will consider as materially inaccurate, and will therefore reject, any Tender which does not disclose the fact that a proposed team member has an existing and continuing commitment to another AusAID project.

6.5 AusAID's strong preference is that individuals with conflicting commitments are not included in Tenders. Where team members with conflicting commitments are nominated, AusAID will assess on a case-by-case basis the impacts of the personnel changes and may require further information from the Tenderer in relation to managing the transition.

TABLE 1 - SPECIFIED PERSONNEL – Long Term

Position	**Name**	**Total Inputs in person months**	**Referee Contact Details**		**Commitments**
			#1	**#2**	
Team Leader/Scholarships Services Manager (SSM)	*Specify*	28	*Specify*	*Specify*	*Specify*
Deputy Team Leader (local)	*Specify*	28	*Specify*	*Specify*	*Specify*

Notes: (i) Long Term Personnel means personnel engaged for more than 6 months continuously over the life of this Contract.

TABLE 2 - SPECIFIED PERSONNEL – Short Term

Position	Name	Total Inputs in person months	Referee Contact Details		Commitments
			#1	#2	
Academic Adviser (international)	*Specify*	4.5	*Specify*	*Specify*	*Specify*
Academic Adviser (local)	*Specify*	7	*Specify*	*Specify*	*Specify*
Human Resource Development Adviser	*Specify*	9.5	*Specify*	*Specify*	*Specify*
Monitoring & Evaluation Specialist	*Specify*	4	*Specify*	*Specify*	*Specify*

Note: (i) Short Term Personnel means personnel engaged for less than 6 months continuously over the life of this Contract.

7. TENDER SCHEDULE C - FINANCIAL PROPOSAL

7.1 **Tender Schedule C** - the financial proposal must contain the information required and in the format detailed in Attachment 1.

7.2 It must:

(a) be a fully costed fixed price based on the outputs and/or inputs as specified in the Scope of Services, including:

(i) escalation and any allowance for foreign exchange rate variations;

(ii) necessary insurances required by the Contract Conditions and for the performance of the Services; and

(iii) itemise separately, cost for each insurance type;

(b) be expressed in Australian dollars; and

(c) include detailed information on assumptions used in preparing the pricing and final bid price in Table 1 of the Financial Proposal.

7.3 Any escalators, foreign exchange rate variations, or other price risks, must be built into the fixed price proposal. AusAID will not consider any "across the board" escalators subsequently applied to any rates or Project costs.

7.4 Information provided in the tables will be used for the financial assessment and for the like-for-like price assessment.

7.5 **Part 4** Draft Basis of Payment outlines the payment regime in detail. The Contract will include four (4) categories of payments:

(a) Total Management Fee (TMF) paid as milestones;

(b) Reimbursable Personnel Costs (Long Term and Short Term);
Reimbursable Long and Short term Personnel Costs will be paid quarterly in arrears.

(c) Reimbursable Program Implementation Costs; and
Reimbursable Program Implementation Costs will be paid on the basis of actual costs incurred for items listed in Table 4, Part 4 up to specified limits, and payable on quarterly invoicing.

(d) Reimbursable Student Operational Costs.
Reimbursable Student Operational Costs will be paid on the basis of actual costs incurred for items listed in Table 5, Part 4 up to specified limits, and payable on quarterly invoicing.

Leave Entitlements

7.6 Tenderers must detail in the financial proposal under Tender Schedule C, Table B, leave entitlements of nominated Specified Personnel. Where annual recreation leave entitlements exceed 2 trips or a total of 4 weeks per 12 month period, a justification must also be provided along with a narrative description of how the Tenderer will ensure, during Specified Personnel absences, the continued quality of Services. Tenderers should note that leave entitlements and the management strategy may be assessed by the TAP or AusAID as part of the technical assessment process. AusAID reserves the right to negotiate leave entitlements should AusAID consider them excessive.

8. TENDER SCHEDULE D – FINANCIAL ASSESSMENT

8.1 No Contract will be entered into unless AusAID has satisfied itself of the financial capacity of the Tenderer to undertake the contractual obligations. In this regard, AusAID requires that each Tenderer provide information on its financial status at Tender Schedule D. Two options are available.

<u>Option 1</u>
This option is mandatory for:

(a) those Tenderers who have not been subject to a financial assessment by AusAID in the 12 months preceding the date of release of this Tender; or

(b) those Tenderers who have been subject to a financial assessment by AusAID within the 12 months preceding the date of release of this Tender who have experienced a material change in financial position since the last financial assessment was completed by AusAID; or

(c) those Tenderers who have finalised their latest annual financial statements since the Tenderers last financial assessment by AusAID.

Under this Option 1, Tenderers must provide details of the following:

1. the name of the tendering entity and its ultimate owner(s).

2. the names and financial relationships between the tendering entity, its parent entity (if relevant) and other related entities within the group.

3. the previous three years' annual financial statements for the tendering entity. These annual financial statements must be prepared in accordance with Generally Accepted Accounting Standards applicable to the Tenderers country of residence (audited if available). The annual financial statements for each year must include:

    a) a balance sheet;

    b) a profit and loss statement; and

    c) a cashflow statement

each prepared on an accrual accounting basis.

An auditor's statement of financial viability or short form financial statements are not acceptable.

    d) contact name and telephone number of the Tenderer's financial accountant.

    e) a statement detailing any other tendering opportunities being pursued by the tendering entity or the group and the likely impact of such tendering opportunities on the financial capacity of the Tenderer to discharge its contractual obligations to AusAID associated with this RFT.

<u>Option 2</u>

This option may be considered by a Tenderer where:

(a) a Tenderer has been subject to an AusAID financial assessment in the previous twelve months, except where the Tenderers latest annual financial statements have been finalised since the last financial assessment by AusAID; and

(b) the Tenderer can demonstrate to the satisfaction of AusAID that their financial circumstances have not materially changed since the time of the previous financial assessment.

Tenderers who consider that they may qualify for Option 2 must provide the following information:

1. the date of its most recent financial assessment and the name of the tender for which this assessment was undertaken;

2. an explanation of why a Tenderer believes a further financial assessment is not warranted; and

3. a statutory declaration declaring that the Tenderer's financial position has not altered materially since the date of the previous assessment.

Where a Tenderer considers itself exempt from the need to provide the full financial information (Option 1) and chooses instead to supply with the information in Option 2 AusAID reserves the right to subsequently require the Tenderer to provide the information required in Option 1.

A Tenderer must respond to either Option 1 or Option 2 to satisfy the requirements of this Tender.

Tenderers should be aware that AusAID may wish to contact the nominated financial accountant to obtain further information to assess the financial capacity of the Tenderer to undertake the Contract.

AusAID reserves the right to engage appropriate external expertise to assist with the analysis of the financial information. A report on the financial capacity of the Tenderer to undertake the Contract may be provided to either the delegate or the TAP.

The financial information of Tenderers will be treated confidentially.

TENDER SCHEDULE C – FINANCIAL TABLES

Table A – Like-for-like Assessment

	Sept 2009 – 31 Jan 2012	**1 Feb 2012 – 31 Jan 2013**	**1 Feb 2013 – 31 Jan 2014**	**1 Feb 2014 – 31 Jan 2015**	**1 Feb 2015 – 31 Jan 2016**	**Total (AUD)**
Total Management Fee (TMF)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Long Term Personnel (Tables B & C)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Short Term Personnel (Table D & E)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Reimbursable Program Implementation Costs	368,000	TBA	TBA	TBA	TBA	
Reimbursable Student Operational Costs	2,215,250	TBA	TBA	TBA	TBA	
Total For Like for Like Assessment						*****

Note: (i) Reimbursable Program Implementation Costs and Reimbursable Student Operational Costs for 1 February 2012 to 31 January 2016 will be agreed with AusAID if the option to extend as per Clause 3 of Part A of the draft Contract (Part 2 of this RFT) is exercised.

(ii) * "Tenderer's Bid Price".

Table B – Long Term Personnel Costs (September 2009 – 31 January 2012)

Position	Name	Monthly Fee	Inputs	Mobilisation Costs	Demobilisation Costs	Amount of Annual Leave	Financial Limitation
		(AUD)	**(Months)**	**(AUD)**	**(AUD)**	**(Days)**	**(AUD)**
Team Leader/Scholarships Services Manager (SSM)	*Specify*	*Specify*	27	*Specify*	*Specify*	*Specify*	*Specify*
Deputy Team Leader (local)	*Specify*	*Specify*	27	*Specify*	*Specify*	*Specify*	*Specify*
						TOTAL for Like for Like Assessment	***Specify***

Note: Long Term Personnel means personnel engaged for more than 6 months over the life of this Contract.

Table C – Long Term Personnel Costs (Option Period)

Long Term Personnel	1 Feb 2012 – 31 Jan 2013	1 Feb 2013 – 31 Jan 2014	1 Feb 2014 – 31 Jan 2015	1 Feb 2015 – 31 Jan 2016	Demobilisation (AUD)	Financial Limitation (AUD)
Inputs	12 months	12 months	12 months	12 months		
Team Leader/Scholarships Services Manager (SSM)	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
Deputy Team Leader (local)	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
Sub-total	***Specify***	***Specify***	***Specify***	***Specify (Include sub-total for Demobilisation here)***		
					TOTAL for Like for Like Assessment	***Specify***

Table D – Short Term Personnel Costs (September 2009 – 31 January 2012)

Position	**Name**	**Daily Professional Fee**	**˚Indicative Inputs**	**Travel Costs**	**Financial Limitation**
		(AUD)	**(Days)**	**(value X number trips)**	**(AUD)**
Academic Adviser			135		*Specify*
Academic Adviser (local)			210		*Specify*
Human Resources Development Adviser			285		*Specify*
M&E Specialist			120		*Specify*
				TOTAL for Like for Like Assessment	

Note: Short Term Personnel means personnel engaged for less than 6 months continuously over the life of this Contract.
˚ Final phasing for Short Term Personnel Inputs will be subject to negotiation with the winning tenderer.

Table E – Short Term Personnel Costs (Option Period)

Position	**1 Feb 2012 – 31 Jan 2013**		**1 Feb 2013 – 31 Jan 2014**		**1 Feb 2014 – 31 Jan 2015**		**1 Feb 2015 – 31 Jan 2016**		**Financial Limitation (AUD)**
	DPF˅	Inputs	DPF	Inputs	DPF	Inputs	DPF	Inputs	*Specify*
Academic Adviser	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*Specify*
Academic Adviser (local)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*Specify*
Human Resources Development Adviser	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*Specify*
M&E Specialist	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*Specify*
Sub-total	***Specify***		***Specify***		***Specify***		***Specify***		
TOTAL for Like for Like Assessment									***Specify***

˅DPF is Daily Professional Fee

PART 2 - PROJECT SPECIFIC CONTRACT CONDITIONS

Note to Tenderers: These Project Specific Contract Conditions are presented as **Part 2** of this RFT, and will appear as Part A in the consolidated Contract.

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PART A – PROJECT SPECIFIC CONTRACT CONDITIONS

In addition to the Standard Conditions detailed in Part B the following Project Specific Contract Conditions apply.

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

"**Changed Tax**" means a new tax imposed or a change in an existing Commonwealth, State or Territory Government or Partner Country tax after the commencement of this Contract described in **Clause 2** (Project Commencement) **below**.

"**Independent Auditor**" means an auditing firm that does not have any affiliations with, and is not currently engaged by, the Contractor in any manner.

"**Long Term Adviser**" or "**LTA**" means an adviser working continuously for six months or longer on the Project.

"**Partner Country**" means the country/countries in which the services are to be delivered in, as specified in Schedule 1.

"**Payment Milestone**" means a milestone identified in **Clause 4 to Schedule 2 (Milestone Payments)** and for which the Contractor is entitled to receive a payment in accordance with the Contract.

"**Project Design Document**" or "**PDD**" or "**Design Document**" means the project design document.

"**Priority Public Institutions**" or "**PPI**" means selected Government of Vietnam Ministries.

"**Related Corporation**" has the meaning set out in section 50 of the *Corporations Act 2001*.

"**Short Term Advisers**" or "**STA**" means advisers working on the Project for less than six months continuously.

"**Stakeholders**" means any body, institution, organization or governmental authority in the Partner Country or non-government organization having any interest in the Project.

"**Team Leader**" means the specified person nominated in **Schedule 1 (Specified Personnel*)*.**

"**Third Party Issues**" means any issues or events which may affect the Services and which are clearly within the control of a party other than AusAID, the

Australian Diplomatic Mission in or having responsibility for the Partner Country or the Contractor.

2. PROJECT COMMENCEMENT

2.1 The Contractor must commence the Services no later than **insert date**, which date will be referred to as the Project Start Date.

2.2 The term of this Contract is deemed to have begun on the Project Start Date and continues until the final payment is made or earlier notice of termination under the Contract.

3. OPTION TO EXTEND

3.1 The Contractor hereby grants to the Commonwealth an option to extend the term of the Contract for a period of up to forty-eight (48) months. The option must be exercised in writing to the Contractor no later than three (3) months prior to the date of the Contract completion. If the option to extend is exercised, the Contractor shall continue to provide the Services for the extended period on the terms and conditions contained in the Contract, except that this Clause 3.1 shall no longer apply.

4. ACCOUNTS AND RECORDS

4.1 The statement of Project expenditure referred to in Standard Conditions **Clause 15.1(e)** (Accounts and Records) must be provided on a **3 monthly** basis and must indicate:

(a) total expenditure of the Project to date;

(b) disaggregated expenditure for the Project to date identifying all categories of expenditure including the Fees component and Reimbursable items;

(c) total expenditure for the period of **3 months**; and

(d) forward expenditure and expenses by category for the period of **6 months**.

5. NOTICES

5.1 For the purposes of Standard Conditions **Clause 40** (Notices), the address of a Party is the address set out below or another address of which that Party may from time to time give notice in writing to each other Party:

AusAID

To:	Australian Embassy, Hanoi
Attention:	Senior Quality Assurance Program Manager, AusAID
Postal Address:	Australian Agency for International Development Dao Tan Street Van Phuc Compound Hanoi

Vietnam

Street Address: Dao Tan Street
Van Phuc Compound
Hanoi
Vietnam

Facsimile: +84 4 3831 7706

Contractor:
To: Contractor's Name
Attention: Contact Person
Postal Address: Contractor's Postal Address

Street Address: Contractor's Head Office Street Address

Facsimile: Contractor's Fax

6. MANAGEMENT SERVICES

6.1 The Contractor must provide all Management Services necessary for the provision of the Services. In addition to the other requirements specified by the Contract, at a minimum the Contractor must provide the following Management Services:

(a) provide pre-mobilisation briefings to Contractor Personnel including but not limited to project objectives and requirements, relevant contract obligations, services standards, roles and responsibilities, communication arrangements, key events and delivery timeframe, security issues, country and cultural environment;

(b) decision-making within the Contractor's organisation and the advising of AusAID of decisions required by AusAID;

(c) pro-actively identifying and rectifying problems or recommending strategies to AusAID on how to rectify problems, which may arise in, or during the performance of, the Services;

(d) managing those risks which are the Contractor's responsibility under the Contract in accordance with the Risk Management Plan including in relation to Supplies after delivery and before their incorporation into the Project; and

(e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID.

7. INDEPENDENT REVIEW TEAM

7.1 AusAID will engage an external independent review team whose purpose is to provide AusAID with independent technical and other advice on any aspects of the Project including the feasibility of continuing new approaches and to assist AusAID to assess the performance of the Services.

7.2 The Contractor must:

(a) attend and participate in those review meetings which AusAID directs it in writing to attend;

(b) when required by AusAID, consult with the review team on matters related to the Project including:

(i) progress and performance of the Services;

(ii) any matters, circumstances or events which may be affecting or impacting upon the Contractor's relationship with the Partner Country, Stakeholders, AusAID or the review team and suggest actions to avoid or counteract any adverse effects on the relationships;

(iii) any matters, circumstances or events which may affect the Project and if there are anticipated or contingent problems or difficulties, suggestions to avoid or counteract those problems or difficulties; and

(iv) any issues or concerns which the Contractor may want to raise with AusAID.

(c) co-operate with and assist in any way requested by the review team in the performance of its monitoring and review;

(d) co-operate with and assist the review team by providing all necessary information and Contractor Personnel and ensuring its Contractor Personnel are available and willing to assist in answering inquiries or requests for information in respect of the performance of the Services; and

(e) provide to the review team copies of all reports, notices, information or other Project material which the review team reasonably requires to fully and efficiently perform its monitoring and review as soon as practicable after such material is produced or received by the Contractor.

8. ANNUAL PLAN

8.1 The Contractor must provide to AusAID, within six months of the Project Start Date, and by 31 March in each following year of the Project, an Annual Plan which, before it is implemented, must be approved by AusAID.

8.2 The Annual Plan should be prepared in accordance with directions provided in writing by AusAID, must be consistent with this Contract and must include the following matters:

(a) the Contractor's plan for performance of the Services required for the period of the Annual Plan;

(b) the Contractor's proposed strategy for coordinating any Third Party Issues and for providing the Services in a flexible manner as is appropriate;

(c) a detailed budget for the period of the Annual Plan disaggregated by ADS, ALAS, ALAF, pilot activities and alumni activities; and

(d) a Risk Management Plan, updated annually.

8.3 The Contractor must make amendments to the Annual Plan as reasonably requested by AusAID.

8.4 Within 30 days of receipt of the Annual Plan in accordance with **Clause 8.1 above** AusAID shall notify the Contractor in writing when a decision is likely to be made to reject or accept the Annual Plan. If such Annual Plan has not been approved or rejected within the stated period of 30 days AusAID shall give fair and reasonable consideration to granting an extension of time to the Contractor in respect of the performance of the Services.

8.5 Acceptance by AusAID of an Annual Plan does not represent a change to the Contract. The Contract may only be varied in accordance with the Standard Conditions **Clause 12** (Contract Amendments and Variation).

9. SUB-CONTRACTING

9.1 In addition to the Standard Conditions **Clause 11** (Sub-Contracting) the following conditions apply to sub-contracts entered into by the Contractor:

(a) the Contractor must obtain the prior written approval of AusAID to sub-contracts with any party, except Specified Personnel, to the value of AUD100,000 or more. In granting its approval AusAID may impose such conditions, in AusAID's opinion are appropriate, in relation to a proposed sub-contract; and

(b) if AusAID objects to the Contractor's recommended sub-contractor, or AusAID nominates a particular sub-contractor, the Contractor must enter into an agreement with such other sub-contractor as directed by AusAID on the basis of remuneration approved by AusAID and provide AusAID with a copy of the executed sub-contract.

9.2 Standard Conditions **Clauses 11.1** (Sub-contracting) **(d)** and **(e)** ***(with respect to Deeds of Novation and Substitution)*** will only apply to sub-contracts valued at AUD100,000 or more.

9.3 The Contractor must not enter into any contract for the procurement of any Supplies or services from any Related Corporation without AusAID's prior approval.

10. MEETINGS

10.1 The Team Leader or Contractor Representative must attend meetings in AusAID Hanoi on a regular basis as requested by AusAID, to review or discuss the Contract including the following matters:

(a) the general progress of the Project;

(b) matters arising from the Contractor's reports to AusAID;

(c) any issues arising as a result of communication by either Party with Stakeholders;

(d) any other Third Party Issues and the Contractor's proposal for resolution of any issue referred to in **(c) above**;

(e) any variations proposed to the Project including in relation to timing, whether or not any such variations have been agreed to by AusAID;

(f) Contract performance matters;

(g) the accuracy of invoices; and

(h) such other matters in relation to which either Party provides five (5) Business Days' notice in writing to the other Party.

10.2 AusAID may require an implementation briefing in Canberra prior to mobilisation. The Team Leader who is included in the Specified Personnel must attend this meeting. AusAID may also require the Team Leader and other Specified Personnel to attend a meeting at the Australian Diplomatic Mission in or having responsibility for the Partner Country before commencement of implementation.

10.3 The Contractor acknowledges and agrees that the costs of any meetings under this clause are included in the Fees. AusAID may determine the length of the meetings required, but AusAID expects that such meetings shall be for approximately 8 hours (excluding meal breaks).

11. RIGHT OF AusAID TO RECOVER MONEY

11.1 Without limiting AusAID's rights under any provision of the Contract, any payment or debt owed by the Contractor to AusAID in relation to the Contract may be deducted by AusAID from the amount of payment of any claim for Fees, including Reimbursable Costs or from any other moneys payable or due to the Contractor or may be recovered in any court of competent jurisdiction.

11.2 AusAID may review any payments made to the Contractor at any time and:

(a) if the total of the amount paid to the Contractor is greater than AusAID determines by review to be payable under the Contract, then AusAID must notify the Contractor in writing of the amount of refund it has determined to be repayable;

(b) the Contractor must within 28 days after receipt of AusAID's notification:

(i) refund the excess to AusAID; or

(ii) provide AusAID with evidence supporting the Contractor's opinion concerning the amount of the refund;

(c) failure by the Contractor to provide evidence as required in **Clause 11.2(b)(ii) above** will, in the absence of payment in full of the refund claimed, be deemed to be evidence of the Contractor's acceptance that the amount of refund is correct and payable to AusAID on demand or deductible from subsequent payments due under the Contract; and

(d) AusAID must, within 28 days of receipt after the Contractor's evidence supporting its opinion concerning the amount of the refund, consider the Contractor's evidence and give the Contractor written notice either:

(i) calling for payment within 28 days of the refund determined by AusAID's review; or

(ii) calling for payment within 28 days of the refund as re-determined following its consideration of the Contractor's evidence; or

(iii) of AusAID's agreement that there is no refund payable.

11.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 11.2**, or pay any amount due to AusAID, the amount of the refund or payment is recoverable by AusAID from the Contractor by deducting the amount from subsequent payments owed to the Contractor or in any court of competent jurisdiction as a debt due and payable to AusAID by the Contractor.

11.4 Where AusAID deducts the amount of a debt or payment in accordance with this clause, it must advise the Contractor in writing that it has done so.

12. GOVERNMENT TAXES, DUTIES AND CHARGES

12.1 Except to the extent referred to in this clause and Standard Conditions **Clause 21** (Goods and Services Tax), each Party must bear and is responsible for its own costs in connection with the preparation, execution, and carrying into effect of the Contract.

12.2 Except where the Contract, the Treaty between Australia and the Partner Country or the MOU provides otherwise, all taxes:

(a) imposed or levied in Australia or overseas during the term of the Contract in connection with the performance of the Contract; and

(b) which are not already included in the Fees payable by AusAID under the Contract,

must be paid by the Contractor.

12.3 The Contractor must bear and is responsible for all stamp duty and other fees, whether levied in Australia or in the Partner Country, on or in respect of:

(a) the Contract, the Project, and any sub-contracts entered into for the performance of the Services;

(b) the sale, purchase, lease, assignment, licence or transfer of any property under the Contract;

(c) the obtaining of any approvals, consents or authorisations in respect of the Project; and

(d) any instrument or transaction contemplated by or necessary to give effect to the Contract.

12.4 Subject to **Clause 12.8 below** if any new or existing government tax, duty or charge ("Changed Tax") levied in Australia or the Partner Country in connection with the performance of the Services under this Contract is introduced, increases, decreases or is removed in its entirety and this affects the cost to the Contractor of providing the Services, the Contractor must give AusAID:

(a) written notice of the increase, decrease or removal;

(b) written notice of the net effect of the Changed Tax on the cost of supplying the Services; and

(c) in the case of a decrease or a removal, any supporting evidence of the change and an explanation of its effect on the Fees,

as soon as practicable after the change in the Changed Tax is announced or the Contractor becomes aware of the increase, decrease or removal.

12.5 An increase in the Fees under **Clause 12.4 above** shall not be approved and AusAID is not obliged to pay the amount claimed to be attributable to the change in the Changed Tax unless and until the Contractor provides AusAID with evidence of the net effect of the change in the Changed Tax on the cost of supplying the Services and AusAID is satisfied that:

(a) the claimed increase is actually attributable to that Changed Tax and takes into account reductions in any other Changed Tax; and

(b) the net change in the Changed Tax has affected the Fees for supplying the Services,

and the increase shall take effect from the date on which the Changed Tax became effective.

12.6 A decrease in Fees under **Clause 12.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.

12.7 The Contractor may claim a Changed Tax adjustment only once in respect of any change.

12.8 **Clause 12.4 above** does not apply to income tax, taxes on turnover or revenue or similar taxes imposed on or in respect of income, turnover or revenue.

13. INSURANCES

13.1 In addition to the Contractor's obligations regarding insurance detailed in Standard Conditions **Clause 34** (Insurance) the Contractor must ensure that:

(a) AusAID is notified immediately the Contractor becomes aware of any actual, threatened or likely claims under all of the insurances required by this Contract or any act or omission by the Contractor which could materially reduce the available limit of indemnity;

(b) AusAID is notified in writing whenever the insurer gives the Contractor a notice of cancellation of project-related insurances;

(c) in respect of public liability insurance and property insurance that:

(i) all insurance agreements and endorsements (with the exception of limits of liability) name, and operate as if there was a separate policy of insurance covering, AusAID, the Contractor and sub-contractors; and

(ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;

(d) where AusAID is a joint insured under an insurance policy, the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against AusAID; and

(e) all premiums are promptly paid.

13.2 The Contractor undertakes that it shall use its best endeavours to ensure that it commits no act or omission which renders any of the insurances required by this Contract to be effected by it, null and void or of less value.

13.3 In respect of the public liability insurance, Standard Conditions **Clause 34.1(a)** is amended as follows: the Contractor must ensure that the limit for each and every claim is $20 million.

14. REDUCTION IN FEES FOR NON-PERFORMANCE

14.1 If the Contractor fails to supply the Services in accordance with the Contract, the Fees shall be reduced to cover the reduced level of Services rendered to AusAID or loss or damage suffered by AusAID (as appropriate) because of that failure in accordance with the formula set out in **Schedule 2**.

15. PERFORMANCE GUARANTEE

Note to Tenderers: This Clause may be required following completion of the financial assessment and should be costed as part of Tender Schedule C.

15.1 The Contractor must, at its expense, provide to AusAID; within 10 Business Days of the Project Start Date, a performance guarantee executed by a guarantor delivered to AusAID, guaranteeing the performance by the

Contractor of its obligations under the Contract, which must be substantially in the form appearing in Schedule 6.

PART 3 – DRAFT SCOPE OF SERVICES

AUSTRALIAN SCHOLARSHIPS FOR DEVELOPMENT IN VIETNAM (ASDIV) PROGRAM

Note to tenderers: this Part 3 of the RFT will appear as Schedule 1 of the consolidated contract.

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ANNEXES

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DRAFT SCHEDULE 1 - SCOPE OF SERVICES
AUSTRALIAN SCHOLARSHIPS FOR DEVELOPMENT IN VIETNAM (ASDIV) PROGRAM

1. BACKGROUND

1.1 The Australian Scholarships program is a key delivery mechanism and integral part of the Australian Government's development cooperation program in Vietnam. AusAID funded scholarships for development include:

(a) Australian Development Scholarships (ADS) is a bilateral scholarships program that is targeted at agreed priority human resource and development needs of recipient countries. The Government of Australia (GOA) has provided scholarships to Vietnam since 1992.

(b) Australian Leadership Awards (ALA). Since 2007, GOA has implemented this regional scholarships program that aims to develop leadership, build partnerships and linkages within the Asia-Pacific. ALA program includes Scholarships (ALASs) and Fellowships (ALAFs).

1.2 This Scope of Services is for the period from Contract Start Date to 31 January 2012 and covers the promotion, management, administration, monitoring and alumni functions for GOA scholarship programs in Vietnam. It also includes the development, trialling and implementation of new approaches aimed at increasing the application and take-up of scholarships to Australia.

2. PROGRAM GOAL AND OBJECTIVES

2.1 Goal: Economic growth and poverty reduction in Vietnam is facilitated by access to new professional and technical capacity and leadership skills contributed by an expanded group of Vietnamese graduates from Australian tertiary programs and study placements.

2.2 Objectives for the Program for the period 2009-15:

(a) Vietnam has additional higher learning and leadership capability from Australian scholarships and learning placements that is being used by graduates to make personal contributions to the following priority development areas:

(i) planning and effectively managing the long term opportunities and risks of international economic integration to ensure pro-poor growth;

(ii) planning and implementing approaches to assist alleviation of poverty in rural areas and among ethnic minorities;

(iii) implementing integrated disaster mitigation approaches, and supporting new national approaches to addressing climate change;

(iv) planning and implementing approaches for providing water and sanitation in rural areas;

(v) planning and managing the financing and coordination of the health sector; and

(vi) identifying and preparing for the new set of development challenges associated with 2010 middle income country status.

3. PROGRAM DURATION, PHASING AND IMPLEMENTATION POLICIES

3.1 The duration of the Australian Scholarships for Development in Vietnam (ASDiV) program is 6.5 years to 31 January 2016. This Contract is a pilot period for the implementation of new approaches to promotion, recruitment and selection of scholarship awardees.

3.2 The initial phase (mid 2009 to January 2012) will be subject to an independent review which is expected to be conducted in October 2011 to assess the continuing feasibility of the new approaches and the Contractor's performance. The Review Team will then make recommendations to AusAID regarding amendments to Program design and contract extension.

3.3 Policies that maximise development effectiveness of the scholarship program that the Contractor must take into consideration include:

(a) identifying scholarships for study programs that will contribute directly to the development and poverty reduction priorities agreed between the Government of Vietnam (GoV) and Government of Australia (GoA);

(b) seeking applications in accordance with the 'applicant profiles' (Annex 1). These applicant profiles may be adjusted annually to support emerging strategic priorities or to focus more directly on a priority area;

(c) retaining a strong focus on using scholarships to build capacity and promote institutional development through a targeted approach in selected Priority Public Institutions (PPIs);

(d) using scholarships to develop new knowledge and skills that contribute to reducing poverty in Vietnam's poorest rural and ethnic minority areas;

(e) building capacity of Vietnam's universities by contributing to the training of lecturers who hold PhDs, increasing specialist skills in TESOL and promoting Diplomas of Education that focus on greater research capability and aim to improve academic teaching quality;

(f) granting scholarships in courses or fields of study where Australian universities offer access to course content or award levels to standards not yet available in Vietnam universities;

(g) maintaining gender sensitivity and gender equity in promoting the scholarship program and to identifying and selecting awardees;

(h) maintaining a high level of transparency in the selection process, ensuring that assessments are objective and that the selection process is carried out in accordance with GOA and GOV laws, regulations and policies; and

(i) maintaining equitable and inclusive practices in the promotion of the Program, implementation, and reintegration services for candidates and awardees with disabilities.

4. PROGRAM MANAGEMENT, GOVERNANCE AND COORDINATION

4.1 The Program will be oversighted and guided by the Program Coordinating Committee (PCC), which consists of GOA (AusAID) and GOV representatives. It provides policy direction and strategic planning and guidance to the Program, agrees on or adjusts 'applicant profiles' (Annex 1) to determine ongoing relevance to development priorities, undertakes regular reviews of ongoing operations, and approves Contractor milestone reports.

4.2 The Contractor and English Language Training (ELT) provider will attend the PCC in an advisory capacity. The Contractor will provide a Secretariat service to the PCC. The PCC will meet twice annually, and may also meet out-of-session. AusAID will notify the Contractor if Secretariat services are required for out-of-session meetings.

4.3 The Joint Selection Committee (JSC) consists of representatives from AusAID and Ministry of Education and Training (MOET). Its role is to select and approve candidates who will receive Australian Development Scholarships. It will meet three times in each scholarship selection cycle. The first meeting is convened to select a shortlist of candidates that are pre-qualified and sorted into profiles by the Contractor. The second meeting is convened after IELTS results become available. The objective of this meeting is to identify those candidates who have achieved the required IELTS level (the Fast-track Group). The objective of the third meeting is to finalise the selection of awardees to be admitted to the courses of choice. The Contractor will support the Joint Selection Committee and manage administrative processes for selection of awardees.

4.4 Contractor Coordination Meetings. The Contractor will meet with the ELT Provider to coordinate training requirements for awardees requiring ELT. The AusAID Program Manager may call special coordination meetings to resolve issues with other programs or contractors as required.

4.5 AusAID Hanoi Post will be the primary point of contact for the Contractor.

5. PROGRAM SIZE

5.1 The Program aims to identify 175 ADS Awardees, and 15 ALA Scholarship post-graduate Awardees per annual selection round. This is the base amount in 2008.

5.2 AusAID reserves the right to alter the number of scholarships offered in any one academic year. In the event that the overall number of ADS scholars mobilised increases (or decreases) by more than 20% in any academic year, this will act as the trigger for a contract variation. The base line for the numbers will be the 2008 scholarship figures as set out in Clause 5.1 above.

5.3 The overall program and annual indicative targets[1] are set for awardees as follows:

(a) approximately 30% from locations and/or disciplines[2] that have potential to contribute directly to the poverty reduction in the poorest regional areas and in ethnic communities (estimated approximately 260 ADS awardees over the Program period, drawn mainly from Profiles 1 & 2);

(b) approximately 40% from the Priority Public Institutions (PPIs), which deal with policy supporting the DCS priority areas for development in Vietnam, covering awardees who plan to make contributions across the range of the identified priority areas of international economic integration for pro-poor growth, poverty reduction, disaster mitigation and climate change policy, health system policy and management, policy for water and sanitation management, and new development challenges emerging from middle-income status- (estimated approximately 350 ADS awardees over the program period across these priority areas);

(c) approximately 20% from Vietnam universities receive awards to study PhDs, Masters and / or Post-Graduate Diplomas that have potential to contribute to improvements in university teaching / research careers in Vietnam (estimated approximately 170 ADS awardees over the program period);

(d) approximately 10% from universities or other English Language Centres established by the Government receive awards to study Teaching English as a Second Language (TESOL) (approximately 87 ADS awardees over the program period); plus

(e) an aspirational target for the ALA program of approximately 325 Leadership Fellows to achieve assistance over the contract period

[1] The proportions and categories are not mutually exclusive, i.e. an individual's contribution may be relevant to more than one category.

[2] It is not a pre-condition that applicants must come from regional/rural locations or be from an ethnic minority group to contribute to poverty reduction or development in and for poor communities. Applicants in profiles 1 & 2 must show how they expect to use new qualifications to make a contribution to poverty reduction and /or development in poor regions whether they live there or not.

through host organisations, to learn and gain experience in areas that, on return, the individuals can enhance their work in their positions to contribute to the DCS priority development areas of facilitating Vietnam's participation in international trade, managing health systems to control emerging pandemic disease and supporting responses to environment and climate change issues.

SERVICES

6. INCEPTION

6.1 The Contractor's office must be located in Hanoi, Vietnam and must be established within four weeks of the Contract Start Date.

6.2 The Contractor will:

(a) Mobilise office staff within four (4) weeks of commencement of the contract;

(b) Establish and maintain office services, administrative systems, Information Technology and data management systems to manage all scholarship processes and the M&E requirements. This must include as a minimum an ASDiV integrated database (see Clause 8.2 below) based on records of individuals that covers all stages of application, selection, award, enrolment, study progress and results, re-integration of graduates and alumni activities and any additional studies;

(c) Within six (6) weeks of Contract Start Date, prepare an Inception Report which includes the following:

(i) a Monitoring and Evaluation (M&E) strategy and plan (see Clause 19.1) for discussion with AusAID and approval within six (6) months of Contract Start Date;

(ii) Contractor communications protocol;

(iii) an initial outline of the Awareness Raising and Promotion Plan;

(iv) a plan for mobilising awardees for the intake commencing in 2011 academic year;

(v) a workplan for the remaining financial year to 30 June 2010;

(vi) plans for recruitment and selection for following academic years; and

(vii) a report and plan for implementing the gender strategy.

7. IMPLEMENTATION

7.1 The Contractor will:

(a) promote the ASDiV program and raise awareness among target groups;

(b) call for scholarship applications;

(c) manage logistics for the selection processes, including interviews prior to relevant JSC meetings;

(d) assist scholars to identify courses and universities;

(e) arrange English language training for 'exceptional circumstance' candidates (see Clause 9.4 below);

(f) following award, place and enrol scholars in courses in universities;

(g) provide pre-departure services and mobilise scholars as required; Monitor on – award scholars, including award variation management;

(h) provide scholar re-integration services on completion of studies;

(i) support alumni activities;

(j) manage all candidate and awardee details in an ASDiV integrated database (see Clause 8.2 below); and

(k) conduct program monitoring and prepare evaluation reports as required.

7.2 The Contractor must have regard to the following requirements:

(a) seeking applications that will enable selection of awardees from economically disadvantaged regions and ethnic minority communities;

(b) considering a trial of flexible approaches to study options, including for example limited in-Vietnam study as described in the December 2008 Design Document as a guide; and

(c) supporting the participation of Vietnamese leaders in the ALA Fellowships scheme. The Contractor will identify individuals, PPIs or other organisations that would benefit from the ALAF program and facilitate linkages with Australian Host Organisations, and support preparation of ALAF proposals.

7.3 The Contractor must prepare an annual timeline of selection that ensures the requirements of receiving universities in Australia for enrolments for 1st or 2nd semesters are met.

8. DATABASES

8.1 The Contractor will be required to maintain records of past, current and future applicants, keeping a record of each person throughout the program and after graduates return from study (as alumni and potential recipients of further

support opportunities under ASDiV). These records must be maintained utilising multiple databases, as outlined in Clauses 8.2 and 8.3 below.

8.2 ASDiV integrated database: The incumbent contractor will hand over two data sets (one data set for candidate selection stage, one for award graduates). The ASDiV 'integrated database' will include these two data sets that include the full set of each applicant's records: selection, award, enrolment, study progress and results, re-integration of graduates, alumni activities and any additional studies upon return to Vietnam, funded from small grants (see Clause 16.2 below).

8.3 SIMON and OASIS databases: AusAID Canberra manages two databases: SIMON for ADS program and OASIS for the ALA program. OASIS will replace SIMON by end of 2010. These two databases currently exist parallel to one another, and the Contractor will have a role in maintaining the currency of candidate and awardee data on these two AusAID databases, as well as the Contractor's own ASDiV 'integrated database'.

9. SCHOLARSHIPS

9.1 The Contractor will identify or target as required, individuals, PPIs or other organisations that may benefit from the Scholarship Program, and provide services as set out in the Scope of Services.

9.2 The following courses are open to applicants. Enrolments may also be approved in courses accredited under the Australian Qualifications Framework and delivered in Australia by an Australian recognised university:

(a) Post-Graduate courses, including PhD, Masters by Research, Masters by Coursework, and Post-Graduate Diplomas;

(b) Short work placements associated with study in a Post-graduate program limited to scholarship holders enrolled in Masters by coursework. These work placements must be approved at award time as part of the overall award approval;

(c) Undergraduate courses – limited to Exceptional Circumstances (see Clause 9.4 below) candidates; and

(d) Associate Degrees – limited to Exceptional Circumstances candidates (see Clause 9.4 below).

9.3 Other courses or study/work programs may be approved under the following conditions:

(a) Short-term study and or work placements – under the guidelines of the ALA Fellowships scheme using the submission processes of the scheme. AusAID will notify the Contractor of specific services to be provided to ALA Fellows; and

(b) Post-graduate programs offered in Vietnam universities (recognised by Ministry Of Education and Training (MOET) or special legislation)

which are joint or shared programs with Australian universities. The Contractor must identify possible programs and prepare a submission (as set out in Clause 13 below) to the PCC for approval and further consideration by AusAID Canberra.

Exceptional Circumstances Candidates

9.4 Candidates qualify for this group if the person is from a poor rural or ethnic community and has a high potential to make a contribution to poverty reduction in rural or ethnic communities, and who is assessed by the Academic advisers as being able to gain entry to an undergraduate or post-graduate course in Australia or in Vietnam (under the flexible delivery arrangements) but who is without sufficient English language capacity and is in need of more intensive or longer ELT assistance to take up a scholarship.

10. PROMOTIONS

10.1 The Contractor will develop a general awareness campaign to promote recognition of the AusAID Scholarships for Development in Vietnam. The Contractor will also develop a promotion plan to attract applications from persons who fit the applicant profiles approved for the program, including from potential applicants in rural and ethnic communities who may be hard to reach. In developing this awareness program, the Contractor will work in close collaboration with the AusAID Public Affairs Officer in Hanoi. The plans will be adapted and applied annually at the commencement of the cycle. The general awareness campaign and the promotion plans must include:

(a) a plan for visits by appropriate personnel including ADS or ALA alumni, to selected geographic areas or organisations for presentations to specific communities;

(b) promotion of scholarship opportunities to women and those from ethnic minorities and rural areas;

(c) targeted information for each application round, including print packages with the application form and relevant parts of the promotional material, adaptations to the Application Form to accommodate the changed emphasis on obtaining information from each applicant about the priority area of development in Vietnam that they wish to work in on return from study and how they perceive they can make effective contribution;

(d) travel by locally engaged staff on a limited basis to non-metropolitan and rural areas to provide information to potential applicants and if deemed necessary, provide assistance to complete their applications.

10.2 The Contractor must develop and implement a strategy to assess the effectiveness of the general awareness and promotional plans in obtaining applications from people that fit the profiles set out in Annex 1 of this Schedule.

10.3 The Contractor must prepare comprehensive costings that include the production of the advertising material (video, print, internet etc) and the advertising buy in each year and the implementation costs of the annual promotion activities.

10.4 The awareness raising plan and promotions plan must be submitted to AusAID for approval two months before implementation. The submission date will vary each year and be identified in Annual Plans. In the second and subsequent years the plans must be reviewed and redeveloped to suit the profiles and environment, and to incorporate lessons learned from the previous year. The review process must be supported by data and analysis developed under Clause 10.2 above.

10.5 Once approved the plan must be implemented in a period that ensures all target timelines are met for receipt of applications; and selection and approval processes for scholarship awards.

11. ADS AND ALA FELLOWSHIPS FOR PPI CATEGORY

11.1 Approximately 70 (about 40% of the total number of scholarships) are awarded each year to PPIs. Selection of PPI candidates typically involves calling for applications within each PPI. An initial internal pre-selection process agrees on nominees to put forward to the JSC to be considered for award of scholarships.

11.2 The Contractor, through the HRD Advisor will assist the PPIs to improve systems for internal selection and reintegration processes:

(a) engage with the PPIs before applicants are selected each year;

(b) three months prior to return of graduates, explore and support GoV Ministry plans for graduate placements;

(c) assist PPIs to enhance institutional planning to enable the PPI to benefit from the return of scholarship holders and improve the career prospects for graduates in ways that support longer term retention in the service of the PPI or public institutions generally;

(d) assist PPIs to develop individual career path plans and agreements with recommended candidates that clarify expectations of the employing institution and of the graduates; and

(e) subject to PPI agreement, counsel and advise PPI nominees on personal career planning, with an emphasis on planning for making personal contributions in priority areas of development.

11.3 The Contractor through the HRD Advisor will also assist ministries to identify opportunities for participating in the ALAF program, including the identification of areas of study/work experience, identification of qualified personnel and appropriate host organisations in Australia, and support host organisations to prepare applications in accordance with the requirements of the ALAF program (http://www.ausaid.gov.au/scholar/alafellow.cfm).

12. SELECTION OF ADS AWARDEES

12.1 The Contractor will manage the administrative processes for the short listing, selection and enrolment/placement processes. The Contractor will also provide secretariat support to the Joint Selection Committee (JSC), including providing reports to the JSC, and coordinating all information on each candidate.

12.2 The Contractor will provide services for the JSC meetings at least three times in each annual intake. These meetings will be: first to approve the shortlist of candidates (based on applicant profiles as sorted by the Contractor); second to select awardees suitable for fast-track enrolment who do not require any ELT (Profiles 4 and 5 and any others who already have the required level of IELTS to allow for mobilisation); and third to select the final group of awardees.

12.3 Upon receipt of an application the Contractor will establish each applicant's individual record in the integrated database and populate the record for the life of the applicant throughout program.

12.4 The Contractor will process ADS applications, check them against the eligibility criteria and then against the selection criteria for each profile, before sorting them into profile groups. The Contractor will identify those applicants who do not meet basic requirements or who should for other reasons be deemed ineligible and submit this list to AusAID for consideration and approval.

12.5 For the applicants agreed as meeting eligibility criteria the Contractor will prepare an initial order of ranking based on material submitted in the application forms. This list must be submitted to the JSC ten (10) working days before the JSC meets.

12.6 The Contractor will support the convening and meetings of the JSC. The JSC will consider all applicants in the Open and PPI categories who are deemed to meet basic eligibility (by profile grouping) and will select those who are to be shortlisted, becoming Candidates. Determinations will be based on their suitability against a target profile and within each profile, based on their individual qualities and motivations offering the best potential to contribute to Vietnam's development on their return home after graduation.

Referring for ELT

12.7 The Contractor will arrange for Candidates to sit IELTs examinations. Following receipt of results, the Contractor will determine whether Candidates will be included in the Fast-Track Group (above 6.5 overall) or whether they will be referred to the AusAID-contracted ELT training provider for additional ELT. The Contractor will coordinate with the ELT contractor to arrange a second IELTS examination for this group after they complete their further ELT training.

Exceptional Circumstance Candidates

12.8 In arranging for IELTs testing, the Contractor must take account of the eligibility provisions specific to each applicant profile and proposed course of study. The Contractor must also take into consideration the needs of Exceptional Circumstances Candidates (see Clause 9.4 above).

12.9 The Contractor must work in consultation with the ELT Provider or with other one-off providers as may be appropriate to the circumstances of each Exceptional Circumstances candidate. The Contractor will submit a plan and budget to AusAID to ensure that Exception Circumstances Candidates can qualify for a scholarship. Subject to AusAID approval, the Contractor will implement the plan.

Academic Advisers

12.10 Academic Advisers must assist Candidates to select a course of study in an Australian university. Candidates in the Fast-Track Group will be assisted first, followed by those who are receiving ELT (during the period of ELT study). The Contractor will work cooperatively with the ELT Provider to ensure that Candidates have sufficient and timely access to Academic Advisers.

12.11 Academic Advisers will counsel each Candidate in the selection of his/her preferred courses for enrolment and in consultation with the HRD Advisor, support planning for their reintegration back into Vietnam and their employer (if this is a PPI). The Academic Advisers will encourage and assist Candidates to undertake a wide-ranging canvassing of universities and their course offerings, and to help ensure that choice of university, field and courses are the most appropriate for the candidates' profile and future area of development contribution. If appropriate, the Academic Advisers will consider the potential for some Candidates to benefit from the inclusion of a period of relevant work placement within the overall scholarship package. For this option to be available it must be identified at time of selection and it must be included in the proposal along with course selection preferences submitted to the universities. Work placements would occur in Australia and be in line with the terms of the visa. Details of the actual placement may be arranged during the study period in Australia, in consultation with the scholar, university and AusAID Hanoi.

12.12 The Academic Advisers will prepare a written assessment of each Candidate to be made available to the Interview Panel and the JSC. The report must provide an assessment of:

(a) the appropriateness of the course selected for the Candidate's 'profile';

(b) the suitability of the selected course(s) to the Candidate's indicated plan for making contributions to development on graduation; and

(c) the match of the Candidate's academic capabilities to meet the course entrance requirements and any proposed work attachments.

Interviewing Candidates

12.13 The use of interview panels will be trialled during the first phase of the Program. Accordingly, the Contractor will convene an interview panel (or panels) of at least three people as set out in Clause 12.16 below.

12.14 The Contractor must ensure the integrity of the interview process by ensuring that panel members receive appropriate briefing on the standards of behaviour expected of panel members and the need for consistency and objectivity in conducting interviews. In addition, the Contractor must ensure that panel members can report any undue pressure from any sources whatsoever.

12.15 The Contractor will ensure that the panel interviews:

(a) all candidates for PhDs:

(b) all candidates for Masters by research; and

(c) all candidates in Applicant Profiles 1 and 2.

12.16 Each interview panel will include at least three members drawn from the following:

(a) The Team Leader/Scholarships Services Manager (SSM) as Chair (mandatory);

(b) An independent person (i.e., independent of AusAID and MOET) who may be able to provide a perspective of interviewees' capacity to adapt to living in Australia (e.g., an alumnus from ADS or other overseas scholarship program);

(c) A member of MOET or other GOV representative; and

(d) A sectoral or thematic specialist (e.g., gender specialist).

12.17 The Academic Advisers may not be members of the interview panel.

12.18 The Contractor will arrange and pay for travel by the interview panel, taking into consideration both access for interviewees and the needs of those living in rural/remote locations and those with disabilities.

12.19 The Contractor will arrange to pay sitting fees and per diems to the independent member/s of the interview panels, as well as per diem, travelling and associated costs to any representative of the GoV sitting on the interview panels. For rural and or Exceptional Circumstances Candidates the Contractor will also arrange for travel and associated costs to be reimbursed if a candidate can demonstrate reasonable need for financial support to attend interview.

12.20 Following interviews, the Chair will prepare an interview report for each candidate for submission to the JSC.

Selecting Awardees

12.21 The Contractor will ensure that the second JSC meeting has:

(a) Academic Advisers' reports (see Clause 12.12 above); and

(b) Interview Panel reports (see Clause 12.20 above).

12.22 Following selection by the JSC, the Contractor will prepare notification letters to selected awardees for AusAID signature.

Enrolment and Placement of Awardees

12.23 Once Candidates are confirmed as Awardees the Contractor must assist to Awardees to complete the formal enrolment in their selected courses and universities in Australia or in selected 'pilot' courses in Vietnam.

12.24 For awardees enrolling for study in Australia the Contractor must follow enrolment procedures as set out in the ADS program guidelines and must utilise the AusAID on-line SIMON/OASIS program.

13. FLEXIBLE MODES OF STUDY

13.1 The Contractor must conduct a feasibility study and prepare a proposal for approval by the PCC for flexible modes of study in Vietnam. This will include identifying appropriate institutions and courses and proposing suitable mechanisms for AusAID to contract with institutions to deliver the courses to selected scholars. The Contractor must also identify in its proposal the arrangements for enrolling and monitoring students while studying under an AusAID scholarship. The Contractor will identify appropriate courses in Vietnam while ensuring that as a minimum any course:

(a) is a Joint post-Graduate Program taught wholly or mainly in Vietnam which leads to a qualification that is formally recognised as an Australian qualification issued by the Australian partner institution, and which may also be recognised by the Government of Vietnam; or

(b) leads to an Australian qualification where the study is via a split Post-Graduate program where a proportion of the study is undertaken in Vietnam, or where the research for PhDs or Masters by research is done in Vietnam on subjects which are relevant to the Vietnam experience or priority development areas; or

(c) is an undergraduate course at an existing Australian accredited university in Vietnam. This option is only available to Awardees in the Exceptional Circumstances category.

13.2 The Contractor must present the feasibility study and proposal to the PCC on a date to be agreed with AusAID. It is envisaged that implementation of flexible modes of study would occur after January 2012 and be available only to a limited number of scholars. Subject to agreement by AusAID Canberra (and AusAID contracting with the Vietnamese institutions), the Contractor

will be required to take this option into consideration for potential scholars and to include them in its monitoring and alumni activities.

14. PRE-DEPARTURE ASSISTANCE

14.1 The Contractor will provide all awardees with a pre-departure program that includes at a minimum:

(a) assistance with applications for student visas and immigration clearances as required;

(b) travel arrangements including purchase of air tickets (one way)

(c) briefings that familiarise awardees with travelling to Australia, general conditions for living in Australia, and understanding their access to additional ELT and the 'Introductory Academic Program" (IAP) in Australia;

(d) briefings that include information from Australian universities; scholarship objectives; scholarship terms and conditions; family entry conditions; services provided by Australian institutions available to awardees; and post award expectations; and

(e) support services to assist awardees mobilise to Australia.

14.2 The Contractor will provide additional support to Exceptional Circumstances awardees and to any others who identify need.

15. SERVICES DURING ADS STUDY PERIOD

15.1 The Contractor must monitor scholars' progress while studying - both for those studying in Australia and in the pilot programs in Vietnam. In this regard, the Contractor will also monitor all current on-award scholars who commenced study before the commencement of the Contract. This will include maintaining their files, maintaining the AusAID SIMON database for each ongoing student and liaising with universities, MOET and AusAID as required.

15.2 The Contractor shall receive and manage requests for award variation in accordance with the ADS Guidelines. Such requests will be submitted by Australian universities to the SIMON database or direct to the Contractor. For these purposes, the Contractor shall:

(a) ensure full justification is provided for each request, and liaise with universities to obtain supplementary information (in accordance with ADS Guidelines);

(b) where requests fall outside the ADS Guidelines, liaise with the relevant university to negotiate alternative arrangements to ensure the most cost effective outcome is achieved through the variation; and

(c) prepare a letter to MOET (including any clarifications) setting out the reason for the request, relevant background information, and a recommendation on whether the request should be approved or not approved, together with appropriate documentation for endorsement.

15.3 On receipt of MOET's endorsement, the Contractor must forward to AusAID Hanoi any variations requiring change to financial approvals. AusAID approval can only be sought after GOV support has been obtained, and is subject to funding availability. The Contractor must not advise any stakeholders of the outcome of requests for award variations until AusAID Hanoi has approved it.

15.4 Variations that involve scholars who are in Profile 3 (Vietnam university staff) accepting an offer from the Australian university to upgrade from a Masters to PhD (either during the period of initial study or immediately on completion of the Masters) may be approved (by AusAID and MOET) to continue to immediately commence the PhD study without being required to return to Vietnam for the minimum period of two years at the completion of the first Degree.

15.5 Upon receipt of advice from MOET and AusAID Hanoi on whether or not the award variation has been approved, the Contractor shall inform Australian universities and AusAID Canberra, of the results of award variation requests. The Contractor will record award variations in all relevant databases.

15.6 The Contractor will collect data from universities on student progress. Information to be collected from universities includes details of scholars' progress, including: deferrals; extensions; suspensions; upgrades; terminations; and semester results. Details of completed scholarships must also be collected, including information on pass/failure rates and when graduates have returned to Vietnam. This data must be recorded in the ASDiV integrated database (see Clause 8 above).

16. SERVICES TO GRADUATES ON RETURN (RE-INTEGRATION)

16.1 The Contractor will develop a re-integration strategy and plan to facilitate the re-integration of all ADS and ALAS graduates into their workplaces, as appropriate.

16.2 It is envisaged that the Contractor will administer a graduate small grants program of up to $5,000 per individual for a period of three years after return. The total pool of funding for this small grants program will be determined by AusAID each year and will be subject to availability of funds.

16.3 A minimum condition of eligibility to receive this assistance will be agreement by the graduate to provide and keep up-to-date contact with the Contractor and/or alumni association.

16.4 The Contractor must ensure that returning awardees' contact, degree and, where relevant, employment details are included in the ASDiV integrated database.

16.5 The re-integration service will be available to all Degree Scholarship holders (both ADS and ALS graduates but not to Fellowship holders) and to the PPI managers to support the internal re-integration activities for their returning employees.

16.6 Graduates from PPIs may make applications for extended re-integration assistance on an individual basis, or PPIs may negotiate a 'package' that will cover their employees in the periods of eligibility. In both cases of individual applications or institution based package applications, the PPI is expected to make a financial contribution to the grants scheme.

16.46 In developing the re-integration strategy and plan, the Contractor must ensure the establishment of a system for receiving applications/proposals from graduates, criteria to award grants or reject grant applications and a reporting format on the use of the grants.

17. ALUMNI SERVICES SUPPORT

17.1 The Contractor will facilitate alumni activities such as:

(a) organizing alumni groups according to various professional interest areas;

(b) organizing professional seminars or workshops;

(c) organizing social events for alumni; and

(d) managing small grant support to individuals alumni.

17.2 The Contractor will cooperate with the AusAID Hanoi to prepare an annual alumni plan to offer the ADS Alumni Association or the separate Vietnam Graduates from Australia (VGAC), small grants to manage events that facilitate networking. Funding support would be assessed case by case on the basis of merit of proposals from the alumni associations.

17.3 The Contractor will prepare a recommendation and costing for such activities on an annual basis. AusAID will consider proposals and may approve funding, which will then be administered by the Contractor.

18. AUSTRALIAN LEADERSHIP AWARDS SCHOLARSHIPS AND FELLOWSHIPS

18.1 The Contractor will include information about the ALA program in the awareness raising and promotions plan and will seek to increase the numbers of Vietnamese applicants who succeed in obtaining these awards. The Contractor will develop a plan to reach the target number of Vietnamese participating in ALAS/ALAFs at the commencement of each selection round.

18.2 The Contractor will seek applications for ALA Scholarships from persons in leadership or potential leadership positions. As part of the process of shortlisting for the ADS the Contractor may take account of any applicants for ADS who may be better suited to or would benefit more from an ALA

Scholarship or Fellowship and, if appropriate, and with the agreement of the applicant, may guide the application into the ALA stream for processing.

ALA Scholarships

18.3 The Contractor will assist AusAID to undertake interviews and other tasks relating to short-listing Vietnamese applicants for the ALA Scholarships. AusAID and the Contractor will agree a process for undertaking and completing these interviews as applications are received. AusAID will notify the Contractor of Vietnamese applicants who are awarded ALA Scholarships and the Contractor will support Awardees with services as set out in Clauses 14 and 16.

ALA Fellowships

18.4 The Contractor will develop plans to expand the fellowship opportunities available to Vietnamese. AusAID and the Contractor will cooperate to take pro-active steps to identify single individuals who fit the 'applicant profile' areas and who could benefit from participation in the ALAF; and also to identify PPIs or other organisations in Vietnam that have groups of individuals who similarly fit the profiles and who could benefit from participation in the ALAF. The Contractor will then actively seek out appropriate Australian host organisations which can and are willing to support Vietnamese Fellowship applications, and, if necessary, support the host organisation to establish linkages with the identified Vietnamese individuals or organisations and support the host organisation to apply direct to AusAID Canberra for an ALAF activity that fits the need in Vietnam. In some cases AusAID will be aware of potential host organisations, and will advise the Contractor of their potential for participation.

18.5 The Contractor will assist AusAID to undertake any necessary liaison in Australia with potential host organisations or may, where appropriate, undertake the liaison directly (or may use approved associates).

18.6 The Contractor will ensure that all participants in the ALA program from Vietnam are entered into the ASDiV integrated database and that details of their participation and re-integration are available for inclusion in the M&E plan for the ASDiV program. AusAID will notify the Contractor of any ALAF participants who have obtained fellowship awards through host sponsors without the direct assistance of the Contractor and the Contractor will include these participants in the database.

18.7 The Contractor is not required to offer direct re-integration assistance to ALAF participants.

19. MONITORING AND EVALUATION

19.1 The Contractor will develop a Monitoring and Evaluation (M&E) Strategy and Plan in close consultation with AusAID Hanoi and submit it to AusAID and MOET for approval within six months of commencement of the contract.

This plan must include a budget, to be reviewed and approved at least annually.

19.2 The M&E Strategy must focus on demonstrating the development impact from the provision of scholarships under ADS and ALA (both Scholarships and Fellowships). The strategy and plan must support the objective of monitoring, which is to:

(a) ensure continuous improvement in the implementation of ASDiV;

(b) facilitate evaluation of the development effectiveness of the ASDiV over time using tracer studies and longer term follow-up of the graduates on return from completion of scholarships; and

(c) demonstrate development impact of provision of scholarships.

19.3 The Contractor will administer country-based tracer studies, using template and guidance from AusAID.

19.4 The Contractor, through the M&E Specialist is expected to lead and manage collection of data and oversight local staff who may be hired to support data collection.

19.5 The Contractor will prepare an Annual Academic Outputs Report which will contain analysis that will inform the annual AusAID 'Quality at Implementation' review, focusing on overall progress towards meeting the ASDiV objectives. This report will be submitted each year within one month of the return of the graduates at the end of December. This Report shall as a minimum cover:

(a) information collected from universities, tracking details of scholars' progress during the study in Australia, by semester, noting in particular deferrals, extensions, suspensions, upgrades and drop-outs, together with individual course outcomes highlighting high achievers and students who may be at risk and the measures taken to mitigate the situation;

(b) details of completed scholarships, including information on pass/failure rates, with a detailed analysis of the reasons for failure and suggestions for areas where improvements could be achieved; and

(c) details of post-graduation monitoring activities, focusing on recording of returned graduates in each year, locations of resumption of employment on return and information on the expected areas of contributions to development from the initial employment taken up by the graduates. This will include details of take-up of the re-integration support services, and of the activities arranged in conjunction with the alumni associations.

20. SPECIFIED PERSONNEL

20.1 The Contractor must supply the following personnel. Terms of Reference are at Annex 2:

Position	**Name**
Team Leader/Scholarships Services Manager (SSM) – Full time	
Deputy Team Leader (local) – Full time	
Academic Advisers (2)	
HRD Adviser	
M&E Specialist	

21. REPORTING REQUIREMENTS

21.1 The Contractor must produce an Annual Selection Report covering both ADS and ALA programs: with analysis (including a statistical annex that meets professional standards in statistical presentation and analysis) that will inform a review of the priorities and development of profiles for the next recruitment round. This report should be submitted one month after acceptance of awardees into courses by receiving universities, and in time to be used to inform strategy development by AusAID and the GoV before the commencement of the next selection round. It is expected that the Contractor and the ELT Provider will cooperate to prepare this report, though the Contractor holds primary responsibility for preparation and submission. This Report shall as a minimum cover:

(a) the features of each annual recruitment round detailing selection and screening activities (with clear disaggregation of profiles, gender, location, fields of study, level of study, indicated area of development contribution) and with details available at each stage of the program, including applicant recruitment, candidates, awardees accepted;

(b) the results of English Language Training and proportions achieving required grades, and pass/failure rates, together with reasons for fail rates (utilising contributions from the ELT provider, integrated into the Annual Selection Report through coordinated contractor action); and

(c) details of other pre-departure and academic preparation training, including incidences and results for Exceptional Circumstances candidates.

21.2 The Contractor may produce Brief Exception Reports: to be provided immediately upon identification of any unforeseen problems that may have a detrimental effect on the Program, particularly in relation to the achievement of the objectives of the Program. One electronic copy of the Exception Report should be sent to the AusAID Activity Manager. Where possible, these Exception Reports should include a proposed solution and/or strategy. Exception Reports may take the form of an e-mail and will be entitled "ASDiV – Exception Report".

21.3 **Financial Reports:** The Contractor must submit financial reports on a quarterly basis, detailing all expenditure in the past quarter and foreshadowing the projected expenditure for the next six months. In the middle of each quarter, the contractor is required to provide estimates for that quarter to AusAID. The Contractor must provide monthly financial updates in the last three months of a financial year (April – June). Specific requirements for the financial reports will be discussed with AusAID Hanoi.

21.4 **Program Completion Report (PCR):** to be submitted no later than three months prior to the Completion date. The Contractor must detail and assess the activities and performance of the program against the objectives outlined in this Scope of Services.

21.5 Provide any other information in relation to the Program including student statistics from the ASDiV integrated database maintained by the Contractor and other sources as deemed necessary, when required by AusAID.

Table of Reports

Report Title	**Clause Reference**	**Due Date and Frequency**
Inception Report	Clauses 6.1 and 6.2	Within 6 weeks of Contract Start Date
M&E Strategy and Plan	Clause 19.1	Within 6 months of Contract Start Date
Annual Report, including Academic Outputs Report and Annual Selection Report	Clause 19.5 and 21.1	Draft by first week December each year
		Final due January each year
Annual Plan, including update of Risk Management Plan and M&E Strategy and Plan	Part A, Clause 7 and Clause 19.1 of this Part	31 March each year
Feasibility Study and Proposal for Flexible Modes of Study	Clause 13	Date to be agreed
Financial Reports	Clause 21.3	Quarterly
Exception Reports	Clause 21.2	As required
Program Completion Report (PCR)	Clause 21.4	Three months before end of Contract

21.6 All reports must:

(a) be provided in accordance with the specification under Standard Contract Condition Clause headed “Reports”;

(b) be accurate and not misleading in any respect;

(c) be prepared in accordance with directions provided by AusAID;

(d) allow AusAID to properly assess progress under the Contract;

(e) be provided in the format, number and on the media approved or requested by AusAID;

(f) not incorporate either the AusAID or the Contractor's logo;

(g) be provided at the time specified in this Schedule; and

(h) incorporate sufficient information to allow AusAID to monitor and assess the success of the Services in achieving the objectives of AusAID's policy framework.

19.6 AusAID Independent Completion Report: In addition to the annual reports above, the Contractor will assist with the preparation of a final Independent Report close to contract completion. AusAID will separately engage consultants to undertake the independent analysis. This report will be prepared in consultation with AusAID and the GoV, and other interested parties as may be appropriate. The Contractor must cooperate with all requirements to support and assist the preparation of the final report and must supply information as requested and coordinate consultants required for the Independent Report.

22. CONTRACTOR AND PROGRAM PERFORMANCE ASSESSMENT

22.1 AusAID will assess the Contractor's performance annually. The annual assessment will be based on judgments on effectiveness and efficiency of the administrative processes for ADS and ALA and appropriateness of services to orient the ASDiV program with AusAID's development priority areas. Table 1 sets out the criteria to be used for this assessment of management performance.

Table 1: Contractor Management Performance Criteria –

Performance Indicator	**Criteria**
(1) Efficiency and timeliness of administration processes	
Personnel Performance	All Contractor personnel and consultants: o Act professionally and with integrity, and produce high quality[3] work o Communicate in a clear, transparent and effective manner o Deliver outputs on time.
Project Management	o Good working relationships with AusAID Hanoi and other stakeholders, effective coordination and consistency of service levels o Finances are soundly and transparently managed and financial reporting meets AusAID requirements o Program reports are clear, constructive and timely and meet the information needs to support continuous improvement in the program

[3] In this context, 'quality' means work that is technically appropriate, relevant to needs, with appropriately presented reports that are clear and timely.

Performance Indicator	Criteria
	o Ongoing monitoring and evaluation is undertaken effectively and is being analysed and reflected in continuous improvement by the implementing team o The contractor's People management approach is fair, sustains the level of performance expected and the flexible staff time is managed efficiently and appropriately.
Scholarships Management	o Scholarship promotion, management and monitoring processes implemented effectively and efficiently, and utilizing a new 'applicant profiles' approach o Demonstrate gender sensitivity and gender equity in approaches to promotion of the program o Target number of awardees mobilised efficiently and meet critical timelines o Re-integration support services are implemented effectively o The integrated database is established and maintained effectively, providing appropriate information to support effective operations, and ongoing analysis of selections, enrolments, scholar progress and reintegration of returning graduates.
Communication / Coordination	o Clear management arrangements and effective communication between all Contractor Personnel and between Contractor Personnel and AusAID o Management identifies and reports any major difficulties in communication/ stakeholder relationships to AusAID as they arise.
Risk Management	o Management issues are identified and resolved in a timely manner and/or reported to AusAID for decision where relevant o Personnel respond effectively to new or changed environments or requirements from AusAID.

AusAID Quality at Implementation (QAI) Assessment

22.2 AusAID will conduct an annual QAI assessment. The QAI report is a cooperative assessment conducted by AusAID in consultation with the Contractor and is intended to provide AusAID and the Contractor's managers with information on the main achievements of the aid activity implementation to date, and especially in the past year.

22.3 The QAI assessment will focus on the quality of activity implementation and whether the approaches are on track and making reasonable progress towards meeting the ASDiV objectives. This assessment will take account of the situation and continuing relevance of design approaches, and well as the quality of the development approaches being applied by the Contractor. The QAI is not an evaluation, and judgements are necessarily subjective, but will use information from the M&E plan to ensure the judgements are based on evidence. Judgements will be subject to contestability and the Contractor can offer comment on the final assessments made by AusAID. Table 2 sets out the issues to be considered in this assessment.

Table 2: QAI issues for Assessment

Performance Indicator	Criteria
(i) Progress towards achieving outcomes	
Appropriate focus on poverty reduction objectives and equity participation.	o Are the applicant profiles a useful tool? Are they appropriately directed to obtain applications from people who can contribute to the priority development areas in the DCS? Is the Contractor making effective use of them to obtain gradual increases in the proportion of applicants and scholarship awardees who are from disadvantaged rural areas and/or are from ethnic minorities o Are there reasonable progressive increases towards meeting the target of 30% awardees who are selected based on credible intentions of returning to work in areas that contribute to poverty reduction in rural and ethnic minority areas (whether or not they live in those areas) o Are the strategies to achieve gender equity participation objectives appropriate? Is the targeting effective? Are the targets likely to be progressively met, in terms of credible evidence that an overall minimum 50% women awardees are likely to be selected across the period of the contract. o Are approaches being applied to ensure that applicants with disabilities are encouraged and assisted to apply and that no barriers to their participation are permitted. Are they appropriate and efficient?
Focus on selection for potential to contribute to DCS priority areas and program priorities such as increasing PhD qualified teachers and researchers and support the national program to expand skills in English language.	o Is there evidence of effective and appropriate counseling and placement of scholars in courses relevant to their needs to acquire knowledge and skills that are relevant to the priority development areas, with scholars in a cross-section of Australian institutions / universities? Are Candidates making appropriate choices of courses and institutions for study, or are choices influenced by matters not relevant to achieving the best development outcomes? o Is there evidence that selections are likely to support a progressive move towards meeting the desired proportions of ***awardees*** in the DCS priority areas and program priorities?
Focus on re-integration support that promotes working in areas and on issues that make feasible contributions to development.	o Is the enhanced support to PPIs effective in changing practices in planning for placement of graduates in work that can make meaningful contributions to priority development areas within the context of the agency mission? Is there evidence that PPI agencies are using HR plans to continually support ASDiV graduates and leadership Fellows to continue a career path that is appropriate to using their new knowledge and skills effectively for development? o Is there evidence that the post-return employment for open-category graduates are increasingly being selected for the opportunity to make contribution to the development areas for which their Scholarships/fellowships were granted? Is the program on track to move closer to meeting the desired proportions of graduates actually working in the DCS priority areas. o Is there evidence that the focus at selection on the motivation of awardees to use new skills to contribute to development is sustainable and is resulting in higher proportions of graduates choosing and continuing to work in relevant DCS priority areas? (longer-term issue)

ANNEX 1 TO THE SCOPE OF SERVICES

Eligibility, Selection Criteria and Applicant Profiles to be Applied for ADS and ALA Scholarships

1 The Contractor must use the following eligibility, selection criteria, and applicant profiles in managing the process for the shortlisting and selection of Candidates.

2 **Eligibility and Selection Criteria**

All applicants must:

- Be a citizen of Vietnam and be resident in Vietnam at the time of first application
- Not have permanent residence in Australia or any other country
- Not be married to or engaged to be married to a person who is eligible to hold citizenship of any other country
- At the time of application be not more than 45 years of age
- Be applying for a new course of study and not be seeking support through ADS or ALAs for a course already commenced in Australia under other funding arrangements (except where an ADS/ALA scholar is offered an upgrade from a Masters to a PhD – as described in Part B)
- Have met, or be able to meet before commencement of the course, the academic entry requirements and English language levels of proficiency set by the Australian university for the study program for which enrolment is sought
- Have worked for a minimum of two years relevant employment in Vietnam (employees of PPI must have been employed by that PPI for at least two years; and exceptional circumstance applicants seeking undergraduate studies are exempt from this minimum)
- (For those employed by a PPI), be supported by their employers and have signed a written agreement for continuing employment with the employer for a minimum of two years after graduation (noting that some PPIs require a longer period of continuing employment); and
- After selection:
    - Be able to satisfy Australian government requirements for international student visas for entry to Australia (health, character etc)
    - Not hold another scholarship that will give overlapping benefits

PLUS

- Have outlined a case (written in the personal statement attached to the application form) that is clear about their objectives and motivation to make a contribution to development in Vietnam and is specific about the area of development priority in which they seek to make the contribution.

Selection Criteria –The JSC will use the personal statement and the selection criteria set out in each applicant profile to determine who amongst the eligible applicants will be shortlisted to become candidates, and who will finally be awarded scholarships. The selection criteria are set out separately below in each profile. Selection criteria vary across the profiles. The JSC will make judgments on the degree to which each applicant has made an appropriate case about where and how they plan to make an effective contribution to future development in Vietnam in the priority areas, and the relative merit of their case, together with the degree to which they also meet other selection criteria designated for their profile.

3 Applicant Profiles

Profile 1: Poverty Reduction in Rural Areas and for Ethnic Minorities

Relating to DCS Strategic Objective 2 – "Government of Vietnam adopts better planning and implementation approaches to assist in alleviating poverty among ethnic minorities" (MDG1)

Profile 1 - Enablers	**Government Regulatory or Administrative Change for Rural Economies**: Government staff working at different levels in provinces who have current or potential influence on provincial or local regulations and administrative systems and who can facilitate the further development of rural industries and local social services delivery.
Purpose	To increase the number of applicants for study in fields or disciplines that will enhance individuals' capability to make direct contributions to poverty reduction in rural areas and in ethnic communities
Outputs	The number of awardees from all scholarships over 2010-2015 who are expected to have enhanced capability to contribute to rural poverty reduction is approximately 350 (combining Profiles 1 & 2; plus any from other profiles who also return to work in areas directly contributing to poverty reduction).
Outcomes	Recorded changes made to provincial level regulatory or administrative arrangements that are directed to facilitating improved economic development and productivity from rural industries and livelihoods in rural and ethnic minority areas.
Eligible Groups/Areas	This profile may include applicants who are employed in public institutions at the Provincial or district levels, including: Provincial legislatures and supporting agencies, such as the Party and Committee membership; District governing bodies and committees; Administration Departments at provincial or district level or community governing structures. Generally applicants in this profile will be in the Open category. However any applicants who are officials of agencies that are associated with the Public Priority Institutions at central government level will be deemed to be in the PPI category, but will be additional to the quotas agreed for the central agencies. It is likely, but not essential, that personnel from this profile will live in and return to and work in a provincial city or other non-major metropolitan city. The critical issue is that the contribution they plan to make is directly linked to activities that can reduce poverty in rural and ethnic minority localities.
Strategies to gain Applications	• identify specific provinces where the greatest pro-poor needs are or where ethnic minorities are concentrated. Different provinces may be targeted annually and these may be determined annually by AusAID and GoV • identify specific institutions that may offer the most opportunity for addressing key areas of poverty reduction • deliver direct presentations during visits to selected rural locations • access to hard-copy application forms distributed via government agencies, other organisations, communes and alumni and • arrangements for direct assistance for candidates to complete applications
Selection Criteria	• the minimum eligibility criteria – PLUS • have a minimum of two years of work experience in the government agency • can demonstrate a commitment to reach IELTS 6.5 **or** a particular course's English proficiency entry requirements (i.e. no requirement to prove an IELTS minimum at application) • be seeking either an undergraduate or post-graduate course of study directly relevant to need • the degree to which the personal statement clearly articulates how the new skills could influence change in government administration that benefits poverty reduction, and is persuasive about motivation to sustain the commitment to make the contribution.
Support Service Options	• Additional ELT as required to meet minimum 6.5 IELTS or the entrance requirement for English of the selected course of study • Additional time for pre-departure training in academic study, English for Academic Purposes and adapting to Australian living / cultural environment.

Profile 2 – Poverty Reduction in Rural Areas and for Ethnic Minorities

Relating to DCS Strategic Objective 2 – "Government of Vietnam adopts better planning and implementation approaches to assist in alleviating poverty among ethnic minorities" (MDG1)

Profile 2 - Implementers	**Rural industry production and community services for the poor** Persons who potentially can influence change in rural regions and ethnic minority communities that **are focussed directly on poverty reduction** for the 'most poor' with an emphasis on improving productivity of agriculture, forestry or fisheries and on improving quality or access to local services delivery in the poorest (including ethnic minority) communities.
Purpose	To increase the number of applicants to study in fields or disciplines that will enhance individuals' capability to make direct contributions to rural poverty reduction
Outputs	The number of awardees from all scholarships over 2010-2015 who are expected to have enhanced capability to contribute to rural poverty reduction is approximately 350 (combining Profiles 1 & 2; plus any from other profiles who also return to work in areas directly contributing to poverty reduction).
Outcomes	Recorded changes made in production/productivity in rural industries/livelihoods or in quality and access to services in rural and ethnic minority areas.
Eligible Groups/Areas	This profile may include applicants who are employed in public institutions or semi-public organisations, private enterprise and NGO organisations including: research institutions and universities, colleges, health or education services delivery personnel. It is expected that service delivery personnel in this profile will have lived in and return to live and work in a rural location. Applicants from research institutions or related applicants need not have lived in provincial/rural areas, but must demonstrate that the field/discipline knowledge gained will be applied directly in the support of rural industries/livelihoods on return. Awardees in this profile will be deemed to be in the Open category.
Strategies to gain Applications	• identify specific provinces where the greatest pro-poor needs are or where ethnic minorities are concentrated • identify specific institutions, organisations, NGOs, social service delivery agencies, unions or communes that may offer the most opportunity for addressing key areas of poverty reduction through direct application of new knowledge to solving issues of rural industry production/productivity/trade or local social service delivery that improves lives and opportunities • deliver direct presentations during visits to selected rural locations • access to hard-copy application forms distributed via government agencies, other organisations, communes and alumni and • arrangements for direct assistance for candidates to complete applications.
Selection Criteria	• the minimum eligibility criteria – PLUS • have a minimum of two years of relevant work experience (except exceptional circumstance applicants seeking undergraduate studies are exempt from this) • can demonstrate a commitment to reach IELTS 6.5 **or** a particular course's English proficiency entry requirements (i.e. no requirement to prove an IELTS minimum at application) • be seeking either an undergraduate or post-graduate course of study directly relevant to need • the degree to which the personal statement clearly articulates how the new skills could influence rural industry or social services that benefits poverty, and is persuasive about motivation to sustain the commitment to make the contribution.
Support Service Options	• Additional ELT as required to meet minimum 6.5 IELTS or the entrance requirement for English of the selected course of study • Additional time for pre-departure training in academic study, English for academic purposes and adapting to Australian living/ cultural environment (if necessary).

Profile 3 - Promoting Pro-Development Policy in Central Government

Relating to all DCS Strategy Objectives, that the Government of Vietnam:

- 1: plans and effectively manages the long term opportunities and risks of international economic integration to ensure pro-poor growth (MDG 1)
- 3: implements integrated disaster mitigation approaches, including to address climate change (MDG 7)
- 4: adopts better planning and implementation approaches for providing water and sanitation (MDG 7)
- 5: improves management, financing and coordination of the health sector (MDGs 4, 5 and 6)
- 6: identifies and prepares for the new set of development challenges associated with 2010 middle income country status, with the support of development partners (MDG 8)

Profile 3 - Enablers	**Pro-Development Policy in Central Policy and Administration:** Potential contributors to policy and administration in central policy ministries who can influence continuing systemic reforms that are focussed on creating the right conditions in governance that facilitates growth in private enterprise and economic development, and more effective systems in any of the priority areas in the DCS strategy areas (above).
Purpose	To seek applications for study in fields/disciplines that will enhance individuals' capability to make direct contributions to changes in central governance and policy in the profile target areas
Outputs	The number of awardees from all scholarships over 2010-2015 who are expected to have enhanced capability to contribute to reforms in central policy and administration is approximately 350 (representing the target of 40% in the PPI category). These are expected to be for Masters courses only. (NB: Staff of PPI linked universities or research institutes will be included in Profile 4 (below))
Outcomes	Recorded changes made to central level regulatory or administrative arrangements that are directed to facilitating improvements in the profile target areas
Eligible Groups/Areas	This profile may include scholars who are employed in the agreed Priority Public Institutions (who are counted in the PPI allocations) **and** in other public institutions at Central levels (who may apply in the Open Category).
Strategies to gain Applications	• identify specific central agencies for inclusion in the PPI category. The agreed agencies may vary from time to time • make separate presentations/workshops to PPIs • provide hard-copy application information packs to agency representatives and advice on web-based application forms option; include human-interest stories applicable to careers enhancement in central policy and administration • place advertisements in national newspapers
Selection Criteria	• the minimum eligibility criteria – PLUS • have a minimum of two years of work experience in the government agency • have a minimum of overall 4.0 IELTS with no sub-band below 3.5 on application • be seeking a post-graduate course of study directly relevant to public agency need or a leadership fellowship for short term study • the degree to which the personal statement clearly articulates how the new skills could lead to better opportunities to influence change in central policy or systems development and which undertakes to remain in Vietnam central public employment for five years after completion of study and is persuasive about motivation to sustain the commitment to make the contribution. • for PPI applicants, be supported by an institutional HRD plan and individual career path plan that is linked to the PPI HRD plan, and which clearly explains how the applicant will contribute to the PPI's capacity after returning to Vietnam, if the application is successful.
Support Service Options	• Additional ELT as required to meet minimum 6.5 IELTS required before mobilisation to Australia.

Profile 4 - Improving Teaching and Research in Universities

Relating to all DCS Strategy Objectives – through building more capacity in Vietnam to train citizens who will in time support these development priority areas: 1: long term opportunities and risks of international economic integration to ensure pro-poor growth (MDG 1); 2 –approaches to assist in alleviating poverty among ethnic minorities (MDG1); 3: integrated disaster mitigation approaches, including to address climate change (MDG 7); 4: approaches for providing water and sanitation (MDG 7); 5: management, financing and coordination of the health sector (MDGs 4, 5 and 6); and 6: development challenges associated with 2010 middle income country status (MDG 8).

Profile 4 - Implementers	**Improving Teaching and Research Capability in Public Universities** University teaching academics who need to improve the level of their academic qualifications **to improve teaching and research capability** in universities
Purpose	To increase the awards made to current university academics who will study for PhDs to be approximately 20% of the total over 2010-2015.
Outputs	The number of awardees from all scholarships over 2010-2015 who are university personnel studying towards a PhD is approximately 170.
Outcomes	Recorded changes made by new Australian PhD graduates in their personal approaches to teaching or contributions to research activities in their university.
Eligible Groups/Areas	This profile may include scholars who are employed in any Vietnam public or semi-public university (in Hanoi/HCMC or provincially based and potentially focusing on universities and provinces with the greatest capacity building needs) who demonstrate entry requirements for any PhD program in any Australian university. It may include scholars who are studying or have studied a Masters qualification on ADS or other scholarships and who qualify to upgrade to PhD. Awardees in this profile will be deemed to be in the Open Category.
Strategies to gain Applications	• Work with MOET to promote the opportunities. This may be done in association with MOET's own selection procedures for the GoV PhD scholarship program. • Provide hardcopy application information packs to MOET and advice on web-based application forms option
Selection Criteria	• the minimum eligibility criteria – PLUS • be employed by any qualifying university, (even if as a first year graduate employee) • hold a Masters degree or can be accepted direct from undergraduate study (exceptional circumstances only) • meet the IELTS 6.5 (with no band below 6.0) before mobilisation to Australia with no requirement for provision of ELT through ACET) (ie may still be undertaking ELT from GoV provision at time of application) • the degree to which the personal statement clearly articulates how the new personal research skills in the selected discipline could contribute to enhancing their university's teaching and research programs in ways that will benefit development in Vietnam, and is persuasive about motivation to sustain the commitment to make the contribution. • provide an undertaking to remain employed in the Vietnam public university system for five years after graduation.
Support Service Options	• pre-departure training in adapting to Australian living/ cultural environment (only if required per Awardee).

Profile 5 - Teaching English as a Second Language (TESOL)

Related to all DSC priority areas (as above for Profile 4) – through improving capacity for increasing English language proficiency in Vietnam for citizens whose capacity to contribute to development priority areas will be enhanced through better command of English language.

Profile 5 - Implementers	**Expanding Capacity for Teaching of English as a Second Language (TESOL) in Vietnam** University teaching academics qualified in TESOL who need to upgrade qualifications to teach English, and for TESOL faculty management, in Vietnam
Purpose	To increase the awards made to current university academics who train Vietnamese TESOL teachers, will study for TESOL qualifications at post-Graduate Diploma, Masters or PhDs level, or for education management or pedagogy qualifications relevant to establishing and managing TESOL faculties or other TESOL delivery services - to approximately 10% of all awardees over the period 2010-2015.
Outputs	The number of awardees from all scholarships over 2010-2015 who are expected to gain post-graduate qualifications in TESOL or Education administration / pedagogy for TESOL is approximately 87
Outcomes	Noted changes made by new TESOL graduates in their personal approaches to teaching TESOL or contributions to enhancing TESOL teacher training and services delivery activities in any Vietnamese TESOL unit (including use in schools, commercial or community organisations teaching TESOL, and higher education institutions).
Eligible Groups/Areas	This profile may include scholars who are employed in any Vietnam public or semi-public university (in Hanoi/HCMC or provincially based) who demonstrate entry requirements for any relevant TESOL or education administration or pedagogy post-graduate program in any Australian university. It may include scholars who are or have studied a Masters qualification on ADS or other scholarships and who qualify to upgrade to PhD. Awardees in this profile will be deemed to be in the Open category.
Strategies to gain Applications	• Work with MOET to promote the opportunities. This may be done in association with MOET's own selection procedures for the GoV PhD scholarship program • Identify provincially based organisations that have relevant needs • Provide hardcopy application information packs to MOET and or provincially based organisations and advice on web-based application forms option • Advertisements in national newspapers.
Selection Criteria	• the minimum eligibility criteria – PLUS • be employed by any qualifying university, (even if as a first year graduate employee) • meet the IELTS 6.5 (with no band below 6.0) before mobilisation to Australia with no requirement for provision of ELT through ACET) (ie may still be undertaking ELT from GoV provision at time of application) • the degree to which the personal statement clearly articulates how the new personal research skills in the selected discipline could contribute to enhancing their university's TESOL program and / or TESOL teacher training programs, in ways that will benefit Vietnam's strategy for expanding English language proficiency in the population, and is persuasive about motivation to sustain the commitment to make the contribution. • provide an undertaking to remain employed in the Vietnam public university system or linked English teaching facility for five years after graduation.
Support Service Options	• pre-departure training in adapting to Australian living/ cultural environment.

ANNEX 2 TO THE SCOPE OF SERVICES
Terms of Reference for Specified Personnel

Team Leader/Scholarships Services Manager (SSM)	
Location:	Hanoi
Duration:	Full-time over period of contract
Reports to:	AusAID Activity Manager, Hanoi (and contracting firm's representative); also reports to GoV counterpart in MOET
Responsibilities:	

The SSM will manage and administer all aspects of the contract for the AusAID Scholarships Manager (ASM) function, and ensure professional management of the ASDiV selection and re-integration activities, accept responsibility for achieving ASDiV program objectives and oversee the Monitoring and Evaluation requirements. The SSM has no responsibility in relation to oversight or monitoring of the performance of the ADS Training contractor providing the ELT services.

Key responsibilities are to:

- Provide leadership and management of the program to ensure priority of focus is on achievement of development outcomes in Vietnam from effective and efficient management of processes for provision of scholarships and for management of the monitoring and evaluation of the program in Vietnam.
- Manage the locally-engaged support staff and ensure quality and efficiency of work.
- Manage the inputs for the short-term international consultants and apply quality assurance to outputs.
- Liaise with AusAID and ADS Training contractor as needed and maintain productive relationships with both to support effective program implementation.
- Liaise with GoV agencies as appropriate and ensure sensitivity of all ASM activities to working harmoniously with the Government of Vietnam to support development priorities in Vietnam.
- Liaise with other donors/and providers of international scholarship programs and support networking for learning from each other and contributing to harmonisation of approaches where appropriate.
- Manage the reporting process, and ensure professional standards in reporting.
- Initiate and manage a process of continuous improvement to support use of the most effective and efficient administration of all tasks necessary for the implementation of ASDiV; advise AusAID on improvements to processes that can improve management or outcomes of ASDiV.
- Ensure efficiency and probity in management of the finances provided by AusAID for the ASDiV and arrange for independent auditing of accounts as required.

Qualifications:

Tertiary qualifications in a relevant area such as human resource development or public administration.

Experience:

- Substantial experience in human resource development and project management in Vietnam or similar contexts.
- An understanding of educational administration, particularly university administration, student recruitment, admissions, and/or scholarship management would be advantageous.
- Demonstrated successful experience in working cross-culturally and with government agencies in developing countries.

Key Skills:

- A sound knowledge of the tertiary education sector in Australia.
- Leadership and team management skills.
- Ability to develop and oversight the use of manual and computer-based monitoring/management information systems.

- Ability to develop, implement and monitor systems, procedures and instruments for the management of project activities, personnel, resources, finance, and data.
- Ability to develop and lead continuous improvement activities and to implement formal monitoring and evaluation processes.
- Ability to undertake policy reviews and to produce high quality written analytical reports on the outcome of such reviews.
- Able to communicate effectively (and work with interpreters where necessary).
- Ability to write in clear, plain English and to prepare reports that are timely, succinct, and address issues appropriately for the report's audience.
- Ability to provide transparency and accountability for project outputs and outcomes.

Deputy Team Leader - National	
Location:	Hanoi
Duration:	Full-time over period of contract
Reports to:	Team Leader/SSM
Responsibilities:	

The DTL will assist the SSM to manage and administer all aspects of the contract, and ensure professional management of the ASDiV selection and re-integration activities, support achieving ASDiV program objectives, particularly in relation to the development of the innovative approaches to promotion and information, regional visits and the trials of flexible programs with Vietnamese universities.

Key responsibilities are to:

- Assist management of the program to ensure priority of focus is on achievement of development outcomes in Vietnam from effective and efficient management of processes for provision of scholarships.
- Develop approaches to the innovative activities for promotion, regional visits, interviewing, and trials for use of flexible programs with Vietnamese universities.
- Assist in the management of the locally-engaged support staff and ensure quality and efficiency of work.
- Assist with liaison with AusAID and ADS Training contractor as needed and maintain productive relationships with both to support effective program implementation.
- Assist with liaison with GoV agencies as appropriate and ensure sensitivity of all ASM activities to working harmoniously with the Government of Vietnam to support development priorities in Vietnam.
- Assist with liaison with other donors/and providers of international scholarship programs and support networking for learning from each other and contributing to harmonisation of approaches where appropriate.
- Support the management of the reporting process.
- Assist with continuous improvement to support use of the most effective and efficient administration of all tasks necessary for the implementation of ASDiV; advise AusAID on improvements to processes that can improve management or outcomes of ASDiV.

Qualifications:

Tertiary qualifications in a relevant area such as human resource development or public administration. Qualifications from an Australian university will be an advantage.

Experience:

- Experience in ODA project management in Vietnam or similar contexts.
- An understanding of education administration, particularly university administration, student recruitment, admissions, and/or scholarship management would be advantageous.
- Demonstrated successful experience in working cross-culturally and with government agencies.

Key Skills:

- Knowledge of the tertiary education sector in Australia.
- Management skills and capacity for innovative thinking and pro-active planning.
- Ability to review issues and to produce quality written analytical reports.
- Able to communicate effectively and good team working skills.
- Ability to write in English and to prepare reports that address issues appropriately for the report's audience.
- Ability to provide transparency and accountability for project outputs and outcomes.

Academic Advisers (x 2) (International x 1; National x 1)	
Location /Duration:	Hanoi (Short -Term) – 2 month per year for the International PhD advise; and up to 3 months per year for the national adviser (as required)
Reports to:	Team Leader/SSM

Responsibilities:

The Academic Advisers will provide advice and assistance to candidates (shortlisted applicants) in understanding of the Australian qualifications system, how to use websites to acquire useful information about the nature and scope of course content to support making appropriate choices on academic courses that are most suitable to meet the knowledge needs for the chosen area of development contribution on completion of studies; and provide advice to candidates and to the Joint Selection Committee (JSC) on whether each candidate will meet the academic requirements for entry to the degree programs in which they seek to enrol.

The International Academic Adviser will be assigned to assist all candidates for PhDs and Masters by Research (and any others as may be appropriate to manage numbers of candidates in any one intake grouping). The local Academic Adviser will be assigned to assist all other candidates for Masters, and exceptional circumstances candidates. This role may involve travel to regional locations to assist persons from rural or ethnic communities.

Key Responsibilities:

- Meet all candidates assigned by the ASMC (this may be individually or in small groups as appropriate).
- Provide advice as required to candidates relating to their learning needs relevant to the priority areas of development they will be working in on return to Vietnam after completion of studies. Advise on course and university selection as relevant to requirements above.
- Advise on use of Australian university websites to select appropriate courses for enrolment – ensure candidate understanding of course nomenclature, how to search content descriptors to gain accurate information on content and scope of curriculum and how to evaluate the information to make informed choices.
- Provide written reports to the candidates and to the JSC on whether they meet the **academic** requirements of the Australian university for the selected courses. The AA will also make a reasonable assessment of the potential for candidates to meet the minimum requirements for English language proficiency but formal assessments are not required – as this is assessed separately by the IELTS testing.
- Other related tasks that may reasonably be required by the SSM from time to time.

Qualifications:

- Tertiary qualifications in a relevant area such as education, human resource development or public administration.
- The International AA must have a PhD; the National AA must have at least a Masters from an Australian university.

Key Skills:

- Able to communicate effectively (and work with interpreters where necessary).
- Able to provide best-practice advice on a wide range of educational programs.
- Able to liaise and coordinate effectively between senior ASMC management, project staff and GoV representatives.

HRD Adviser (PPIs)	
Location /Duration:	Hanoi Up to four (4) months a year, in two inputs per year – approx 2-3 person months during the selection process and 1.0 person month to prepare for re-integration support for graduates returning at the end of an academic year. (Most of the input time is expected to be in Vietnam but tenderers may opt to plan for a small proportion of the time in Australia to comment on final versions of HRD plans.) The ASMC must balance the inputs flexibly over the period as required.
Reports to:	**SSM**

Responsibilities:

- Provide HRD planning and capacity building assistance to PPIs within the context of each agency's needs. Assist PPIs to develop their HRD planning to ensure that the scholarships within these Ministries are focused on fields that reflect the AusAID DCS priorities and are appropriate for longer term study in Australia.
- Periodically review HRD practices in PPIs to ensure that appropriate HRD and selection processes for AusAID scholarships are in place.
- Assist PPIs in planning appropriate individual career path plans that include realistic re-entry strategies to maximise transfer of knowledge and skills to PPIs and to review and develop agency/scholar agreements that facilitates effective re-integration and use of new knowledge for development priorities.
- Work with PPIs to establish a process to achieve formal agreements with the ASMC concerning each participating agency's commitment to implementing the HRD plans and the individual career path plans for the transfer of each graduate's knowledge and skills. Ensure that these agreements have an appropriate balance of focus on input processes for selecting PPI nominee and on agencies' achieving development outcomes from effective use of graduate knowledge.
- As appropriate assist PPIs to identify potential opportunities for ALAF placements that could complement the skills development strategies in the HRD plan.
- Ensure appropriate attention to gender equity in PPI planning.
- Advise on strategies to use feedback data from M&E processes to improve all aspects of the capacity building elements of the PPI participation in the program.
- Other related tasks that may reasonably be required by the SSM from time to time.

Qualifications:

- Relevant tertiary qualifications and experience in human resource development (HRD), or human resource management (HRM), with preference to qualifications in organizational development and change management.

Experience:

- Demonstrated experience in a training or human resource development role in public sector departments.
- Demonstrated successful experience in contributing to organizational development and change management.
- Demonstrated successful experience as a mentor to public sector management personnel.
- Excellent interpersonal and liaison skills and experience in working in a cross-cultural setting.
- Excellent presentation and communication skills.

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Key Skills:
– Able to communicate effectively (and work with interpreters where necessary). – Able to provide best-practice advice on institutional development and HRD planning. – Able to liaise and coordinate effectively between senior ASMC management, project staff and GoV representatives. – Clear report writing skills.

Monitoring and Evaluation Adviser	
Location /Duration:	Hanoi Inputs up to a total of 4 people months per year. It is expected this will average about 2.0 person months a year, but a longer initial input may be required to develop the M&E implementation plan and at the end to support final reporting. The contractor must balance the total input over the period flexibly as required.
Reports to:	SSM

Responsibilities:

The M&E Adviser will:

- Work with the SSM, with Program Office staff and with PPI organisations in Vietnam to further develop and implement an M&E Plan based on the M&E Framework outlined in the Design Document (DD).
- Use the outcomes based Key Performance Indicators as set out in the DD and assess the M&E implications of the program's targeting strategies and prepare advice and refine means to measure the indicators to assist in achieving program objectives.
- Refine and implement strategies for the monitoring and evaluation of Candidates Individual career path plans.
- Design, and assist in conducting, an *initial* impact assessment at the conclusion of the six year program, consistent with the approved M&E strategy for the program and AusAID requirements.
- Design a plan for the conduct of a later Impact Evaluation where the data is collected periodically over five years after the completion of the contract period. This should be focused on assessing the development impact made by returning graduates to the designated priority development areas. The design should integrate key material from the guidance templates prepared by the Scholarships group to be supplied by AusAID relating to tracer studies and case histories, and must also focus on the specified development outcomes for ASDiV. (noting that the conduct of the evaluation may be carried out by others after the completion of the program on separate contracts commissioned by AusAID).
- Review and support the redevelopment of an integrated program database to facilitate reporting and analysis and ensure adequate treatment of gender information and qualitative data focused on outcomes.
- Assist in producing meaningful M&E reports including: annual analysis of program monitoring data to contribute to the ASMC annual reports required under the contract; and analysis from surveys on re-integration of returning graduates that meet AusAID's accountability and aid quality objectives and that take into account AusAID's data requirements for the overall Australian Scholarships program and the ALAF usage in Vietnam.
- Work with program staff and relevant staff of PPIs to ensure their capacity to effectively monitor and evaluate the implementation of the program and broader ministry HRD plans.
- Assist in policy and research studies as required.
- Other related tasks that may reasonably be required by the SSM from time to time.

Qualifications:

- Masters or doctoral degree qualifications in the social sciences, preferably with a concentration in M&E and/or evaluation research.

Experience:

- Demonstrated successful experience in preparing M&E and assisting in the implementation of M&E plans for development activities.
- Evidence of knowledge and successful application of qualitative and quantitative research methodologies appropriate to this Activity, including survey design, sampling, case study

methodology as well as experience with appropriate software to facilitate the capture and analysis of data.
Key Skills:
– Ability to undertake M&E design, develop methodology and questionnaires, and apply qualitative and quantitative research methodologies and multi-variate analysis. – Excellent interpersonal and liaison skills and experience in working in a cross-cultural setting. – Able to communicate effectively (and work with interpreters where necessary). – Able to liaise and coordinate effectively between senior ASMC management, project staff and GoV representatives. – Ability to write in clear, plain English and to prepare reports that are timely, succinct, and address issues appropriately for the report's audience.

ANNEX 3 TO THE SCOPE OF SERVICES
Monitoring and Evaluation Framework

Parts A and B

Part A – Overview of the M&E Strategy

The monitoring and evaluation (M&E) framework for the Vietnam scholarships program must be designed in such a way to ensure the focus is on demonstrating the development impact from the provision of scholarships under ADS and ALA and of Australia Leadership Awards Fellowships. The two clear delineators for measuring development impact encompass strategies to ensure both continuous improvement in the implementation of ASDiV and longer term monitoring of the graduates on return from completion of scholarships.

To date, scholarships supported under the Vietnam program have not established systematic approaches for M&E of ADS / ALA scholarship outcomes or impact. As such, the success and the quality of the delivery of scholarships programs have been primarily in terms of the satisfactory completion of process oriented tasks relating to the scholarships cycle, followed by the anecdotal evidence of subsequent impact.

In 2007 ASG in AusAID Canberra developed a Monitoring and Evaluation framework for the Australian Scholarships[4]. The strategy consists of three main elements which include

- Monitoring of implementation processes, and inputs and outputs, in terms of aspects of selection, study/placement and mobilization, progress during study and completion of the scholarships on an annual basis
- Periodic evaluation which involves an assessment of use of new knowledge/skills for development outcomes during the re-integration stage; and
- Thematic reviews and evaluations.

While acknowledging the significance of individual country strategies in influencing the specific M&E requirements for their country, the Australian Scholarships M&E strategy identifies a number of commonalities across all Australian Scholarships activities. ASG is currently refining the key questions outlined in the strategy to 'unpack' them to enable more practical application in individual country programs' scholarships M&E frameworks. These questions will guide the monitoring and corporate reporting undertaken by the individual scholarships programs. The strategy will facilitate performance assessment across Australian Scholarships internationally, and support aggregate-level performance reporting. In each country the key questions to measure the quality and development effectiveness of Australian scholarships should be adapted to align with the specific objectives of the country program. However it is expected there will be some common areas across countries that will be included in the revised overarching ASG M&E framework (adapted for Vietnam), that may focus on the following issues:

1. Are we securing the 'right' applicants / candidates for the ADS and ALA ie are the applicants coming from the agreed priority development and are the awardees being selected consistent with these priority redevelopment areas?
2. Are internal targets for proportions of PPI/Open category being met?
3. Are Australian higher education institutions meeting their key performance measures?
4. Are the scholars' in-Australia experiences positive?

[4] The ASG summary diagram for "Measuring Quality and Effectiveness of the Australian Scholarships" is included in Part B of this annex (below)

5. Are scholars successfully completing their placement?
6. Have the graduates returned to Vietnam and are they staying in Vietnam to make contributions to Vietnam's development? (at least for the minimum two years but the expectation is for much longer or permanent commitment to working in Vietnam.)
7. Have the graduates re-integrated back into a work environment successfully, either with their previous employer or in an appropriate new employment?
8. Are graduates applying the skills and knowledge they gained in Australia in ways that contribute effectively to Vietnam's development in the priority areas for which they were selected?
9. Are graduates maintaining linkages with Australia and networking with other graduates to in ways that enhance their ability make effective contributions to Vietnam's development?
10. Has there been a successful outcome in relation to gender equity in participation, leadership awards and program governance?

2.3 - Monitoring and Evaluation activities for ASDiV

Monitoring for continuous improvement

Monitoring activity needs to commence at the promotion stage and continue for all stages of scholarship including up to 10-15 years after return of graduates.

The effectiveness of the marketing and communication strategies for obtaining applications from people in the new profiles will need to be gauged. Following every selection round an assessment of whether this has been the case should be undertaken, and if the desired applicants are not obtained, the marketing strategies may need to be revised for the next year.

The M&E will make an assessment of the cost effectiveness of the strategies during the first two pilot years (outlined above in Part C1). An initial increased budget outlay and operating costs may be required in order to meet the expenses of the revised approach, and the evaluation will also assess whether the approach (ie costs vs outcomes) is effective and achieving value for money.

This recognises that additional workload and resources may be incurred for Post and that it may also involve higher resourcing for the ASMC. The M&E will determine if the higher investment actually leads to the expected improved development outcomes.

The revised selection process will also require changes to reporting to place more focus on more effective reporting of outputs. In particular the ASMC should cooperate with the ADS Training contractor to prepare an annual joint analytical report detailing the results of ELT and pre-departure training and of completed scholarships - including information on pass rates and failures, and with a detailed analysis of the reasons for failure and suggestions for areas where improvements could be achieved. In addition the annual reports should include information collected from the universities and should analyse the progress of scholars, tracking deferrals, extensions and suspensions and the reasons, together with individual course outcomes highlighting high achievers and students who may be at risk and the measures taken to mitigate the situation.

Evaluation of Development Effectiveness over a Longer Term

The ASDiV will work with ASG to use the M&E framework to apply more robust approaches to evaluation in order to measure the long term effectiveness of the scholarships and leadership training program. This must include the extent to which graduates have completed their study program or leadership placement and returned to Vietnam and are using their new knowledge and skills to have an impact on development.

The M&E plan must also include the establishment of **baseline data**. To establish a meaningful baseline for the assessment of the effects of the new targeting processes, it will be necessary that the existing ADS Support contractor design and undertake a baseline data collection to improve the information available on the current number of graduates working in different areas that may be deemed to equate to the DCS priority areas. The design may build on material to be available under current tracer studies, where appropriate. A contract amendment may be required to support the additional data collection.

The longer term M&E will involve using the proposed new ASG longitudinal impact/tracer studies adapted to fit the environment in Vietnam. This is designed as a generic program-wide set of data instruments to ensure the consistency of program wide data. The tracer studies will build on and adapt the post–completion questionnaires and tracer studies currently in use in Vietnam, which monitors mainly the graduates returning to work in the PPIs. The ASG tracer study data will also involve closer monitoring of post-completion career of 'open' category graduates. It will also be developed to have new approaches and strategies to measure the effects for poverty reduction in rural and ethnic minority areas.

It is important to highlight the value of alumni associations in tracking (rather than losing and 'tracing') returned students for M&E purposes. More information on progress of graduates and the positions/areas they are working in needs to be gathered to ensure they are contributing to priority areas. The current methods of assessing PPI performance, involvement and effectiveness year to year are insufficient in determining whether the PPIs are effectively implementing the alumni's individual career path plans on their return; and are meeting the organisation criteria for PPIs. The contract for the ASMC will provide further guidance for the development and implementation of the strengthened performance monitoring mechanisms for PPIs.

The results of the Australian Scholarships Annual Survey (ASAS) - (ie the on-arrival and ongoing surveys conducted about time in Australia by ASG Canberra) also need to be taken into account when measuring the effectiveness of the program. These surveys provide a broad analysis and overview of how the scholars are faring (both academically and personally) in Australia; of their perceptions of the selection process; and assess whether awardees are benefiting personally and 'professionally' by being exposed to different cultures and ideas.

An M&E Framework for ASDiV is included below in Part B of this annex. It focuses on how the outcomes will be assessed against contribution to the DCS priority areas. The ASMC will be required to develop a **detailed M&E Plan** based on the M&E Framework and the SoS (Volume 2), including working with the staff at the AusAID Hanoi office to finalise the country specific indicators for M&E questions. The M&E Plan will take account of the details as set out at Part C, Section 2.4 of the DD, shall specify what data will be collected, with provide details of how, and when, and the resources necessary for the collection and analysis. The M&E Plan should conform generally to a guideline for M&E plans that will be provided by AusAID.

2.4 - The Monitoring & Evaluation Methods and Tools

Information on awardees is required at all stages of the scholarships cycle – the selection phase, in-country study, completion of studies and post-return. The M&E Plan will include:

- *monitoring information* that focus on recording and keeping track of the efficiency and timelines of the approaches and management of procedures for implementing the ASDiV tasks, to inform continuous improvement and to refine priorities.
- *evaluation data* that will focus on measuring the inputs (appropriateness of awardees selected for scholarships), the outputs (achievements /completions of study programs)

and outcomes (use by graduates of new knowledge for development and the effectiveness of contributions made).

ASMC management processes will be assessed in separate AusAID QAI and contractor performance reviews, to be undertaken annually in accordance with standard AusAID performance management framework.

All data collected will be disaggregated to show sex and any disability, and record location and employment of graduates, and subsequent analysis will assess the contribution of graduates to furthering development and any constraints or barriers for both women and men, or people with a disability, and for those for rural and ethnic minorities.

The ASMC will establish and maintain a database to record all M&E data collected, and this information will be integrated with OASIS where possible. The M&E methods/tools will include:

- ***Scholarship Student Records*:** The ASMC will develop and maintain an integrated scholar records/profiles up to date on SIMON/OASIS. While OASIS, when operational, will be the basis of data, the integrated scholar record must be expanded to keep full records of all data relating to individuals that is able to be interrogated to support multi-variate analyses across all elements of the M&E plan and all stages of the scholarship from application through to graduate tracer studies and case histories. These records will be used to track progress and to compare the actual vs the target 'applicant profile' (priority themes/sectors, gender balance, diversity, representation from rural and ethnic minority groups, people with a disability, and use of knowledge in the DCS priority areas).
- ***Annual Scholar Surveys / Focus groups (in-Australia)*** – the ASG has developed and will administer annual scholar surveys, and will conduct annual scholar focus groups for awardees while studying in Australia, including:
    - *Arrival survey and focus groups* – to obtain perception/satisfaction of scholars with the selection / mobilisation processes, pre-departure briefing, Introductory Academic Program (IAP) and the quality of courses taken at academic institutions.
    - *On-going student survey and focus groups* – to obtain perception/satisfaction with services and programs provided by academic institutions and experiences in Australia.

  ASG will make results available to the AusAID, Hanoi Office and the ASMC on a routine basis after collection and compilation. The ASMC / AusAID Post will utilise the results of these annual surveys to inform and improve the applicant profiles and recruitment, selection process, mobilization and the pre-departure activities.
- ***Tracer Studies*** – In years two, four and six (2-4-6) of the contract tracer studies will be conducted to capture information on scholarship development outcomes for a range of individual awardees. The tracer study will be based on a template / guidance provided by the ASG, which will be tailored for Vietnam's scholarship context and local development priorities. Each tracer study will focus on returned scholars who have been back in their agency for at least 12 months and again in the following collection years. The study will explore issues including: (i) whether graduates have successfully reintegrated into workplaces; (ii) are they using their skills to make effective contributions to the priority development areas that they nominated at selection (including in some cases how they are able to contribute to strengthening their employer organisation's capacity to influence development in Vietnam relevant to its mission); and (iii) do they have ongoing links to Australia / within the region that continue to enhance their ability to make contributions to Vietnam's

development. Methodology for the implementation and analysis of the tracer studies will be determined by agreement between the ASMC and Hanoi Post prior to the first set in year 2 of the contract.

- ***Periodic Evaluation, Case study assessments***–case studies will be conducted concurrently with tracer studies to build on the tracer studies and make more detailed qualitative assessments of how graduates have contributed to capacity building in their particular fields, organisations, PPI or communities. The ASMC should design and develop the materials for case studies, and then manage the collection of a sample size of at least 20 per collection, and at least 60 over the total period of the contract. Possible case studies include:
  - Twelve per collection in selected PPIs – so that each of the twelve provides at least one each second year
  - Six per collection of graduates (in either PPI or Open category) who have returned to work in a provincial or rural or ethnic minority community. Case studies will help determine how successful the new focus on increasing graduates for work in these areas has been, whether the graduates continue to live / work in provincial/rural areas and have they contributed to development of a sector or region or community in ways that supports poverty reduction.
  - Two per collection from other areas in the Open category and or the universities and TESOL priorities.

  Arising from these case studies will emerge a number of individual success stories / case studies that may be suitable for use showcase the ADS / ALA scholarship outcomes and to assist in future recruitment for applicants. These will comprise positive news stories for the awareness praising program and for targeted promotion for new applicants to fit the applicant profiles.
- ***Impact Evaluation –*** AusAID will separately design and commission an Impact Evaluation study to be conducted five years after the close of the full period of ASDiV phase 1 (ie in 2020, five years from close of the phase in 2015). This will be done in consultation with ASG in Canberra, and the details will be funded and arranged closer to the time. The ASMC will be aware of and take account of the need to ensure that adequate data is designed into the M&E plan and collected throughout – but the ASMC is not responsible for the design or conduct of the Impact evaluation.
- ***Annual Corporate Reporting*** – In accordance with AusAID requirements, annually (March/April), Quality at Implementation (QAI) assessment and reporting will be conducted for the ADS program in each country. QAI reporting provides an assessment of the implementation the scholarships against the following criteria:
  - Implementation progress
  - Achieving objectives
  - Monitoring and evaluation
  - Sustainability
  - Risk management
  - Gender equality and other overarching issues.

  In Vietnam two separate QAI reviews are undertaken, one for each of the two separate contracts. To ensure a complete analysis and appropriate information on the integrated ASDiV these two QAI reviews will be undertaken simultaneously (thought two separate QAI reports will be produced). AusAID Hanoi may engage independent consultants (using the Education Resource Facility) to support this

process. In cooperation with AusAID, the ASMC and the ADS Training contractor will each be required to provide specific input and data for these QAI reviews.

The QAI review focuses on the program and how it is progressing towards objectives. (It is separate from the annual ASMC performance assessment meeting, which is to focus on a review of operational processes from the previous year and how they support achievement of objectives and to agree on improvements and adjustments that may improve scholarships management – more information about the ASMC performance assessment is above at part C1).

- ***Initial Phase Review – Formative (Progress) Evaluation*** – An independent Evaluation to be arranged separately by AusAID will be conducted at month 20 of the initial two year phase of the contract. It will assess and take account of the first year QAI and contractor performance assessment and make a further assessment focusing particularly on:
  - how the new processes for targeting applicants using the 'applicant profile' approach has worked, and what implications it has had on the potential to improve the representation from provincial / rural/ ethnic minorities, and the other new groups represented in the profiles as set out in the Design Document (also detailed at C1 and Annex 2);
  - the resourcing costs of managing the new approach and the potential value for money in terms of impact on improving development effectiveness from scholarships;
  - on any potential improvements in efficiency and effectiveness of the management of the scholarships in Vietnam, with special reference to access, equity, gender and transparency; and
  - an assessment of the new approaches to determine if they should continue into the second (four year) phase of the program from September 2011-2015, or if adjustments to the design are warranted. This Review will also advise AusAID on whether the ASMC contract should be extended or whether a further design and re-tendering is required. (NB this period will coincide with the need for a further decision on how to continue the arrangements for the ELT contract – see additional comments above at part C1).

2.5 - The Responsibilities for Effective Monitoring and Evaluation

AusAID Posts, the ASG and the ASMC all have responsibilities for the scholarships M&E. The following lists outline these individual responsibilities (some are also strategic responsibilities):

AusAID Staff, Hanoi

- Determine country specific indicators/targets against the overarching Vietnam scholarships objectives/outcomes and then review and define 'applicant profiles" (in consultation with MOET) for the next annual intake.
- In the context of the determination of profiles, review and agree with MOET and MPI which government departments will be included in the 13 PPIs (including those who will continue and any new ones that will come into the program. The total number of PPIs will remain at 13 for each cohort intake).
- Use results of annual student surveys to guide determination of the profiles.
- Provide input to development of tracer studies and periodic evaluation/case studies.

- Lead the QAI review and report on scholarship effectiveness in relation to the DCS and provide any other information required by ASG for the Annual Global Report on AusAID Scholarships.
- Annually review opportunities for a more systematic approach to support graduates and their institution in development of a HRD strategy for scholar reintegration into the workplace on return from Australia.
- Monitor the work of the ASMC in relation to meeting local scholarship timelines, achieving appropriate placements in courses and Australian institutions, relevant to the agreed profile priorities, and the satisfaction of the Government of Vietnam and scholars about the services provided.
- In consultation with ASMC, monitor awardees while they are studying in Australia.

ASMC Staff

- Develop and maintain a database to record all details of intake selection and graduate returns for follow-up activities (including working with PPI Ministries to maintain contacts on their returned graduates).
- Develop a Vietnam Scholarships M&E system, based on the M&E framework, in close consultation with AusAID Hanoi, including assisting to determine additional KPIs (beyond those articulated in this Design Document above in Part B1).
- Enter and maintain student records in SIMON/OASIS, keeping scholar contact details up to date.
- Establish and maintain an M&E database, reporting to AusAID in a specific form when requested.
- Utilise results of annual scholar surveys to improve targeting for promotion for recruitment, and for selection and mobilisation processes.
- Administer country-based tracer studies, undertake analysis of data and report on outcomes and results.
- Administer case study/periodic evaluation methodology, capture data, undertake analysis and report to AusAID on the results.
- Provide requested inputs to provide data for AusAID Corporate reporting.
- Incorporate lessons learned to systems and processes, as part of continuous improvement.
- In consultation with AusAID, monitor scholars while they are studying in Australia.

AusAID Scholarship Group (in Canberra)

- Implement Scholar Surveys on arrival and focus groups studies while scholars are in Australia and make results available to Vietnam stakeholders.
- Monitor performance of the Australian Universities.
- Give guidance on the development of the monitoring database and develop and administer the Annual student surveys and focus groups in Australia.
- Develop tracer study and case study templates and guidance for the ASMC to implement.
- Coordinate and develop AusAID's annual corporate reporting on scholarship effectiveness.

2.6 - Resources for the Monitoring and Evaluation

It is a requirement that the ASMC include in its staffing establishment a person who is well qualified to enable reliable and accurate reporting to take place and to provide a high quality of analysis of the data in the annual reports. Initial inputs will be required during inception by an M&E specialist to develop the detailed M&E plan and assist with the initial establishment of the M&E system and database. The M&E will also build on AusAID's existing ASG templates that cover the development of tracer study/survey and periodic evaluation/case study methodology and the subsequent data analysis. Subsequent periodic inputs will be required as needed to support the implementation of the key data collections, tracer studies etc.

AusAID Hanoi will also need to allocate staff time/resources to the M&E, especially in the initial stage of the contract. To strengthen the consistency and reliability of the data, Hanoi AusAID staff should avail themselves of the M&E expertise available in ASG to overcome any problems or uses that arise in the initial 4-6 months of the new contract. The GoV, including individual PPIs, will also be expected to make resources available to ensure the integrity of the M&E database and follow-up activities, and cooperate to make graduates available to respond to follow-up activities.

Part B – M&E Framework

[NB: The information sought in this framework will be used to inform the monitoring of the management of the scholarship administration processes and the evaluation of the desired development outcomes. In assessing the outcomes the data are to be assembled in two groups, one for those graduates who return during 2010-2015 who were selected under the different procedures and criteria used under the previous ADS Support contract (those selected up to and including call for applications in 2009); and one for those who are selected using the new procedures based on the 'applicant profiles' (based on the call for applications from 2010). The ASMC is responsible for reporting on both groups, but the independent evaluators and AusAID will not use the data for the former group in making assessments of activity performance on development outcomes under ASDiV. While ALA scholarships and Fellowships are included for all points of the data collection, judgement must be exercised in attributing outcomes in the DCS priority areas, as their selection is based on regionally applied criteria, which are not formally tied to the priority areas.].

Objective	Indicator	Source
Objective 1. That by the end of the first ASDiV contract period (2015) Vietnam has additional higher learning and leadership capability from Australian scholarships and learning placements **that is being used** by graduates to make personal contributions to these priority development areas: • planning and effectively managing the long term opportunities and risks of *international economic integration to ensure pro-poor growth* • planning and implementing approaches to assist *alleviating poverty in rural areas and among ethnic minorities* • implementing, integrated *disaster mitigation* approaches • supporting new national approaches to addressing *climate change* • planning and implementing approaches for	**1.1 Outcome level - Evaluation** (Notes: all require sector /locality/ethnic disaggregation and are measured up to 5 years after return from Degree completion) **ADS/ALA Scholars** Annual/cumulative number of new policies or improvements to existing policies that may directly contribute to each of the priority development areas (listed beside in column 1) made with the immediate involvement of Past AusAID Scholars. Annual/cumulative number of new practices or improvements to existing practices that may directly contribute to each of the priority development areas (listed beside in column 1) made with the immediate involvement of Past AusAID Scholars. Qualitative assessments made by evaluators about value of contributions made to each of the priority development areas (listed beside in column 1) and degree to which they have, or have potential to, influence development in positive ways (commensurate with the reasonable limits on individual's level of contribution) **ALA Fellowship holders** Annual/cumulative number of new policies or improvements to existing policies within each of the priority development areas made with the immediate involvement of past AusAID fellows.	MC Records & Graduate Surveys, cross checked with supervisor interviews/institutional reports Tracer Studies and case histories

Objective	Indicator	Source
providing *water and sanitation in rural areas* • planning and managing the financing and coordination of the *health sector* • identifying and preparing for the new set of *development challenges associated with 2010 middle income country status.*	Annual/cumulative number of new practices or improvements to existing practices within each of the priority development areas made with the immediate involvement of past AusAID fellows. Qualitative assessments made by evaluators about value of new leadership contributions made in each of the key areas and degree to which they have, or have potential to, influence development in positive ways (commensurate with the reasonable limits on individual's level of contribution	
	1.2 Input and Output level - Monitoring (Notes: all require **disaggregation by gender and disability**; non-mutual exclusivity acknowledged; the term 'relevant' is used in reference to Objective 1; All the indicators apply to ADS/ALA scholarships and also to ALAF (where applicable)):	
	Applications: (ADS. ALAS, ALAF) 1 Profiles 1 & 2 – Poverty Reduction in Rural Areas and for Ethnic Minorities: Annual/cumulative % of applications received from eligible candidates from poor regions and/or ethnic communities Annual/cumulative % of applications received from eligible candidates employed in poverty reduction fields within poor regions and/or ethnic communities Annual/cumulative % of applications received from eligible candidates intending to study fields which are approved as enabling them to directly contribute to poverty reduction within poor regions and/or ethnic communities 2 Profile 3 – Promoting pro-Development Policy in Central Government Annual/cumulative % of applications received from eligible candidates within provincial agencies of PPIs (disaggregated by each of the DCS priority areas listed in column 1) Annual/cumulative % of applications received from eligible candidates	MC records

Objective	Indicator	Source
	within metropolitan offices of the Central agency PPIs (disaggregated by the DCS priority areas listed in column 1) 3 ALA Fellow Placements: Annual/cumulative number of fellowship places arranged that reasonably equate to each of the priority development areas (disaggregated by the DCS priority areas listed in column 1) .	
	Selections/Awards: covering Profiles 1, 2 & 3 - (ADS,ALAS,ALAF) Annual/cumulative % of *selections* and of *departures* of candidates *who live in* poor regions and/or ethnic communities Annual/cumulative % of *selections* and of *departures* of candidates *employed in* poverty reduction fields within poor regions and/or ethnic communities Annual/cumulative % of *selections* and of *departures* of candidates intending to study fields which would enable them to directly contribute to poverty reduction within poor regions and/or ethnic communities Annual/cumulative % of *extensions* and of *termination*s of scholars from poor regions and/or ethnic communities Annual/cumulative % of *extensions* and of *terminations* of scholars employed in poverty reduction fields within poor regions and/or ethnic communities Annual/cumulative % of *extensions* and of *terminations* of scholars studying fields which would enable them to directly contribute to poverty reduction within poor regions and/or ethnic communities Annual/cumulative % of *selections* and of *departures* of candidates within provincial agencies of PPIs	MC Records

Objective	Indicator	Source
	Annual/cumulative % of *selections* and of *departures* of candidates within metropolitan offices of the Central agency PPIs Annual/cumulative % of *extensions* and of *terminations* of provincial PPI nominated scholars Annual/cumulative % of *extensions* and of *terminations* of metropolitan offices of the Central agency PPI nominated scholars ALA Fellow Awards: Annual/cumulative number of fellowship places arranged that reasonably equate to each of the priority development areas (disaggregated by the DCS priority areas listed in column 1)	
	Completed Degrees: covering Profiles 1, 2, and 3 (ADS, ALAS,ALAF) Annual/cumulative % of returns to by graduates who came from poor regions and/or ethnic communities to work in those locations Annual/cumulative % of returns by graduates who were employed in poverty reduction fields within poor regions and/or ethnic communities to work in those places of employment Annual/cumulative % of returns by graduates to work in fields which would enable them to directly contribute to poverty reduction within poor regions and/or ethnic communities Whether cumulative of these above has increased to between 25-30% of total returns Annual/cumulative % of returns by graduates who were from provincial PPIs to work in those places of employment Annual/cumulative % of returns by graduates who were from metropolitan offices of the Central agency PPIs to work in those places of employment	MC Records

Objective	Indicator	Source
	Annual/cumulative % of provincial PPI nominated graduates who are still employed by provincial PPIs two years after return Annual/cumulative % of metropolitan PPI nominated graduates who are still employed by metropolitan offices of the Central agency PPIs two years after return Annual/cumulative % of provincial PPI nominated graduates who are employed by metropolitan offices of the Central agency PPIs two yers after return Annual/cumulative % of metropolitan PPI nominated graduates who are employed by provincial PPIs two years after return Whether cumulative of PPIs is approximately 40% of total returns Completed ALAF Annual/cumulative number of fellowship holders returned to work in areas that reasonably equate to each of the priority development areas (disaggregated by the DCS priority areas listed in column 1)	
Objective 2. That by the end of the contract period (July 2015) Vietnam has additional PhD qualified university teachers and researchers using new qualifications to improve quality of teaching and research programs in Vietnam universities that in turn train students and researchers in fields and disciplines that support development work in the priority development areas; ; and has additional post-graduates with qualifications in TESOL who use	**2.1 Outcome level** All disaggregated to **separately identify both PhD and TESOL qualification** – plus by gender, disability and by provincial and metropolitan locations: Degree that the ASDiV qualified PhDs and TESOL post-graduate degrees has contributed to an increase in the percentage of the total Vietnam university teaching/research staff with PhDs and TESOL post-graduate qualifications. Number of new research projects undertaken within tertiary institutions with the direct involvement of successful (PhDs or Post-Graduate Diplomas in University Education) AusAID scholarship returnees. Qualitative assessments made by evaluators about value of contributions made in	MC Records Specific designed evaluation Surveys, cross checked with MOET and institution-sourced information; Targeted tracer studies

Objective	Indicator	Source
the skills to improve quality in TESOL teacher-training to support the national program to expand skills in English language.	key areas of university teaching/research quality improvement and degree to which they have, or have potential to, influence development in positive ways (commensurate with the reasonable limits on individual's level of contribution). Satisfaction with teaching approaches and learning outcomes as expressed by sample of students taught by staff with new PhDs in any field, and those with higher qualifications in teaching English as a second language (TESOL), within tertiary institutions and/or other provincial (GoV) English Language Centres which employ ASDiV graduates. Qualitative assessments made by evaluators about value of contributions made in improving TESOL in Vietnam and level of contribution to achieving expanded capacity for TESOL in Vietnam to which they have, or have potential to, influence development in positive ways (commensurate with the reasonable limits on individual's level of contribution). This may include contributions to teaching teachers of TESOL, and to TESOL education leadership and management, or other aspects of services delivery (ie is not confined to direct teaching contributions).	
	2.2 Input and Output level (Notes: all require disaggregation by gender and disability; the term 'relevant' is used in reference to Objective 2.):	
	Applications: disaggregated to **separately show PhDs and TESOL** (including where overlap occurs) Annual/cumulative % of applications received from eligible candidates already employed as teaching, tutoring or research or TESOL staff by provincial tertiary institutions Annual/cumulative % of applications received from eligible candidates already employed as teaching, tutoring or research or TESOL staff by metropolitan tertiary institutions	MC Records
	Selections: disaggregated to **separately show PhDs and TESOL** (including where overlap occurs)	MC Records

Objective	Indicator	Source
	Annual/cumulative % of *selections* and *departures* of candidates already employed as teaching, tutoring or research or TESOL staff by provincial tertiary institutions Annual/cumulative % of *selections* and *departures* of candidates already employed as teaching, tutoring or research or TESOL staff by metropolitan tertiary institutions Annual/cumulative % of *extensions* and of *terminations* of scholars already employed as teaching, tutoring or research or TESOL staff by provincial tertiary institutions Annual/cumulative % of *extensions* and of *terminations* of scholars already employed as teaching, tutoring or research or TESOL staff by metropolitan tertiary institutions	
	Completed Degrees: disaggregated to **separately show PhDs and TESOL** (including where overlap occurs) Annual/cumulative % of returns by graduates who were employed as teaching, tutoring or research or TESOL staff by provincial tertiary institutions Annual/cumulative % of returns by graduates who were employed as teaching, tutoring or research or TESOL staff by metropolitan tertiary institutions Annual/cumulative % of relevant graduates originally (pre-scholarship) employed as teaching, tutoring or research or TESOL staff by provincial tertiary institutions who go to new employment on return in provincial tertiary institutions (not necessarily same ones) Annual/cumulative % of graduates originally (pre-scholarship) employed as	MC records

Objective	Indicator	Source
	teaching, tutoring or research or TESOL staff by metropolitan tertiary institutions who are return to employment with metropolitan tertiary institutions (not necessarily same ones) Annual/cumulative % of relevant graduates originally (pre-scholarship) employed as teaching, tutoring or research or TESOL staff by provincial tertiary institutions who go to work on return in metropolitan tertiary institutions Annual/cumulative % of graduates originally (pre-scholarship) employed as teaching, tutoring or research or TESOL staff by metropolitan tertiary institutions who go to work on return in provincial tertiary institutions.	
Objective 3: Women constitute at least 50% of the additional graduates and leaders obtaining new skills, and are using the new skills to contribute to development in the priority areas.	**Input, Output and Outcome Indicators,** All of the above in objectives 1 and 2 - disaggregated by gender, disability, by location, by PII and by Open categories, and by enabler or implementer classification. Specific recording and analysis of contributions by any graduates or leadership placements to policy or service delivery that is directly relevant to enhancing the status of women n Vietnam and reducing gender biases in policy or program implementation. Specific recording and analysis of contributions by any PhD graduates to teaching/research in universities that is directly related to learning and developing analytical capacity for addressing gender status or biases in Vietnam academia or society.	MC records & Specific designed evaluation Surveys, cross checked with MOET and institution-sourced information; Targeted tracer studies
Summary Totals:	**Required by Objective and overall program.**	

PART 4: DRAFT BASIS OF PAYMENT
AUSTRALIAN SCHOLARSHIPS FOR DEVELOPMENT IN VIETNAM (ASDIV) PROGRAM

Note to Tenderers: This **Part 4** of the RFT will appear as Schedule 2 of the final Contract.

SCHEDULE 2: DRAFT BASIS OF PAYMENT
AUSTRALIAN SCHOLARSHIPS FOR DEVELOPMENT IN VIETNAM (ASDIV) PROGRAM

1. TOTAL AMOUNT

1.1 The total amount payable by AusAID to the Contractor shall not exceed the sum of **AUDxxx** plus GST if any up to a maximum amount of **AUDxxx.**

1.2 AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.

2. PAYMENT STREAMS

2.1 For the performance of the Services described in the Contract, AusAID shall pay the Contractor as follows:

(a) The fixed **Total Management Fee (TMF)** in accordance with **Clause 3** of this Schedule 2 and paid as Milestone Payments in accordance with **Clause 4** of this Part 4, up to a maximum total amount of **AUDxxx**;

(b) **Reimbursable Long Term Personnel Costs**, in accordance with **Clause 5** of this Schedule 2, up to a maximum total amount of **AUDxxx**;

(c) **Reimbursable Short Term Personnel Costs**, in accordance with **Clause 6** of this Part 4, up to a maximum total amount of **AUDxxx**; and

(d) **Reimbursable Program Implementation Costs**, in accordance with **Clause 7** of this Part 4, up to a maximum total amount of **AUD368,000**.

(e) **Reimbursable Student Operational Costs**, in accordance with **Clause 8** of this Part 4, up to a maximum total amount of **AUD2,215,250**.

3. THE TOTAL MANAGEMENT FEE (TMF)

3.1 The TMF will comprise (but will not be limited to):

(a) All aspects of profit, including commercial margins for all personnel;

(b) All overheads, including rent and utilities, maintenance for office and computer equipment and website maintenance, supplies and consumables, vehicular maintenance and petrol costs;

(c) Communications and telecommunications costs including website management and maintenance;

(d) Financial management costs and financing costs, if any;

(e) All management support costs for all nominated personnel;

(f) Cost of any Contractor administrative and head office staff;

(g) Security costs for all personnel;

(h) Insurance, as required in accordance with **Clauses 33 and 34** of Part B (Standard Contract Conditions) of the Contract;

(i) Taxation, as applicable;

(j) Health, Medivac, workers' compensation, liability and indemnity insurances;

(k) Costs, including financial costs and freight, associated with any subcontracting and procurement of goods and services;

(l) Any costs associated with tendering and subcontracting any services;

(m) All other costs not specified as Reimbursable Costs; and

(n) Allowances for risks and contingencies.

3.2 The Annual TMF is **AUDxxx**.

3.3 The Annual TMF is fixed for this Contract and will be billed to AusAID on satisfactory achievement of Milestones as per **Clause 4** to this Schedule 2**.**

4. MILESTONE PAYMENTS

4.1 AusAID shall pay the Contractor the TMF in instalments known as Milestone Payments. The Milestone Payments payable by the Commonwealth to the Contractor shall not exceed the sum of **AUDxxx**, plus GST, if any, to a maximum of **AUDxxx**.

4.2 The Milestone Payments will be payable to the Contractor progressively. The Contractor may submit an invoice upon receipt of written acceptance from AusAID of satisfactory achievement of the Milestones specified in **Table 1** below. Payment will then be made within thirty (30) days of receipt of a correctly rendered invoice and subject to the provisions of **Clause 20** of Part 6.

4.3 **Table 1: Milestone Payments and Reporting Requirements**

No.	Description	Due Date	Verifiable Indicator	Financial Limitation AUD
1	Inception Report	Six weeks after project start date	Acceptance by AusAID and PCC	
2	1st Annual Report	January 2010	Acceptance by AusAID	

No.	Description	Due Date	Verifiable Indicator	Financial Limitation AUD
			and PCC	
3	2nd Annual Plan for FY 2010/2011	31 March 2010	Acceptance by AusAID and PCC	
4	*To Be Agreed with Winning Tenderer*	30 June 2010	Acceptance by AusAID	
5	*To Be Agreed with Winning Tenderer*	30 September 2010	Acceptance by AusAID	
6	2nd Annual Report	January 2011	Acceptance by AusAID and PCC	
7	3rd Annual Plan for FY 2011/2012	31 March 2011	Acceptance by AusAID and PCC	
8	*To Be Agreed with Winning Tenderer*	30 June 2011	Acceptance by AusAID	
9	Program Completion Report	31 October 2011	Acceptance by AusAID and PCC	
10	3rd Annual Report	End of December 2011	Acceptance by AusAID and PCC	
			TOTAL	

4.4 AusAID's assessment of the Contractor's achievement of Milestones may be informed by independent review in accordance with **Clause 17** of Part 6.

5. REIMBURSABLE PAYMENTS: LONG TERM PERSONNEL COSTS

5.1 AusAID shall reimburse the Contractor up to a maximum total of **AUDxxx** for Long Term Personnel Costs.

5.2 For each identified Long Term Personnel, AusAID shall pay the Contractor, quarterly on a reimbursable basis in arrears, Monthly Fees up to the maximum amounts specified in **Table 2** below. Mobilisation and Demobilisation costs will be reimbursed at cost up to the maximum one-off amounts which apply to each position.

Table 2: Long Term Personnel Fee Rates

Position	Monthly Fee (AUD)	Inputs (Months)	Mobilisation (AUD)	Demobilisation (AUD)	Financial Limitation (AUD)
Team Leader/Scholarships Services Manager (SSM)	*Specify*				

Position	Monthly Fee (AUD)	Inputs (Months)	Mobilisation (AUD)	Demobilisation (AUD)	Financial Limitation (AUD)
Deputy Team Leader (local)	*Specify*				
				TOTAL	

5.3 The Monthly Fee is:

(a) ***Inclusive*** of all personnel-related taxes and levies incurred in Vietnam and Australia, except;

(i) GST for Services performed in Australia in accordance with **Clause 21** of Part 6 (Goods and Services Tax);

(b) ***Inclusive*** of superannuation levy, if any, as appropriate;

(c) ***Inclusive*** of paid annual leave allowances of up to four (4) weeks per annum, to accrue on a pro rata basis per twelve months' continuous engagement on the Program (noting that leave allowances cannot be carried over from one twelve month period to another and must be taken in the twelve month period in which they fall due), including all leave costs such as airfares to and from the South Asia region;

(d) ***Inclusive*** of accommodation, utilities and private transport costs; **but**

(e) ***Exclusive*** of mobilisation/demobilisation costs (including airfares, in accordance with **Clause 5.9** below), which will be reimbursed at cost, in arrears; and

(f) ***Exclusive*** of any profit, overheads, administration or management fee, or any other mark-up on the part of the Contractor.

5.4 Where Contractor leave entitlements for Long Term Personnel exceeds two (2) trips or a total of four (4) weeks per twelve month period, a satisfactory justification must be provided to AusAID of how the Contractor will ensure, during Specified Personnel absences, the continued quality of the Services.

5.5 For the purpose of calculating part months, where necessary a full month is deemed to be 30 days. Part months will be pro rated on a daily basis.

5.6 The entitlement to reimbursement for travel costs related to mobilisation and demobilisation is as follows:

(a) Business Class airfares for international travel; and

(b) Economy Class airfares for domestic travel; **but**

(c) In any event, international travel undertaken on an Economy Class airfare does not entitle the Contractor to claim for reimbursement of the equivalent Business Class airfare.

6. REIMBURSABLE PAYMENTS: SHORT TERM PERSONNEL COSTS

6.1 AusAID shall reimburse the Contractor up to a maximum total of **AUDxxx** for Short Term Personnel Costs.

6.2 For each Short Term Personnel, AusAID shall pay the Contractor, quarterly on a reimbursable basis in arrears, a Daily Fee in accordance with the relevant rate(s) detailed in **Table 3** below.

Table 3: Short Term Personnel Fee Rates

Position	**Name**	**Daily Professional Fee**	**Inputs**	**Travel Costs**	**Financial Limitation**
		(AUD)	**(Days)**	**(value X number trips)**	**(AUD)**
Academic Adviser					
Academic Adviser (local)					
Human Resources Development Adviser					
M&E Specialist					

6.3 The Daily Fee for Short Term Personnel is:

(a) ***Inclusive*** of all personnel-related taxes and levies incurred in Vietnam and Australia, with the exception of GST for Services performed in Australia [refer to **Clause 21** of the Standard Contract Conditions (Goods and Services Tax)];

(b) ***Inclusive*** of superannuation levy, if any, as appropriate, **but**;

(c) ***Exclusive*** of any profit, overheads, administration or management fee, or any other mark-up on the part of the Contractor.

7. REIMBURSABLE PAYMENTS: PROGRAM IMPLEMENTATION COSTS

7.1 AusAID shall reimburse the Contractor up to a maximum of **AUD368,000** for Program Implementation Costs as set out in Tables 4 and 5 below.

7.2 The Contractor will be reimbursed on the basis of the actual cost incurred for items identified as reimbursable, based on prior approval of an annual expenditure plan, up to the maximum amounts specified in **Table 4** below. The actual cost will be exclusive of any costs that are included in the TMF in accordance with **Clause 3** of this Part.

Table 4: Program Implementation Costs (ADS, ALAS, ALAF)

Item	Unit type	No. of Units	Cost per Unit (AUD)	Financial Limitation (AUD)
Program Costs - Implementation				
Awareness Raising Campaign – development costs	package	1	40,000	40,000
Annual Promotion for applications, recruitment and advertising (including, media buy for awareness raising and advertising, printing, costs of regional visits)	annual	2.5	37,000	92,500
Interview panel sitting fees and travel expenses (all approved members and allowance for some interviewees (refer SOS))	annual	2.5	8,500	21,250
Support to alumni association grant	annual	2.5	5,000	12,500
Support for alumni association organising events/seminars to support reintegration of graduates	Bi-annual	1.5	20,000	30,000
Support for alumni association travel associated with alumni outreach activities	annual	2.5	500	1,250
Support for approved M&E Studies (including tracer studies of graduates and others as approved)	annual	2.5	20,000	50,000
Staff local travel – routine support activities, verification etc (exclusive of promotion program travel)	annual	2.5	10,000	25,000
JSC and PCC meeting costs	each	13	1,000	13,000
Program related in-country travel, accommodation and per diem (Short Term Advisors)	annual	2.5	5,000	12,500
Vehicle leasing contribution, including maintenance (at AUD1,500 per month)	Annual	30	1,500	45,000
Unallocated miscellaneous costs (ref cl 7.6)	annual	2.5	10,000	25,000

Item	Unit type	No. of Units	Cost per Unit (AUD)	Financial Limitation (AUD)
			TOTAL	**368,000**

7.3 The Contractor will be entitled to claim reimbursement for expenses incurred in respect of Program Implementation Costs, subject to:

(a) Details of the items purchased or expenses incurred contained in a quarterly invoice prepared in accordance with Clause 11 of Part B of the Contract; and

(b) Original receipts and invoices retained to substantiate any claim.

7.4 When expenditure reaches 80% of the limits specified in Table 4 the Contractor must advise AusAID of the remaining commitments and must ensure that the upper limits are not exceeded.

7.5 The Contractor may vary the sums assigned against individual line items in Table 4, within the overall financial limitation of this payment. Changes to the value of individual line items will not require a variation to this Contract.

7.6 Table 5 includes an amount which may be payable to the Contractor for Unallocated Activities. These Unallocated Activities will require the prior written approval of AusAID and may include the costs of administering the pre-departure arrangements for additional AusAID students. Payment for these Unallocated Activities is conditional upon certification by the Contractor that activity outcomes have been met.

8. REIMBURSABLE PAYMENTS: STUDENT OPERATIONAL COSTS

8.1 AusAID shall reimburse the Contractor up to a maximum total of **AUD2,215,250** for Student Operational Costs.

8.2 The Contractor will be reimbursed on the basis of the actual cost incurred for items identified as reimbursable, based on an annual prior approved expenditure plan, up to the maximum amounts specified in **Table 5** below. The actual cost will be exclusive of any costs that are included in the TMF in accordance with **Clause 3** of this Part.

Table 5: Student Operational Costs

Item	Unit type	No. of Units	Cost per Unit (AUD)	Financial Limitation (AUD)
IELTS Testing costs	Annual	2.5	100,000	250,000
Pre-Departure Briefing/Training	Annual	2.5	10,000	25,000

Item	Unit type	No. of Units	Cost per Unit (AUD)	Financial Limitation (AUD)
	package			
Awardee medical examinations	Annual	2.5	14,000	34,000
Awardee Travel to Australia	Annual	2.5	262,500	656,250
Additional English language training (ELT) for some exceptional circumstances candidates (cost of courses, plus Pre-Departure Training/In-country Academic Training)	Annual	2.5	100,000	250,000
Flexible small grants for graduates	Per person	200	5,000	1,000,000
			TOTAL	**2,215,250**

8.3 In accordance with Clause 8.2 above, the Contractor will be entitled to reimbursement for expenses incurred in respect of Reimbursable Student Operational Costs, subject to:

(a) details of the items purchased or expenses incurred contained in a quarterly payment invoice prepared in accordance with **Clause 11** of Part B and items in each invoice separately identify amounts attributed to ADS, ALAS and ALAF support; and

(b) original receipts and invoices retained to substantiate any claim.

9. RATES FOR OPTION PERIOD

9.1 Should AusAID exercise its rights, under **Clause 3** in Part A of the Contract, to extend the term of this Contract, the TMF, Long Term Personnel Monthly Fee Rates and Short Term Personnel Daily Fee Rates applying to the Contract extension will be the following values shown in **Tables A, B and C** below:

Table A – Total Management Fee Per Year

Item	1 Feb 2012 – 31 Jan 2013	1 Feb 2013 – 31 Jan 2014	1 Feb 2014 – 31 Jan 2015	1 Feb 2015 – 31 Jan 2016
Total Management Fee (TMF)				

Table B – Long Term Personnel Monthly Fee Rate

Long Term Personnel	1 Feb 2012 – 31 Jan 2013	1 Feb 2013 – 31 Jan 2014	1 Feb 2014 – 31 Jan 2015	1 Feb 2015 – 31 Jan 2016	Demob-ilisation (AUD)	Financial Limitation (AUD)
Team Leader/Scholarships Services Manager (SSM)						
Deputy Team Leader (local)						

Table C – Short Term Personnel Daily Fee Rate

Position	1 Feb 2012 – 31 Jan 2013		1 Feb 2013 – 31 Jan 2014		1 Feb 2014 – 31 Jan 2015		1 Feb 2015 – 31 Jan 2016	
	DPF˅	APD˚	DPF	APD	DPF	APD	DPF	APD
Academic Adviser								
Academic Adviser (local)								
Human Resources Development Adviser								
M&E Specialist								

˅DPF is Daily Professional Fee
˚APD is Accommodation and Per Diem

9.2 The rates specified in **Clause 9, Table B** above apply to Demobilisation costs but not to Mobilisation costs.

10. CLAIMS FOR PAYMENT

10.1 The Contractor's claims for payment shall be submitted when due pursuant to this Schedule 2 in accordance with the Standard Contract Conditions clause headed **Payment** in the Contract, and shall be submitted in a form identifiable with the services.

10.2 Claims for payment should include reference to the relevant Payment Event Number that will be issued by AusAID.

10.3 Invoices involving foreign exchange transactions must be made in the equivalent Australian dollar amount, converted at an exchange rate which is calculated in

accordance with appropriate accounting standards and as entered by the Contractor in their general ledger.

10.4 All claims for payment shall be made to:

Chief Financial Officer
Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601

10.5 Tax invoices should be sent to the above address. Alternatively AusAID will accept electronic tax invoices. These can be sent to accountsprocessing@ausaid.gov.au

10.6 A copy (electronic or hard copy) of the invoice should also be forwarded to the Activity Manager.

10.7 Invalid invoices will be returned to contractors. Information on what constitutes a valid tax invoice can be found at http://www.ato.gov.au/businesses/content.asp?doc=/content/50913.htm

SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

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PART 5 – STANDARD TENDER CONDITIONS

Bolded words are defined in the Tender Particulars in **Part 1** of this RFT.

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

(a) Electronically, via AusTender at https://tenders.gov.au before the **Closing Time** and in accordance with the tender lodgement procedures set out in **Annex C to this Part** and on AusTender; or

(b) Physically, by depositing by hand in the Canberra Tender Box before the **Closing Time**.

1.2 AusAID's preference is for electronic lodgement of Tenders. However, if electronic lodgement is not possible, you may lodge a hard copy of your Tender instead.

1.3 For both electronic and hard copy Tender lodgement, you must submit the following documents as part of your Tender:

(a) the technical proposal which includes:

(i) **Tender Schedule A** addressing the selection criteria and including the required annexes in the form specified in **Part 1**; and

(ii) **Tender Schedule B** providing details of Specified Personnel in the form specified in **Part 1**;

(b) The financial proposal in the form specified in **Part 1 Tender Schedule C**. For electronic submissions, **Tender Schedule C** must be submitted as a separate file, and for hard copy submissions, **Tender Schedule C** must be submitted in a separate sealed envelope;

(c) The financial assessment material in the form specified in **Part 1** Tender Schedule D. For electronic submissions, **Tender Schedule D** must be submitted as a separate file, and for hard copy submissions, **Tender Schedule D** must be submitted in a separate sealed envelope; and

(d) The completed and signed Tenderer Declaration in the form specified in **Annex B of this Part**.

1.4 All documentation submitted as part of the Tender must be in English.

1.5 Tenderers must include all information specified in this RFT in their Tender. Tenderers accept that their failure to provide all information required, in the format specified will result in their Tender being considered as a non-conforming Tender and liable to rejection.

1.6 The Tenderer must submit the number of copies specified in the Tender Particulars (**Part 1 Clause 1** of this RFT). Different numbers of copies may be required for hard copy lodgement and for electronic lodgement.

1.7 Tenders submitted by facsimile or email will not be considered.

1.8 It is a condition of this RFT that each Tender must remain valid and available for acceptance by AusAID for the **Tender Validity Period** specified in the Tender Particulars (**Part 1 Clause 1** of this RFT).

1.9 A person or persons having authority to lodge the Tender and enter into a contract on behalf of the Tenderer must sign the Tenderer Declaration (**Annex B of this Part**).

1.10 AusAID may extend the **Closing Time** at its sole and absolute discretion, and will issue an Addendum notifying any decision to extend.

Conditions Applying to Electronic Tender Lodgement

1.11 Electronic tenders must be lodged electronically via the Australian Government Tender System, AusTender, at https://www.tenders.gov.au before the **Closing Time** and in accordance with the tender lodgement procedures set out in **Annex C of this Part** and on AusTender.

1.12 Where there is any inconsistency between the tender lodgement procedures set out on AusTender and those set out in this RFT, this RFT will prevail.

1.13 Tenders not submitted in accordance with **Clause 1.11** will be excluded from evaluation.

1.14 It is the responsibility of tenderers to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on AusTender. Neither AusAID nor the Commonwealth takes any responsibility for any problems arising from tenderers' infrastructure and/or Internet connectivity.

Conditions Applying to Hard Copy Tender Lodgement

1.15 For hard copy lodgement, the Tenderer is responsible for the delivery of their Tender. The Tender must be placed in AusAID's **Canberra Tender Box**. The Tender must be delivered during **Business Hours** by the **Closing Time**. Failure to submit a Tender in accordance with this clause may render the Tender liable to rejection.

1.16 The Original Tender document and any copies requested should be bound using a plastic comb binding, and should contain no plastic page separators.

1.17 The Tender should be endorsed with the name of the Project and marked: "Tender Box: Attention **Contact Person.**" The Tenderer's postal address and fax number should be provided on the outside of the Tender.

2. TENDERER ENQUIRIES

2.1 Any enquiries that Tenderers may have must only be directed to the **Contact Person** specified in the Tender Particulars.

2.2 If a Tenderer:

(a) finds any discrepancy, error or omission in the terms and conditions of the RFT, including of the Contract Conditions; or

(b) wishes to make any enquiry, including seeking clarification, of the RFT, including of the Contract Conditions,

the Tenderer must notify the **Contact Person** in writing, which notice may be sent by means of facsimile transmission or email, as soon as possible and not later than 14 days prior to the **Closing Time**.

2.3 AusAID will respond to any Tenderer enquiries no later than 7 days prior to the **Closing Time**.

2.4 AusAID reserves the right to issue or publish answers to any Tenderer enquiries to all Tenderers.

3. LATE TENDERS

Conditions Applying to Tenders Lodged Electronically

3.1 A Tender lodged electronically is a **Late Tender** in accordance with the conditions specified in **Clause 6, Annex C of this Part** and will be excluded from evaluation.

3.2 For tenders submitted electronically, the time displayed on AusTender is deemed to be the correct time and will be the means by which AusAID will determine whether Tenders lodged electronically have been lodged by the **Closing Time**.

3.3 The judgement of AusAID as to the time a Tender has been lodged electronically will be final.

Conditions Applying to Tenders Lodged in Hard Copy

3.4 A hard copy Tender lodged after the **Closing Time** is a late Tender.

3.5 AusAID will admit to evaluation a Tender that was received late solely due to AusAID mishandling. AusAID mishandling does not include mishandling by a courier or mail service provider engaged by a Tenderer to deliver their Tender. It is the responsibility of tenderers to ensure that their Tender is dispatched in sufficient time for it to be received by AusAID by the **Closing Time**.

3.6 Late Tenders that are rejected by AusAID will be returned to tenderers unopened, except in cases where a Tender must be opened to identify the return address of the Tenderer or to establish which tender process the Tender was for.

3.7 If a Tender is taken to be late, the Tenderer may be asked to provide explanatory evidence in an appropriate form to the **Contact Person** specified in the Tender Particulars.

4. NON-CONFORMING TENDERS

4.1 Subject to **Clause 3 (Late Tenders) of this Part**, Tenders will be regarded as non-conforming if they fail to conform with one or more of the requirements of the RFT.

4.2 AusAID reserves the right to seek clarification of non-conforming Tenders in accordance with **Clause 5 of this Part**.

4.3 Subject to **Clause 3 (Late Tenders) of this Part**, AusAID may, at its absolute discretion, assess or reject a non-conforming Tender.

4.4 AusAID will not enter into correspondence about a decision to assess or reject a non-conforming Tender.

5. CLARIFICATION OF TENDERS

5.1 AusAID reserves the right to seek clarification of any Tender. Tenderers must:

(a) respond to any request for clarification within the time period specified by AusAID;

(b) ensure that additional information provided answers AusAID's enquiry and is fully consistent with the Tender submitted by the Tenderer; and

(c) not seek to change any aspect of their Tender by providing additional information to AusAID.

5.2 Clarifications are provided on the terms of the RFT.

5.3 Failure to supply clarification to the satisfaction of AusAID may render the Tender liable to rejection.

6. AMENDMENT OF THE RFT

6.1 AusAID may amend the RFT at any time by issuing an Addendum. All conditions of this RFT will apply to Addenda.

7. ASSESSMENT OF TENDERS

7.1 Tenders will be assessed on the following basis:

(a) technical, which includes the other factors described in **Clause 7.8 of this Part** which in AusAID's opinion may impact upon the suitability of any Tenderer including the financial viability of any Tenderer; and

(b) financial

to achieve the best value for money outcome.

7.2 Tenderers should note that value for money determinations are made on a whole-of-life basis and that AusAID is not bound or required to accept the lowest priced Tender or any Tender.

Technical Assessment

7.3 The technical assessment will be undertaken by the Technical Assessment Panel (the "**TAP**") comprising AusAID representative(s) and independent specialists appointed at AusAID's sole discretion. Representatives of the Partner Government may also participate. The TAP will assess Tenders based on the technical selection criteria specified in **Part 1**.

7.4 AusAID may invite a Tenderer (shortlisted or otherwise) to give AusAID a short presentation and be interviewed by the TAP. Specified Personnel, such as the proposed in-

country team leader and the project director, will be required to attend at the presentation. If Specified Personnel are unable to attend, a teleconference presentation may be arranged. Specified Personnel will be required to answer any questions asked by the TAP. The TAP will be convened in Canberra and the costs of the Tenderer's (and its personnel's) attendance must be borne by the Tenderer.

7.5 Tenderers should note that failure by a Tenderer or proposed Specified Personnel to attend the presentation (either in person or via teleconference) may disadvantage the Tender.

7.6 TAP members are required to maintain the "commercial-in-confidence" nature of the proceedings of the TAP meeting. TAP members must not discuss matters relating to the technical assessment of any tender with any party. Tenderers must not make contact with any members of the TAP, outside any TAP meeting, and any such contact will be considered a breach of confidentiality and may result in AusAID rejecting the tender of the Tenderer concerned.

7.7 AusAID reserves the right to take into account in the assessment of this Tender the past performance of the Tenderer or any proposed personnel contained in the Tender in accordance with **Annex A of this Part**.

7.8 In making its assessment the TAP or AusAID may have regard to other factors relevant to the suitability, capacity and qualifications of a Tenderer including but not limited to:

(a) the Tenderer's ability to comply with AusAID policies referred to in this RFT and the Tenderer's ability to comply with the **Contract Conditions**;

(b) the resourcing of Tenders;

(c) information obtained from any source which is relevant to the capacity of the Tenderer or any proposed personnel to perform the Services and achieve the Project goals and objectives. Such information may be the result of inquiries made by AusAID; and

(d) the Tenderer's demonstrated understanding of the cultural environment of the Project.

These other factors have not been allocated any specific weightings.

7.9 TAP members may adjust technical scores as a consequence of the presentation, interview and consideration of past performance.

Goods and Services Tax

7.10 All Tenderers should be aware that under *A New Tax System (Goods and Services Tax) Act 1999 (GST Act),* AusAID is treated as a taxable enterprise. To allow a like-for-like price assessment, the financial proposal must state the value of the supplies exclusive of the GST.

Insurances

7.11 The financial proposal must be inclusive of all necessary insurances required by the Contract Conditions and for the performance of the Services. Notwithstanding the requirements of the Contract AusAID strongly recommends that all Tenderers seek advice

on and consider arranging professional indemnity insurance as a matter of prudent commercial practice. Where such insurance is arranged, AusAID recommends that it be maintained for the duration, plus a further 3 years, of the full Term of the Contract or earlier termination.

Project Vehicles

7.12 For the purposes of this clause, "Project Vehicles" are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Project and that are provided primarily for Contractor Personnel use for Project activities. Vehicles purchased by the Project, but handed over to the Partner Country immediately (where maintenance and insurance are Partner Country responsibilities and Contractor Personnel do not use the vehicles or only use them on an exceptional basis) are not considered Project Vehicles for the purposes of requiring a financial contribution by the Contractor.

7.13 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute $250.00 for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor's invoices.

7.14 The Contractor must abide by the following requirements with regards to Project Vehicles:

(a) Project demands must always take precedence over private use;

(b) the Contractor must ensure that any persons driving the Project Vehicle must have a current valid international or Partner Country drivers license for the class of Project Vehicle;

(c) the Contractor is responsible for ensuring Project Vehicles are appropriately insured;

(d) the Contractor is responsible for ensuring that seat belts are fitted and must make every effort to ensure that they are worn at all times by drivers and all passengers;

(e) the Contractor is responsible for any costs incurred in the event of an accident while the Project Vehicle is being privately used; and

(f) the Contractor must ensure that Project Vehicles are serviced in accordance with manufacturer's requirements.

Tenderers Note: compliance with the requirements detailed in **Clause 7.13 above** may be subject to a review undertaken by or on behalf of AusAID under the **Standard Conditions** clause of the Contract titled **Reviews**.

Technical proposal format

7.15 The technical proposal must:

(a) indicate the Tenderer's nominated contact person and contact details on the cover page;

(b) be in a type font of no less than 12 point on A4 paper;

(c) have left and right page margins of no less than 2.5 cm, and top and bottom page margins of no less than 3 cm, excluding headers, footers and page numbers;

(d) not have the AusAID logo or any other representation or mark which may indicate that the Tenderer is in any way related to or connected with AusAID; and

(e) be no longer than the page limit detailed in the Tender Particulars (inclusive of tables, diagrams or graphs), but exclusive of required annexes.

Curricula vitae

7.16 The curriculum vitae for team member must include the following information:

(a) name and personal contact details (this can be an email address or phone number);

(b) nationality and if relevant permanent resident status;

(c) professional qualifications, including institution and date of award; and

(d) details of recent relevant professional and development work experience, including the duration and extent of inputs.

7.17 CVs must be no longer than the page limit detailed in the Tender Particulars, must be signed and dated by the proposed team member, and must include the following certification:

"I, ***[insert name]***, declare that:

(a) the information provided in this CV is accurate and hereby authorise the Commonwealth to make whatsoever inquiries it may consider reasonable and necessary to undertake in the course of the Tender assessment in relation to the information I have provided in this CV or any other matter which may relate to my suitability for the position for which I have been nominated; and

(b) I am available to participate in the Project in the role in which I have been nominated in the Tender for the period or periods indicated in the Tender".

(c) I have not been convicted of an offence of, or relating to, bribery of a public official, nor am I subject to any proceedings which could lead to such a conviction.

While an original signature on CVs is preferred, copies are allowed. However, Tenderers are reminded of their warranties (**paragraphs 3.3** and **3.4**) and the potential consequences to their Tender (**paragraph 3.5**), as detailed in the Tenderer Declaration (**Annex B of this Part**).

Referees

7.18 Tenderers must nominate at least two (2) referees who can provide an objective assessment of the quality of relevant and recent work performed by the organisation (if the Annex titled Past Experience Forms is used) or the proposed team member (regarding Tender Schedule B). Referees who can supply character references only are not sufficient.

7.19 Tenderers must ensure that nominated referees do not have an actual or potential conflict of interest when acting as a referee. In particular, Tenderers must ensure that referees:

(a) are not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with, the Tenderer or a subsidiary organisation of the Tenderer;

(b) are not included in the Tender as proposed team members; and

(c) are not AusAID employees.

7.20 Tenderers must further ensure that nominated referees:

(a) are available to be contacted in the 3 week period after the **Closing Time**; and

(b) are able to provide comments in English.

7.21 AusAID reserves the right to check with nominated referees and with other persons as AusAID chooses, the accuracy of the information and quality of work performed.

8. JOINT VENTURES AND CONSORTIUMS

8.1 AusAID intends to contract with a single legal entity.

8.2 In the case of a joint venture or consortium that does not constitute a single legal entity, AusAID will contract with the lead joint venture or consortium member that is required to be nominated by the tenderer.

8.3 Tenders by a joint venture or consortium must be submitted on the basis that details on the activities to be performed and responsibility assumed by each party of the joint venture or consortium must be clearly specified in the body of the text in **Tender Schedule A**.

8.4 AusAID may require parent company guarantees from the parent companies of parties to a joint venture or consortium.

9. ASSOCIATES AND OTHER SUB-CONTRACTORS

9.1 Tenders involving two or more parties who have not formed a single legal entity will only be accepted if the Tender is submitted on the basis that one party, the Tenderer, is intended to act as the prime contractor and any other party becomes a sub-contractor known as an "Associate".

9.2 Tenders involving Associates will be assessed on the basis of that arrangement. Tenders must include:

(a) details on the activities to be performed and responsibilities assumed by each party where Associates are involved must be described in the body of the text of **Tender Schedule A**; and

(b) assurance to AusAID from an authorised representative of the Associate of their corporate commitment to and involvement in the Project in the form of a single page Letter of Association in a separate annex to **Tender Schedule A**.

Details of Associate responsibilities, if any, will be included in the Contract.

9.3 In addition to Associates, Tenderers are required to include detailed information on other work to be sub-contracted (excluding Specified Personnel) and proposed sub-contractors, where these are reasonably known at the time of the Tender and have expressed their willingness to be involved in the Project. These details must also be included in a separate annex to **Tender Schedule A** in the form described in **Clause 9.4 below**.

9.4 Letters in which organisation's express their willingness to be involved with the Tenderer in the Project as a sub-contractor must be limited to a single page per organisation and include details on the broad skills or areas in which the organisation may add value.

9.5 Tenderers note: AusAID contracts assign full responsibility for all sub-contracted Services to the contractor.

10. OWNERSHIP OF TENDERS AND RFT

10.1 All Tenders become the property of AusAID on lodgement.

10.2 Such intellectual property rights as may exist in the information contained in each Tender will remain the property of the Tenderer.

10.3 The Tenderer authorises AusAID to copy, adapt, amend, disclose, including to AusAID contractors and advisers, or do anything else necessary, in AusAID's sole discretion, to all materials including that which contains intellectual property rights of the Tenderer or other parties contained in the Tender.

10.4 Copyright in the RFT is reserved to AusAID.

11. CONFLICT OF INTEREST

11.1 Tenderers must:

(a) identify any actual or potential conflict of interest; and

(b) the procedures they intend to implement for dealing with, any actual or potential conflicts of interest,

which may arise in connection with the submission of their Tender or the conduct of the Services described in this RFT. Tenders should include details of any known circumstances that may give rise to either an actual conflict or potential of conflict of interest in relation to the Project.

11.2 If any actual or potential conflicts of interest arise for a Tenderer before entering into a Contract for the Services, AusAID may:

(a) enter into discussions to seek to resolve such conflict of interest; or

(b) disregard the Tender submitted by such a Tenderer; or

(c) take any other action that AusAID considers appropriate.

12. TENDERING CONDUCT

12.1 Each Tenderer warrants that it has not engaged in collusive or anti-competitive practices with any other Tenderer in the preparation of its Tender.

12.2 If a Tenderer is found to have made false or misleading claims or statements, or receives improper assistance or improperly obtains confidential information, AusAID reserves the right to reject at any time, any Tender lodged by or on behalf of that Tenderer.

13. INELIGIBILITY TO TENDER

13.1 A Tenderer is ineligible to tender where the Tenderer or any subcontractor of the Tenderer is listed by the World Bank in its "Listing of Ineligible Firms" or "Listings of Firms, Letters of Reprimand" posted at www.worldbank.org (the "**World Bank List**").

13.2 Tenderers warrant by submitting a tender that the Tenderer, and any subcontractor of the Tenderer, are not listed on a World Bank List. Tenderers must also state in their tender whether the Tenderer or any subcontractor of the Tenderer is listed on any similar list maintained by any other donor of development funding ("**Relevant List**") or are subject to any proceedings which could lead to listing on a World Bank List or listing on any Relevant List. Tenderers must also immediately notify AusAID where the Tenderer or any of their subcontractors becomes listed on a World Bank List or Relevant List, or subject to proceedings which may lead to such a listing, after the tender is submitted to AusAID.

13.3 AusAID will exclude any tender where the Tenderer is in breach of the warranty, or does not disclose any circumstance required under **Clause 13.2**. AusAID also reserves the right to exclude any tender, where the Tenderer or a subcontractor of the Tenderer becomes listed on a World Bank List or Relevant List, or is subject to proceedings which could lead to such a listing.

13.4 Tenderers should note that if they tender in breach of this **Clause 13**, or are subsequently listed on a World Bank List or Relevant List, AusAID may terminate any contract subsequently entered into with that Tenderer.

13.5 For the purpose of this **Clause 13**, a reference to a Tenderer or a subcontractor of a Tenderer, includes any company in the same group as the Tenderer or the subcontractor (including but not limited to, related bodies corporate of the Tenderer or subcontractor within the meaning of the *Corporations Act 2001*) and parties with whom the Tenderer or subcontractor is associated in respect of this Tender.

14. AusAID's RIGHTS

14.1 As a Commonwealth Government agency, all AusAID procurement is subject to the Commonwealth Procurement Guidelines. The core principle of Commonwealth procurement is to achieve value for money. AusAID is also bound to conduct its procurement in an ethical, accountable, transparent, efficient and effective manner.

14.2 AusAID reserves the right to:

(a) seek Tenders from any organisation;

(b) accept or reject any Tender;

(c) terminate, extend or vary its procurement process for the Services;

(d) request clarification in relation to a Tender;

(e) seek information or negotiate with any organisation that has not been invited to submit a Tender;

(f) terminate negotiations with the preferred Tenderer and commence negotiations with any other Tenderer;

(g) evaluate Tenders as AusAID sees appropriate; and

(h) negotiate with any one or more Tenderers.

15. TENDERER'S ACKNOWLEDGEMENT

15.1 A Tender is submitted on the following basis:

(a) no legal obligation or agreement whatsoever is intended to be or is created between AusAID and any Tenderer by virtue of the tender process (including but not limited to statements contained in this RFT) unless and until contract negotiations are completed and a formal written agreement acceptable to AusAID is entered into and executed by an authorised officer of AusAID and by the successful Tenderer, if any;

(b) the Tenderer acknowledges and agrees that AusAID, its employees, agents and advisers are not, and will not be responsible, or liable for the accuracy or completeness of any information contained in this RFT; and

(c) the Tenderer is responsible for all costs of and incidental to the preparation and delivery of the Tender, including obtaining this RFT, or any subsequent stage of the procurement process, including answering any queries and providing any further information sought by AusAID.

16. DEBRIEFING OF TENDERERS

16.1 If requested, AusAID will provide Tenderers with a written debriefing on the results of the assessment of their Tender, including reasons why the tender was not successful.

16.2 AusAID will not enter into discussion or communications on the content of the tender debrief once it has been completed.

17. AUSTRALIAN GOVERNMENT AND AUSAID LAWS AND POLICIES

17.1 Freedom of Information

(a) The *Freedom of Information Act 1982* gives members of the public rights of access to official documents of the Australian Government and its agencies. The *Freedom of Information Act 1982* extends, as far as possible, the right of the Australian community to access information (generally documents) in the possession of the Australian Government, limited only by considerations of the protection of essential

public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.

(b) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Freedom of Information Act 1982* on their participation in this RFT process and any subsequent contract.

17.2 Privacy

(a) The *Privacy Act 1988* establishes a national scheme providing, through codes of practice adopted by private sector organisations and the National Privacy Principles, for the appropriate collection, holding, use, correction, disclosure and transfer of personal information by private sector organisations.

(b) The Draft Contract provides that the Contractor will comply with the *Privacy Act 1988*, including the Information Privacy Principles and the National Privacy Principles whether or not the Contractor is an organisation subject to the *Privacy Act 1988*.

(c) The Contractor acknowledges that the Privacy Act 1988 reflects the principles of the International Covenant on Civil and Political Rights and OECD Guidelines, in particular, the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.

(d) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Privacy Act 1988* on their participation in this RFT process and any subsequent contract.

17.3 Access by Australian National Audit Office

(a) Attention of Tenderers is drawn to the *Auditor-General Act 1997* which provides the Auditor-General, or an authorised person, with a right to have, at all reasonable times, access to information, documents and records.

(b) In addition to the Auditor-General's powers under the *Auditor-General Act 1997*, the Draft Contract provides that the Contractor will provide the Auditor-General, or an authorised person, access to information, documents, records and agency assets, including those on the Contractor's premises. Such access will apply for the term of the contract and for a period of seven years from the date of expiration or termination.

(c) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997* on their participation in the RFT process and any subsequent contract.

17.4 Access by Ombudsman

(a) Attention of Tenderers is drawn to the *Ombudsman Act 1976* which gives Australians access to a government officer, known as an ombudsman, who investigates complaints from the public about government agencies and their operations and decisions, and reports on ways in which they may be resolved.

(b) In addition to the ombudsman's powers under the *Ombudsman Act 1976*, the Draft Contract provides that the Contractor will provide the ombudsman, access to information, documents, records and agency assets, including those on the Contractor's premises. Such access will apply for the term of the contract and for a period of seven years from the date of expiration or termination.

(c) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Ombudsman Act 1976* on their participation in the RFT process and any subsequent contract.

17.5 Equal Employment Opportunity for Women in the Workplace Act 1999.

(a) Australian Government policy prevents AusAID from entering into contracts with suppliers who are currently named as non compliant under the *Equal Employment Opportunity for Women in the Workplace Act 1999* (EEO Act).

(b) AusAID will exclude from consideration any Tender from a Tenderer who is named or whose subcontractor is named as not complying with the EEO Act.

17.6 United Nations Act, Criminal Code Act 1995 and World Bank List

(a) AusAID will exclude from consideration any Tender from a Tenderer who is listed:

(b) by the Minister for Foreign Affairs under the *Charter of the United Nations Act 1945* and/or listed in regulations made under Division 102 of the *Criminal Code Act 1995* (Cth). Further information about listed persons and entities is available from the Department of Foreign Affairs and Trade website at www.dfat.gov.au/icat/UNSC_financial_sanctions.html and from http://www.nationalsecurity.gov.au/

(c) by the World Bank on its "Listing of Ineligible Firms" or "Listings of Firms, Letters of Reprimand" posted at www.worldbank.org (the "World Bank List") and/or any similar list maintained by any other donor of development funding.

17.7 Other Australian Government and AusAID Policies

(a) Tenderers should familiarise themselves with AusAID policies including:

(i) the policy *Gender Equality in Australia's Aid Program – Why and How* (March 2007). This document is available on AusAID's website at http://www.ausaid.gov.au/publications/default.cfm;

(ii) AusAID's policy on the environment as set out in the *Environmental Management Guide for Australia's Aid Program*. This document is available on AusAID's website at http://www.ausaid.gov.au/keyaid/envt.cfm.

(iii) AusAID's *Child protection policy*, in particular the child protection compliance standards at Attachment 1 to the policy. This document is available on AusAID's website at http://www.ausaid.gov.au/publications/default.cfm.

(iv) any other policies published from time to time on http://www.ausaid.gov.au or as otherwise notified to Tenderers.

18. FURTHER REQUIREMENTS

18.1 Tenderers should be aware that current employees of AusAID cannot be included in Tenders for AusAID projects. Former AusAID employees may be included in Tenders if doing so does not represent a breach of conflict of interest. See AusAID's Frequently Asked Questions website for further information: www.ausaid.gov.au/business/frequent.cfm.

18.2 Tenderers should note that the Commonwealth Procurement Guidelines require that Commonwealth agencies must not enter into agreements with suppliers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not paid the claim. AusAID will reject submissions from tenderers in this position.

18.3 Tenderers must keep any discussions or contact with AusAID in connection with the Tender, the RFT and any contract negotiations confidential. Any unauthorised approach by a Tenderer to an AusAID officer or discussion of matters pertaining to the procurement process will be considered a breach of confidentiality.

19. CONTRACT NEGOTIATIONS

19.1 AusAID may select, as preferred Tenderer, the Tenderer(s) who best meet the requirements of the RFT on the basis of the tender assessment process.

19.2 The preferred Tenderer(s) must within 14 days of written notification from AusAID that it has been selected as preferred Tenderer, provide AusAID with originals of Police Clearance Certificates for all Personnel nominated in their Tender in positions specified in the Specified Personnel Table (**Clause 7, Part 1**) as working with children.

(a) Police Clearance Certificates must be provided for each country in which the individual has lived for 12 months or longer over the last five years, and for the individual's country of citizenship;

(b) Police Clearance Certificates must be dated no earlier than 12 months before the Tender Closing Time;

(c) If any required Police Clearance Certificates are not provided to AusAID in accordance with **Clause 18.2** above, AusAID may exercise its right, specified at **Clause 14.2** above, to terminate negotiations with the preferred Tenderer and commence negotiation with any other Tenderer. AusAID recognises that in limited instances it may prove impossible to obtain a reliable Criminal Record Check, and will take non-provision of a Criminal Record Check into account upon request;

(d) AusAID reserves the right to require the preferred Tenderer(s) to replace any Personnel whose Police Clearance Certificate shows conviction of criminal offences of, or relating to, child abuse where AusAID, in its absolute discretion, considers that the Personnel poses an unacceptable risk to children's safety or well-being. Nominated replacement Personnel must have qualifications and experience equal to

or better than those of the personnel being replaced, and must be acceptable to AusAID.

19.3 It is AusAID's intention to contract on the basis of the Contract Conditions contained in this RFT. Following the selection of a preferred Tenderer AusAID may enter into negotiations with the preferred Tenderer in respect of the Scope of Services and the Basis of Payments of the contract. Such negotiations will be strictly limited to matters of detail rather than substance.

19.4 If the Scope of Services is reduced as a result of constraints imposed on AusAID before or after the **Closing Time**, AusAID and the preferred Tenderer must negotiate, in good faith, a proportionate reduction, if necessary, to the fixed price quote.

19.5 Enhancements to the Scope of Services included in the Tender in accordance with the selection criteria should be costed into the fixed price quote for the purposes of the like-for-like price assessment. Where AusAID has instructed that the like-for-like price assessment is to be based on indicative values, the Tenderer must clearly specify all cost implications of enhancements proposed in the Tenderer's technical proposal.

20. CONTRACT PLANS

20.1 The preferred Tenderer may be required to convert the Technical Proposal submitted in its Tender into appropriate schedules for the Contract based on the Contract Conditions. The Tenderer must take into account the outcome of any negotiations and give effect to amendments agreed with AusAID.

21. APPLICABLE LAW

21.1 The laws of the Australian Capital Territory apply to the RFT and the RFT process.

ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION

1. AusAID reserves the right to take into account in the assessment of this Tender the past performance, in previous AusAID and non-AusAID activities, or activities of:

   (a) any Tenderer; and

   (b) any member of the proposed personnel,

   in its capacity as:

   (c) contractor, consultant or sub-contractor;

   (d) an associate or employee of a contractor, consultant or sub-contractor; or

   (e) a joint venture partner.

2. AusAID may:

   (a) include in the assessment any contractor performance information contained in any internal AusAID contractor performance reporting systems in relation to performance of the Tenderer or proposed management, administrative and Project personnel on previous AusAID activities, providing the contractor has seen the report and has had reasonable opportunity to comment; and

   (b) take into account relevant performance information provided by external referees in relation to a Tenderer or proposed personnel member obtained by AusAID as a result of inquiries made within the previous 12 months.

3. AusAID reserves the right to use any relevant information obtained in relation to a Tenderer or proposed personnel member obtained either during the Tender period or within the previous 12 month period by providing it to the Technical Assessment Panel (TAP) or to any other relevant person for the purposes of Tender assessment, and such information may be taken into account in the course of assessment of the Tender by the TAP and AusAID. Where information has been received in accordance with paragraph 2 (a) above, this may also be introduced into the TAP process.

4. AusAID may, at any time, make independent inquiries of:

   (a) any person or entity which it reasonably believes to have actual knowledge of the performance of the Tenderer or proposed personnel member/s on a previous project or activity, whether or not that person or entity is nominated in the Tender as a referee for the Tenderer or proposed personnel member; and

   (b) any Commonwealth Government department, agency or other government entity in Australia whether Commonwealth or State, or any other country, including law enforcement agencies in relation to a person who is proposed for inclusion in a Tender or a Tenderer.

5. AusAID may request a Tenderer to provide additional or clarifying information in relation to information obtained during the assessment process following the **Closing Time** for the purpose of assessment of the Tender.

6. Information obtained as a result of inquiries made by AusAID in relation to performance on previous activities will be sought on a confidential basis and AusAID shall not be obliged to disclose the content or source of prior performance information about a Tenderer or individual to any person.

7. AusAID shall not be liable upon any claim, demand, proceeding suit or action by any Tenderer or any proposed personnel member in relation to any matter, thing or issue arising out of or in any way in relation to the collection of information from any source or the use of any information collected pursuant to this Annex in the Tender assessment process.

ANNEX B – TENDERER DECLARATION

I, [*name, address and corporation of person making the declaration*], do solemnly and sincerely declare that:

1. **DEFINITIONS**

1.1 In this declaration:

"**AusAID**" means the means the Australian Agency for International Development and represents the Commonwealth of Australia;

"**Services**" means Services to be performed by the Contractor in the ***[enter Project name]***;

"**Tenderer**" means ***[list name, address and ABN and ACN if appropriate. Note, Tenderers must provide their ABN if they have one. Moreover, if you are a Company and your ACN is not included in your ABN, you must also provide your ACN)]***; and

"**Tender Price**" means the total amount excluding Reimbursable Expenses indicated by a Tenderer as being the lowest amount for which that Tenderer is prepared to undertake the Services.

2. **BASIS OF DECLARATION**

2.1 I hold the position of **[*managing director or other title*]** of the Tenderer and am duly authorised by the Tenderer to make this declaration.

2.2 I make this declaration on behalf of the Tenderer and on behalf of myself.

3. **THE OFFER**

3.1 The Tenderer tenders to perform the Services for the Tender Price set out in the Tender, which is submitted as a separate file (for electronic submissions), or in a separate sealed envelope (for hard copy submissions).

3.2 The Tenderer undertakes, if this Tender is accepted and a Contract acceptable to AusAID is executed by both parties, to commence the provision of the Services and to perform them in accordance with the Contract.

3.3 The Tender is accurate in every respect. In particular, I warrant that the information and certification included in each CV submitted in the Tender is accurate, that the proposed team members have been approached and confirmed their availability and that AusAID has the authority to make the inquiries referred according to the CV certification.

3.4 I acknowledge that if the Tenderer is found to have made false or misleading material claims or statements in the Tender or in this declaration, or to have used confidential information, or received improper assistance, AusAID will reject at any time any Tender lodged by or on behalf of the Tenderer.

3.5 I acknowledge and agree to the matters specified in **Clauses 14** (AusAID's Rights) and **15** (Tenderer's Acknowledgement) of **Part 5**.

3.6 I agree:

(a) that the Tenderer will be bound by this Tender for the Tender Validity Period of 180 days after the **Closing Time**; and

(b) that this Tender may be accepted by AusAID at any time before the expiration of that period or any additional period to which we may agree.

3.7 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.

3.8 I understand that AusAID is not bound to accept the lowest priced or any Tender.

3.9 I warrant that in preparing the Tender for the Services the Tenderer did not act in any way which did or could have had the effect of reducing the competitiveness of the tender process for the Services. In particular I warrant that the Tenderer did not engage in:

(a) any discussion or correspondence with other tenderers concerning the amount of the Tender;

(b) any collusive tendering or other anti-competitive practices with any of the other Tenderers or any other person; or

(c) any conduct or have any arrangement or arrive at any understanding with any of the other Tenderers.

3.10 **[This clause applies to government owned Tenderers only.]** I warrant that in preparing the Tender, the Tenderer has complied with the principles of competitive neutrality**.**

3.11 I warrant that the Tenderer, and any subcontractor of the Tenderer are not:

(a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of this RFT;

(b) listed on any similar list maintained by any donor of development funding (Relevant List), or:

(c) subject to any proceedings which could lead to listing on a World Bank List or listing on a Relevant List.

3.12 Neither the Tenderer nor any of its employees, agents or contractors have been convicted of an offence of, or relating to bribery of a public official, nor are they subject to any proceedings which could lead to such a conviction.

3.13 I undertake that the Tenderer will not permit any of its employees, agents or contractors, to work with children if they pose an unacceptable risk to children's safety or well being.

3.14 No employees of the Tenderer, or its agents or contractors, who have been nominated in Project positions that involve working with children, have been convicted of a criminal offence relating to child abuse, nor are they subject to any proceedings which could lead to such a conviction.

3.15 Neither the Tenderer nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.

3.16 Neither the Tenderer nor any of its employees, agents or contractors had knowledge of the technical proposal or the Tender Price for the Services of any other tenderer prior to the Tenderer submitting its Tender for the Services.

3.17 Neither the Tenderer nor any of its employees, agents or contractors disclosed the technical proposal or the Tender Price for the Services submitted by the Tenderer to any other tenderer who submitted a tender for the Services or to any other person or organisation prior to the **Closing Time**.

3.18 Neither the Tenderer nor any of its employees, agents or contractors provided information to any other tenderer, person or organisation, to assist another tenderer for the Services to prepare a tender known in the building and construction industry as a "cover bid", whereby the Tenderer was of the opinion or belief that another tenderer did not intend to genuinely compete for the Contract.

3.19 The Tenderer is genuinely competing for the Contract and its Tender is not a "cover bid".

3.20 Prior to the Tenderer submitting its Tender for the Services neither the Tenderer nor any of its employees, agents or contractors entered into any Contract, agreement, arrangement or understanding that the successful Tenderer for the Services would pay any money, or would provide any other benefit or other financial advantage, to or for the benefit of any other tenderer who unsuccessfully tendered for the Tender.

3.21 I acknowledge that each party constituting the Tenderer is bound jointly and severally by this Tender.

4. ADDENDA TO TENDER DOCUMENTS

I acknowledge receipt of the following Addenda, the terms of which are incorporated in the Tender:

Number _____ Dated _____ Number _____ Dated ____

Number _____ Dated ____ Number _____ Dated ____

5. ADDRESS OF TENDERER

Address or Registered Office of Tenderer

Address for service of notices (NOT PO. BOX)

Telephone Number: ..... Fax Number: .....

SIGNED for and on behalf of *insert organisation/ company name ABN (and ACN if applicable)* by:)
)
)

_____ _____

insert name and title *Signature*

ANNEX C – CONDITIONS FOR USE OF AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

1.1 AusTender is the online tendering system for Australian Government Agencies. AusTender allows tenderers to download tender documentation and upload tender responses. Tenderers must first register with AusTender at https://www.tenders.gov.au.

1.2 Access to and use of AusTender is subject to terms and conditions. Tenderers must agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender.

1.3 It is the responsibility of tenderers to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on AusTender. Neither AusAID nor the Commonwealth take any responsibility for any problems arising from tenderers' infrastructure and/or Internet connectivity.

1.4 Tenderers must inform themselves concerning all security measures and other aspects of the AusTender technical environment. Tenderers must make their own assessment of the AusTender system prior to using it for any matter related to this RFT and no responsibility will be accepted by AusAID arising in respect of any use or attempted use by any party of AusTender.

2. REGISTERED TENDERERS AND NOTICES

2.1 In the event that AusAID elects to vary or supplement this RFT or change the conditions of tender, it will make reasonable efforts to inform tenderers in accordance with this **Clause 2**.

2.2 Tenderers may be informed by notices and other information issued as addenda posted on the webpage for this RFT on AusTender.

2.3 Tenderers who have registered and downloaded the tender documentation will be notified by AusTender via email of any addenda issuance. It is in the interest of tenderers to ensure they have correctly recorded their contact details prior to downloading tender documentation. If tenderers have not recorded their details correctly, they should amend their details and download the tender documentation again.

2.4 Tenderers are required to log in to AusTender and collect addenda as notified.

2.5 The Commonwealth will accept no responsibility if a tenderer fails to become aware of any addendum notice which would have been apparent from a visit to the AusTender page for this RFT.

2.6 If a tenderer has obtained tender documentation other than from AusTender, they must visit AusTender, register as a user and download the tender documentation for this RFT.

3. AUSTENDER HELP DESK

3.1 All queries and requests for technical or operational support must be directed to:

AusTender Help Desk
Telephone: 1300 651 698
Email: tenders@finance.gov.au

The AusTender Help Desk is available between 9am and 5pm Canberra Time, Monday to Friday (excluding ACT and national Australian public holidays).

4. PREPARING TO LODGE A TENDER ELECTRONICALLY

Virus Checking

4.1 In submitting their tenders electronically, tenderers warrant that they have taken reasonable steps to ensure that tender response files are free of viruses, worms or other disabling features which may affect AusTender and/or AusAID computing environment. Tenders found to contain viruses, worms or other disabling features will be excluded from the evaluation process.

Tender File Formats, Naming Conventions and Sizes

4.2 Tenderers must lodge their tender in accordance with the requirements set out in this **Clause 4** for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the tender not uploading successfully and/or may eliminate the bid from consideration.

4.3 AusAID will accept tenders lodged in the **File Formats for Electronic Tenders** specified in the Tender Particulars (**Clause 1 of Part 1** of this RFT).

4.4 The tender file name/s must:

(a) incorporate the tenderer's company name

(b) reflect the various parts of the bid they represent, where the tender comprises multiple files;

(c) not contain \ / : * ? " < > | characters. Check your files and re-name them if necessary; and

(d) not exceed 100 characters.

4.5 Tender files:

(a) must not exceed a combined file size of 5 megabytes per upload;

(b) should be uploaded from a high level directory on a tenderer's desktop, so as not to impede the upload process; and

(c) should be zipped (compressed) together for transmission to AusTender.

4.6 AusTender will accept up to a maximum of five files in any one upload of a tender. Each upload should not exceed the combined file size limit of 5 megabytes. If an upload would otherwise exceed 5 megabytes, the tenderer should either:

(a) transmit the tender files as a compressed (zip) file not exceeding 5 megabytes; and/or

(b) lodge the tender in multiple uploads ensuring that each upload does not exceed 5 megabytes and clearly identify each upload as part of the tender.

4.7 If a tender consists of multiple uploads, due to the number of files or file size, tenderers should ensure that transmission of all files is completed before the **Closing Time**.

4.8 Tenders must be completely self-contained. No hyperlinked or other material may be incorporated by reference.

Scanned or Imaged Material, including Statutory Declarations

4.9 Scanned images of signed and/or initialled pages within the tender, including Statutory Declarations and Deeds of Confidentiality, where they are required, are permitted so long as the total file size does not exceed the 5 megabyte limit. The use of scanned or imaged material, where it expands the tender file size beyond the 5 megabyte limit per upload, is prohibited.

5. ELECTRONIC LODGEMENT PROCESS

5.1 Before submitting an electronic tender, tenderers must:

(a) ensure their technology platform meets the minimum requirements identified on AusTender;

(b) refer to AusTender's Help guidance, if required, on uploading tenders;

(c) take all steps to ensure that the tender is free from anything that might reasonably affect useability or the security or operations of AusTender and/or AusAID computing environment;

(d) ensure that the tender does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by AusAID; and

(e) ensure that the tender complies with all file type, format, naming conventions, size limitations or other requirements specified in **Clause 4** above or otherwise advised by AusAID or required by AusTender.

5.2 Tenderers must allow sufficient time for tender lodgement, including time that may be required for any problem analysis and resolution prior to the **Closing Time**.

5.3 Tenderers should be aware that holding the "Lodge a Response" page in the web browser will not hold the electronic tender box open beyond the **Closing Time**. An error message will be issued if the lodgement process is attempted after the **Closing Time**.

5.4 Tenders lodged through AusTender will be deemed to be authorised by the tenderer.

5.5 If tenderers have any problem in accessing the AusTender website or uploading a tender they must contact AusAID via the nominated **Contact Person** (**Clause 1 of Part 1**) or the

AusTender Help Desk (**Clause 3.1** above) **prior to the Closing Time.** Failure to do so will exclude a tender from consideration.

6. LATE TENDERS, INCOMPLETE TENDERS AND CORRUPTED FILES

6.1 Any attempt to lodge a tender electronically after the **Closing Time** will not be permitted by AusTender. Such a tender will be deemed to be a Late Tender.

6.2 Where electronic submission of a tender has commenced prior to the **Closing Time** but concluded after the **Closing Time**, and upload of the tender file/s has completed successfully, as confirmed by AusTender system logs, the tender will not be deemed to be a Late Tender. Such tenders will be identified by AusTender to AusAID as having commenced transmission prior to, but completed lodgement after, **Closing Time**.

6.3 Where a tender lodgement consists of multiple uploads, due to the number and/or size of the files, tenderers must ensure that transmission of all files is completed and receipted before the **Closing Time** and **Clause 6.2** above will only apply to the final upload.

6.4 Late Tenders, incomplete tenders, including those with electronic files that cannot be read or decrypted, tenders which AusAID believes to potentially contain any virus, malicious code or anything else that might compromise the integrity or security of AusTender and/or AusAID's computing environment, will be excluded from evaluation.

7. PROOF OF LODGEMENT

7.1 When a tender lodgement has successfully completed, an official receipt is provided on screen. The on-screen receipt will record the time and date the tender was received by AusTender and will be conclusive evidence of successful lodgement of a tender. It is essential that tenderers save and print this receipt as proof of lodgement. A separate email confirming receipt of the tender will also be automatically dispatched to the email address of the registered user whose details were recorded at login.

7.2 Failure to receive a receipt means that lodgement has not completed successfully. Where no receipt has been issued by AusTender, the attempted lodgement will be deemed to have been unsuccessful. Tenderers should refer to **Clauses 5.2 and 5.5** above.

8. AUSTENDER SECURITY

8.1 Tenderers acknowledge that although the Commonwealth has implemented the security measures described on AusTender, the Commonwealth does not warrant that unauthorised access to information and data transmitted via the Internet will not occur.

8.2 Tenderers acknowledge that:

(a) lodgement of their tender on time and in accordance with these conditions of tender is entirely their responsibility; and

(b) AusAID will not be liable for any loss, damage, costs or expenses incurred by tenderers or any other person if, for any reason, a tender or any other material or communication relevant to this RFT, is not received on time, is corrupted or altered

or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

PART 6 - STANDARD CONTRACT CONDITIONS

Note to Tenderers: Although these Standard Contract Conditions are presented as **Part 6** of this RFT, in the consolidated Contract Conditions they will appear as **Part B**.

PART B – STANDARD CONTRACT CONDITIONS

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PART B – STANDARD CONTRACT CONDITIONS

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

"**APS Code of Conduct**" refers to the code of conduct of the Australian Public Service (for details visit the Internet website address: www.apsc.gov.au).

"**APS Values**" refers to the values of the Australian Public Service (for details visit the Internet website address: www.apsc.gov.au).

"**Associates**" means an organisation or organisations whom the Contractor identified in its tender for the Project as an associate or joint venturer or consortium member to provide the Services.

"**Auditor-General**" has the meaning set out in the *Auditor-General Act 1997*.

"**AusAID Confidential Information**" means information that:

(a) is designated by AusAID as confidential; or

(b) the Contractor knows or ought to know is confidential;

(c) is comprised in or relating to the Contract Material, the Data, any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID, or the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;

(d) is personal information under the *Privacy Act 1988*, but does not include this Contract or information which:

(e) is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation; or

(f) has been independently developed or acquired by the Contractor, as established by written evidence.

"**AusAID Eligibility Criteria**" means the criteria organisations wishing to tender for AusAID contracts must satisfy. Details are available at http://www.ausaid.gov.au/business/contracting/eligibility.cfm.

"**Business Day**" means a day on which AusAID is open for business.

"**Commonwealth**" means Commonwealth of Australia or AusAID, as appropriate.

"**Commonwealth Procurement Guidelines**" means the guidelines issued by the Minister for Finance and Administration that governs purchasing by Commonwealth agencies and

departments. Details are available at:
http://www.finance.gov.au/procurement/procurement_guidelines.html.

"**Contract**" means this agreement including all Parts, the Schedules and any annexes.

"**Contract Conditions**" means the provisions contained in Part A "**Project Specific Conditions**" and Part B "**Standard Conditions**" of the Contract excluding the Schedules and any annexes.

"**Contract Material**" means all material created or required to be developed or created as part of, or for the purpose of performing, the Services, including documents, equipment, information and data stored by any means.

"**Contractor Personnel**" means personnel either employed by the Contractor or Associates, engaged by the Contractor or Associates on a sub-contract basis, including the Specified Personnel, or agents of the Contractor or Associates engaged in the provision of the Services.

"Control" has the meaning given to that term in the *Corporations Act* 2001.

"**Cost**" or "**Costs**" means any actual costs or expenses.

"**Criminal Record Check**" means a check of an individual's criminal history record, conducted by the police or other authority responsible for conducting such checks.

"**Data**" includes any information provided to the Contractor under this Contract from any source, or collected or created by the Contractor in connection with the Services, whether in magnetic, electronic, hardcopy or any other form.

"**Director of Equal Opportunity for Women in the Workplace**" means the person so named in section 9 of the *Equal Opportunity for Women in the Workplace Act 1999*.

"**Dispute Notice**" means a notice of dispute given by one Party to the other Party under this Contract.

"**Document**" includes:

(a) any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and

(b) a disc, tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device.

"**Encumbrance**" means any lien, mortgage, charge or third party right or interest.

"**Fees**" means the fees for the Services set out in **Schedule 2**, including Reimbursable Costs.

"**Force Majeure Event**" means any of the following where they are beyond the reasonable control of the Contractor or AusAID and where they make it impossible to perform the Contract obligation:

(a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;

(b) acts of war (whether declared or not), invasion, acts of foreign enemies, mobilisation, requisition, or embargo;

(c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution, or military usurped power, or civil war; and

(d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosion, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly.

"**GST**" means the goods and services tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"**Intellectual Property**" means business names, copyrights, patents, trade marks, service marks, trade names, designs, and similar industrial, commercial and intellectual property.

"Loss" or **"Losses"** means any loss, losses, damage, liability, cost or expense including legal expenses on a solicitor and own client basis.

"**MOU**" or "**Treaty**" (if any) means the Memorandum of Understanding or treaty in relation to development cooperation, including any related "**Subsidiary Arrangement**" entered into between AusAID and the government of the Partner Country which deals with a number of governmental arrangements relevant to this Contract.

"**NAA**" means National Archives of Australia.

"**Partner Government**" means the Government of the Partner Country.

"**Party**" means AusAID or the Contractor.

"**Personal Information**" means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, as set out in section 6 of the *Privacy Act 1988* (Cth).

"**Police Clearance Certificate**" means the certificate showing the results of a "**Criminal Record Check**", issued by the police or other authority responsible for conducting such checks.

"**Privacy Commissioner**" means the person so named in section 19 of the *Privacy Act 1988* (Cth).

"**Prior Material**" means all material developed by the Contractor or a third party independently from the Services whether before or after commencement of any Services.

"**Project Administration and Equipment**" means goods and services, such as office furniture, computers, vehicles, communications, utilities and office rent required by the Contractor for the day-to-day administration of the Project.

"**Project Specific Conditions**" means Contract Conditions in Part A of this Contract.

"**Project Start Date**" means the date specified in the Project Specific Conditions **Clause 2** (Project Commencement) as the date by which the Contractor must commence the Services.

"**Project Supplies**" means goods provided to the Partner Country by the Contractor during the course of the Project as required by this Contract.

"**Reimbursable Costs**" means any costs incurred by the Contractor for which AusAID shall reimburse the Contractor as specified in **Schedule 2**.

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

"**Services**" means the services described in **Schedule 1** together with any supplies or materials incidental to the services.

"**Specified Acts**" means classes or types of acts or omissions performed by or on behalf of AusAID which would infringe an author's right of attribution, or integrity, of authorship but does not include those which would infringe an author's right not to have authorship falsely attributed.

"**Specified Personnel**" means the Contractor Personnel who are identified in **Schedule 1**.

"**Standard Conditions**" means Contract Conditions in Part B of this Contract.

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

"**Tax**" means any income tax, capital gains tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, withholding tax, goods and services tax, consumption tax, value added tax, municipal rates, stamp duties and other fees, levies and impositions, assessed or charged, or assessable or chargeable by or payable to any governmental taxation or excise authority and includes any additional tax, interest, penalty, charge, fee or other amount imposed or made on or in relation to a failure to file a relevant return or to pay the relevant tax.

"**Working With Children**" means working in a position that involves regular contact with children, either under the position description or due to the nature of the work environment.

"**World Bank List**" means a list of organisations maintained by the World Bank in its "Listing of Ineligible Firms" or "Listings of Firms, Letters of Reprimand" posted at: http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984

General

In this Contract, including the recitals, unless the context otherwise requires:

(e) the contractual obligations of the Parties must be interpreted and performed in accordance with the Contract as a whole;

(f) Contract clause headings are for convenience only and shall not be taken into consideration in the interpretation or construction of the Contract;

(g) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;

(h) a word denoting the singular number includes the plural number and vice versa;

(i) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;

(j) a word denoting a gender includes all genders;

(k) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Contract;

(l) where used in the Contract the words “including” or “includes” will be read as “including, without limitation” or “includes, without limitation” (as the case may be);

(m) a reference to any contract or document is to that contract or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;

(n) “shall” and “must” denote an equivalent positive obligation;

(o) a reference to any Party to this Contract, or any other document or arrangement, includes that Party's executors, administrators, substitutes, successors and permitted assigns; and

(p) a reference to "dollars" or "$" is to an amount in Australian currency.

1.2 **Counterparts of the Contract**

This Contract may be executed in any number of counterparts and by the different Parties on different counterparts, each of which constitutes an original Contract. In the event of any discrepancy between the Parties’ versions of the Contract, the Contract held by AusAID as the original will prevail.

1.3 **Contract prevails**

If there is any inconsistency (whether expressly referred to or to be implied from the Contract or otherwise) between the Contract Conditions and the provisions in the Schedules, the Schedules are to be read subject to the Contract Conditions and the Contract Conditions prevail to the extent of the inconsistency.

1.4 **Inconsistency**

If there is any inconsistency (whether expressly or to be implied from the Contract or otherwise) between the Project Specific Conditions and the Standard Conditions, the Project Specific Conditions are to be read subject to the Standard Conditions and the Standard Conditions prevail to the extent of the inconsistency, unless explicitly amended in the Project Specific Conditions.

2. SCOPE OF CONTRACT

2.1 The Contract sets out the terms and conditions on which the Contractor agrees to secure the aims and objectives of the Project supplying, or procuring the supply of, the provision of the Services.

2.2 The activities to be performed and responsibilities assumed by the Contractor are detailed in **Schedule 1**.

2.3 Neither the Contractor, nor Contractor Personnel or Associates, shall by virtue of this Contract be, or for any purpose be deemed to be, and must not represent themselves as being, an employee, partner or agent of AusAID.

3. AUSAID'S OBLIGATIONS

3.1 AusAID must:

(a) make payments to the Contractor in accordance with the Contract; and

(b) perform, fulfill, comply with, submit to and observe the terms and conditions of the Contract, which are to be performed, fulfilled, complied with, submitted to or observed by AusAID.

4. NON-EXCLUSIVITY

4.1 The Contractor may not be the exclusive provider of services to AusAID similar to those provided under this Contract.

4.2 The Contractor must cooperate with any other service provider appointed by AusAID to ensure the integrated and efficient carrying on of the Project and must provide such reasonable assistance to other service providers as AusAID may reasonably request.

5. PROVISION OF SERVICES

5.1 In providing the Services, the Contractor must:

(a) perform the Services as described in **Schedule 1** for the term of the Contract, unless the Contract is terminated earlier;

(b) accept and implement AusAID's reasonable directions in relation to the management of the Project;

(c) use its best endeavours to ensure the spirit and intent of the Project are fully met by the Services, including acting within the spirit and intent of the Treaty, MOU or Subsidiary Arrangement;

(d) liaise and cooperate with AusAID, with the stakeholders, and the Australian Diplomatic Mission in or having responsibility for the Partner Country especially in relation to security, personal safety and welfare matters;

(e) subject to any flexibility permitted in the Contract, ensure all timing obligations included in the Contract are fully met;

(f) within the term of the Contract assist AusAID in the maintenance and ongoing implementation of the Services, including monitoring and evaluating the Services to ensure results accord with the aims of the Project, and provide necessary handover assistance to any subsequent service provider and to the Partner Country;

(g) ensure that the Services are provided to a standard which shall promote Australia's international reputation and standing as a source of skill and expertise in the provision of international assistance;

(h) perform the Services in a manner which, as far as possible, establishes and maintains a harmonious, cooperative and effective working relationship with stakeholders and any personnel from the Partner Country involved in the Project;

(i) if a Risk Management Plan for the Project has not been prepared prior to the Project Start Date, the Contractor must prepare a Risk Management Plan within 30 days after the Project Start Date. If requested by AusAID, the Contractor will make the Risk Management Plan available to AusAID;

(j) whether a Risk Management Plan is prepared under paragraph (i) above, or was prepared prior to the Project Start Date (for example, as part of the Contractor's tender for the Project or as part of the Project Design Document or similar document), the Contractor must maintain and update the Risk Management Plan, as necessary, to ensure that at all times it adequately reflects Project risks and includes risk-minimisation strategies. The Contractor must promptly advise AusAID of any significant risks in accordance with **Clause 6 below**. The Contractor must also ensure the Risk Management Plan contains provisions for advance notification of AusAID of risks that may lead to disruption or delay of the Project;

(k) liaise with, and obtain all necessary consents, approvals and authorisations from any public and other authorities in the Partner Country;

(l) provide adequate support resources to secure the aims and objectives of the Project;

(m) be responsive to the changing needs and environment of the Partner Country; and

(n) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity.

5.2 Without limiting its other obligations and liabilities under this Contract, the Contractor must remedy at its cost any failure to comply with its obligations to perform the Services in accordance with this Contract as soon as practicable after becoming aware of the failure.

5.3 The Parties recognise that the performance of the Services may be affected by changes to relevant policy in the Partner Country, and that some flexibility in the performance of the Services shall be required.

6. EARLY NOTIFICATION

6.1 The Contractor must report immediately, and in any event within seven (7) days, to AusAID on any actual, perceived or anticipated problems or risks that may have a significant effect on the achievement of the aims and objectives of the Project, on the cost to AusAID or on the delivery or operation of the Services. If the report is first given orally, the Contractor must promptly confirm the report in writing to AusAID. The Contractor must recommend to AusAID options to prevent or mitigate the impact of problems on the Project.

7. CONTRACTOR PERSONNEL

7.1 The Contractor must ensure that Contractor Personnel are aware of, and must use its best endeavours to ensure Contractor Personnel comply with, the requirements of the Contract.

7.2 The Contractor must use its best endeavours to ensure that all Contractor Personnel conduct themselves in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct*.

7.3 The Contractor must use its best endeavours to ensure that no Contractor Personnel or their accompanying family members:

(a) become involved in the political affairs of the Partner Country (unless citizens of the Partner Country);

(b) interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country); or

(c) share information known as a result of their work on, or relationship to, the Project,

in a way that a reasonable person could foresee may be detrimental to the relationship between the Australian and Partner Governments.

7.4 The Contractor must not employ a currently serving Commonwealth employee in any capacity in connection with the Services without the prior written approval of AusAID.

7.5 The Contractor must ensure that media advertisements placed by the Contractor for personnel to fill a Project position acknowledge that the Project is funded by AusAID as part of the Australian Government's official overseas aid program.

7.6 AusAID may give notice to the Contractor requiring the Contractor to remove any Contractor Personnel from work in respect of the Services. The Contractor must promptly arrange for the removal of such Contractor Personnel from work in respect of the Services and their replacement (if required) with Contractor Personnel acceptable to AusAID.

7.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Contractor Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.

7.8 The Contractor must advise AusAID immediately in writing if any Contractor Personnel is arrested for, or convicted of, criminal offences relating to child abuse, or for accessing or possessing child pornography. AusAID may require Contractor Personnel under formal investigation in relation to such criminal offences to be suspended from duty or transferred to other duties during the investigation.

7.9 AusAID may give notice to the Contractor requiring the Contractor to temporarily suspend from duty, or transfer to other duties, any Contractor Personnel who are under criminal or internal investigation in relation to child abuse or accessing or possessing child pornography. The Contractor must comply promptly with any such notice.

8. SPECIFIED PERSONNEL

8.1 The Contractor must provide all Specified Personnel for the Project and for the minimum periods specified in **Schedule 1**.

8.2 During the minimum periods specified in **Schedule 1**, the Long Term Advisers included in the Specified Personnel must be exclusively dedicated to the Project and only perform the duties required under this Contract unless otherwise agreed in writing by AusAID.

8.3 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:

(a) are of good fame and character;

(b) are properly qualified for the tasks they are to perform;

(c) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner;

(d) are adequately briefed and understand the environment and culture of the Partner Country; and

(e) act in a fit and proper manner while they are carrying out work or performing duties under the Contract.

8.4 The Contractor must use its best endeavours to secure the availability of Specified Personnel for the term of the Contract. If a change to Specified Personnel is required the Contractor must provide AusAID with not less than 3 months prior written notice of such change except where circumstances beyond the reasonable control of the Contractor make the giving of such notice impracticable. Any proposed change to the Specified Personnel must only be made after written consent from AusAID and in accordance with the procedure set out in **Clause 8.8 below**.

8.5 Subject to **Clause 8.4 above**, Specified Personnel may be temporarily absent from the Project. Where Specified Personnel are unavailable for work in respect of the Contract, for any period in excess of 2 weeks, the Contractor must notify AusAID in writing immediately and, if requested, must provide replacement personnel acceptable to AusAID and the Partner Government at no additional charge and at the earliest opportunity and for the duration of the absence.

8.6 The costs incurred by the Contractors in providing temporary substitute personnel due to the absence of Specified Personnel are the responsibility of the Contractor.

8.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Specified Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.

8.8 Before appointing Specified Personnel to the Project, the Contractor must obtain AusAID's written approval. In seeking approval of proposed Specified Personnel the Contractor must provide to AusAID:

(a) the full names, dates of birth, and nationalities of proposed personnel and their accompanying dependants;

(b) a statement demonstrating that the proposed personnel has the demonstrated skills and capacity to undertake the job specification of the position and duration of the proposed appointment;

(c) a copy of the proposed person's curriculum vitae certified as accurate by the person and showing recent and relevant experience and formal qualifications including dates of award; and

(d) assurances that the nominated personnel has no existing commitments (defined in relation to the commitments of the position and not the individual's commitment to a particular organisation), to other AusAID projects that will suffer detriment if accepted on this Project. If this is not the case AusAID may require further information before assessing the individual's suitability.

8.9 If the Contractor is unable to provide acceptable replacement Specified Personnel with equivalent qualifications and experience AusAID may seek a reduction in fees.

8.10 This clause is a fundamental term of the Contract, such that breach shall entitle AusAID to terminate the Contract in accordance with **Clause 31** and sue for damages.

9. PROJECT VEHICLE CONTRIBUTION

9.1 For the purposes of this clause, "Project Vehicles" are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Project and that are provided for Project activities. Vehicles purchased by the Project, but handed over to the Partner Country immediately (where maintenance and insurance are Partner Country responsibilities and Contractor Personnel do not use the vehicles or only use them on an exceptional basis) are not considered Project Vehicles for the purposes of requiring a financial contribution by the Contractor.

9.2 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute $250.00 for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor's invoices.

9.3 The Contractor must abide by the following requirements with regards to Project Vehicles:

(a) Project demands must always take precedence over private use;

(b) the Contractor must ensure that any persons driving the Project Vehicle must have a current valid international or Partner Country drivers license for the class of Project Vehicle;

(c) the Contractor is responsible for ensuring Project Vehicles are appropriately insured;

(d) the Contractor is responsible for ensuring that seat belts are fitted and must make every effort to ensure that they are worn at all times by drivers and all passengers;

(e) the Contractor is responsible for any costs incurred in the event of an accident while the Project Vehicle is being privately used; and

(f) the Contractor must ensure that Project Vehicles are serviced in accordance with manufacturer's requirements.

10. PROCUREMENT SERVICES

10.1 In procuring all Supplies, the Contractor must:

(a) determine what Supplies are required for proper implementation of the Services and advise AusAID;

(b) keep AusAID informed of ongoing requirements for Supplies in connection with the Project;

(c) implement procedures so that procurement is undertaken in a manner that is consistent with the Commonwealth Procurement Guidelines, in particular, observing the Core Principle of achieving value for money and the supporting principles;

(d) maintain complete and accurate records documenting the procedures followed in procuring, and the particulars of Supplies; and

(e) use its best endeavours to ensure Supplies are maintained including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed.

10.2 The Contractor shall bear the loss or damage in respect of Supplies until handover of Supplies to the Partner Government.

10.3 The Contractor must use its best endeavours to ensure all Supplies are free from defects in design, material, manufacture or workmanship. The Contractor must replace defective Supplies under warranty provisions or at its own cost.

10.4 The Contractor shall establish and maintain a Register of Assets which shall record any non-consumable Supplies valued at $2,000 or more, which at a minimum contains the following information: reference identification number (which may be for example, a serial number, engine number or chassis number); description of the asset; date of procurement; cost; location; current status; and disposal or handover details.

10.5 The Register of Assets and associated documentation such as import documents, invoices and warranties shall be subject to audit by or on behalf of AusAID at any time and from time to time.

10.6 The Contractor must use the Supplies for purposes permitted under this Contract only and must ensure that the Supplies at all times remain free from any Encumbrance.

11. SUB-CONTRACTING

11.1 The Contractor may not sub-contract the whole of the Services. The sub-contracting of parts or elements of the performance of the Services is subject to compliance with the following requirements:

(a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;

(b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;

(c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor’s relevant obligations under this Contract. In particular sub-contractors must:

(i) comply with relevant and applicable laws, regulations and development policies, including AusAID's *Child protection policy* (http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments) and child protection compliance standards (Attachment 1 to the policy), both in Australia and in the Partner Country;

(ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;

(iii) be bound by the same obligations regarding **Clauses 15** (Accounts and Records), **18** (Audits), **19** (Access to Premises), **26** (Privacy), and **35.4** (Anti-corruption) **below** and as required by Project Specific Conditions **Clause 3** (Accounts and Records) as the Contractor; and

(iv) be bound by appropriate obligations in relation to ongoing software licensing, computer maintenance requirements and handover arrangements to the Partner Country;

(d) if requested by AusAID, the Contractor must provide to AusAID an executed Deed of Novation and Substitution in the form at **Schedule 5** (Deed of Novation), contemporaneously with or within 10 Business Days of execution of the sub-contract by the Contractor;

(e) the sub-contract must include the right of AusAID, in the event of AusAID issuing a notice of substitution under the Deed of Novation at **Schedule 5** (Deed of Novation), to further novate the sub-contract to another contractor;

(f) the Contractor must maintain up-to-date records of the names of all sub-contractors engaged by the Contractor to perform part of the Services. If requested by AusAID, the Contractor must, within five (5) working days, provide to AusAID a copy of the records of sub-contractors' names, in the format specified by AusAID. The sub-contract must include the right of AusAID to disclose the name of the sub-contractor, in accordance with **Clause 27 (AusAID Use of Contract Information) below**;

(g) the Contractor must maintain records as to the performance of each of the sub-contractors engaged by the Contractor including details of any defects in such performance and the steps taken to ensure compliance with the Contract and provide to AusAID if requested; and

(h) if requested by AusAID, the Contractor must provide to AusAID a copy of any proposed or executed sub-contract.

11.2 The obligations of **Clause 11.1 above** apply equally to Associates.

11.3 Despite any consent or approval given by AusAID, the Contractor shall remain at all times responsible for ensuring the suitability of Associates and sub-contractors and for ensuring that the Services are performed in accordance with the Contract.

12. CONTRACT AMENDMENTS AND VARIATION

12.1 The Contractor must not do anything that amounts to a variation of this Contract in whole or in part otherwise than in accordance with this clause.

Contract Amendment

12.2 Changes to Contract Conditions shall not be legally binding upon either party unless agreed in writing and signed by both Parties in the form of a Deed of Contract Amendment.

Contract Variation

12.3 AusAID or the Contractor may propose variations to the manner of providing the Services or changes to the Project, at any time for the purpose of improving the delivery of the Services or, the efficiency, cost-effectiveness and development impact of the Services. These changes shall be subject to a "Variation Order" as described below.

12.4 The Contractor must prepare a "Variation Proposal" for any variation sought by AusAID, or the Contractor, at no extra cost to AusAID and this must be submitted to AusAID in a timely manner.

12.5 The Variation Proposal must include specific identification of the proposed change, associated cost implications, a cost/benefit and risk analysis, including of developmental impact improvements, a general plan for implementation of the change and a projected time schedule.

12.6 No proposed variation must take effect unless it is in writing, titled a "Variation Order" and signed by AusAID. A summary of changes effected by Variation Orders will be maintained in the form set out in **Schedule 4B** (Variation Summary Schedule).

Costing Variations

12.7 If AusAID approves the Contractor's Variation Proposal including any increase or decrease in the amount payable, implementation shall be effected by issuing a Variation Order in the form of **Schedule 4A** and the Contractor must promptly perform the variation.

12.8 If AusAID does not approve the Contractor's cost estimate in the Variation Proposal and appropriate rates on which to cost the variation are not included in **Schedule 2**, the Parties undertake to negotiate a fair and reasonable amount within 20 Business Days.

12.9 In the event that the Parties cannot resolve a reasonable amount within 20 Business Days, either Party may seek to have an independent third party appointed pursuant to **Clause 39** (Resolution of Disputes), to determine a reasonable amount and the Parties agree that they shall be bound by that determination.

12.10 If AusAID does not approve the Contractor's cost estimate in the Variation Proposal and there are appropriate rates included in **Schedule 2**, AusAID may nevertheless issue a Variation Order requiring the Contractor to carry out the variation in the form of **Schedule 4A** and subject to the appropriate rates and fees detailed **Schedule 2**.

12.11 Where no agreement can be reached, AusAID reserves the right to perform itself, or engage another service provider to perform, the services which were the subject of the Variation Proposal.

Omission of Services

12.12 AusAID may issue a Variation Order omitting any part, though not the whole, of the Services. AusAID shall notify the Contractor in writing of its determination in respect of

the valuation of the omitted services. The value of the omitted Services will be determined in accordance with **Schedule 2** having regard to:

(a) the Services omitted from the Contract;

(b) any particular Payment Milestone affected by the omission;

(c) other relevant payments; and

(d) the extent of the work and/or inputs already performed or provided by the Contractor in respect of any such Payment Milestones.

12.13 AusAID will not be liable upon any claim by the Contractor as a result of any part of the Services being omitted, whether or not AusAID performs the omitted Services itself, or engages another service provider to carrying out the omitted Services.

12.14 If the Contractor disagrees with AusAID's determination of the value of the omitted Services, based on the rates included in **Schedule 2**, the Parties undertake to negotiate fair and reasonable amount within 20 Business Days.

12.15 In the event that the Parties cannot resolve a reasonable amount within 20 Business Days, either Party may seek to have an independent third party appointed pursuant to **Clause 39** (Resolution of Disputes), to determine a reasonable amount and the Parties agree that they shall be bound by that determination.

Suspension and rescheduling of Services

12.16 AusAID may issue a Variation Order directing the Contractor to:

(a) suspend for such time as AusAID thinks fit, the progress of the whole or any part of the Services; or

(b) reschedule the performance of Services to a time determined by AusAID.

AusAID does not have a duty to exercise this right for the benefit of the Contractor.

12.17 If the suspension or rescheduling is due to:

(a) an act, default or omission of the Contractor or Contractor Personnel, the Contractor will not be entitled to any Costs or Losses arising from the suspension; or

(b) any other cause:

(i) the Contractor will be entitled to be paid any extra reasonable Costs incurred by it as a result of the suspension subject to the Contractor taking reasonable steps to mitigate the extra Costs incurred;

(ii) AusAID's liability under the payments provisions of **Schedule 2** shall, in the absence of an agreement to the contrary, abate proportionately to the reduction in the Services.

12.18 Upon receipt of a Variation Order suspending part or all of the Services, the Contractor must:

(a) stop work as specified;

(b) take all reasonable steps to minimise any Loss resulting from the suspension and to protect Supplies and Contract Material; and

(c) continue work on any part of the Services not affected by the suspension.

12.19 The Contractor must promptly recommence the performance of the Services when so directed by AusAID.

13. EXTENSION OF TIME

13.1 Subject to **Clause 13.6 below** neither AusAID nor the Contractor shall be in breach of the Contract to the extent that performance of their Contract obligations is prevented by any of the following causes ("**Relevant Causes**") that arise during the term of the Contract:

(a) a Force Majeure Event;

(b) a significant change in circumstances beyond the control of the Contractor;

(c) an Australia-wide or Partner Country-wide industrial dispute; or

(d) a change in the laws of Australia or the Partner Country that directly impacts on the provision of the Services.

13.2 Where in the Contractor's reasonable opinion there is likely to be a delay in the Contractor's discharging an obligation under the Contract because of a Relevant Cause the Contractor must:

(a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;

(b) give details of the likely effect on the Project and any Contractual implications;

(c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;

(d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances in the form of a Variation Proposal in accordance with **Clause 12.5 above**; and

(e) use its best endeavours to continue to perform its obligations under the Contract.

13.3 AusAID must give consideration to the Contractor's recommendations and request for an extension of time and as soon as practicable after receiving the request notify the Contractor in writing whether it has determined that a Relevant Cause has occurred and whether all or part of the request has been granted. AusAID's approval of a request may be granted subject to conditions.

13.4 If AusAID approves in writing a request, the approval should be titled a "Variation Order" and recorded in the Variation Schedule, **Schedule 4B** (Variation Summary Schedule). The Contract shall be deemed to have been varied accordingly.

13.5 Even if the Contractor has not given notice under **Clause 13.2 above**, where AusAID considers that a delay has arisen, in whole or in part, because of an act or omission on the part of AusAID, its employees or agents, AusAID may, by notice in writing to the Contractor, extend the time for performance of the relevant obligation of the Contractor.

13.6 Where AusAID has determined that a Relevant Cause has occurred, and the Contractor's inability to perform its obligations due to a Relevant Cause exceeds 45 Business Days, AusAID may:

(a) notify the Contractor that the Contract is suspended for a specified period of time; or

(b) delete part of the Services; or

(c) immediately or thereafter terminate the Contract in whole or in part by providing notice in writing to the Contractor.

13.7 A notice of suspension, deletion or termination of the Contract under **Clause 13.6 above** takes effect on the date that the notification is received by the Contractor.

13.8 In the event of suspension, deletion or termination of Services or the Contract under **Clause 13.6 above** the Contractor may claim, Fees for Services performed as payable under **Schedule 2**, prior to the date of suspension, deletion or termination, on a pro rata basis and Costs that are reasonably and properly incurred by the Contractor in connection with the Contract to the extent to which those Costs are unavoidable as a direct consequence of the suspension, deletion or termination of the Contract in accordance with this clause. Any Cost must be substantiated to AusAID and must not include loss of profits or any other form of expectation loss.

14. HANDOVER

14.1 The Contractor must within 12 months of the Project Start Date draft a Handover Plan which includes all the functions to be performed to hand over the Project to the Partner Country in a manner which ensures the Partner Country is able to continue the Project and in particular to manage ongoing maintenance requirements as well as any other matters specified in **Schedule 1** and provide a copy to AusAID.

14.2 The Contractor must make changes to the Handover Plan as reasonably requested by AusAID and update the Handover Plan as necessary during the Project but at least annually and 6 months before the end of the Contract.

14.3 The Contractor must ensure that a finalised Handover Plan is provided to AusAID within seven (7) days of any early termination of the Project, or one month prior to the expected completion of the Project.

14.4 The Contractor must provide all reasonable assistance and cooperation necessary to, on expiration or termination of the Contract, facilitate the provision of the Services by AusAID or an alternative service provider. In particular the Contractor must:

(a) deliver to AusAID or its nominee complete copies of all the Data, in a form and on a media approved by AusAID, and any other AusAID property including the Supplies held or used by the Contractor;

(b) either destroy or deliver to AusAID all copies of AusAID Confidential Information as required by AusAID;

(c) if requested by the Partner Country, facilitate the assignment to the Partner Country of sub-contracts relating to Supplies, including for licensing and support of information technology and any construction work maintenance;

(d) vacate the Project Office where this has been supplied by AusAID or the Partner Country;

(e) co-operate with AusAID and, if requested, AusAID's nominee, and provide reasonable assistance relating to the transfer of any contracts to AusAID, its nominee or the Partner Country;

(f) provide all information necessary for an alternative service provider to assume provision of the Services;

(g) continue the provision of the Services for as long as reasonably requested by AusAID on the terms and conditions of the Contract;

(h) cooperate with AusAID and any other service provider in the ongoing provision of services similar to the Services; and

(i) allow AusAID to audit compliance with this clause.

15. ACCOUNTS AND RECORDS

15.1 The Contractor must at all times maintain full, true, separate and up-to-date accounts and records in relation to the Fees, Supplies and the Services. Such accounts and records must:

(a) record all receipts and expenses in relation to the Supplies and Services, including those involving foreign exchange transactions;

(b) be kept in a manner that permits them to be conveniently and properly audited;

(c) enable the extraction of all information relevant to this Contract;

(d) contain details of the disposition of Supplies as agreed to by AusAID such as replacement, write-off or transfer to the Partner Country; and

(e) the Contractor shall provide to AusAID a statement of Project expenditure on a regular basis for the duration of the Project. The details of the timing and content of the statement of expenditure are defined in Part A Project Specific Contract Conditions.

15.2 Accounts and records must be provided for inspection by AusAID immediately upon the request of AusAID.

15.3 The accounts and records must be held for the term of this Contract and for a period of seven (7) years from the date of expiry or termination of this Contract.

16. REPORTS

16.1 The Contractor must ensure that all reports required in accordance with **Schedule 1**, provide the information required and conform with the quality and format requirements specified.

16.2 The Contractor is responsible for any extra costs occasioned by any clarifications, discrepancies, errors or omissions in reports provided to AusAID or other information supplied in writing by the Contractor, provided such discrepancies, errors or omissions are not due to inaccurate information supplied in writing to the Contractor by AusAID.

16.3 AusAID may reject and withhold payment of Fees for any report which does not conform to the requirements of the Contract until the Contractor rectifies the report.

17. REVIEWS

17.1 For the purpose of ensuring that this Contract is being properly performed, AusAID may itself, or may appoint an independent person or persons to assist in the performance of, or to perform, a review of this Contract at the frequency and in relation to any matter specified by AusAID.

17.2 The Contractor must participate cooperatively in any reviews conducted by AusAID or its nominees. In addition the Contractor must respond in writing to any draft review report within 28 days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.

17.3 Reviews may be conducted of:

(a) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services, including procurement and risk management procedures;

(b) the accuracy and reliability of the Contractor's financial management systems;

(c) the Contractor's compliance with their obligations under the Contract in relation to foreign exchange transactions;

(d) the accuracy of the Contractor's reports in relation to the provision of the Services;

(e) the Contractor's compliance with AusAID's *Child protection policy* and child protection compliance standards (Attachment 1 to the policy);

(f) the Contractor's compliance with its Contractor Personnel, confidentiality and privacy obligations; or

(g) any other matters relevant to the performance of any Services including user satisfaction.

17.4 Each Party must bear its own costs of any such reviews conducted by or on behalf of AusAID.

17.5 The requirement for, and participation in, reviews does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

18. AUDITS

18.1 Where AusAID has reasonable concerns regarding the Contractor's financial management systems AusAID must provide the Contractor with written notification of those concerns and what action is required of the Contractor. This may include:

(a) that the Company Director must provide a Statutory Declaration confirming that they have sighted the necessary supporting documentation and confirm the veracity of the claim for payment;

(b) providing AusAID with additional documentation to support the claim for payment; or

(c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including invoicing procedures and practices.

18.2 The Contractor must respond to any notice received under **Clause 18.1 above** within 14 days.

18.3 Where the Contractor does not respond within 14 days, or the response does not alleviate AusAID's concern, AusAID reserves the right, if it has not already done so, to direct the Contractor to provide AusAID with certification from an independent auditor as described in **Clause 18.1(c) above**.

18.4 If AusAID directs the Contractor to undertake an independent audit under this clause:

(a) the terms of reference must be agreed in writing by AusAID;

(b) the audit must be undertaken according to the standards of the professional body relevant to the particular audit and those standards must be detailed in the terms of reference;

(c) the Contractor will bear the total cost of the audit; and

(d) AusAID will not make any further payments owed to the Contractor pending certification of the reliability of the Contractor's financial management systems and the veracity of the invoicing procedures and practices.

19. ACCESS TO THE CONTRACTOR'S PREMISES, DATA AND RECORDS

19.1 The Contractor must grant AusAID and/or its nominees (including the Auditor-General or the Privacy Commissioner or their delegates), access to the Contractor's premises, the Data, records, accounts and other financial material or material relevant to the Services, however and wherever stored, in the Contractor's or its sub-contractors' custody, possession or control, for inspection and copying.

19.2 Such access must be available to AusAID and its nominees:

(a) during the hours of 9 am and 5 pm on a Business Day;

(b) except in the case of a breach of this Contract, subject to reasonable prior notice; and

(c) at no additional charge to AusAID.

19.3 In the case of documents or records stored on a medium other than in writing, the Contractor must make available on request such reasonable facilities as may be necessary to enable a legible reproduction to be created at no additional cost to AusAID.

19.4 This clause applies for the term of this Contract and for a period of seven (7) years from the date of its expiration or termination.

20. PAYMENT

20.1 AusAID must make payment of the Fees within 30 days of:

(a) AusAID's acceptance of the satisfactory completion of the Services or relevant Payment Milestone as specified in **Schedule 2**; and

(b) receipt of a correctly rendered invoice.

20.2 It is AusAID corporate practice to inform Contractors as soon as reasonably possible, and in any case within 30 days of receipt of notice of the completion of an identified output or provision of a report whether or not that output or report is accepted.

20.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.

20.4 The Contractor must make all foreign exchange transactions at arms length and at commercially competitive rates. Supporting documentation must be retained in accordance with Standard Conditions **Clause 15.1** (Accounts and Records) and may be audited by AusAID in accordance with Standard Conditions **Clause 17** (Reviews).

20.5 Where the Contractor is entitled to reimbursement for expenditure in a currency other than Australian dollars under this Contract, the Contractor must invoice AusAID for the equivalent Australian dollar amount as recorded by the Contractor in their general ledger converted at an exchange rate which is calculated in accordance with appropriate accounting standards.

20.6 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.

20.7 Subject to the Contract AusAID shall pay Reimbursable Costs within 30 days of receipt of a correctly-rendered invoice.

20.8 An invoice is correctly rendered if:

(a) the invoice details all Services provided against the Fees and records the amount payable in respect of each category of Services described in the Contract;

(b) the invoice details the Contractor's monthly contribution toward Project Vehicles in accordance with **Clause 9.2**;

(c) the invoice is based upon the calculation of Fees referred to in **Schedule 2**; and

(d) a company director of the Contractor, or their delegate has certified that the invoice:

(i) has been correctly calculated;

(ii) that the Services included in it have been performed in accordance with this Contract; and

(iii) in the case of Reimbursable Costs that these costs have been paid.

20.9 If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Contractor, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due from AusAID to the Contractor.

20.10 A payment by AusAID is not an admission of liability. In the event that AusAID makes a payment for the completion of a Payment Milestone or the procurement of Supplies or inputs that AusAID subsequently learns have not been completed to the quality or performance specifications required or provided as required, the payment shall be deemed an overpayment and recoverable from the Contractor. Without limiting recourse to other available remedies, the overpayment may be offset against any amount subsequently due to the Contractor.

20.11 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.

20.12 AusAID need not pay any amount due to the Contractor until the Contractor delivers to AusAID a written statement which satisfies the requirements of section 127 of the *Industrial Relations Act 1996* (NSW) or the requirements of similar State or Territory legislation, in relation to the payment of employees or sub-contractors of the Contractor who were engaged in the performance of the Contract.

20.13 Except as otherwise specified in this Contract, the Fees are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Contractor in providing the Services.

20.14 If the Contractor does not have an Australian Business Number (ABN), AusAID, in accordance with the 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.

20.15 AusAID will make all amounts payable to the Contractor under this Contract into a bank account nominated by the Contractor. The Contractor must provide AusAID with the necessary details as soon as possible following execution of this Contract. Requests to change bank account must be provided to AusAID with 45 days notice.

21. GOODS AND SERVICES TAX

21.1 Except as provided by this clause, all taxes, duties and charges imposed or levied in Australia in connection with the performance of this Contract shall be borne by the Contractor or its sub-contractor(s), as the case requires.

21.2 The amount shown against each item in **Schedule 2** is the 'value' of the 'periodic supplies' to be made under this Contract, as these terms are used in the *A New Tax System Act 1999* (Cth).

21.3 The amount payable under the Contract for each supply listed in **Schedule 2** is the value of that supply plus any GST payable by the Contractor under the GST legislation. Payment by AusAID to the Contractor of the GST shall be subject to the Contractor providing AusAID with a valid Tax Invoice issued in accordance with the relevant provisions of the GST legislation and regulations.

21.4 The total amount of GST payable by the Contractor, and for which the Contractor seeks payment from AusAID, in respect of any supply shall be shown as a separate item on the Tax Invoice.

21.5 AusAID shall not pay to the Contractor any amount referable to GST, except as provided in this clause.

22. INTELLECTUAL PROPERTY RIGHTS

22.1 Subject to **Clause 22.2**, the title to all Intellectual Property rights in or in relation to Contract Material shall vest upon its creation in AusAID. If required by AusAID, the Contractor must bring into existence, sign, execute or otherwise deal with any document which may be necessary to enable the vesting of such title or rights in AusAID.

22.2 **Clause 22.1** does not affect the ownership of Intellectual Property in any Prior Material incorporated into the Contract Material, but the Contractor grants to AusAID a permanent, irrevocable, royalty-free worldwide, non-exclusive licence to use, reproduce, adapt and otherwise exploit such Prior Material in conjunction with the Contract Material. The licence granted under this **Clause 22.2** includes the right of AusAID to sub-licence any of its employees, agents or contractors to use, reproduce, adapt and otherwise exploit the Prior Material incorporated into the Contract Material for the purposes of performing functions, responsibilities, activities or services for, or on behalf of, AusAID.

22.3 The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.

22.4 The Contractor must deliver all Contract Material to AusAID or to the Partner Government counterpart agency as may be directed in writing by AusAID.

23. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

23.1 The Contractor must at all times indemnify AusAID, its employees and agents and the Partner Country ("**those indemnified**") from and against any Loss or liability whatsoever incurred by any of those indemnified or arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such Loss or liability arose out of an infringement, or an alleged infringement, of the Intellectual Property rights of any person, which occurred by reason of the performance or use of the Services.

24. MORAL RIGHTS

24.1 The Contractor warrants or undertakes that the author of any Contract Material, other than Prior Material, has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the benefit of AusAID in relation to such material used, reproduced, adapted and exploited in conjunction with the other Contract Material.

25. CONFIDENTIALITY

25.1 Subject to this clause, the Contractor must not, without the prior written approval of AusAID, make public or disclose to any person any AusAID Confidential Information. In giving written approval, AusAID may impose such terms and conditions as in AusAID's opinion are appropriate.

25.2 The Contractor must take all reasonable steps to ensure Contractor Personnel do not make public or disclose the AusAID Confidential Information and must promptly notify AusAID of any unauthorised possession, use or disclosure of AusAID Confidential Information.

25.3 The Contractor must ensure that any Contract Personnel who will have access to AusAID Confidential Information complete a written undertaking in the form set out at **Schedule 3**, relating to the non-disclosure of that information.

25.4 The Contractor may disclose AusAID Confidential Information:

(a) to its legal advisers in order to obtain advice in relation to its rights under this Contract, but only to the extent necessary for that purpose;

(b) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the first-mentioned party; or

(c) if required in connection with legal proceedings,

but in the case of (b) and/or (c) above, subject to the Contractor giving AusAID sufficient notice of any proposed disclosure to enable AusAID to seek a protective order or other remedy to prevent the disclosure.

25.5 The Contractor must not transfer AusAID Confidential Information outside Australia, except to the Partner Country, or allow parties outside Australia to have access to it, without the prior approval of AusAID.

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

25.7 This clause shall survive expiration or termination of this Contract.

26. PRIVACY

26.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services.

26.2 In this clause, the terms 'agency', 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the *Privacy Act 1988*.

26.3 The Contractor acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services:

(a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;

(b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;

(c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;

(d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;

(e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to10) where that section or NPP is applicable to the Contractor, unless:

(i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or

(ii) in the case of a NPP – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorized by this Contract is inconsistent with the NPP;

(f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with a NPP binding a party to this Contract;

(g) to immediately notify AusAID if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any sub-contractor;

(h) not to transfer such information outside Australia, except to the Partner Country, or to allow parties outside Australia or the Partner Country to have access to it, without the prior approval of AusAID; and

(i) to ensure that any employee of the Contractor who is required to deal with Personal Information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause.

26.4 The Contractor agrees to ensure that any sub-contract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the sub-contractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to sub-contracts.

26.5 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause, or a sub-contractor under the sub-contract provisions referred to in **Clause 26.4 above**.

26.6 This clause shall survive expiration or termination of this Contract.

27. AusAID USE OF CONTRACT INFORMATION

27.1 AusAID may disclose matters relating to the Contract, including the Contract and the names of sub-contractors as specified in **Clause 11.1 (f) above**, except where such information may breach the *Privacy Act 1988*, to Commonwealth governmental departments and agencies, Commonwealth Ministers and Parliamentary Secretaries, and to the

Commonwealth Parliament, including responding to requests for information from Parliamentary committees or inquiries.

27.2 This clause shall survive termination or expiration of the Contract.

28. PUBLICITY

28.1 The Contractor must identify and implement appropriate opportunities for publicising the Project.

28.2 The Contractor must not make any press, media or other announcements or releases relating to this Contract and the Services without the prior approval of AusAID Public Affairs Group as to the form, content and manner of the announcement or release.

28.3 The Contractor must only use the Australian Government/AusAID logo (in-line version) to denote association with Australia, the Australian Government or AusAID in any publicity or other project related materials. The Contractor must comply with the "AusAID Logo Guidelines for Managing Contractors" at all times, including when advertising for sub-contractors or personnel. The Guidelines are available from the AusAID Business website.

28.4 The Contractor shall, if appropriate, erect a sign at each Project site that acknowledges the contributions of the Australian and Partner Governments. Such signs shall in all cases be discussed and agreed between AusAID and the Partner Government. Signs should use the Australian Government/AusAID logo (in-line version). No independent project or program logos or emblems are to be used. Contractor signs may also be displayed, but not in greater number or prominence than acknowledgments to either the Australian or Partner Governments.

29. WARRANTIES

29.1 The Contractor represents and warrants that it has made its own assessment of all information made available to the Contractor in respect of the Services and sought appropriate professional advice concerning:

(a) any information, statements or representations;

(b) the regulatory regime applicable to the delivery of the Services both in Australia and in the Partner Country;

(c) the assumptions, uncertainties and contingencies which may affect the future business of the Services; and

(d) the impact that a variation in future outcomes may have on any Services.

29.2 Subject to any law to the contrary, and to the maximum extent permitted by law, AusAID, its employees, agents and advisers each disclaim all liability for any Losses (whether foreseeable or not) suffered by any other person acting on any part of the information made available to the Contractor in respect of the Service, whether or not the loss arises in connection with any negligence, default or lack of care on the part of AusAID, its employees, agents or advisers or any other person or any misrepresentation or any other cause.

29.3 The Contractor warrants that it shall have full corporate power and authority to enter into, perform and observe its obligations under this Contract and that the execution, delivery and

performance of this Contract shall be duly and validly authorised by all necessary corporate action.

30. PERSONNEL SECURITY

30.1 The Contractor is responsible for the security of Contractor Personnel and for taking out and maintaining appropriate insurances in respect of Contractor Personnel.

30.2 The Contractor is responsible for the immediate development and implementation of a Security Plan to ensure the safety and security of Contractor Personnel. The Security Plan should incorporate prevention strategies and response plans, including evacuation plans where appropriate. The Contractor shall submit a copy of the Security Plan to AusAID prior to mobilisation in the Partner Country. The Contractor shall review and update the Security Plan whenever considered necessary by the Contractor and shall submit the revised document to AusAID.

30.3 The Contractor must keep abreast of the security situation in the Partner Country including where relevant having regard to travel advisories and notices including those issued by the Australian Department of Foreign Affairs and Trade. The Australian advisories and notices are available at: www.dfat.gov.au

30.4 The Contractor acknowledges and confirms that, notwithstanding any other provisions of the Contract:

(a) it is not the function or responsibility of AusAID or any person acting or purporting to act on behalf of AusAID, to comment on or approve the Contractor's Security Plans; and

(b) the Contractor has not entered the Contract based on any representation, statement or assurance by AusAID or any person acting or purporting to act on behalf of AusAID, in respect of the safety or security of the Contractor, Contractor Personnel or any person acting on behalf of the Contractor, in the Partner Country or in any other location.

31. TERMINATION FOR CONTRACTOR DEFAULT

31.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor terminate this Contract, with effect from the date in the notice, if the Contractor:

(a) commits a breach of this Contract and:

(i) that breach is not capable of remedy;

(ii) fails to remedy that breach within **[10]** Business Days (or such further time as AusAID may, in its absolute discretion, specify), after receiving a notice from AusAID requiring the Contractor to remedy the breach; or

(iii) does not commence to remedy that breach, within a reasonable time (having regard to the nature of the breach) after being given notice by AusAID requiring the Contractor to remedy the breach;

(b) becomes, or in AusAID's reasonable opinion is likely to become, bankrupt, insolvent or otherwise financially unable to fulfil its obligations under this Contract;

(c) becomes subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act* 2001;

(d) is wound up by resolution or an order of the court;

(e) ceases to carry on business;

(f) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;

(g) suffers any execution against its assets having, or which in AusAID's reasonable opinion is likely to have, an adverse effect on its ability to perform this Contract;

(h) ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Contract (except to the extent that this is outside the Contractor's reasonable control);

(i) assigns its rights otherwise than in accordance with the requirements of this Contract;

(j) suffers a change in Control which in AusAID's reasonable opinion may adversely affect the Contractor's ability to perform the Services under this Contract;

(k) is in breach of the warranty, regarding listing on a World Bank List or Relevant List, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;

(l) is, during the term of this Contract, listed on a World Bank List or Relevant List;

(m) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, bribery of a public official, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;

(n) is in breach of the warranty, regarding unsettled judicial decisions relating to employee entitlements, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;

(o) is, during the term of this Contract, convicted of an offence of, or relating to, bribery of a public official. In this paragraph (n) the Contractor includes Contractor Personnel; or

(p) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, child abuse, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract.

31.2 If this Contract is terminated under this **Clause 31**:

(a) subject to this Contract, the parties are relieved from future performance of this Contract, without prejudice to any right of action that has accrued at the date of termination;

(b) subject to this Contract, all licences and authorisations granted to the Contractor by AusAID under this Contract terminate immediately despite anything to the contrary contained in the relevant licence or authorisation;

(c) the AusAID Confidential Information, Supplies and any other property supplied or given to the Contractor by AusAID pursuant to this Contract must be immediately returned to AusAID;

(d) AusAID is not obliged to make any further payments (including the payment of Fees) to the Contractor. However, AusAID may, in its absolute discretion, consider making a payment to the Contractor in such amount and upon such terms as AusAID determines is appropriate in the circumstances; and

(e) the Contractor will indemnify and hold AusAID harmless against any Losses, costs and expenses arising out of or in connection with the termination or any breach of this Contract by the Contractor (including those arising from affected sub-contracts).

32. TERMINATION FOR CONVENIENCE

32.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor, terminate or reduce the scope of this Contract from the time specified in the notice (and without the need to give further notice) and, in that event, AusAID may give to the Contractor such directions as it thinks fit in relation to subsequent performance of this Contract.

32.2 Where notice is given under **Clause 32.1** the Contractor must:

(a) comply with all directions given by AusAID;

(b) cease or reduce (as applicable) the performance of work under the Contract; and

(c) immediately do everything possible to mitigate its Losses, and all other loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination (including those arising from affected sub-contracts) arising in consequence of termination of this Contract under this **Clause 32**.

32.3 In the event of termination or reduction in scope under this **Clause 32**, subject to **Clause 32.4**, AusAID will only be liable to the Contractor for:

(a) Fees, as payable under **Schedule 2**, for Services performed prior to the termination, on a pro rata basis; and

(b) Costs that are:

(i) directly attributable to the termination or reduction in scope of this Contract; and

(ii) in AusAID's opinion, reasonably and properly incurred by the Contractor in connection with the Contract,

to the extent that such Costs are substantiated to AusAID.

32.4 AusAID is not liable for any loss of profits or any other form of expectation loss arising out of, or in connection with, the termination or reduction in scope of this Contract under this **Clause 32**.

33. INDEMNITY

33.1 The Contractor must at all times indemnify AusAID, its employees, agents and contractors (except the Contractor) ("**those indemnified**") from and against any Loss or liability whatsoever suffered by those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such Loss or liability was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the Contractor, or any Contractor Personnel in connection with this Contract.

33.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 33.1 above** for the benefit of each of such persons in the name of AusAID or of such persons.

33.3 The indemnity in this clause is reduced to the extent that the Loss or liability is directly caused by AusAID, its employees or contractors (except the Contractor), as substantiated by the Contractor.

33.4 The Contractor is responsible for all risks associated with the Data, the Supplies and any AusAID property while in the possession or control of the Contractor.

33.5 This indemnity shall survive termination or expiration of this Contract.

34. INSURANCE

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

(a) public liability insurance with a limit of at least $5 million for each and every claim which covers:

(i) loss of, or damage to, or loss of use of any real or personal property; or

(ii) personal injury to, illness (including mental illness) or death of any person arising from the performance of the Contract;

(b) motor vehicle third party property damage insurance;

(c) workers' compensation insurance:

(i) which fully insures the Contractor for any amount it becomes liable to pay under any statute relating to workers' or accident compensation or for employer's liability at common law;

(ii) to be effected in the Partner Country as well as every state or territory in Australia where the Contractor Personnel normally reside or in which their contract of employment was made; and

(iii) which, where possible at law extends to indemnify AusAID as principal for AusAID's liability to persons engaged by the Contractor.

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

(d) property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value;

(e) professional indemnity insurance to cover the Contractor's obligations under this Contract. The Contractor's professional indemnity policy must respond to claims arising under the *Trade Practices Act (Cth)* 1974, in regard to this Contract. The Contractor may obtain the insurance on an annual basis if necessary, but must maintain the necessary insurance each year until the expiration of three (3) years after the full Term of the Contract or earlier termination of the Contract;

(f) adequate medical and dental insurance for Contractor Personnel who are engaged to operate outside their country of permanent residence; and

(g) adequate insurance for medical evacuation and evacuation resulting from an insured event for all Contractor Personnel.

34.2 The Contractor must, within 14 days after a request by AusAID, provide for any insurance policy: a certificate of currency, a list of exclusions; and the amount of excess payable.

34.3 Neither the effecting of insurance nor any failure to effect such insurance shall in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the other provisions of this Contract or at law.

34.4 In the event of an insurance claim any deductible/excess payable shall be the responsibility of the Contractor.

35. CONFLICT OF INTEREST

Conflict of Interest

35.1 The Contractor warrants that, at the date of signing this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.

35.2 The Contractor must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. The Contractor must not engage in any activity, subject to **Clause 35.3 below**, that may result in a conflict of interest arising or continuing.

35.3 Where a conflict of interest arises in the performance of the Contractor's obligations under this Contract, the Contractor must notify AusAID immediately, and may request permission from AusAID to undertake the work despite that conflict of interest.

Anti-Corruption

35.4 The Contractor warrants that the Contractor shall not make or cause to be made, nor shall the Contractor receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt act, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Contract. In addition, the Contractor shall not bribe public officials and shall ensure that all

Contractor Personnel comply with this provision. Any breach of this clause shall be grounds for immediate termination of this Contract under Standard Conditions **Clause 31** (Termination for Contractor Default) by notice from AusAID.

36. **FRAUD**

36.1 For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means.

36.2 The Contractor and its sub-contractors must not engage in any fraudulent activity.

36.3 The Contractor must prepare a fraud risk assessment and zero tolerance fraud control strategy. These must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures that comply with the *Commonwealth Fraud Control Guidelines*.

36.4 The Contractor is responsible for preventing and detecting fraud including fraud within those functions outsourced / performed by a sub-contractor or under any other arrangement established by the Contractor relating to the management or administration of AusAID provided funds. The Contractor is responsible for ensuring that its staff and its subcontractors' staff are responsible and accountable to the Contractor for preventing and reporting any fraud or suspected fraud as part of their routine responsibilities.

36.5 The Contractor must report in writing within 5 working days to AusAID any detected, suspected, or attempted fraudulent activity involving AusAID provided funds. Where a matter is reported in writing to AusAID by a Contractor, the advice must provide where known:

(a) the name of the Project under which AusAID funding is being provided;

(b) name of any personnel or subcontractors involved;

(c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);

(d) the names of the suspected offender(s) (where known);

(e) details of witnesses;

(f) copies of relevant documents;

(g) references to any relevant legislation;

(h) a nominated contact officer;

(i) any other relevant information (eg, political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and

(j) the current status of any inquiries commenced by the Contractor.

36.6 The Contractor must, in consultation with AusAID, develop and implement a strategy to investigate the detected, suspected or attempted fraud based on the principles set out in the *Australian Government Investigations Standards* which are available from AusAID when a demonstrated need to distribute them exists. The Contractor will be responsible for the conduct of the investigation. Any investigator appointed by the Contractor should possess the minimum qualifications specified in the *Commonwealth Fraud Control Guidelines.* Before engaging a qualified investigator, the Contractor may consult with AusAID regarding the appointment and may request assistance from AusAID in meeting the actual costs of a qualified investigator. Provided that the Contractor has consulted with AusAID

before engaging an investigator, AusAID may in its absolute discretion agree to meet some or all of those costs.

36.7 AusAID reserves the right to appoint its own investigator, conduct the investigation, conduct a concurrent investigation or refer the allegations to the appropriate law enforcement agencies or any other person or entity AusAID deems appropriate in Australia or in the partner countries for investigation. In this instance the Contractor shall provide all assistance that may be required at the Contractor's sole expense.

36.8 Following the conclusion of an investigation, where the investigation finds the Contractor, an employee of the Contractor or a subcontractor of the Contractor has acted in a fraudulent manner, the Contractor shall:

(a) where money has been misappropriated, pay to AusAID or the project the full value of the AusAID funds that have been misappropriated; or

(b) where an item of property has been misappropriated, either return the item to AusAID or the project or if the item cannot be recovered or has been damaged so that it is no longer usable, replace the item with one of equal quality.

36.9 Following the conclusion of an investigation, where the investigation finds that a party other than the Contractor, an employee of the Contractor or a subcontractor of the Contractor, has acted in a fraudulent manner, the Contractor shall at the Contractor's cost:

(a) make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, one or both of the following:

(i) taking recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country. Before commencing any recovery action, the Contractor may consult with AusAID regarding the proposed course of action and may request assistance from AusAID in meeting the costs of the recovery action. Provided that the Contractor has consulted with AusAID before commencing recovery action, AusAID may in its absolute discretion agree to meet some or all of those costs.

(ii) referring the matter to the relevant Partner Country police or other authorities responsible for prosecution of fraudulent activity.

(b) keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.

36.10 If the Contractor considers that after all reasonable action has been taken to recover the funds or funded property and full recovery has not been achieved or recovery has only been achieved in part, the Contractor may seek approval from AusAID that no further recovery action be taken. The Contractor must provide to AusAID all information, records and documents required by AusAID to enable the AusAID delegate to make a decision on whether to approve non-recovery of funds or funded property.

36.11 In the event that any investigation finds that the contractor, an employee of the Contractor or a subcontractor of the Contractor has been involved in any fraudulent activity, or in the event that AusAID discovers that a suspected, attempted or detected fraud has not been reported to AusAID, AusAID, at AusAID's sole discretion, reserves the right to:

(a) Terminate the Contract with the Contractor, in which event, AusAID shall not be liable to the Contractor for any claim, demand, proceeding suit or action by the Contractor, and the Contractor shall indemnify, defend and hold harmless AusAID from any claim, demand, proceeding suit or action from any party or individual resulting from such termination; and / or.

(b) Not enter into any further agreement with the Contractor until such time as AusAID is satisfied that any recommended changes to the Contractor's management and procedures have been made in order to prevent any further fraudulent activity from occurring and to ensure timely reporting of suspected, attempted or detected fraud to AusAID.

37. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

37.1 The Contractor must at all times have regard to and comply with, and use its best endeavours to ensure that all Contractor Personnel comply with, the laws in Australia, the Partner Country and applicable laws of other countries.

37.2 A list, as amended from time to time, of Australian laws that may apply to the delivery of developmental aid to foreign countries can be found on the AusAID website: http://www.ausaid.gov.au/business/contracting.cfm.

This list is not exhaustive and is provided for information only. The provision of this list does not relieve the Contractor from complying with the obligations contained in **Clause 37.1**.

37.3 The Contractor and all Contractor Personnel must at all times have regard to and operate in accordance with relevant guidelines, as amended from time to time, and listed on the AusAID website: http://www.ausaid.gov.au/business/contracting.cfm.

37.4 The Contractor must notify AusAID of any material breach by the Contractor or Contractor Personnel of a law or guideline referred to in this **Clause 37**.

37.5 On becoming aware of a material breach by the Contractor or Contractor Personnel of a law or guideline, whether or not such a breach is notified to AusAID by the Contractor, AusAID may, in addition to any other rights available to AusAID, terminate this Contract under **Clause 31**.

37.6 The Contractor must in carrying out its obligations under this Contract comply with those laws in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the *Criminal Code Act 1995 (Cth)* and listed in regulations made under that Act and regulations made under the *Charter of the UN Act 1945 (Cth)*. The Contractor must ensure that funds provided under this Contract do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform AusAID immediately.

37.7 The Contractor must when providing any Services and procuring the Supplies have regard to and operate in accordance with Australian policies on developmental aid to foreign countries including:

(a) the policy Gender Equality in Australia's Aid Program – Why and How (March 2007);

(b) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child protection policy*;

(c) Environment. AusAID is bound by the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:

1. ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;

2. comply with AusAID's Environmental Management System outlined in the *Environmental Management Guide for Australia's Aid Program*, including:

   a. assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;

   b. report regularly on any such impacts as required by the Scope of Services; and

3. comply with all relevant environmental laws and regulations of the Partner Country.

The *Environmental Management Guide for Australia's Aid Program* can be found at: http://www.ausaid.gov.au/keyaid/envt.cfm.

38. INVESTIGATION BY THE OMBUDSMAN

38.1 In carrying out the Services, the Contractor, and an employee or subcontractor of the Contractor, may be a "Commonwealth service provider' under section 3BA of the Ombudsman Act 1976.

38.2 The Contractor must use its best endeavours, and must ensure that employees and subcontractors of the Contractor use their best endeavours, in undertaking the Services, not to engage in conduct that:

(a) would, if the Contractor or an employee or subcontractor were an officer of AusAID, amount to a breach of duty or to misconduct; or

(b) should be brought to the attention of the principal officer of AusAID.

38.3 If the Commonwealth Ombudsman commences an investigation of conduct of the Contractor, as a Commonwealth service provider, the Contractor, at the cost of the Contractor, must cooperate with the investigator including:

(a) providing all documentation required by the investigator,

(b) making Contractor Personnel available to assist the investigator and

(c) allowing the investigator, at any reasonable time of the day, to enter a place occupied by the Contractor and carry on the investigation at that place.

38.4 If the Ombudsman brings evidence to the notice of AusAID concerning the conduct of the Contractor, or of an employee or subcontractor of the Contractor, the Contractor must, at the cost of the Contractor, take whatever remedial action is required by AusAID or by the Ombudsman to rectify the situation.

38.5 The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including this requirement in relation to subcontracts.

38.6 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID, due to conduct of the Contractor or of an employee or subcontractor, which arise directly or indirectly, as a result of an investigation carried out by the Ombudsman.

38.7 This clause shall survive expiration or termination of this Contract.

39. RESOLUTION OF DISPUTES

39.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Contract. Subject to **Clause 20.11** (Payment) and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Contract.

39.2 A Party may give the other Party a notice of dispute ("**dispute notice**") in connection with this Contract. Following the giving of a dispute notice, the dispute must be referred to a senior officer of AusAID and a senior officer of the Contractor, who must use reasonable endeavours to resolve the dispute within 20 Business Days or such other period as is agreed by the Parties.

39.3 If the Parties have not been able to resolve the dispute in accordance with **Clause 39.2 above**, then the Parties may agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation.

39.4 In the event that the dispute, controversy or claim has not been resolved within 50 Business Days (or such other period as agreed between the Parties in writing) after the dispute notice has been received in accordance with clause headed 'Notices' in Part B (Standard Contract Conditions) of this Contract, then either Party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.

39.5 Nothing in this clause prevents either Party from seeking urgent injunctive relief.

40. NOTICES

40.1 A notice required or permitted to be given by one Party to another under this Contract must be in writing and is treated as having been duly given and received:

(a) when delivered (if left at that Party's address);

(b) on the third Business Day after posting (if sent by pre-paid mail); or

(c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice

had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

41. MISCELLANEOUS

41.1 Waiver

The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon that Party by this Contract does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under this Contract.

41.2 Liability of Party

If any Party to this Contract consists of more than one person then the liability of those persons in all respects under this Contract is a joint liability of all those persons and a separate liability of each of those persons.

41.3 Entire agreement

This Contract constitutes the sole and entire agreement between the Parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Contract is of no force or effect.

41.4 Severance

If any provision of this Contract is invalid and not enforceable in accordance with its terms, other provisions that are self-sustaining and capable of separate enforcement with regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.

41.5 Assignment

No Party may assign or transfer any of its rights or obligations under this Contract without the prior consent in writing of the other Party.

41.6 Governing Law and Jurisdiction

This Contract is governed by, and is to be construed in accordance with, the law of the Australian Capital Territory and the Parties submit to the exclusive jurisdiction of the courts of the Australian Capital Territory and any court hearing appeals from those courts.

41.7 Contra Proferentem

No rule of construction shall apply in the interpretation of this Contract to the disadvantage of one Party on the basis that such Party put forward or drafted this Contract or drafted any provision of this Contract.

41.8 False and Misleading Information

The Contractor acknowledges that it is aware that, in relation to section 137.1 of the *Commonwealth Criminal Code,* giving false or misleading information is a serious offence.

SCHEDULE 1 – SCOPE OF SERVICES
AUSTRALIAN SCHOLARSHIPS FOR DEVELOPMENT IN VIETNAM (ASDIV) PROGRAM

Note to tenderers: refer to Part 3 of the RFT.

SCHEDULE 2 – BASIS OF PAYMENT
AUSTRALIAN SCHOLARSHIPS FOR DEVELOPMENT IN VIETNAM (ASDIV) PROGRAM

Note to tenderers: refer to Part 4 of the RFT.

SCHEDULE 3 - DEED OF CONFIDENTIALITY

THIS DEED POLL is made on the day of [ ]

in favour of **COMMONWEALTH OF AUSTRALIA** represented by the Australian Agency for International Development ("**AusAID**") which is part of the Department of Foreign Affairs and Trade.

BY [Insert name and address of Recipient] (the "**Recipient**").

RECITALS

A. AusAID and **Contractor's Name** (the "**Contractor**") have entered into a Contract for the purpose of a project in **Country**.

B. The Recipient has been engaged by the Contractor to work on the project.

C. The Recipient will, in carrying out that work, be given access to Confidential Information.

D. AusAID requires the Recipient to enter into this Deed in relation to use of Confidential Information.

THE RECIPIENT DECLARES AS FOLLOWS:

1. **INTERPRETATION**

In this Deed:

"**Confidential Information**" means information that:

(a) is designated by AusAID as confidential; or

(b) the Recipient knows or ought to know is confidential,

and includes to the extent that it is confidential:

(c) information comprised in or relating to any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID;

(d) information relating to the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;

(e) the Data; and

(f) personal information under the *Privacy Act 1988*;

but does not include information which:

(g) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality; or

(h) has been independently developed or acquired by the Recipient as established by written evidence.

"**Data**" includes any information provided to the Contractor under this Contract from any source, or collected or created by the Contractor in connection with the Services, whether in magnetic, electronic, hardcopy or any other form.

2. **NON DISCLOSURE**

2.1 The Recipient must not copy, reproduce or disclose any of the Confidential Information without the prior written consent of AusAID, which consent AusAID may grant or withhold in its absolute discretion.

3. **RESTRICTION ON USE**

3.1 The Recipient must use the Confidential Information only for the purpose of the Services.

4. **DELIVERY UP OF DOCUMENTS**

4.1 AusAID may, at any time and without notice, demand, either orally or in writing, the delivery to AusAID of all documents in the possession or control of the Recipient which contain the Confidential Information.

5. **SURVIVAL OF OBLIGATIONS**

5.1 The obligations in this Deed are perpetual.

EXECUTED as a deed poll.

SIGNED, by the Recipient in the presence of:) ……..
)
Signature of

……..	……..
Signature of witness	Name of witness ***(Print)***

SCHEDULE 4A – VARIATION ORDER PRO FORMA

VARIATION ORDER NO.

FOR CONTRACT

between

COMMONWEALTH OF AUSTRALIA

represented by

The Australian Agency for International Development

(AusAID)

and

CONTRACTOR'S NAME

ABN

in relation to

CONTRACT TITLE

VARIATION ORDER No. # UNDER CLAUSE # OF CONTRACT #

TO: CONTRACTOR – ***insert Name***

FROM: AusAID

1. This Variation Order is given pursuant to Standard Condition clause headed **Amendments and Variation** in the Contract.

2. The Contract ***Schedule 1 and/or Schedule 2*** is varied as follows:

EITHER *detail here under the headings of:*

3. **SERVICES**
4. **COMMENCEMENT AND COMPLETION OF SERVICES**
5. **REPORTING REQUIREMENTS**

OR *where variation requires a reissue of Schedules 1 and/or 2. Use paragraphs 6 and/or 7 as appropriate.*

6. Delete Schedule 1, Scope of Services and replace with the attached Scope of Services.

7. Delete Schedule 2, Basis of Payment and replace with the attached Basis of Payment.

8. There will be an ***increase/decrease/no change*** of $x,xxx.xx in the financial limit of this Contract for the performance of these Services.

9. In all other regards you are required to carry out the Services as described in the Contract.

Yours sincerely

FMA Section 44 Delegate
Insert date

NOTE TO USER:

It is not necessary for the Contractor to sign the Variation Order. However, you must act in good faith by ensuring that the Contractor agrees to the changes before issuing the Variation Order. As with Amendments, Variation Orders must be cleared by Procurement Management Group (PMG) and AusAID's Senior Legal Adviser or

AusAID's Legal Officer before being issued. See 'MINUTE Clearance (Variation Order)' on the Contract Templates Sharepoint.

The delegate must sign two originals of the Variation Order. One original is sent to the Contractor. One copy needs to be made. The copy must be retained by the Activity Manager (Canberra or Post). The AusAID original copy is sent to RMC for inclusion on the original Contract File. (DELETE this note before issuing the Variation Order).

SCHEDULE 4B - VARIATION SUMMARY SCHEDULE

The Contract has been varied in accordance with Standard Condition clause headed **Amendments and Variation** of the Contract on the following dates relating to:

Variation Order #	**Date signed by AusAID**	**Very Brief Summary of variation**	**Increase/Decrease in financial limit**	**Adjusted Financial Limit**

SCHEDULE 5 – DEED OF NOVATION AND SUBSTITUTION

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

BETWEEN:

COMMONWEALTH OF AUSTRALIA represented by the Australian Agency for International Development of the Department of Foreign Affairs and Trade ("**AusAID**")

AND:

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

AND:

Contractor's Name ACN# of **Contractor's Address** (the "**Contractor**") of the third part.

WHEREAS:

A. AusAID is concerned to ensure that the Services under the Contract are properly delivered.

B. The Subcontractor is a subcontractor to the Contractor for the Services.

C. The Subcontractor and Contractor have agreed with AusAID to novate the Subcontract to AusAID in the event that AusAID exercises its right under **Clause 31** and **32** of the Contract.

D. The Subcontractor agrees that AusAID may novate the Subcontract to another Contractor at its sole and absolute discretion in the event that AusAID has exercised its right under **Clause 31** and **32** of the Contract.

NOW THIS DEED WITNESSES AS FOLLOWS:

6. **DEFINITIONS**

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

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

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

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

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

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

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

"**Subcontractor Services**" means the services that the Subcontractor is obliged to provide to the Contractor under the Subcontract.

7. **APPLICATION OF DEED**

The Contractor and the Subcontractor agree that:

this Deed is entered into for the benefit of AusAID; and

AusAID may exercise the rights granted to it under this Deed.

This Deed commences on the Commencement Date of the Subcontract.

8. **NOVATION**

AusAID may issue a notice of substitution to the Subcontractor if AusAID is entitled to exercise its rights under **Clauses 31** or **32** of the Contract.

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

AusAID is substituted for the Contractor under the Subcontract in respect of the Subcontractor Services as if AusAID was originally the Party to the Subcontract instead of the Contractor, and all references in the Subcontract to the Contractor are to be read and construed as if they were references to AusAID;

AusAID is to pay any amount due to the Subcontractor under the Subcontract to the Subcontractor and the receipt of the Subcontractor shall be full and sufficient discharge for any such payments;

subject to paragraph (a), AusAID is bound by, and must fulfil, comply with and observe all the provisions of the Subcontract and enjoys all the rights and benefits of the Contractor under the Subcontract; and

the performance by the Subcontractor of services under the Subcontract, is instead of, and not in addition to, any performance by the Contractor of its obligations under that Subcontract.

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

9. **RELEASE**

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

10. **FURTHER ASSURANCES**

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

11. **DISCHARGE**

Neither the Subcontractor nor the Contractor are discharged or released or excused from this Deed by an arrangement made between the Contractor and the Subcontractor prior to the issue of a notice of substitution with, by any change to the Subcontract, or by any forbearance whether as to payment, time or otherwise.

The Contractor undertakes to notify AusAID of any alterations to the Subcontract or other matter referred to in **Clause 3** of this Schedule. A failure of the Contractor to notify AusAID under this clause does not alter the Subcontractor's obligations under this Deed.

This Deed by the Subcontractor for AusAID to assume the obligations of the Contractor is discharged in relation to the Subcontract only on completion by the Subcontractor of all its obligations under the Subcontract in respect of the Subcontractor Services, or, in the event of the issue of a notice of substitution, on the due and proper performance of the Subcontract by the Subcontractor.

The obligations of AusAID under this Deed in its application to the Subcontract must not exceed the obligations of the Contractor under the Subcontract.

12. **NOTICES**

A notice required or permitted to be given by one Party to another under this Deed must be in writing and is treated as being duly given and received:

when delivered (if left at that Party's address);

on the third Business Day after posting (if sent by pre-paid mail); or

on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and the facsimile machine provides an affirmation of a successful transmission).

Address of Party

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

AusAID

To:	**Desk Name**
Attention:	Country Program Manager
Address:	Australian Agency for International Development GPO Box 887 CANBERRA ACT 2601
Facsimile:	**Desk Fax**

Contractor

To:	**Contractor's Name**
Attention:	
Address:	**Contractor's Address**
Facsimile:	**Contractor's Fax**

Subcontractor

To:

Attention:

Address:

Facsimile:

13. **LAWS**

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

14. **WARRANTY**

The Subcontractor and the Contractor each warrant and represent to AusAID that at all times:

the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the Subcontractor and the Contractor respectively;

the Subcontractor and the Contractor respectively each has full corporate power and lawful authority to execute and deliver this Deed and to consummate and perform or caused to be performed its obligations under this Deed;

this Deed constitutes a legal, valid and binding obligation of the Subcontractor and the Contractor respectively, enforceable in accordance with its terms by appropriate legal remedy; and

to the best of each of the Subcontractor's or the Contractor's knowledge, there are no actions, claims, proceedings or investigations pending or threatened against or by the Subcontractor or the Contractor respectively that may have a material effect on the ability of the Subcontractor or the Contractor respectively to perform its obligations under this Deed.

15. **GENERAL**

Counterparts

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

Attorneys

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

Further Assurance

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

Assignment

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

EXECUTED as a Deed.

SIGNED, for and on behalf of the **COMMONWEALTH OF AUSTRALIA** in the presence of:	)))	…….. Signature
…….. Signature of witness		
…….. Name of witness ***(Print)***		
SIGNED for and on behalf of ***[Subcontractor]*** by:	)))	
…….. Director Name of Director ***(Print)***		…….. Director/Secretary Name of Director/Secretary ***(Print)***
SIGNED for and on behalf of ***[Contractor]*** by:	)))	
…….. Director Name of Director ***(Print)***		…….. Director/Secretary Name of Director/Secretary ***(Print)***

SCHEDULE 6 – PERFORMANCE GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20

BETWEEN **COMMONWEALTH OF AUSTRALIA** represented by the Australian Agency for International Development ('**AusAID**')

AND **[ ]** ABN **[ ]**

('**Guarantor**')

RECITALS

A. AusAID wishes to procure certain services.

B. **Contractor's Name** ('**Contractor**') has agreed to supply the services to AusAID under the annexed Contract (the '**Contract**').

C. The Guarantor agrees to provide the guarantees and indemnities appearing in this Deed.

AGREEMENT

1. The Guarantor guarantees to AusAID the performance of the obligations undertaken by the Contractor under the Contract on the conditions set out in this Deed.

2. If the Contractor (unless relieved from the performance of the Contract by AusAID expressly or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its obligations under the Contract, the Guarantor shall, if required to do so by AusAID, complete or cause to be completed the obligations set out in, and in accordance with the conditions of, the Contract. If the Contractor commits any breach of its obligations, and such breach is not remedied by the Guarantor under this Deed and the Contract is then terminated for default, the Guarantor shall indemnify AusAID against losses, damages, costs and expenses directly incurred by reason of that default.

3. The Guarantor shall not be discharged or released or excused from this Deed by an arrangement made between the Contractor and AusAID with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise. The guarantee by the Guarantor in this Deed to assume the obligations of the Contractor shall continue in force and effect until completion of all the Contractor's obligations under the Contract or until the completion of the undertakings under this Deed by the Guarantor.

4. The undertakings of the Guarantor under this Deed shall not exceed the obligations of the Contractor under the Contract. Any liability of the Guarantor shall be coextensive, but not in excess of any liability of the Contractor to AusAID under the Contract. The Guarantor shall be entitled to all rights, privileges and defences otherwise available, to the Contractor with respect to any such liability, including without limitation all provisions of the Contract relating to the limitation of liability and the resolution of disputes.

5. This Deed is subject to, and is to be construed in accordance with, the laws in force in the Australian Capital Territory and the parties agree that the courts of that Territory have jurisdiction to entertain any action in respect of, or arising out of, this Deed and the parties submit themselves to the jurisdiction of those courts.

6. For the purpose of this Deed, where an obligation of the Contractor under the Contract has not been performed, the Contractor shall be taken to have failed to perform that obligation notwithstanding that the Contractor has been dissolved or is subject to external administration procedures under chapter 5 of the *Corporations Law* or any other law.

7. The guarantee in this Deed is a continuing guarantee to AusAID until the obligations and liabilities of the Contractor under the Contract have in all respects been performed, observed and discharged.

8. The following notice arrangements apply:

   (a) notice or other communication which may be given to or served on the Guarantor under this Deed shall be deemed to have been duly given or served if it is in writing, signed on behalf of AusAID and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Guarantor or its agent at any registered office of the Guarantor or posted to the Guarantor's address set out above or such other address as is notified in writing to AusAID from time to time;

   (b) a notice or other communication which may be given to or served on AusAID under this Deed shall be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Guarantor and is either delivered by hand, posted or faxed or a copy transmitted electronically to AusAID at the address set out above or such other address as is notified in writing to the Guarantor from time to time;

   (c) a notice sent by post shall be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent; and

   (d) a notice sent by facsimile transmission or transmitted electronically shall be deemed to have been given when the machine on which the notice is sent reports that the notice has been transmitted satisfactorily.

SIGNED, for and on behalf of the **COMMONWEALTH OF AUSTRALIA** by:)
)
)

In the presence of:

……..

Signature of witness

……..

Name and Position
(Print)

……..

Name of witness (print)

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

……..

Director
Name
(Print)

……..

Director/Secretary
Name
(Print)