



Australian Government

AusAID

23 January 2010

Request for Tender

**Australia Indonesia Partnership for Decentralisation (AIPD)
– Management Support Team**

REQUEST FOR TENDER

Australia Indonesia Partnership for Decentralisation (AIPD) – Management Support Team

AusAID is seeking proposals from organisations interested in providing services for the **Australia Indonesia Partnership for Decentralisation (AIPD) – Management Support Team** (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**).

The two sections are designed to clearly identify standard clauses applicable to AusAID tenders and contracts and by extension to highlight particular requirements (either in tendering or the contract) that will apply for this particular Project.

The conditions (Tender and Contract) contained in this RFT apply to this stage of the procurement process and supersedes any earlier stage conducted by AusAID.

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**.

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 1.15, Part 5)

2.00 pm local time in Canberra, ACT, Australia
Tuesday, 9 March 2010

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 1.15, 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 D to Part 5)

PDF (Portable Document Format)

*Using grey scale, not colour.

Number of Copies of Tender:

(Clause 1.6, Part 5)

For electronic tender lodgement

Technical Proposal: One (1) electronic file containing all
sections.

Tenderer's Submission Checklist: One (1) separate
electronic file.

Financial Proposal: One (1) separate electronic file.

Financial Assessment material: One (1) separate
electronic file.

For hard copy tender lodgement

Technical Proposal: One (1) printed Original and four (4)
copies.

*To be printed double sided and without section dividers.

Tenderer's Submission Checklist: One (1) printed
Original.

Financial Proposal: One (1) printed Original, in a separate, sealed envelope.

Financial Assessment material: One (1) printed copy in a separate sealed envelope.

CD: One (1) CD containing the above documents in four (4) separate PDF files.

Endorsement of hard copy Tenders:

(Clause 1.17, Part 5)

“Tender for the AIPD – Management Support Team”

Tender Validity Period:

(Clause 1.8, Part 5)

180 days

Contact Person:

(Clause 2.1, Part 5)

Name: Rebecca Clack

Fax: +61 2 6206 4885

Email: AIPDtender@ausaid.gov.au

AusTender Help Desk:

(Clause 3.1, Annex D, Part 5)

Phone: 1300 651 698 (within Australia)

Phone: +61 2 6215 1558 (outside Australia)

Email: tenders@finance.gov.au

Page limits:

(Clauses 7.15 and 7.17, Part 5)

Technical Proposal: max. ten (10) pages plus annexes

Curriculum Vitae: max. four (4) pages each

Attachments to the RFT:

1. AIPD Delivery Strategy

The following attachments are provided in Microsoft Word format to facilitate preparation of tenders:

2. Annex 1 – Past Experience Forms

3. Tender Schedule B – Table 1: Specified Personnel

4. Tender Schedule C – Financial Proposal

Reference documents:

Other important background reference documents relating to the development of the AIPD can be found on the Latest News page of the AusAID website:

<http://www1.ausaid.gov.au/latestnews/details.aspx?NewsID=120>

The Request for Tender and any associated documents are available from the AusTender website <https://tenders.gov.au>

2. PRE-TENDER BRIEFING

- 2.1 AusAID intends to hold a pre-tender briefing on **Tuesday, 9 February 2010** in Jakarta. Venue details will be provided to registered attendees closer to the date.
- 2.2 Tenderers planning to attend the pre-tender briefing are requested to register by email, indicating the name of the organisation and the number and names of people planning to attend, to **Rebecca Clack** by 5pm Canberra time **Friday, 5 February 2010**.

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

- 4.1 The technical assessment of the proposal will account for 90% of the overall score using the following formula:

$$\text{Technical Score} = \frac{\text{Tenderer's Weighted Technical Score (out of 100)}}{\text{Highest Weighted Technical Score (out of 100)}} \times 90\%$$

- 4.2 Following consideration of the technical merit of Tenders, a 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.
- 4.3 The like-for-like price assessment will represent 10% of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

$$\text{Price Score} = \frac{\text{Bid Price of Lowest Priced Technically Suitable Bid}}{\text{Tenderer's Bid Price}} \times 10\%$$

- 4.4 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**

Selection Criteria		Weighting
A	<u>Management Capability</u> - Experience in implementing development programs targeted at improving systems for decentralised public service delivery in a challenging and diverse environment. - Experience in managing strategic cooperation arrangements and service delivery agreements with government, civil society and private sector stakeholders. - Demonstrated ability to operationalise systems for harmonisation and alignment of aid activities in line with principles of development effectiveness.	40%
B	<u>Personnel</u> - Contractor Representative: Demonstrated skills and experience in accordance with the Position Description, including experience working with partner governments, an understanding of the Indonesian political context and reform challenges, and the ability to manage critical relationships with various stakeholders. - Public Financial Management Specialist and Monitoring & Evaluation Specialist: Demonstrated skills and experience in accordance with the relevant Position Description and ability to manage critical relationships with various stakeholders. - Staffing strategy: Proposed team structure, and how they will work together with the Specified Personnel to guide development and implementation of the Program.	40%
C	<u>Approach</u> - Strategic and practical approach to identifying and engaging resources to achieve Program objectives. - Elaborate on risks to the Program's success and identify practical strategies to mitigate these risks.	20%

5.3 Annexes

Annex 1 – Past Experience Form

Provide 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 four (4) 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 – Narrative Work Plan

Provide a narrative work plan describing the Tenderer’s vision of program implementation and expectations for the first twelve (12) months of the Program. This narrative must not exceed two (2) A4 pages.

Annex 3 – Dependency Work Plan

Provide a detailed work plan showing dependencies for the first twelve (12) months of the Program e.g. a Gantt Chart or Critical Path Method identifying resources, dependencies and milestones. Dates referring to commencement or mobilisation are indicative only and may be varied by AusAID. This chart must not exceed one (1) A3 page.

Annex 4 – Team Member Inputs (Bar Charts)

Provide one (1) bar chart showing the proposed inputs per team member for this project and indicating the total person months or person days for the duration of the project (denoting a person as “part-time” is not acceptable). This chart must not exceed one (1) A3 page.

Annex 5 – Mobilisation Plan

Provide a detailed Mobilisation Plan for the first four (4) months of the Project. This annex must not exceed one (1) A4 page.

The Mobilisation Plan must include provision for:

- (a) establishment of communication channels with AusAID, the Australian Diplomatic Mission and Stakeholders;
- (b) 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 financial control procedures;
 - (iii) establishment of all other management and administration requirements; and
- (c) any other matters specified in the Scope of Services, **Part 3** of this RFT.

Annex 6 – Letters of Association and other details of other proposed sub-contractors

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 one (1) A4 page per Letter of Association.

Clauses 9.4, Part 5 also requires that details are provided for other work to be sub-contracted and proposed sub-contractors, where these are reasonably known at the time of tender and who have made known their willingness to be involved with the Project limited to one (1) A4 page per organisation.

Annex 7 – 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**. If applicable, this annex must not exceed two (2) A4 pages.

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 (in landscape) format provided and in accordance with the instructions included in **Clauses 6.2-6.3** 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 skill 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.
- 6.6 Tenderers are reminded of the requirements of **Clause 19.2, Part 5** particularly in relation to providing police clearance certificates for all Project Personnel nominated in the Specified Personnel table for positions specified as working with children.
- (a) Tenderers must request the required criminal record checks in sufficient time to ensure that police clearance certificates can be provided in accordance with **Clause 19.2, Part 5**.

- (b) Tenderers should note that in Australia, national criminal record checks are available through the Australian Federal Police and take around 20 working days. The type of employment should be specified as ‘overseas employment.’ Overseas, different checking procedures apply in each country and may take six weeks or longer. Individuals need to give their consent to a criminal record check and should be informed of the purpose for which it will be used, including sighting by AusAID.

Table 1: Specified Personnel

Position	Name	Total Inputs in person months		Leave Entitlements	Commitments
		Home Base	Overseas		
Contractor Representative*					
Public Financial Management Specialist*					
Monitoring and Evaluation Specialist*					

*Positions identified as NOT working with children.

7. TENDER SCHEDULE C – FINANCIAL PROPOSAL

7.1 **Tender Schedule C – Financial Proposal** must contain the information required and in the format detailed in this clause.

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;
- (b) be expressed in Australian dollars; and
- (c) include detailed information on assumptions used in preparing the pricing.

7.1 Any escalators, foreign exchange rate variations or other price risks must be built into the fixed price proposal but separately disclosed as a single escalator factor. AusAID will not consider any ‘across the board’ escalators subsequently applied to any rates or Project costs.

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

Fixed Management Fee

- 7.3 Tenderers must detail in the financial proposal **Table 2 below** a Fixed Management Fee for the full five (5) year term of the Contract.
- 7.4 The Fixed Management Fee applies to the delivery of the program activities as detailed in **Part 3** (draft Scope of Services) and is inclusive of, but not limited to, all of the items listed in **Clause 2 of Part 4** (draft Basis of Payment) of this RFT.
- 7.5 The Fixed Management Fee is exclusive of all profit, management overheads and commercial margins (see **Clause 7.8 below**)
- 7.6 Tenderers must also provide a breakdown of the Fixed Management Fee for the full five (5) year term of the Contract itemised against **Clause 2.2 of Part 4 – Basis of Payment**.

Performance Payment – Nominated Base Rate

- 7.7 Tenderers must detail in the financial proposal **Table 3 below** a Nominated Base Rate for Performance Payments for the full five (5) year term of the Contract in the format provided.
- 7.8 The Performance Payment – Nominated Base Rate is inclusive of all profit, management overheads and commercial margins.
- 7.9 Actual performance payments will be based on a six-monthly assessment of the Contractor's performance in accordance with **Annex 5** of Schedule 1 and will be paid in accordance with **Table 3** of Schedule 2 Basis of Payment.

Long-term Personnel

- 7.10 Tenderers must detail in the financial proposal **Table 4 below** the costs of all Specified Personnel and any other long-term personnel as specified by Tenderers in the format provided.
- 7.11 These costs must include consideration of all factors of pay, including leave entitlement, as outlined in **Clause 4 of Part 4** (draft Basis of Payment).
- 7.12 Tenderers must detail in **Tender Schedule B – Specified Personnel Table 1 above** the leave entitlements of nominated Specified Personnel. Where annual recreation leave entitlements exceed two (2) trips or a total of four (4) weeks per twelve (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.

Novated Positions

- 7.13 Tenderers are advised that the Contractor will be required to maintain selected personnel on contract under the Australia Nusa Tenggara Assistance for Regional Autonomy (ANTARA) Program. The following four long-term positions will be novated from ANTARA to the Contractor for a period of six (6) months and as such should not be included in Tender submissions:

- (a) Assistant Program Director – NTT;
- (b) Assistant Program Director – NTB;
- (c) Assistant Program Director – Papua; and
- (d) Program Officer – Communications.

*For the purposes of the Financial Proposal Tenderers should assume the above four (4) novated positions cost a total of AUD200,000 per year for the Term of the Contract.

Summary Table

- 7.14 Tenderers must complete the financial proposal **Table 5 below** inserting Totals from **Tables 2 to 4 below** and calculating the total tender price in the format provided.

Table 2: Fixed Management Fees

Escalator	Year 1 (AUD)	Year 2 (AUD)	Year 3 (AUD)	Year 4 (AUD)	Year 5 (AUD)	Maximum Amount Payable (AUD)
x%						
TOTAL						

Table 3: Performance Payment – Nominated Base Rate

Escalator	Year 1 (AUD)	Year 2 (AUD)	Year 3 (AUD)	Year 4 (AUD)	Year 5 (AUD)	Maximum Amount Payable (AUD)
x%						
TOTAL						

Table 4: Long-term Personnel (excluding novated positions)

Position	Input (months)	Monthly Rate Year 1 (AUD)	Monthly Rate Year 2 (AUD)	Monthly Rate Year 3 (AUD)	Monthly Rate Year 4 (AUD)	Monthly Rate Year 5 (AUD)	Mobilisation / Demobilisation Costs (AUD)	Maximum Amount Payable (AUD)
Contractor Representative	60							
Public Financial Management Specialist	60							
Monitoring and Evaluation Specialist	60							
<i>Tenderer to specify other positions</i>								
TOTAL								

Table 5: Summary Table

Item	Maximum Amount Payable (AUD)
Fixed Management Fee	<i>Insert total from Table 2</i>
Performance Payment – Nominated Base Rate	<i>Insert total from Table 3</i>
Reimbursable Long-term Personnel Costs (excluding novated positions)	<i>Insert total from Table 4</i>
Reimbursable Long-term Personnel Costs (novated positions)	1,000,000
Reimbursable Technical Personnel Fund	2,000,000
Reimbursable Procurement, Operational and Travel Costs	4,040,000
Imprest Account	45,000,000
TOTAL TENDER PRICE (excluding GST)	<i>Insert total</i>

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 obligations specified under the Contract.
- 8.2 For this RFT, AusAID is trialling an alternative approach to financial assessment, and has appointed an independent financial assessor to evaluate Tenderers' financial capacity.
- 8.3 The Tenderer should be prepared to provide the financial assessor with details of relevant financial data and other relevant information concerning the Tenderer, if so requested by the financial assessor. Financial data and other information requested may include, but will not be limited to:
- (a) complete annual financial statements for the last three (3) financial years, with all supporting notes;
 - (b) descriptions of any recent changes of substance in the Tenderer's financial position that are not reflected in the most recent financial information provided under **Clause 8.3(a) above**;
 - (c) details of any other tendering opportunities currently being pursued by the tendering entity or related entities within the group; and
 - (d) details of any significant events, matters or circumstances that may significantly affect the Tenderer's capacity to perform the Services.
- 8.4 To facilitate the financial assessment process, Tenderers must provide the following details in **Tender Schedule D**:
- (a) The name, telephone number and email address of the tendering entity's nominated contact point for the financial assessment.
- 8.5 The financial assessor's report on the financial capacity of the Tenderer to undertake the Contract may be provided to either the delegate or the TAP.
- 8.6 The financial information of Tenderers will be treated confidentially.
- 8.7 Failure by a Tenderer to provide financial information when requested by the financial assessor may result in the Tender not being assessed further.

PART 2 – PROJECT SPECIFIC CONTRACT CONDITIONS

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

PART A – PROJECT SPECIFIC CONTRACT CONDITIONS

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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** (Term of Contract) **below**.

"Completion" means the stage when any Construction Work is complete except for minor Construction Defects which do not prevent the Construction Work from being reasonably capable of use for their intended purpose and which can be corrected without prejudicing their convenient use.

"Construction Defect" means any defect, fault, shrinkage or omission in any Construction Work or any other aspect of any Construction Work which is not in accordance with the Contract requirements.

"Construction Works" includes all the construction and building work of any kind including the installation of equipment required for the Project and referred to in **Clause 9.3 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.

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

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

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

"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. TERM OF CONTRACT

2.1 The term of this Contract commences upon execution by both parties, being the date indicated at the front of this Contract, and continues until all obligations under this Contract have been fulfilled or earlier notice of termination under this Contract.

2.2 The Contractor must commence the Services in the Partner Country no later than **Start Date** and must complete the Services by **End Date**.

Note to Tenderers: It is anticipated that this Contract will commence mid 2010 and will run for a period of five (5) years.

3. ACCOUNTS AND RECORDS

- 3.1 The statement of Project expenditure referred to in Standard Conditions **Clause 15.1(e)** (Accounts and Records) must be provided on a three (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 three (3) months; and
 - (d) forward expenditure and expenses by category for the period of three (3) months.

4. NOTICES

- 4.1 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: AusAID, C/O Australian Embassy Jakarta

Attention: AIPD Agreement Manager

Postal Address: Jl. H.R. Rasuna Said Kav. C15-16
Jakarta 12940
Indonesia

Street Address: As Above

Facsimile: Fax

Contractor

To: Contractor's Name

Attention: Title First Name Surname

Postal Address: Postal Address

Street Address: Street Address

Facsimile: Fax

5. MANAGEMENT SERVICES

- 5.1 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 appropriate pre-mobilisation briefings to Contractor Personnel including security, medical/health situation, the cultural environment, details of the project objectives, and relevant contractual obligations;
- (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.

6. **MOBILISATION PLAN**

- 6.1 The Contractor must supply a detailed Mobilisation Plan for the first three (3) months of the Project within one (1) month of the Project Start Date, in a form agreed with AusAID and for written approval by AusAID.
- 6.2 The Mobilisation Plan is subject to AusAID approval. It must include provision for:
- (a) the establishment of communication channels with AusAID, the Australian Diplomatic Mission and Stakeholders;
 - (b) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including without limitation:
 - (i) the supply and deployment of Long-term, Novated and Technical Personnel and overall approach to their assignments;
 - (ii) the establishment of procedures relevant to the Procurement Services;
 - (iii) a planned approach to coordination of all aspects of implementation of the Services including identification of Supplies, mobilisation of personnel and obtaining necessary approvals; and
 - (iv) a planned approach to coordination of all aspects of implementation and management of sub-contracts;
 - (c) the establishment of report preparation and delivery mechanisms;
 - (d) the establishment of financial control procedures;
 - (e) the establishment of all other management and administration requirements; and
 - (f) any other matters specified in **Schedule 1**.
- 6.3 The Contractor must make changes to the Mobilisation Plan as requested by AusAID. Both Parties shall give fair and reasonable consideration to changes in costs necessarily incurred by either Party as a consequence of such changes to the Mobilisation Plan.

- 6.4 Once approved in writing by AusAID the Mobilisation Plan will be deemed to be annexed to this Contract as **Annex 6 to Schedule 1 – Scope of Services**. Changes to the Mobilisation Plan will be subject to a Deed of Amendment as described in Standard Conditions **Clause 12** (Contract Amendment).

7. INDEPENDENT MONITORING GROUP

- 7.1 AusAID may establish an Independent Monitoring Group (the “IMG”) whose purpose is to provide AusAID with independent technical and other advice on any aspects of the Project and to assist AusAID to assess the performance of the Services.
- 7.2 The Contractor must:
- (a) attend and participate in those IMG meetings which AusAID directs it in writing to attend;
 - (b) when required by AusAID, consult with the IMG 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 IMG 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 IMG in the performance of its monitoring and review;
 - (d) co-operate with and assist the IMG 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 IMG copies of all reports, notices, information or other Project material which the IMG 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. SIX-MONTHLY WORKPLAN

- 8.1 The Contractor must provide to AusAID, within three (3) months of the Project Start Date, and thereafter at intervals of six (6) months duration, a Six-monthly Workplan, which before it is implemented, must be approved by the PCC.
- 8.2 The Six-monthly Workplan 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 Six-monthly Workplan, and an indicative plan for performance of the Services for the following six (6) months;
- (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 Six-monthly Workplan, and an indicative budget for the following six (6) months; and
- (d) all other requirements in accordance with **Clause 11.1(f) of Schedule 1 – Scope of Services**.

8.3 The Contractor must make amendments to the Six-monthly Workplan as reasonably requested by AusAID or the PCC.

8.4 Within thirty (30) days of receipt of the Six-monthly Workplan 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 Six-monthly Workplan. If such Six-monthly Workplan 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 a Six-monthly Workplan does not represent a change to the Contract. The Contract may only be varied in accordance with the Standard Conditions **Clause 12** (Contract Amendments).

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 (but do not apply to contracts entered into by the Contractor for funding approved Project activities as specified in **Clause 16.5** (Imprest Account) below):

- (a) the Contractor must obtain the prior written approval of AusAID to sub-contracts with any party, except Specified Personnel, to the value of AUD200,000 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 AUD200,000 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. CONSTRUCTION SERVICES

10.1 The Contractor must engage Specialist Construction sub-contractors to undertake all Construction Work. However, the engagement of Construction sub-contractors shall not

relieve the Contractor from any liability for the performance of this contract in accordance with Standard Conditions **Clause 11** (Sub-contracting).

- 10.2 The Contractor must ensure that all construction design work is carried out:
- (a) in accordance with and so as to comply with any design brief or functionality requirements notified by AusAID;
 - (b) to a high standard of skill, care and diligence expected of a design professional; and
 - (c) to ensure that the design work is fit for its intended purpose.
- 10.3 The Contractor must ensure that all Construction Work is carried out:
- (a) in accordance with AusAID approved plans and specifications;
 - (b) so that it is fit for its intended purpose;
 - (c) using good workmanship and, unless otherwise approved or specified, new materials;
 - (d) employing competent and appropriately qualified personnel; and
 - (e) in a manner which clearly seeks to achieve the aims of the Project.
- 10.4 When engaging a Construction sub-contractor, the Contractor must undertake a competitive tendering process that complies with the Commonwealth Procurement Guidelines and AusAID's policy on applying the Mandatory Procedures in Division 2 of the CPGs.
- 10.5 If AusAID reasonably considers that the Contractor has not adhered to appropriate processes or policies with respect to advertising for, or the evaluation of, tenders, AusAID may require the Contractor to cancel the tender selection process. In such circumstances the Contractor may be required to repeat the competitive tender process at no additional cost to AusAID.
- 10.6 The Contractor warrants that it will exercise a duty of care and good faith to AusAID in performing its obligations under the Contract including the preparation of all tender documentation and the administration of any Construction sub-contract, including ensuring that such sub-contracts allow for the correction of any Construction Defects.

11. **GRANT ADMINISTRATION**

- 11.1 In administering grants, the Contractor must:
- (a) implement procedures so that grant administration is undertaken in a manner that is consistent with the Commonwealth Grant Guidelines, in particular the seven Key Principles for Grants Administration; and
 - (b) maintain complete and accurate records documenting the procedures followed in selecting grant recipients.

12. **MEETINGS**

- 12.1 Contractor Personnel must attend meetings in Jakarta at times determined by AusAID, to review or discuss the Contract including the following matters:

- (a) the general progress of the Project;
- (b) matters arising from the Contractors 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 change proposed to the Project including in relation to timing, whether or not any such changes 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.

12.2 AusAID may require an implementation briefing in Jakarta prior to mobilisation. The Contractor Representative, Public Financial Management Specialist and Monitoring and Evaluation Specialist who are included in the Specified Personnel must attend this meeting.

12.3 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 less than approximately eight (8) hours (excluding meal breaks).

13. **RIGHT OF AusAID TO RECOVER MONEY**

13.1 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.

13.2 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 13.2(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.

13.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 13.2 above**, 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.

13.4 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.

14. **GOVERNMENT TAXES, DUTIES AND CHARGES**

14.1 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.

14.2 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.

14.3 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.

14.4 Subject to **Clause 14.8 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.

14.5 An increase in the Fees under **Clause 14.4 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.

14.6 A decrease in Fees under **Clause 14.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.

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

14.8 **Clause 14.4 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.

15. INSURANCES

15.1 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.
- 15.2 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.
- 15.3 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**.
- 15.4 In addition to the Contractor's obligations regarding insurance detailed in Standard Conditions **Clause 34** (Insurances) the Contractor must arrange and maintain insurance to cover:
 - (a) the Contract Works against fire, flood, earthquake, storm and extraneous perils; and
 - (b) the Contractor's plant and equipment against all risks.
- 16. **IMPREST ACCOUNT**
- 16.1 The Contractor shall establish an Imprest Account in accordance with this **Clause 16**.
- 16.2 The Contractor must undertake a selection process in order to recommend a commercial banking institution which represents value for money for AusAID approval, with which to establish the separate Imprest Account.
- 16.3 The Imprest Account will be titled **AIPD Imprest Account**. In correspondence with AusAID the Imprest Account will be referred to by title.
- 16.4 Money in the Imprest Account is the money of the Contractor and is not held by the Contractor on trust for AusAID or as agent for AusAID.
- 16.5 The Contractor agrees that the money in the Imprest Account is to be used for the purpose of funding approved Project activities. No money paid into the Imprest Account, or paid to the Contractor for the purposes of the Imprest Account shall be intermingled with the Contractor's other money.
- 16.6 The Contractor is responsible for the management of (including scheduling, acquittal and disbursement) and reporting on the Imprest Account.
- 16.7 The Contractor must produce and submit to AusAID for approval within one (1) month of the Project Start Date a Manual of Operations which details the management arrangements and operational procedures for the Imprest Account. Where appropriate the Manual of Operations must be developed in consultation with counterparts using counterpart systems, forms and processes as much as possible.
- 16.8 The Contractor in consultation with the Partner Government, where appropriate, will appoint two personnel from one or both of their respective organisations as principal signatories to the Imprest Account. In the case of the Contractor, the personnel shall be

Specified Personnel. Both are to sign withdrawals. In circumstances where one of the principal signatories is absent from the Project, a third approved nominee may act as an alternative signatory to the Imprest Account. All principal and alternative signatories will be named in the Manual of Operations for the Imprest Account and approved by AusAID.

- 16.9 The funds held in the Imprest Account shall be used solely for the purpose of funding:
- (a) ANTARA activities to be continued under AIPD (a listed in **Annex 2 of Schedule 1 – Scope of Services**);
 - (b) activities necessary for the successful implementation of AIPD, in line with the AIPD Delivery Strategy, that occur before an initial Workplan is approved by the PCC;
 - (c) Project activities that will be implemented via sub-contracting arrangements, that have been approved in the Progress Report and Workplan and/or by the PCC, to support the implementation of activities identified in Schedule 1 – Scope of Services and in the AIPD Delivery Strategy, as well as other activities identified during implementation as necessary to the success of the program such as support required to the government and civil society and Project supplies, such as vehicles, to support the operations of technical assistance in the field (i.e. working with local governments or communities).
- 16.10 Bank charges relating to the Imprest Account shall be paid with monies from the Imprest Account and acquitted in the same way other expenditure is acquitted.
- 16.11 Interest earned on the Imprest Account shall remain in the Imprest Account and shall be used for Project purposes and acquitted to AusAID as such.
- 16.12 The Contractor must provide AusAID prior to the deposit by AusAID of monies into the Imprest Account, financial security in accordance with **Clause 19 below**.
- 16.13 Subject to **Clauses 16.14 and 16.15 below**, monies for the Imprest Account will be paid by AusAID to the Contractor on a three (3) monthly basis subject to at least 50% acquittal of the previous payment.
- 16.14 The first payment is payable following AusAID approval of the Manual of Operations and each subsequent payment is payable following AusAID approval of the Contractor's:
- (a) acquittal of the previous payment; and
 - (b) cashflow projection of funds required for each subsequent payment, over the next twelve month period.
- 16.15 Amounts payable in accordance with **Clause 16.13 above**, will be paid within 10 days of notification received by AusAID's Finance Section.
- 16.16 The balance of the Imprest Account must be reported as at 30 March, 30 June, 30 September and 31 December each year, within 10 days of the end of each period, to the AusAID officer specified for the purposes of Standard Conditions **Clause 40** (Notices), with a copy of the balance provided to AusAID's Chief Finance Officer by:

Email (Preferably): accountsprocessing@ausaid.gov.au

Post: AusAID
 Attention: Chief Finance Officer
 GPO Box 887
 Canberra ACT 2601
 Australia

- 16.17 On every anniversary of the Commencement Date, an audit of the Imprest Account and all documentation relating to the Imprest Account for the previous twelve months must be conducted by an independent external auditor. The audit must be completed within 28 days of each anniversary of the Commencement Date and three copies of each audit report sent to AusAID within seven (7) days of the Contractor's receipt of the audit report. One copy must be sent to the relevant AusAID officer specified for the purposes of Standard Conditions **Clause 40** (Notices), one copy must be sent to the Director, Audit and the third copy sent to the Chief Finance Officer at the following address:

AusAID
 Attention: Director, Audit / Chief Finance Officer (delete as appropriate)
 GPO Box 887
 Canberra ACT 2601
 Australia

- 16.18 A final independent audit of the Imprest Account and all documentation relating to the Imprest Account must be provided with the Project Completion Report for the period since the last independent audit provided in accordance with **Clause 16.17 above**.
- 16.19 The cost of an audit conducted in accordance with **Clauses 16.17** and 16.18 is included in the fees payable to the Contractor, and the cost of any corrections or remedial work required to the Imprest Account pursuant to audit findings is to be borne by the Contractor.
- 16.20 The Imprest Account and all documentation relating to the Imprest Account, including documentation related to the use of the Imprest Account funds may be subject to audit by or on behalf of AusAID at any time and from time to time.
- 16.21 If, upon the premature termination of the Contract or at the end of the Contract, money remains in the Imprest Account, the Contractor shall pay to AusAID an amount equal to the total amount of money (including any accrued interest) remaining in the Imprest Account.
- 16.22 In the event that AusAID becomes aware that any money cannot be accounted for by the Contractor in the Imprest Account including upon premature termination of the Contract, AusAID has the right to recover the amount in question (plus interest equal to the interest that would have been earned on the funds had they remained in the Imprest Account) from monies due and owing to the Contractor under this Contract or as a debt due to the Commonwealth or by calling in the Unconditional Financial Undertaking referred to in **Clause 19** below, whichever AusAID in its absolute discretion considers appropriate.
- 16.23 This Clause shall survive expiration or termination of this Contract.
- 17. REDUCTION IN FEES FOR NON-PERFORMANCE**
- 17.1 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 **Clause 3 of Schedule 2 – Basis of Payment**.

18. LIQUIDATED DAMAGES

- 18.1 In addition to AusAID's other remedies either under the Contract or at law, where, through the act or omission of the Contractor, the performance of certain parts of the Services is not successfully completed by the relevant date specified in the Six-monthly Workplan or by the Payment Milestone dates specified in **Schedule 2**, and where no extension of time has been granted under Standard Conditions **Clause 13** (Extension of Time), the Contractor must pay the liquidated damages amount specified in **Schedule 2** in respect of each such day of delay, up to a limit of 180 days when the Contract may be terminated by AusAID under Standard Conditions **Clause 31** (Termination for Contractor Default).
- 18.2 The Contractor's responsibility to achieve Payment Milestones is essential for the successful implementation of the Project and the failure to achieve Payment Milestones in accordance with the Contract is likely to significantly prejudice achievement of the Project objectives and:
- (a) cause AusAID significant political embarrassment;
 - (b) adversely affect Australia's relationship with the Partner Country;
 - (c) adversely affect public perceptions, both within Australia and internationally, of Australia's bilateral aid program; and
 - (d) undermine the diplomatic value to AusAID's bilateral aid program with the Partner Country.
- 18.3 The Contractor agrees that:
- (a) the obligation to pay liquidated damages under this clause is additional to AusAID's rights to withhold payment or part payment of Fees under the Contract; and
 - (b) the amount specified for liquidated damages represents a genuine pre-estimate of the value of loss likely to be suffered and that the issues specified in this clause are relevant in determining AusAID's loss.
- 18.4 AusAID and the Contractor acknowledge and agree that they are both Parties negotiating and contracting at arms length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, financial, economic and other commercial professionals in relation to their rights and obligations under the Contract.

19. UNCONDITIONAL FINANCIAL UNDERTAKING

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

- 19.1 The Contractor must, on or before the Project Start Date, provide to AusAID a performance security in respect of the Services in the form of an unconditional and irrevocable financial undertaking from a financial institution authorised to carry on banking business under the Banking Act 1959 (Cth) in Australia and approved by AusAID.
- 19.2 The performance security provided must be in the form appearing in **Schedule 5** and must be provided at the Contractor's cost, for the maximum aggregate sum of AUD4,000,000 and be available for the term of the Contract.

- 19.3 AusAID is not obliged to make any payments under the Contract, whether or not such payments are due, prior to receipt of the performance security duly executed and, where applicable, stamped, in accordance with **Clause 19.1 above**.
- 19.4 If AusAID becomes entitled to exercise all or any of its rights to recover moneys under or in relation to the Contract, AusAID may exercise all or any of its rights under the performance security.

20. **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.

- 20.1 The Contractor must, at its expense, provide to AusAID, within ten (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

Australia Indonesia Partnership for Decentralisation (AIPD) – Management Support Team

Note to Tenderers: This Part forms a key Schedule of the Contract Conditions. It reflects the most current version of the Services required of the Contractor but may be updated by AusAID during contract negotiations, particularly in light of information included in the Tenderer's response to the RFT. The draft Scope of Services presented here as Part 3 of this RFT will appear as Schedule 1 in the subsequent Contract.

SCHEDULE 1 – DRAFT SCOPE OF SERVICES

Australia Indonesia Partnership for Decentralisation (AIPD) – Management Support Team

1. INTERPRETATION

1.1 In this Contract, unless the context otherwise requires:

“AG” means Advisory Group;

“AIPD” means the Australia Indonesia Partnership for Decentralisation;

“ANTARA” means the Australia Nusa Tenggara Assistance for Regional Autonomy;

“AusAID” means the Australian Agency for International Development;

“BAPPENAS” means the Indonesian National Development Planning Agency;

“DPD” means Deputy Program Director;

“EA” means Evaluability Assessments;

“GoA” means Government of Australia;

“GoI” means Government of Indonesia;

“LG” means Indonesian Local Government;

“MEF” means Monitoring and Evaluation Framework;

“MOF” means the Indonesian Ministry of Finance;

“MOHA” means the Indonesian Ministry of Home Affairs;

“NTB” means West Nusa Tenggara (Nusa Tenggara Barat);

“NTT” means East Nusa Tenggara (Nusa Tenggara Timur);

“P/LG” means Provincial and Local Governments of Indonesia;

“PCC” means Program Coordinating Committee;

“PD” means the Program Director for AIPD; and

“Rp.” means Rupiah; and

“WoG” means Whole of Government / Government of Australia.

2. OVERVIEW

Introduction

- 2.1 The Australia Indonesia Partnership for Decentralisation (AIPD) builds on the experience and established systems and mechanisms of the current Australia Nusa Tenggara Assistance for Regional Autonomy (ANTARA) program. The Contractor will provide analytical, technical and administrative support for the effective and efficient

development, implementation and monitoring of AIPD. The Contractor will also provide support to the AIPD Program Director (PD) and his/her deputy, who will be contracted separately by AusAID.

- 2.2 This Schedule should be read in conjunction with the AIPD Delivery Strategy 2010-2015. In the event of inconsistencies between this Scope of Services and the AIPD Delivery Strategy 2010-2015, this Scope of Services will take precedence.

Objectives and components

- 2.3 AIPD is designed as a flexible and responsive program to allow the Government of Australia (GoA) to support the Government of Indonesia (GoI) to effectively implement its decentralisation policies, with a particular focus on improving essential service delivery. It will also assist the GoA to provide more coordinated and coherent support at the sub-national level through its other substantial sectoral investments in Indonesia.
- 2.4 More specifically, AIPD aims to contribute to improved delivery of essential health, education and infrastructure services by Provincial and Local Governments (P/LG) in some of Indonesia's poorest provinces. It will do so through supporting the more effective allocation and management of the financial resources available at provincial and district levels. AIPD will also actively support poverty and gender inclusive approaches through all its actions. Success for AIPD will mean local government partners link budget planning and expenditure to service delivery targets, and implement management practices that lead to improved health, education and infrastructure. Success for the Contractor will be the extent to which they are able to facilitate local government successes.
- 2.5 Cost sharing with the GoI is an integral part of the AIPD strategy. The Contractor will detail and enter into agreements with targeted provinces and districts specifying the scope of their commitments (both financial and /or in kind) to delivering the desired outputs and to meeting their service delivery improvement targets.
- 2.6 AIPD will work not only with targeted provincial and district administrations, but also with provincial and district parliaments, civil society stakeholders and with selected national government central agencies. It will thus support both 'supply' and 'demand' side stakeholders.
- 2.7 AIPD will take into account lessons learned from the implementation of previous related decentralisation support initiatives (such as the ANTARA program), including the following:
- (a) the importance of supporting participatory approaches that are led by partners, for example in conducting public expenditure reviews;
 - (b) maximising the use of locally sourced expertise / technical advice in order to help build sustainable local capacity and enhance cost-effectiveness;

- (c) maintaining a clear focus on a manageable set of integrated activities with clear and measureable results, in this case a clear focus on improving resource allocation and management (particularly Public Financial Management - PFM) systems that are linked to better service delivery outcomes;
- (d) importance of ensuring the Program staff and contractors have appropriate operational experience, plus a strong knowledge of culture and context; and
- (e) ensuring the legislature, not just the executive, are actively involved in program activities given their critical role in resource allocation/budget approval decisions.

2.8 AIPD support will be provided in three main areas:

- (a) Component 1 – building the capacity of ‘supply side’ stakeholders to more effectively allocate and manage available resources, particularly through developing improved PFM systems and skills;
- (b) Component 2 – support the generation, analysis, sharing and use of knowledge about what works and what doesn’t in the context of decentralisation and improved service delivery, promote peer to peer learning opportunities, and evidence based policy responses; and
- (c) Component 3 – support ‘demand-side’ stakeholders to more actively and effectively engage in and influence resource allocation and management decision making by local authorities (both executive and legislature). Enhancing the ‘voice’ of traditionally marginalised groups, including women and the poor, will be given specific priority.

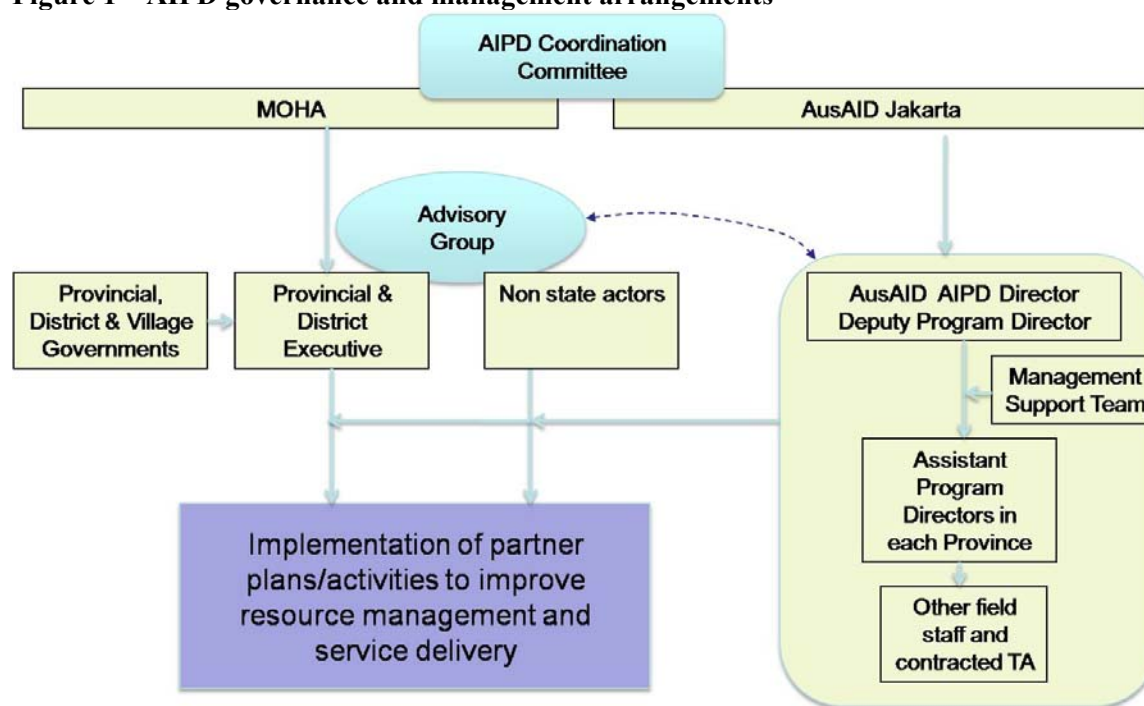
Beneficiaries

2.9 The primary beneficiaries of AIPD support are expected to be the men, women and children of East Nusa Tenggara (Nusa Tenggara Timur – NTT), West Nusa Tenggara (Nusa Tenggara Barat – NTB), Papua and Papua Barat (West Papua) who depend on government supported services for their health, education and infrastructure needs. Particular focus will be given to targeting the needs of women, children and the poor. AIPD’s primary partners are members of the provincial and district executive and legislatures, civil society groups working to improve governance and service delivery, and key decision makers in central government agencies such as Ministry of Home Affairs (MOHA), the National Development Planning Agency (BAPPENAS) and Ministry of Finance (MOF).

3. GOVERNANCE AND MANAGEMENT ARRANGEMENTS

3.1 AIPD’s governance and management arrangements are detailed in **Figure 1 below**.

Figure 1 – AIPD governance and management arrangements



4. ROLES AND RESPONSIBILITIES OF KEY STAKEHOLDERS

Program Coordinating Committee

- 4.1 The Program Coordinating Committee (PCC) will be the official governance forum for strategic decision making on the scope and focus of AIPD. The PCC will have responsibility for:
- (a) the policy and strategic direction of the program; and
 - (b) reviewing and endorsing the AIPD Six-monthly Workplans, taking into account advice provided by the Advisory Group.
- 4.2 The PCC will meet once every six months and be jointly chaired by MOHA and AusAID. Committee members will include representatives from the MOF, BAPPENAS, provincial planning agencies (BAPPEDA) and from other contributing donors.

Advisory Group

- 4.3 The Advisory Group (AG) will have responsibility for:
- (a) providing advice to the PCC and the respective provincial governments on the strategic direction of the AIPD Program; and
 - (b) monitoring AIPD program performance.

- 4.4 It is anticipated that the ANTARA Advisory Group will transition to become the AIPD Advisory Group. The AG will be chaired by the PD and membership of the group will be determined by the PD in consultation with existing members and/or relevant P/LG executives. Membership will be dependent on a range of factors including on-going relevance to the program and effectiveness; however it is anticipated that members will primarily be drawn from civil society and the P/LG executive in the targeted provinces. AG meetings will be held as closely as possible but prior to the six-monthly PCC meeting.

GoI and civil society partners

- 4.5 The GoI and civil society partners will have primary responsibility for managing the implementation of AIPD supported activities. The AIPD program will provide services to facilitate, support and help to quality assure the processes and products, help develop sustainable local capacity, and promote the sharing of information and the scaling up of initiatives that work.

Program Director

- 4.6 The Program Director (PD), supported by a Deputy Program Director (DPD), will have responsibility for:
- (a) the quality of the support provided through the program;
 - (b) providing input into AusAID policy and program development with respect to supporting decentralisation reforms in Indonesia, including the development of a more coherent and coordinated approach to aid delivery;
 - (c) day to day managerial responsibility in relation to the Contractor and the personnel sub-contracted by the Contractor; and
 - (d) assessing the performance of the Contractor.
- 4.7 The PD and DPD will be directly contracted by AusAID, and supported by the Contractor.

AusAID and GoI partnership

- 4.8 AusAID, in partnership with the GoI, will have responsibility for:
- (a) providing strategic level support, decision making and overview to the AIPD;
 - (b) undertaking strategic donor coordination and policy dialogue;
 - (c) providing funding for AIPD;
 - (d) engaging the Contractor and ensuring that contract provisions are sufficiently flexible to respond to the emerging needs of the AIPD Program;

- (e) reviewing and responding to reports on AIPD progress;
- (f) undertaking quality at implementation reviews; and
- (g) organising and undertaking a mid-term review of AIPD.

4.9 AusAID will have responsibility for:

- (a) providing a coordinated Australian Whole of Government (WoG) perspective;
- (b) ensuring coordination with other components of Australia's Indonesia Country Program; and
- (c) establishing an Independent Monitoring Group (Clause 7 of Part A)

5. TARGET PROVINCES AND PHASING

- 5.1 AIPD will initially focus its work in four targeted provinces, namely NTT, NTB, Papua and Papua Barat, which have some of the worst poverty indicators in Indonesia. AIPD will potentially cover additional provinces in the future. Within these four provinces there are a total of 71 districts (NTB 10, NTT 21, Papua 29 and Papua Barat 11), and AIPD cannot provide support to all of those districts.
- 5.2 Selection of districts will be undertaken in partnership with the Program Coordinating Committee and provincial authorities (e.g. the Governor, Sekda and BAPPEDA), with a view to identifying districts with a clear commitment (and basic ability) to engage in PFM and related reforms aimed at improving service delivery. A process of 'self-selection' may be trialled, as this will likely promote ownership of and commitment to resource allocation and management reform initiatives by interested LGs.
- 5.3 AIPD will support a substantive program of work in up to four districts in each province over the Term of the Contract (total of 16 districts). While doing so, AIPD will support the sharing of knowledge about what is working well, both 'horizontally' (between districts and provinces) as well as 'vertically' (with national government), to help inform evidence-based policy making.
- 5.4 AIPD will, as appropriate, support the four targeted provinces to draw on the experience/good practices of other provinces in Indonesia. For example, study tours to East Java could be organised (where there are some notable examples of successful district level reforms being implemented) for key stakeholders in AIPD targeted districts. In addition, AIPD will support the Ministry of Finance in testing a performance incentive scheme that will include Gorontalo province.
- 5.5 The phasing and pace of AIPD support will be determined primarily by an ongoing assessment of circumstances on the ground by AusAID and GoI. Prior to providing any targeted and sustained support at the district level, it is important that the Contractor analyse the situation, collect basic data/information, establish working relationships and a clear joint commitment to objectives, and reach agreement on a program of work and

responsibilities. Support should then be provided as quickly as possible, but as slowly as necessary, in line with demand from and capacity of local partners.

6. LOCATION

- 6.1 The Contractor will be located in the existing ANTARA office in Kupang, NTT and provincial support offices in Mataram, NTB; Manokwari, Papua Barat; and, Jayapura, Papua. The Contractor will liaise with the ANTARA Contractor to ensure a smooth transition in property and leases, including basic assets and activities.
- 6.2 In addition to taking over the above leases, the Contractor will establish an office in Jakarta, to be located in or close to MOHA and/or MOF, in order to support ongoing high level engagement with key central GoI agencies, AusAID Jakarta, other donors and nationally based civil society organisations. AusAID, in consultation with GoI, will suggest a suitable location for the Jakarta office.
- 6.3 Extensive domestic (Indonesian) travel is anticipated for staff in travelling to the provincial support offices and other locations as required.

7. OVERVIEW OF SERVICES

- 7.1 The Contractor is required to support the PD and the PCC to effectively plan, manage and monitor the use of resources invested through the AIPD. The Contractor will provide the necessary analytical, advisory, logistical, technical, administrative, contract management and coordination support to help ensure that program partners achieve the objectives profiled in **Figure 1** of this Schedule.
- 7.2 The Contractor also has a key role to play in developing, maintaining and managing effective working relationships with Indonesian Government and Civil Society partners, in particular members of the AIPD Advisory Group, the PCC and all implementing partners.
- 7.3 A key principle underpinning all activities is capacity building of local systems, including their ability to produce and use data to inform development needs. The Contractor will have a strong role in identifying opportunities and providing support to this end. At least 5% of AIPD program resources should be utilised for M&E activities, including the development of M&E tools specifically to be used by the Contractor, as well as assistance to develop and implement counterpart M&E systems.

8. STAFFING

Long-term Personnel

- 8.1 The Contractor will recruit individuals to fill the following positions as specified personnel (described in the Position Descriptions at Annex 1 to this Schedule):
 - (a) Contractor Representative;

- (b) Public Financial Management Specialist;
- (c) Monitoring and Evaluation Specialist; and
- (d) *Other personnel as identified by the Contractor.*

8.2 In the event that any Long-term Personnel are staff transitioning from ANTARA to AIPD, the Contractor must ensure that personnel are available for AIPD. During the transition phase and until the conclusion of ANTARA, staff cannot be paid concurrently on both programs.

Novated Personnel

8.3 The Contractor will be required to maintain selected personnel on contract from ANTARA. The following four positions will be novated from ANTARA to the Contractor for a minimum period of six (6) months:

- (a) Assistant Program Director – NTT;
- (b) Assistant Program Director – NTB;
- (c) Assistant Program Director – Papua; and
- (d) Program Officer – Communications.

8.4 Following this initial (6) month period the ongoing retention of the personnel in these positions will be subject to satisfactory performance as determined by the Contractor.

Technical Personnel

8.5 The Contractor, in consultation with the PD, will identify and recruit technical personnel as required to contribute to the development and implementation of AIPD activities. Technical Personnel will have experience and expertise in the following technical areas:

- (a) Public Financial Management;
- (b) Public Expenditure Analysis;
- (c) Local Government service delivery;
- (d) Decentralisation policy and regulations;
- (e) Institutional Capacity Development;
- (f) Knowledge Management, Communications and Learning;
- (g) Civil Society Empowerment;
- (h) Gender Analysis and Empowerment;

- (i) Monitoring and Evaluation, including of PFM and service delivery capacity development / improvement programs; and
- (j) Other areas as needs arise.

Recruitment

- 8.6 The Contractor must conduct rigorous, value-for-money recruitment exercises in accordance with the principles of the Commonwealth Procurement Guidelines, and include at least two (2) of the following advertising methods:
- (a) targeted print advertising in relevant national and local press, technical publications, and other major periodicals;
 - (b) advertising on websites and other web-based means as relevant to the position; and
 - (c) word of mouth advertising through local, national and/or international networks.
- 8.7 The Contractor must comply with relevant Indonesian and Australian legislation. Non-discrimination policies (on basis of gender, religion, ethnicity etc) must be clearly articulated and employed.
- 8.8 Where possible, the Contractor must endeavour to recruit locally.
- 8.9 When recruiting Technical Personnel, the Contractor must also undertake the following steps:
- (a) prepare draft Terms of Reference (TOR) for approval by the PD;
 - (b) seek applications for the relevant positions;
 - (c) review all applications and prepare a shortlist;
 - (d) forward the CVs and the proposed rates of short-listed applicants to the PD for review;
 - (e) conduct referee checks for the above short-listed applicants;.
 - (f) following an agreed selection process, recommend a preferred candidate to the PD for final approval;
 - (g) following approval of the preferred applicant by the PD, recruit the preferred candidate.

9. SERVICES

- 9.1 The Contractor shall ensure that:

- (a) analytical, advisory, administrative, technical, logistical, and management support is provided to the AIPD;
- (b) the PD is effectively supported in the development, implementation and monitoring of AIPD, including through the provision of technical and strategic planning advice;
- (c) AIPD's Indonesian partners are effectively supported in the development, implementation and monitoring of AIPD supported activities;
- (d) suitable technical personnel are recruited as required to assist program development and implementation;
- (e) appropriate subcontracting arrangements are entered into in order to deliver AIPD activities implemented using funds from the imprest account;
- (f) plans, budgets and progress reports are prepared and submitted to the AG and PCC on time and in a suitable format;
- (g) the AG and PCC meetings are well prepared and supported, and decisions made are reflected in future work plans and budgets;
- (h) personnel are well managed and supported, have their performance regularly evaluated, and action is taken to address staff performance issues;
- (i) all necessary finance management, accounting, procurement and auditing functions are carried out in accordance with GoA requirements;
- (j) all required office accommodation, equipment, vehicles, materials and supplies and utilities are provided and maintained;
- (k) ongoing monitoring and evaluation (M&E) (refer to **Clause 10 below**) is carried out to a high standard, and
- (l) agreements with targeted provinces and districts specify the scope of their commitments (both financial and/or in kind) to delivering the desired outputs and to meeting their service delivery improvement targets.

Transition Phase

9.2 The Contractor will:

- (a) liaise with the ANTARA Contractor to ensure a smooth transition in property and leases, including basic assets and activities;
- (b) establish an office in Jakarta (in accordance with **Clause 6.2 above**);
- (c) liaise with partner agencies to ensure smooth continuity of any existing programs and relationships. This includes management of the ongoing ANTARA activities

under AIPD Component 1 (primarily support for Public Expenditure Analysis and PFM assessments) as listed at **Annex 2**;

- (d) discuss the preferred strategy for managing the continuity of those ANTARA Advisory Group members transitioning to the AIPD Advisory Group;
- (e) discuss the handover or cessation of ANTARA systems; and
- (f) develop with AusAID an agreed plan for the transition to AIPD in order to maximise continuity and quality of services for Indonesian partners and minimise disruption for personnel.

Finances

9.3 The Contractor shall:

- (a) establish a Quality Systems Manual in accordance with **Clause 11.1(d) below**, including financial management and accounting systems and records including fraud control and audit procedures;
- (b) establish and manage an imprest account in accordance with **Clause 16** of Part A of the Contract;
- (c) prepare summary financial statements and forecasts for the PCC, Advisory Group and AusAID, and any other contributing donors, on a six-monthly and annual basis;
- (d) facilitate the provision of funds to sub-contractors/delivery organisations in a timely and efficient manner;
- (e) conduct briefings to provide relevant information on financial management, accounting, reporting and audit requirements to all sub-contractors/delivery organisations receiving AIPD funds;
- (f) monitor the use of funds; and
- (g) organise the independent audit of the imprest account on an annual basis, ensuring that all relevant financial records will be made available on request by AusAID.

AIPD Activities

9.4 The Contractor, under the direction of the PD, will:

- (a) support GoI and Civil Society partners to improve the allocation and management of provincial and district government resources, with the common objective of improving the delivery of key public services and meeting agreed service delivery standards;

- (b) support the delivery of the outputs described in the AIPD Delivery Strategy document and outputs as approved by the PCC;
- (c) provide secretariat support services for the PCC and the AG meetings, which are expected to be held back to back on a six-monthly basis. These secretariat services will include, but not be limited to, the following:
 - (i) Developing or updating Terms of Reference for the PCC and AG;
 - (ii) Facilitating the identification and selection of AG members;
 - (iii) Scheduling the required meetings and keeping members informed of the schedule and any changes;
 - (iv) Preparing appropriate information packs / reports for PCC and AG members and ensuring they are disseminated in advance of scheduled meetings;
 - (v) Preparing meeting agendas and organising all logistical arrangements regarding the venue, required facilities, accommodation, catering, transport, etc; and
 - (vi) Taking minutes of the meetings, producing a record of discussions and decisions, and disseminating these in a timely manner after the conclusion of the meetings.

9.5 The Contractor shall ensure that AIPD activities funded through the Imprest Account are appropriately designed, appraised, sub-contracted (as relevant), managed and monitored in order to achieve the following outputs (as well as outputs identified by the PCC):

- (a) *Supply side outputs*
 - (i) Clear mechanisms established for improved allocation of funds both between different levels of government and within provincial and district governments;
 - (ii) Performance-based incentive mechanisms piloted for improved service delivery;
 - (iii) P/LG (internal) information management systems improved for planning, budgeting and monitoring;
 - (iv) Knowledge and skills of PFM improved within provincial and district governments;

(b) *Knowledge sharing outputs*

- (i) Information and research results shared on key/common decentralisation issues, including lessons learned and good practices;
- (ii) Peer to peer learning opportunities provided and strategic partnerships for decentralisation/reform established or strengthened;
- (iii) Improved LG-led donor coordination and information sharing mechanisms established;
- (iv) Enhanced coherence and coordination of AusAID support to decentralisation/governance capacity building;

(c) *Demand side outputs*

- (i) Improved LG public information programs and mechanisms established;
- (ii) CSO networks/alliances strengthened (which focus on improving governance, government service delivery and access by marginalised groups including women and the poor);
- (iii) Enhanced mechanisms/for a established for multi-stakeholder dialogue on budget preparation processes, execution and monitoring; and
- (iv) Knowledge and skills of DPRD members enhanced on resource allocation and management issues.

Harmonisation and Coordination

9.6 The Contractor, under the direction of the PD, will:

- (a) organise meetings with relevant GoI ministries/agencies at central, provincial and district levels, key stakeholder groups in the provinces of NTT, NTB, Papua and Papua Barat, key donors and other AusAID activity managers;
- (b) contribute to the development of strategies to improve the coherence and coordination between different AusAID programs/activities within the four provinces including the provision of advice;
- (c) identify strategies that are applicable to other regional development programs;
- (d) support processes for closer coordination with other donors, particularly those active in the four provinces and contribute to practical ways to harmonise programs in support of local development;
- (e) contribute to the identification of appropriate best practice to service delivery, governance, participatory models/processes;

- (f) provide advice to the PD on how best practice models might be applied within the provinces to meet program objectives, and contribute to the development of mechanisms which facilitate the sharing of such successes;
- (g) support the exploration of any other emerging opportunity for Australian support as tasked by the PD; and
- (h) provide AusAID with relevant information as requested.

10. MONITORING & EVALUATION

10.1 Monitoring and Evaluation (M&E) of the AIPD will be conducted to provide information to the GoA, GoI and local partners/stakeholders on whether or not AIPD-supported activities are resulting in improved resource allocation and management at P/LG levels, and whether or not this is then contributing to improved service delivery standards and access to services by the poor. A key principle underpinning the M&E activities is capacity building of local systems. Primary sources of M&E data are expected to come from P/LG records, and in the event that those data sources are weak, the Contractor should endeavour to improve them, rather than establish parallel systems. Where agreed with local partners, specific surveys and research should be jointly developed and managed (to help fill any information gaps and help inform improved decision making).

10.2 M&E tools will operate at three levels:

- (a) at the impact level, through hypothesis testing and the collation and use of baseline and follow-up survey data on service delivery standards;
- (b) at the outcome and output level, through the use of key evaluation questions; and
- (c) at the compliance level, through standard activity monitoring (inputs, activities, deliverables).

10.3 The Contractor will develop and operationalise an M&E plan, using and improving on ANTARA systems as appropriate, including the Services required under **Clause 10.4 below**.

10.4 The Contractor will:

- (a) develop, document and implement a ‘compliance’ monitoring system, to focus on tracking expenditure, inputs, activities and contracted outputs and ‘deliverables’;
- (b) collect and analyse baseline data, commission specific research/studies, produce other ‘knowledge products’, prepare progress reports, and disseminate information about AIPD activities and outcomes;
- (c) conduct Evaluability Assessments (EAs) together with GoI and civil society stakeholders to ensure joint understanding of and commitment to M&E, such as what is going to be measured and how. EAs should include:

- (i) a review of the AIPD program logic and description of the extent to which it is evaluable including clarity of expression of end-of-initiative outcomes in the documentation;
 - (ii) the key hypothesis(es) to be tested;
 - (iii) the key evaluation questions (KEQ) of interest to stakeholders;
 - (iv) an examination of proposed/potential data sources (including partner systems) to ensure that data is of sufficient quality, is collected and analysed as expected, and will be available within the required reporting cycles;
 - (v) assessment of the capacity of the implementation team and partners to participate in the design and/or conduct of M&E activities reporting;
 - (vi) a review of the budget/resources available for M&E activities;
 - (vii) identification of reporting requirements for key stakeholders. This includes progress reporting, Quality at Implementation Reporting, and Annual Program Performance Reporting. There should be a clear recognition of how the M&E is expected to provide evidence for reporting against the Australia Indonesia Country Program Performance Assessment Framework;
 - (viii) a review of cross-cutting policy areas that will need to be included in M&E planning; and
 - (ix) clear identification of issues and/or constraints that will affect the development and implementation of an M&E plan.
- (d) confirm outcomes and suitable outcome indicators. This may include intermediate outcomes and indicators not identified in the AIPD Delivery Strategy. All indicators will be supported by a sound methodology, and detail the means of verification i.e. the methods required to collect the primary data. Secondary data sources are also to be used where appropriate;
 - (e) ensure appropriate reference to cross-cutting issues such as HIV, partnerships, anti-corruption, climate change and disaster reduction, and that mechanisms allow for more detailed investigation as required;
 - (f) ensure the findings of the monitoring and evaluation activities will be disseminated to all relevant stakeholders in such a way as to maximise the likelihood that the findings will be utilised;
 - (g) implement (develop, document and manage) a program of periodic mixed method (quantitative and qualitative) evaluation activities to:

- (i) test the ‘hypothesis’ that improved resource allocation and management leads to improved service delivery, including access for poor/marginalised groups and specifically women;
 - (ii) provide assessment and advice on what is and is not working in regards to M&E;
 - (iii) develop evidence based recommendations for future strategic directions and/or policies. The sub-contractor should refer to the ‘key evaluation questions’ contained in the AIPD Delivery Strategy document Annex 4 Working Paper on Monitoring and Evaluation for further information.
- (h) incrementally collect, analyse and record a set baseline information in each targeted province and district based primarily on existing information sources including public expenditure analyses, GoI Minimum Service Standards and relevant GoI regulations. Refer also to the list of proposed outcome and output indicators contained in the AIPD Delivery Strategy document, for further information. The baseline information must be:
- (i) practical to collect and use i.e. ‘minimal’ in scope;
 - (ii) updated periodically (annually if possible, but at least biannually) to help assess what changes are occurring;
 - (iii) collected, analysed and recorded in partnership with local authorities to assist them in determining:
 - (A) whether or not their resource allocation and management is improving; and
 - (B) whether or not this is impacting on improved service delivery.
- (i) actively support and collaborate with any other review monitoring or evaluation missions that the PCC organises;
 - (j) use the information generated through M&E activities to inform the AG and PCC of progress, performance and issues requiring attention (as part of the ongoing six-monthly reporting and review process);
 - (k) use the information generated through M&E activities to inform the necessary formal reporting requirements (as listed in **Clause 11 below**);
 - (l) provide an implementation schedule that shows M&E activity responsibilities and when all key M&E activities will be carried out; and
 - (m) provide a budget for implementation of the M&E plan, including costings for sub-contracted personnel and activities.

11. REPORTING REQUIREMENTS

11.1 The Contractor must provide the following reports in electronic format by the date indicated:

- (a) **Mobilisation Plan** to be submitted within one (1) month of the Project start date, in accordance with **Clause 6 of Part A** of the Contract.
- (b) **Manual of Operations** to be submitted within one (1) month of the Project start date, in accordance with **Clause 16 of Part A** of the Contract.
- (c) **Inception Report** to be prepared jointly by the Contractor and the PD, and to be submitted within three (3) months of the Project start date for endorsement by the PCC. The report will include, but not be limited to:
 - (i) status of staffing and offices;
 - (ii) status of financial, activity planning and management systems;
 - (iii) status of all activities, including those taken over from ANTARA;
 - (iv) status of partnership arrangements/agreements with local stakeholders, including the membership and terms of reference for the PCC and AG;
 - (v) proposed approach to progressing partnership arrangements with GoI;
 - (vi) detailed plan for selection of targeted districts, in accordance with **Clause 5.2 above**;
 - (vii) status of M&E systems and update on development of the M&E Plan in accordance with **Clause 10 above**, including status of baseline information collection;
 - (viii) updated Contractor Performance assessment criteria, in accordance with **Clause 12.2 below**;
 - (ix) initial work plan and budget estimate, including for the ongoing activities taken over from ANTARA and for the development and implementation of the Monitoring and Evaluation activities. The initial work plan should cover the first twelve (12) months, depending on the actual mobilisation date of the Contractor and how this report fits with the annual planning, budgeting and reporting cycle;
 - (x) initial Risk management plan; and
 - (xi) initial Security Plan.
- (d) **Quality Systems Manual** to be submitted within three (3) months of the Project start date for endorsement by the PCC, including:

- (i) financial management and accounting systems;
 - (ii) fraud control and audit procedures;
 - (iii) develop an activity cycle management and quality assurance system; and
 - (iv) contracting strategy.
- (e) **Monitoring and Evaluation Plan** to be submitted within six (6) months of the Project start date in accordance with **Clause 10.3 above**. Thereafter, it is to be updated as part of the Six-monthly Workplan;
- (f) **Six-monthly Workplan** to be submitted every six (6) months from the Project start date to the PD, for presentation to the PCC, with a summary to be provided to the AG. The report will include, but not be limited to:
- (i) changes in, influence of, the broader policy and institutional context/environment on implementation;
 - (ii) status of governance arrangements, as well as partnerships with GoI and Civil Society stakeholders and with other donors;
 - (iii) progress and developments against the outputs;
 - (iv) assessment of contribution to Program outcomes and impact (recognising that there may not be anything significant to report in the earlier years of implementation, except with respect to progress being made in establishing capacity to assess this in the future);
 - (v) treatment of cross cutting issues, specifically gender;
 - (vi) an overview of strategic direction for the next twelve (12) months;
 - (vii) key issues requiring AG and PCC consideration, including recommendations for PCC action;
 - (viii) financial planning annex, setting out any financial management issues including a statement of performance against budget for the preceding period and a detailed activity based budget for the following six months;
 - (ix) updates to the workplan for the next six (6) months, profiling the key activities that will be implemented;
 - (x) update of M&E Plan and report on status of M&E systems, including data collection and local capacity building;
 - (xi) updates to the risk management plan;
 - (xii) updates to the security plan; and

- (xiii) updates to the status of offices and staffing arrangements.
- (g) **Expenditure reports** to be submitted every three (3) months from the Project start date to AusAID in accordance with **Clause 3** of **Part A** of the Contract;
- (h) Brief **Exception Reports** to be submitted when requested on specific issues of concern for the PD, the PCC or AusAID; and
- (i) **Activity Completion Report** to be submitted to AusAID and the PD three (3) months prior to the Project end date and in accordance with AusAID quality requirements.

11.2 All reports must:

- (a) be provided in accordance with the specification under Standard Condition clause headed “Reports”;
- (b) be accurate and not misleading in any respect;
- (c) be prepared in accordance with AusAID/PCC requirements, including, as required, in both English and Bahasa Indonesia;
- (d) allow AusAID to properly assess progress under the Contract;
- (e) be provided in a format, number and on media approved or requested by AusAID/the PCC;
- (f) not incorporate either AusAID or the Contractor’s logo, including consistency with the latest AusAID instructions on use of logos;
- (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 frameworks.

12. CONTRACTOR PERFORMANCE ASSESSMENT

- 12.1 The assessment of the Contractor’s performance will be on a six-monthly basis with the first assessment being held six (6) months after the Project start date. The performance assessment will be carried out by the AIPD Director in consultation with senior colleagues in AusAID Jakarta. Other parties that may be consulted regarding the performance of the Contractor may include local stakeholders, relevant counterparts and representatives of the Government of Indonesia.
- 12.2 The indicative criteria to be used to assess the Contractor’s performance in delivering the required services and the results table are suggested at **Annex 5** to this Schedule. In consultation with relevant stakeholders (including the Contractor, PD and AusAID) the

M&E Specialist will modify and/or confirm the suggested Contractor performance assessment criteria within two (2) months of the Project start date, for inclusion in the Inception Report and Management Plan.

- 12.3 These criteria may be reviewed and revised as appropriate at AusAID's discretion, in consultation with the Contractor and the PCC. Performance ratings will not be averaged.
- 12.4 At the end of each six (6) month period AusAID will notify the Contractor as to performance assessment outcomes.
- 12.5 Where the Contractor receives two performance assessments in a row which are rated unsatisfactory on two or more criterion, AusAID may conduct an additional performance assessment. The additional assessment will be conducted two months after the second of the two unsatisfactory performance assessments. If the additional assessment determines that the Contractor's performance is still unsatisfactory on more than one criterion AusAID may terminate the Contract in accordance with **Clause 15** of Part A and **Clause 31** of Part B of the Contract.

Annexes

- 1. Position Descriptions – Contractor Representative, PFM Specialist and M&E Specialist
- 2. List of ANTARA activities to continue under AIPD
- 3. List of ANTARA assets to be handed over to AIPD
- 4. Contractor Performance Assessment
- 5. Sample of Contractor Performance Assessment Discussion Guide and Record

ANNEX 1: POSITION DESCRIPTIONS

Position Descriptions for the:

1. Contractor Representative;
2. Public Financial Management Specialist; and
3. Monitoring and Evaluation Specialist.

Contractor Representative

Reports to: Program Director

Location: Kupang, NTT, with travel within the province, to the other targeted provinces and to Jakarta as required.

Duration: 5 years full-time

Key responsibilities and tasks:

1. Ensure the implementation of and compliance with appropriate planning, financial and management information systems.
2. Liaise with the PD/AusAID to ensure that all reports, services delivered and payments made have been completed in accordance with approved procedures.
3. Act as the key point of contact between the program and AusAID on contract management issues, including staff and contractor performance.
4. Assist the PD to:
 - (a) review and further establish (as required) the AIPD office systems and procedures;
 - (b) prepare the Six-monthly Workplans;
 - (c) further develop, establish and operationalise AIPD M&E systems;
 - (d) oversight and quality assure all contracting, financial management and administrative support systems and activities, including the management of the imprest account;
 - (e) provide effective secretariat support to the AG and the PCC;
 - (f) undertake periodic staff performance assessment and assess their Human Resource Management and Development needs.

Requirements:

1. Appropriate tertiary qualifications, such as a higher degree in social sciences (e.g. organisational development, capacity development, economic policy, international development);
2. Demonstrated capacity in the management of complex bilateral development assistance programs, including experience in procurement and contracting. Specifically, the Contractor Representative will have demonstrated capacity in the establishment and day

- to day management of a development assistance program, and in donors' planning, reporting and monitoring requirements;
3. Fluency in speaking, reading and writing in English, and ability to communicate effectively in Bahasa Indonesia;
 4. Excellent communication skills and high level motivational skills for engaging with program and GoI colleagues;
 5. Demonstrated effectiveness in cross-cultural workplaces;
 6. Experience in human resource management and development;
 7. Proven ability to undertake high level strategic dialogue with government officials, preferably in a public sector reform context;
 8. Proven track record of leading international multi-disciplinary teams for large-scale programs;
 9. Excellent understanding of, and preferably experience in, implementing, public sector reform; and
 10. Familiarity with international donor systems and requirements.

Public Financial Management Specialist

Reports to: Program Director

Location: Kupang, NTT, with travel within the province, to the other targeted provinces and to Jakarta as required.

Duration: Five years full-time

Key responsibilities and tasks:

The PFM specialist will be required to provide technical and strategic advice and leadership to facilitate and support:

1. Development of clear mechanisms to improve allocation of funds at Provincial/Local Government levels;
2. Implementation of Public Expenditure Analysis (PEA), improvement of budget preparation mechanism, development of institutional performance-based incentive mechanisms, implementation of PFM assessment, expansion of LKD/KKD university network, and development and implementation of PFM general reforms;
3. Development of strategies to build the institutional capacity of provincial and district level authorities, including local parliaments;
4. Engagement with development partners and Government to assist with the ongoing harmonization of support in PFM related area;
5. Research activities such as public expenditure reviews;
6. Inputs from relevant stakeholders to PFM related government and development partner meetings as well as policy forums, conferences and seminars;
7. AusAID's planning, monitoring, coordinating and evaluation of its PFM activities.

Requirements:

1. Advanced University degree (PhD, Masters or equivalent) in Accounting, Economics, Management, Business Administration, Finance, Public Administration, or related fields; and/or a relevant combination of professional training and certification and extensive experience in policy formulation, management and PFM;
2. Relevant qualifications and/or experience in regard to institutional capacity development.
3. In-depth understanding of the policy issues and practical problems in regard to PFM in Indonesia that constrain improved service delivery in key sectors such as health, education and infrastructure;
4. Excellent knowledge on decentralization and public finance in Indonesia, including the regulatory framework on decentralisation;
5. Extensive experience in PFM related work, preferably in Indonesia;
6. Experience in the delivery of development projects. This is required to ensure that the consultant is sensitive to the difficulties of implementing development projects in complex settings;
7. Demonstrated experience in institutional capacity building;

8. On-going membership of a domestic or international PFM society, or other demonstrated commitment to keeping up to date with the theoretical and practical developments in the field of PFM;
9. Fluency in speaking, reading and writing in English, and ability to communicate effectively in Bahasa Indonesia, including on technical matters.

Monitoring and Evaluation Specialist

Reports to: Program Director

Location: Kupang, NTT, with travel within the province, to the other targeted provinces and to Jakarta as required.

Duration: Five years full-time

Key responsibilities and tasks:

1. Conduct Evaluability Assessments at a time when the implementation team and partners are ready and able to clearly articulate the outcomes of the initiatives. It should include assessing the strength of GoI systems, performance indicators and sources of data to be used to report on program performance. The M&E Specialist is expected to be familiar with this form of assessment.
2. Using a participatory approach, design a monitoring and evaluation framework (plan) that meets the expectation of AusAID and international standards of practice in M&E, including the DAC Evaluation Quality Standards, or the Joint Committee Standards.
3. In designing the M&E Framework (Plan), the M&E Specialist should be aware that AusAID is intending to undertake an ex-post evaluation of the development impact of the program and ensure that evidence will be available to support such an evaluation.
4. Develop baseline data for the program. This baseline data should be relevant to the program objectives and capture the starting point prior to implementation of the program, rather than being a broad needs analysis.
5. Identify where the implementation team and counterparts will require on-going M&E technical support, and where they will be expected to implement the M&E plan themselves.
6. Identify what capacity is required by the implementation team and counterparts to implement the M&E Framework (Plan), and develop a simple capacity building plan to develop relevant skills, and to ensure that there is an enabling environment in place to implement the M&E plan.
7. Provide regular support to the implementation of the M&E Framework (Plan). The focus ought to be on the on-going design of M&E activities; assuring the quality of the M&E system implementation; and providing technical support for the analysis and interpretation of data.
8. Contribute to development of an overarching M&E Framework for AusAID sub-national programs, and provide any information, advice or assistance as requested by AusAID for any independent monitoring and review activities. Prepare relevant outcome and output data in advance of any review team missions.
9. Supervise the compilation of progress reports that meet the requirements of AusAID. Contribute to other AusAID reporting as required or requested, such as Quality at Implementation Reports and Activity Completion Reports. Inputs should be evidence based, and reflect an analytical contribution where the implications of findings are explored, not simply reported.

10. Develop an approach to measuring progress on cross-cutting issues, i.e. gender and anti-corruption, and partnerships.
11. Contribute to the intellectual development of the initiative during implementation. Working as a facilitator, support the implementation team and other relevant stakeholders to interpret and respond to M&E findings over the life of the program.
12. In consultation with AusAID and the contractor, develop the methodology for the collection and analysis of data on the contractor performance indicators. In using the baseline data, the M&E expert must capture the starting point pre-implementation rather than coming up with a broad analysis, and also to test the analysis.

Requirements:

1. Post graduate degree that has included a research dissertation component. Alternatively, evidence of training in advanced research or evaluation design, conduct and management. Where a post graduate degree in research or evaluation methods has not been completed, evidence of the quality of research or evaluation activities previously designed and conducted will be sought;
2. Experience developing M&E systems for projects in resource constrained settings. This is required to ensure that the proposed M&E systems are feasible in the context;
3. Demonstrated practical experience in research or evaluation design, conduct, and management. This experience should reflect expertise in developing a fully elaborated design of an M&E system which includes the design approach, articulation of M&E questions, development of sound methods and tools, conduct of data collection activities, analysis of data (or supervision of such), interpretation and dissemination of results and report preparation;
4. Demonstrated ability to breakdown and communicate complex concepts simply with a range of stakeholders in multi-cultural settings;
5. Demonstrated ability to develop and deliver M&E capacity building activities for implementation teams and GoI counterparts;
6. Demonstrated ability to facilitate learning from M&E findings with implementation teams and other relevant stakeholders;
7. Demonstrated experience in the delivery of development projects. This is required to ensure that the consultant is sensitive to the difficulties of implementing development projects in complex settings, that the design is feasible and value for money, and that the M&E systems meet the needs of all relevant stakeholders;
8. Demonstrated on-going membership of a domestic or international evaluation society, or other demonstrated commitment to keeping up to date with the theoretical and practice developments in the field of evaluation;
9. Fluency in speaking, reading and writing in English, and ability to communicate effectively in Bahasa Indonesia, including on technical matters.

ANNEX 2: LIST OF ANTARA ACTIVITIES TO CONTINUE UNDER AIPD (INDICATIVE)

NTT and NTB

No	Name of Activities	Implementing Agency	Location	End date
1.	Development of Sustainable Agriculture and Fair Marketing in North Central Timor	Yayasan Mitra Tani Mandiri (YMTM)	TTU	Dec 2010
2.	Strengthening Capacities for Poverty Reduction and Livelihoods Enhancement	World Neighbors	Nagekeo	Dec 2010
3.	Build a household economy for family welfare	Delsos Larantuka	East Flores	Dec 2010
4.	Good Food for Good Health Innovations for Food Security in East Sumba	World Neighbors	East Sumba	Dec 2010
5.	Civil Society Strengthening	Oxfam GB	East Flores	Jul 2010
6.	Improving Enabling Environment for small and medium sized business	The Asia Foundation	Manggarai, West Manggarai and Rote Ndao	Jul 2010
7.	Gender Technical Assistance Team	Oxfam Australia	NTT & NTB	Jul 2010
8	Empowerment program for Indonesian migrant workers and their families in the place of origin	Tifa Foundation	NTT & NTB	Dec 2010

PAPUA and WEST PAPUA

No	Name of Activities	Implementing Agency	Location	End date
1.	PNPM RESPEK – Public Education Initiative	Papua Knowledge Centre	Papua	Aug 2010

ANNEX 3: LIST OF ANTARA ASSETS TO BE HANDED OVER TO AIPD

Assets	Value (Rp.)
ANTARA NTT	
Cabinet/cupboard	29,579,250
Computer	486,590,513
Furniture	74,325,000
Office equipment	182,480,750
General	54,318,345
Sub-total	827,293,858
ANTARA NTB	
Cabinet/cupboard	1,700,000
Computer	35,175,000
Furniture	15,755,000
Office equipment	7,075,000
General	2,950,000
Sub-total	62,655,000
ANTARA PAPUA	
Computer	31,347,000
Office equipment	21,275,000
General	1,280,000
Sub-total	53,902,000
ANTARA WEST PAPUA	
Cabinet/cupboard	1,250,000
Computer	16,751,500
Furniture	9,070,000
Office equipment	13,875,000
General	1,700,000
Sub-total	42,646,500
TOTAL	986,497,358

*Please note amounts in Indonesian Rupiah (not AUD).

ANNEX 4: CONTRACTOR PERFORMANCE ASSESSMENT

Table 1 – Criteria

Performance Criteria	Unsatisfactory Performance	Effective Performance	Best Practice
1. Quality of overall support to the PD/AusAID, in line with the services outlined in this Schedule	Lack of effective and/or efficient provision of technical, logistical and coordination services under the PD, including provision of high quality MST staff and technical advisors. Failure to understand management structure and role in relation to PD. Inadequate attention to relationship with PD.	Effective and efficient provision of technical, logistical and coordination services to AIPD, including core staff and technical advisers. Good management of relationship with the PD. Responsive to PD's instructions.	Effective, efficient and proactive provision of technical, logistical and coordination services to AIPD, including high quality staff and TA. Excellent management of relationship with the PD. Provides high level support to enable the PD to maintain focus on strategic and program planning. Anticipates requirements in response to Program needs. Adds value to the work of the PD.
2. Quality of relationships established with GoI and Civil Society stakeholders / implementing partners	Displays a lack of understanding of role with respect to stakeholder engagement. Approach is offensive or potentially offensive to Indonesian community. Requires constant management by AusAID.	Provides support to the PD in establishing and maintaining sound relationships with key stakeholders. Exercises judgement in engagement with stakeholders and refers to the PD where appropriate. Demonstrates sensitivity in its relationship with Indonesian community.	Provides high level support to the PD in establishing and maintaining excellent relationships with key stakeholders. Displays excellent judgement in dealing with/referring stakeholder issues. Demonstrates sensitivity and high-level rapport in its relationship with Indonesian community.
3. Quality of Monitoring and Evaluation, including with respect to both 'compliance' monitoring and evaluation of AIPD's contribution to outputs, outcome and impact	The overall quality of M&E support is less than satisfactory, with need for improvement, e.g. collection, analysis and use of baseline data, supporting development of P/LG systems and capacity, appropriate use of participatory approaches, analysis and use of available secondary data, using gender disaggregated data, conduct of periodic evaluations to assess contribution to outcome and link to impact	The overall quality of M&E support is good and provides a sound basis for helping monitor and evaluate AIPD performance, as well as meeting accountability and learning needs.	The quality of M&E support is excellent, demonstrating best practices in relation to the collection, analysis and use of relevant information. Demonstrates technical rigour while at the same time uses appropriate participatory capacity building approaches with local partners. Information generated is highly relevant and accessible to users.

Performance Criteria	Unsatisfactory Performance	Effective Performance	Best Practice
4. Quality of reporting, including its timeliness, content, presentation and overall 'usefulness' to support PCC/AusAID decision making	Reports are not always of acceptable quality, e.g. with respect to timeliness, clarity of language, content, presentation, appropriate to the reader	Reports are of acceptable quality, e.g. with respect to timeliness, clarity of language, content, presentation, appropriate to the reader	Reports are of a consistently high quality, e.g. on time, innovative in presenting information in an appropriate way, use very clear language, reflect feedback from report users on their needs, etc
5. Quality of Risk Management, specifically the Contractor's responsiveness and flexibility in adjusting to and managing changing needs and circumstances on the ground	Risk management is less than satisfactory, with a lack of responsiveness to changing circumstances, inadequate scanning of the broader environment and slow response to any emergency or security challenges.	Risk management is effective, demonstrating ability to respond to changing circumstances and needs. Adequate awareness of the broader operating environment is demonstrated and factored into risk management strategies	Risk management is highly effective and pro-active, with risks often identified in advance and addressed prior to becoming 'problems'. Risk management strategies are regularly reviewed and updated in consultation with the PD.

Table 2 – Results

Overall Rating	Description	Result
Best Practice	Best practice rating for four of the criteria, with the other being rated effective.	120% of the nominated fee for performance payments. The payment refers to the previous 6-month period only.
Effective Performance	At least effective rating for all of the criteria.	100% of the nominated fee for performance payments. The payment refers to the previous 6-month period only.
Unsatisfactory Performance	Unsatisfactory rating on one or more criterion.	Consultation with AusAID and the Program Director to identify reasons for unsatisfactory rating, and seek to improve performance. AusAID reserves the right to reduce relevant performance payment fees by 10% for each unsatisfactory rating. For example, one unsatisfactory rating would result in payment of 90% of the agreed performance payment; two unsatisfactory ratings would result in a payment of 80% of the performance payment. 5 unsatisfactory ratings would result in no performance payment.

ANNEX 5: SAMPLE CONTRACTOR PERFORMANCE ASSESSMENT DISCUSSION GUIDE AND RECORD

Contractor Details

Name:	Address:
Project:	Contract No:
Country:	Activity Manager (AM):
Date of this Performance Review Discussion: / / Date of Next Discussion / / /	File Number:..... Related Documents:
Project/Activity Duration: From / / / To / / /	
Critical Performance Factors: 1. Quality of overall support to the PD/AusAID, in line with the services outlined in this Schedule, including analytical, advisory, administrative, financial management, technical, logistical, and management support for the implementation of AIPD. 2. Quality of relationships established with GoI and Civil Society stakeholders / implementing partners 3. Quality of Monitoring and Evaluation, including with respect to both ‘compliance’ monitoring (inputs and activities) as well as with respect to the monitoring and evaluation of AIPD’s contribution to outputs, outcome and impact. 4. Quality of reporting, including its timeliness, content, presentation and overall ‘usefulness’ to support PCC/AusAID decision making. 5. Quality of Risk Management, specifically the Contractor’s responsiveness and flexibility in adjusting to and managing changing needs and circumstances on the ground.	

***** A RECORD OF THE DISCUSSION MUST BE SENT TO THE RELEVANT CONTRACTOR AND TO THE DIRECTOR CORPORATE AND CONTRACTS POLICY SECTION, CONTRACT SERVICES GROUP. A COPY WILL BE PLACED ON THE CONTRACTOR'S PERFORMANCE FILE AND MAY BE USED BY AUSAID AS PART OF ANY FUTURE CONTRACTOR SELECTION PROCESS.**

***** THIS SECTION IS COMPLETED BY THE PD AT EACH PERFORMANCE MEETING.**

1. Factors Affecting Performance

PD to record any special events or considerations affecting performance. This may include changes to work priorities and key tasks during the review period, and significant events (eg. Cyclone).

2. Summary of Post/Partner Government/TAG/TRMG/Adviser Comments

.

3. Performance Against Critical Performance Factors

Joint discussion on the extent to which performance has met the agreed critical performance factors.

6. Assessment of Overall Performance against the requirements of the contract.

- ☐ **Best Practice** - Best practice rating for all criteria in the 6-monthly assessment
- ☐ **Adequate** - At least adequate rating for all criteria in the 6-monthly assessment.
- ☐ **Unsatisfactory** - Adequate rating on all but one criterion in the 6-monthly assessment

DEFINITIONS

(I) BEST PRACTICE

- Has achieved all or almost all of their key tasks or result areas fully meeting agreed expectations;
and
- Has consistently demonstrated more than adequate performance against relevant critical performance factors.

(II) EFFECTIVE

- Has achieved most of the key tasks or result areas generally meeting agreed expectations;
and
- Has demonstrated only adequate performance against relevant critical performance factors.

(III) UNSATISFACTORY.

- Has failed to achieve a substantial number of their key tasks or result areas;
and/or
- Has only partially met agreed expectations for key tasks or result areas that she/he has achieved;
and
- Has consistently failed to demonstrate adequate performance against relevant critical performance factors.

****AGREED ACTIONS TO BE TAKEN TO IMPROVE PERFORMANCE:**

Contractor Signature

Activity Manager Signature:.....

Contractor Comments.....

Attachments	Yes/No
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*****A RECORD OF THE DISCUSSION MUST BE SENT TO THE RELEVANT CONTRACTOR AND TO THE DIRECTOR CORPORATE AND CONTRACTS POLICY SECTION, CONTRACT SERVICES GROUP. A COPY WILL BE PLACED ON THE CONTRACTOR'S PERFORMANCE FILE AND MAY BE USED BY AUSAID AS PART OF ANY FUTURE CONTRACTOR SELECTION PROCESS.**

PART 4 – DRAFT BASIS OF PAYMENT

Australia Indonesia Partnership for Decentralisation (AIPD) Management Support Team

Note to Tenderers: The draft Basis of Payment presented here as Part 4 of this RFT will appear as Schedule 2 in the subsequent Contract.

SCHEDULE 2 – DRAFT BASIS OF PAYMENT

Australia Indonesia Partnership for Decentralisation (AIPD) – Management Support Team

1. TOTAL AMOUNT

- 1.1 The total amount payable by AusAID to the Contractor shall not exceed the sum of **AUDxxxx** plus GST, if any to a maximum of **AUDxxxx**. AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.
- 1.2 The total amount payable is summarised in **Table 1 below**.

Table 1: Total Amount Payable

Clause reference	Item	Maximum Payable (AUD)
Clause 2	Fixed Management Fee	xxxx
Clause 3	Performance Payments	xxxx
Clause 4	Reimbursable Long-term Personnel Costs	xxxx
Clause 5	Reimbursable Technical Personnel Fund	2,000,000
Clause 6	Reimbursable Procurement, Operational and Travel Costs	4,040,000
Clause 7	Imprest Account	45,000,000
Total (excluding GST)		xxxx

2. FIXED MANAGEMENT FEE

- 2.1 AusAID shall pay the Contractor Fixed Management Fees of **AUDxxxx** plus GST.
- 2.2 The Fixed Management Fee is inclusive of, but not limited to:
- (a) all high level management and management support costs for all Program personnel;
 - (b) the cost of any Contractor Head Office support, such as administrative, financial and management support;
 - (c) costs, including domestic and international travel, accommodation, per diems, and local transport costs where required for all Contractor Head Office personnel (other than those listed as Long-term Personnel at **Table 4** of this Schedule);
 - (d) all domestic and international communication costs incurred within Australia and in Indonesia;
 - (e) financial management costs and financing costs, if any;
 - (f) security costs;
 - (g) taxation (other than personnel-related taxes and GST), as applicable;

- (h) insurance costs (including but not limited to, professional indemnity, worker's compensation, public liability, and any other insurances as required under the Contract or deemed necessary by the Contractor) in accordance with **Clause 33** (Indemnity) and **Clause 34** (Insurance) of **Part 6** (Standard Contract Conditions) of the Contract;
- (i) costs of complying with the Contractor's reporting and liaison obligations under the Contract;
- (j) costs associated with all personnel briefings in Australia or Indonesia;
- (k) recruitment costs;
- (l) costs associated with any subcontracting and procurement of goods or services;
- (m) all escalators for the Term of the Contract;
- (n) allowances for risk and contingencies;
- (o) costs associated with the Unconditional Financial Undertaking (**Clause 19 of Part A**) or Performance Guarantee(**Clause 20 of Part A**); and
- (p) all other costs not specifically identified in **Clauses 3 to 7** of this Schedule;

BUT exclusive of:

- (q) personnel listed in **Table 4** of this Schedule; and
- (r) profit, management overheads and commercial margins/mark-up for all personnel (refer to **Clause 3.2 below**).

2.3 The Fixed Management Fees shall be paid on a quarterly basis to the Contractor in accordance with **Table 2** of this Schedule and within 30 days of AusAID's receipt of a correctly rendered invoice.

3. PERFORMANCE PAYMENTS

- 3.1 AusAID shall pay the Contractor Performance Payments which shall not exceed the sum of **AUDxxxx** plus GST.
- 3.2 The Performance Payment – Nominated Base Rate is inclusive of all profit, management overheads and commercial margins/mark-up for all personnel.
- 3.3 Performance payments are based on the six-monthly assessment of the Contractor's performance in accordance with **Annex 4** of Schedule 1 – Scope of Services and actual amounts payable are calculated in accordance with **Table 3** of this Schedule.

4. REIMBURSABLE LONG-TERM PERSONNEL COSTS

- 4.1 AusAID shall reimburse the Contractor up to a maximum of **AUDxxx** for the Long-term Personnel specified in **Table 4** of this Schedule.

- 4.2 For each Long-term Personnel specified in **Table 4** of this Schedule, AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears, an all-inclusive Monthly Professional Fee. The actual costs paid by the Contractor to or on behalf of Long-term Personnel shall be reimbursed by AusAID up to the limit specified in **Table 4** of this Schedule and paid within 30 days of AusAID's receipt of a correctly rendered invoice.
- 4.3 The all-inclusive Monthly Professional Fee shall be inclusive of:
- (a) all personnel-related taxes, levies and insurances incurred in Indonesia and Australia, with the exception of GST for Services performed in Australia [refer to Clause 21 (Goods and Services Tax) of Part B of the Contract];
 - (b) any relevant Indonesian employment conditions;
 - (c) superannuation levy, if any, as appropriate;
 - (d) paid annual leave allowances of up to four (4) weeks per annum (in accordance with **Clause 4.5 below**), to accrue on a pro-rata basis per twelve (12) months' continuous engagement, including all associated leave costs such as airfares to and from Indonesia;
 - (e) public holidays per annum as designated by AusAID Jakarta;
 - (f) housing accommodation, utilities and private transport costs;
 - (g) all escalators for the Term of the Contract;
 - (h) any language training costs for international personnel;
 - (i) all other costs not listed as reimbursable items;
- BUT exclusive of
- (j) any profit, overheads, administration or management fee or any other mark-up on the part of the Contractor; and
 - (k) travel costs, including domestic and international program-related travel and accommodation, per diems, and local transport costs where required.
- 4.4 In addition to the items listed under **Clause 4.3 above**, AusAID shall reimburse the Contractor for any mobilisation and demobilisation costs applicable to Long-term Personnel (including airfares) at cost (subject to reasonableness) and in arrears, up to the maximum amounts specified in **Table 4** of this Schedule on a one-off basis, if applicable.
- 4.5 Leave accrued during the assignment for Long-term Personnel shall be deemed to be taken in the year it falls due and cannot be accumulated or paid out.
- 4.6 Where Contractor leave entitlements for Personnel exceed one trip or a total of four (4) weeks per 12 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. AusAID will not reimburse leave costs in excess of those specified at **Clauses 4.3(c) and 4.3(d) above**.

- 4.7 If a Long-term Personnel member is absent for any period, aside for the periods of leave permitted in **Clauses 4.3(d) and (e) above**, the Monthly Rate Payable will be adjusted in accordance with the following formula:

$$\frac{\text{Adjustable Monthly Rate}}{\text{Monthly Rate}} = \frac{(\text{Number of Days Worked} + \text{AusAID Jakarta Public Holidays}) \times \text{Monthly Rate}}{\text{Total workable days (Weekdays and AusAID Jakarta public holidays) in Month}}$$

5. REIMBURSABLE TECHNICAL PERSONNEL FUND

- 5.1 AusAID shall reimburse the Contractor up to a maximum of **AUD2,000,000** for Technical Personnel engaged in accordance with **Clauses 8.6 – 8.9** of Schedule 1 – Scope of Services.
- 5.2 For each Technical Personnel, AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears for actual inputs provided, an all-inclusive Daily Professional Fee. The actual costs paid by the Contractor to or on behalf of Technical Personnel shall be reimbursed by AusAID in accordance with necessary approval and paid within 30 days of AusAID's receipt of a correctly rendered invoice.
- 5.3 Technical Personnel inputs must be identified and approved as part of the relevant Six-monthly Workplan, or otherwise approved in writing by AusAID. Costs for approved Technical Personnel shall be drawn down from the Technical Personnel Fund in **Clause 5.1 above**.
- 5.4 The Daily Professional Fee for Technical Personnel is inclusive of:
- (a) all salary and allowances, based on a five (5) day working week;
 - (b) all personnel-related taxes, levies and insurances incurred in Indonesia and Australia, with the exception of GST for Services performed in Australia [refer to Clause 21 (Goods and Services Tax) of Part B of the Contract];
 - (c) any relevant Indonesian employment conditions;
 - (d) superannuation levy, if any, as appropriate;
 - (e) recruitment costs for technical personnel;
 - (f) all escalators for the Term of the Contract;
- BUT exclusive of
- (g) any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor.
- 5.5 When the Technical Personnel Fund expenditure reaches 80% of the total specified in **Clause 5.1 above**, the Contractor must advise AusAID of the remaining commitments and whether the upper limit is likely to be exceeded, and, if so, provide justification and seek AusAID approval for an increase.

6. REIMBURSABLE PROCUREMENT, OPERATIONAL AND TRAVEL COSTS

- 6.1 AusAID shall reimburse all reasonable costs actually incurred by the Contractor for Reimbursable Procurement, Operational and Travel Costs as shown in **Table 5** of this Schedule, up to a maximum of **AUD4,040,000**.
- 6.2 Reimbursable Procurement and Operational costs means goods and services not already provided through ANTARA such as taking over the leases on the existing four offices (Kupang, Mataram, Jayapura and Manokwari), establishing a Jakarta office, office furniture, computers, transport hire, internal economy airfares for program related in Indonesia travel, associated accommodation and per diems, vehicle purchase, office supplies/stationary, recurrent office costs (phone, fax, printers, papers, photocopier and software), communications, utilities and office rent required by the Contractor for the day-to-day administration.
- 6.3 Reimbursable Travel costs means:
- (a) Airfares reimbursed at economy class for flight legs under four (4) hours and business class for flight legs over four (4) hours. Any travel undertaken at cheaper rates (e.g. discount fares) does not entitle the Contractor to reimbursement of the cost of any higher class of travel. Travel must be via the most direct and cost effective route;
 - (b) Compulsory Arrival and Departure Taxes, and Travel to and from Airport: reimbursed at cost;
 - (c) Hotel Accommodation: reimbursed at lesser of actual cost incurred or AUD237;
 - (d) Travelling Allowance: An agreed daily rate of AUD105 towards the costs of meals and incidentals.
- 6.4 All reasonable costs actually incurred will be reimbursed monthly in arrears on submission of a correctly rendered invoice including certification that the reimbursable costs have been provided as required by the Contract. Costs shown in **Table 5** of this Schedule may be reallocated between line items, with AusAID's prior written approval, but cannot exceed the total specified in **Clause 6.1 above**.
- 6.5 When expenditure reaches 80% of the specified limit for these Costs, the Contractor must advise AusAID of the remaining commitments and whether the upper limit is likely to be exceeded, and, if so, provide justification and seek AusAID approval for an increase.
- 6.6 The Contractor must also maintain a Register of Assets in accordance with **Clause 10 of Part B** Standard Contract Conditions.

7. IMPREST ACCOUNT

- 7.1 The maximum amount payable for the Imprest Account by AusAID to the Contractor shall not exceed the sum of **AUD45,000,000**.
- 7.2 The Imprest Account funds will be paid on a quarterly basis to the Contractor, within 30 days of AusAID's receipt of a correctly rendered invoice and with 50% acquittal of previous payment. Payment to the Imprest account will be withheld until the Manual of Operations is approved in accordance with **Clause 16.14 of Part A** of this Contract.

- 7.3 The Contractor will establish and manage the Imprest Account for the purpose of funding the approved activities and to access and allocate resources in a timely and flexible manner, based on demand from stakeholders, emerging opportunities and program implementation needs. These funds will not be reallocated for any other purpose under this Schedule and may be only used for the implementation of approved activities.
- 7.4 The Imprest Account can only be used for funding of approved activities, such as:
- (a) sub-contracts required to support the delivery of approved activities;
 - (b) on-granting of monies through GoI agencies (such as for the trialling of performance incentive schemes with the Ministry of Finance and for the costs of expanding the MOF / Universities PFM network) in accordance with the scope of formal agreements and subject to the required fiduciary assessments;
 - (c) other costs required to support the delivery of approved activities that are not covered under the existing payment streams of this Contract e.g. reimbursable Long-term Personnel fees; and
 - (d) monitoring and evaluation activities including the development of the Contractor's M&E systems or to develop and implement the partner's M&E systems through capacity building activities conducted by the Contactor.
- 7.5 AusAID does not anticipate funding personnel through the Imprest Account but in the event it is deemed necessary then any long-term positions shall be paid in accordance with the conditions detailed in Clause 4 of this Schedule 2 and deemed to be Specified Personnel in accordance with Clause 8 of Part B. Any technical personnel or other personnel engaged and funded through the Imprest Account will be deemed to be Contractor Personnel in accordance with Clause 7 of Part B.
- 7.6 Imprest Account Funds shall be paid, expended, managed and accounted for in accordance with **Clause 16 of Part A** of this Contract.

8. CLAIMS FOR PAYMENT

- 8.1 The Contractor's tax invoice must be submitted when due pursuant to this Schedule in a form identifiable with the Services.
- 8.2 All tax invoices must include a certification by a Company director of the Contractor, or their delegate:
- (a) that the invoice has been correctly calculated; and
 - (b) that the Services included in it have been performed in accordance with the Contract; and
 - (c) that the invoice is addressed to the AusAID Activity Manager.
- 8.3 All claims for payment must be made out to:

Chief Finance Officer
 Australian Agency for International Development (AusAID)
 GPO Box 887
 CANBERRA ACT 2601

- 8.4 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**
- 8.5 Invalid tax invoices will be returned to contractors. Information on what constitutes a valid tax invoice can be found at
<http://www.ato.gov.au/business/content.asp?doc=/content/50913.htm>

Table 2: Fixed Management Fees

Fixed Management Fee	Year 1 (AUD)	Year 2 (AUD)	Year 3 (AUD)	Year 4 (AUD)	Year 5 (AUD)	Maximum amount payable (AUD)
Quarterly Payment						-
Total						

Table 3: Performance Payments

Rating		Percentage of Nominated Performance Payment (%)	Six-monthly Performance Payment (AUD)
Best Practice		120	
Effective Performance (Nominated Base Rate)		100	
Unsatisfactory Performance	1 criterion	90	
	2 criteria	80	
	3 criteria	70	
	4 criteria	60	
	5 criteria	0	0

* Refer to Clause 3 of this Schedule.

Table 4: Reimbursable Long-term Personnel

Position	Name	Inputs (months)	Monthly Rate Year 1 (AUD)	Monthly Rate Year 2 (AUD)	Monthly Rate Year 3 (AUD)	Monthly Rate Year 4 (AUD)	Monthly Rate Year 5 (AUD)	Mobilisati on and Demobilisati on Costs (AUD)	Maximum Amount Payable (AUD)
Contractor Representative		60							
Public Financial Management Specialist		60							
Monitoring and Evaluation Specialist		60							
Assistant Program Director – NTT		60							
Assistant Program Director – NTB		60							
Assistant Program Director – Papua		60							
Program Officer – Communications		60							
<i>Tenderer to specify other positions</i>									
Total									

Table 5: Reimbursable Procurement, Operational and Travel Costs

Item	Maximum Amount Payable (AUD)
Procurement Costs	325,000
Operational Costs	2,215,000
Travel	1,500,000
Total	4,040,000

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 D 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**.
- (e) The completed and signed Tenderer's Submission Checklist in the form specified in **Annex C 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 D 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 D 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 Jakarta 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;
- (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 am a person of good fame and character; and
- (d) 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. COMPLIANCE WITH LAWS, GUIDELINES 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 Tenderers acknowledge 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.aisaid.gov.au/publications/default.cfm>;
 - (ii) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014', and in particular the strategy’s six guiding principles, located at http://www.aisaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;
 - (iii) 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.aisaid.gov.au/keyaid/envt.cfm>.
 - (iv) 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.aisaid.gov.au/publications/default.cfm>.
 - (v) any other policies published from time to time on <http://www.aisaid.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.
- 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, that no proposed team member is a current AusAID employee, and that AusAID has the authority to make the inquiries referred according to the CV certification.

3.4 I warrant that the Tenderer has used its best endeavours to ensure that all employees of the Tenderer, or of its agents or contractors, proposed as Contractor Personnel for the Contract are of good fame and character.

3.5 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.

- 3.6 I acknowledge and agree to the matters specified in **Clauses 14** (AusAID's Rights) and **15** (Tenderer's Acknowledgement) of **Part 5**.
- 3.7 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.
- 3.8 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.
- 3.9 I understand that AusAID is not bound to accept the lowest priced or any Tender.
- 3.10 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.
- 3.11 **[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.
- 3.12 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.
- 3.13 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.
- 3.14 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.
- 3.15 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.

- 3.16 Neither the Tenderer nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.
- 3.17 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.
- 3.18 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**.
- 3.19 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.
- 3.20 The Tenderer is genuinely competing for the Contract and its Tender is not a “cover bid”.
- 3.21 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.
- 3.22 I acknowledge that each party constituting the Tenderer is bound jointly and severally by this Tender.

4. **ADDENDA TO TENDER DOCUMENTS**

- 4.1 I acknowledge receipt of the following Addenda, the terms of which are incorporated in the Tender:

Number _____ Dated _____	Number _____ Dated _____
Number _____ Dated _____	Number _____ Dated _____
Number _____ Dated _____	Number _____ Dated _____

5. **CONTRACT**

- 5.1 I confirm agreement with the draft contract. I have listed any clauses our Organisation has issue with below:

Clause	Part	Issue / Proposed Change

6. 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 – TENDERER’S SUBMISSION CHECKLIST

This checklist is to be included with all proposals. Tenderers are to confirm that their proposal complies with the requirements of the Request for Tender (RFT) by initialling the box where appropriate.

This checklist is provided to Tenderers in order to assist in the submission of a proposal which conforms with the requirements of the RFT, however it is not an exhaustive list of these requirements. It is incumbent on Tenderers to ensure that proposals comply with the terms of the RFT. It should be considered that all requirements detailed in the RFT are mandatory and that failure to comply with any of the requirements detailed in the RFT may lead to a Tenderer’s proposal being deemed non-conforming.

	Checked
Tenderer’s Declaration	
Has the Tenderer’s Declaration been completed and signed?	
For electronic lodgement has one (1) electronic copy in a separate file been submitted?	
For hard copy lodgement, has one (1) printed original and four (4) copies been submitted?	
Tender Schedule A: Technical Proposal and Annexes	
Is the Technical Proposal within the specified page limit?	
Does the Technical Proposal address each of the selection criteria individually?	
Does the Technical Proposal indicate the Tenderer’s nominated contact person and contact details on the cover page?	
Are the required annexes included and within the specified page limit(s)?	
If the Past Experience Annex is used have at least two (2) referees been nominated and has it been confirmed that they are: a) 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 of the Tenderer? b) not included in the Tender as proposed team members? c) not AusAID employees?	

	Checked
Are both the Technical Proposal and annexes:	
a) in a type font of no less than 12 point on A4 paper? b) formatted with left and right page margins no less than 2.5cm and top and bottom page margins no less than 3cm, excluding headers, footers and page numbers? c) absent of AusAID's logo or any representation or mark which indicates that the Tenderer is in any way related to or connected with AusAID?	
For electronic lodgement, has one (1) electronic copy containing all parts and annexes been provided?	
For hard copy lodgement, has one (1) printed original and four (4) copies containing all parts and annexes been provided?	
Tender Schedule B: Specified Personnel	
Are the CV's within the specified page limit and certified and signed by the nominated personnel?	
Do the CV's include the name and personal contact details of the nominated personnel?	
Do the CV's include the nationality and, if relevant, permanent residency status of the nominated personnel?	
Do the CV's include details of the professional qualifications of nominated personnel (if relevant), including institution and date of award?	
Do the CV's include details of recent relevant professional and development work experience, including the duration and extent of inputs?	
Have at least two (2) referees been nominated on each of the CV's and has it been confirmed that they are:	
a) 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 of the Tenderer b) not included in the Tender as proposed team members? c) not AusAID employees?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed original and four (4) copies been provided?	
Tender Schedule C: Financial Proposal	
Is the financial proposal in the required format?	

	Checked
Is the financial proposal a fully costed schedule of rates expressed in Australian dollars and based on the inputs as specified in the Scope of Services, including: (a) escalation? (b) necessary insurances required by the Contract Conditions and for the performance of the Services? (c) detailed information on assumptions used in preparing the pricing?	
For electronic lodgement has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement has one (1) printed original been provided in a separate, sealed envelope?	
Tender Schedule D: Financial Proposal	
Have all the necessary details been provided?	
Overall	
Has the correct file format and number of copies been provided?	

ANNEX D – 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/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, and any software and associated instrumental/operations manuals.

"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:

- (a) the contractual obligations of the Parties must be interpreted and performed in accordance with the Contract as a whole;
- (b) Contract clause headings are for convenience only and shall not be taken into consideration in the interpretation or construction of the Contract;

- (c) 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;
- (d) a word denoting the singular number includes the plural number and vice versa;
- (e) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;
- (f) a word denoting a gender includes all genders;
- (g) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Contract;
- (h) 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);
- (i) 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;
- (j) “shall” and “must” denote an equivalent positive obligation;
- (k) 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
- (l) 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 are of good fame and character.
- 7.3 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*.
- 7.4 The Contractor must use its best endeavours to ensure that all Contractor Personnel and their accompanying family members while in-country:
- (a) are aware of local laws, culture and customs in the Partner Country; and
 - (b) act in a fit and proper manner.
- 7.5 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.
- 7.6 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.
- 7.7 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.
- 7.8 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.
- 7.9 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.
- 7.10 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.

- 7.11 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 properly qualified for the tasks they are to perform;
 - (b) 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; and
 - (c) are adequately briefed and understand the environment and culture of the Partner Country.
- 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, and also *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.ausaid.gov.au/keyaid/health.cfm>);
 - (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 4** (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 4** (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 AMENDMENT

- 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.
- 12.2 Changes to the Contract shall not be legally binding upon either party unless agreed in writing and signed by both Parties in the form of a “Deed of Amendment”.
- 12.3 AusAID or the Contractor may propose an amendment 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.
- 12.4 The Contractor must prepare an “Amendment Proposal” for any change 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 Amendment 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 AusAID may, at its sole discretion, accept or reject the Amendment Proposal submitted by the Contractor.

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 an Amendment 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 extension of time and any approved changes to the Contract will be documented in a "Deed of Amendment". The Contract shall be deemed to have been varied once the Deed of Amendment is signed by both the Contractor and AusAID.
- 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 Contract Material, Supplies, information, documents and other materials to the Partner Country in a manner which ensures the Partner Country is able to benefit from the Project and in particular enables the Partner Country to manage ongoing maintenance requirements, as well as any other matters specified in **Schedule 1**. The Contractor must provide a copy of the Draft Handover Plan to AusAID within 12 months of the Project Start Date.

- 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, on expiration or termination of the Contract, to facilitate the provision of further maintenance 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 and Contract Material, in a form and on a media approved by AusAID, and any other AusAID property including the Supplies;
 - (b) either destroy or deliver to AusAID all copies of AusAID Confidential Information as required by AusAID;
 - (c) if requested by AusAID, facilitate the assignment to AusAID, AusAID's nominee or 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 to AusAID or, if requested, to AusAID's nominee all information, including Data and Contract Material, 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 to 10) 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 Clause 31.1(o) the Contractor includes Contractor Personnel;

- (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; or
- (q) is in breach of the warranty, regarding the good fame and character of Contractor Personnel, 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 a suspected offender has been identified, the Contractor must report all alleged, suspected or detected cases of fraud to the local police and any other appropriate law enforcement agency in the country where the incident has occurred, unless the Director of the Audit section of AusAID agrees otherwise in writing.
- 36.9 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.
- 36.10 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 make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, 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.
- 36.11 The Contractor must keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.
- 36.12 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.

36.13 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.

36.14 **Clauses 36.6, 36.7, 36.8, 36.9, 36.10, 36.11 and 36.12** shall survive termination or expiration of this Contract in relation to:

- (a) any fraud detected by the Contractor before the date of termination or expiry of this Contract but the Contractor had not commenced an investigation under **Clause 36.6** before that date,
- (b) any investigation commenced by the Contractor under **Clause 36.6**, but not completed, before the date of termination or expiry of this Contract, and
- (c) any investigation commenced by AusAID under **Clause 36.7**, but not completed, before the date of termination or expiry of this Contract.

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 and all Contractor Personnel 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) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014', and in particular the strategy's six guiding principles, located at http://www.aisaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;
 - (c) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child protection policy*;
 - (d) *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.aisaid.gov.au/keyaid/health.cfm>);
 - (e) 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.aisaid.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 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 4 – 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, Part B** 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, Part B** of the Contract.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

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

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

"**Contract**" means the Contract for the provision of Services between 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.

2. APPLICATION OF DEED

2.1 The Contractor and the Subcontractor agree that:

- (a) this Deed is entered into for the benefit of AusAID; and

(b) AusAID may exercise the rights granted to it under this Deed.

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

3. **NOVATION**

3.1 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.

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

- (a) 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;
- (b) 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;
- (c) 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
- (d) the performance by the Subcontractor of services under the Subcontract, is instead of, and not in addition to, any performance by the Contractor of its obligations under that Subcontract.

3.3 If 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.

4. **RELEASE**

4.1 Except in relation to payment due from the Contractor to the Subcontractor under the Subcontract but unpaid on the date of issuing of the notice of substitution referred to in Clause 3 of this Schedule, the Contractor releases and discharges 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.

5. **FURTHER ASSURANCES**

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

6. **DISCHARGE**

6.1 Neither the Subcontractor nor the Contractor are discharged or released or excused from this Deed by an arrangement made between the Contractor and the Subcontractor prior to the issue of a notice of substitution with, by any change to the Subcontract, or by any forbearance whether as to payment, time or otherwise.

- 6.2 The Contractor undertakes to notify 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.
- 6.3 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.
- 6.4 The obligations of AusAID under this Deed in its application to the Subcontract must not exceed the obligations of the Contractor under the Subcontract.

7. NOTICES

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

Address of Party

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

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:

8. LAWS

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

9. WARRANTY

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

10. GENERAL

Counterparts

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

Attorneys

- 10.2 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

- 10.3 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

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

SIGNED for and on behalf of	)	
[Contractor] by:	)	
	)	
.....		
Director		Director/Secretary
Name of Director		Name of Director/Secretary
(Print)		(Print)

SCHEDULE 5 – UNCONDITIONAL FINANCIAL UNDERTAKING

THIS DEED POLL made

20

BY:

[]
(the “**Guarantor**”)

FOR THE BENEFIT OF:

COMMONWEALTH OF AUSTRALIA (represented by the Australian Agency for International Development of the Department of Foreign Affairs and Trade (“**AusAID**”).

RECITALS:

- A. AusAID and **[to be inserted]** (hereinafter called the “**Contractor**”) have agreed to enter into a contract for the provision of services in [] (“the Contract”).
- B. The Contractor has agreed to provide to AusAID prior to execution of the Contract a performance security in respect of the services to be performed by the Contractor in accordance with the executed Contract.
- C. The Contractor has agreed that the performance security shall be in the form of an unconditional and irrevocable financial undertaking of [to be inserted] for the period of [to be inserted] (“the Undertaking”).
- D. The Guarantor has signed this Deed Poll at the request of the Contractor and in consideration of AusAID accepting the Undertaking.
- E. AusAID shall enter into the Contract with the Contractor on condition that the Contractor provides the Undertaking and the Guarantor signs this Deed Poll.

THE GUARANTOR DECLARES as follows:

- 1. The Guarantor unconditionally undertakes and covenants to pay to AusAID on demand without reference to the Contractor and notwithstanding any notice given by the Contractor to the Guarantor not to pay same, any sum or sums which may from time to time be demanded in writing by AusAID to a maximum aggregate sum of [].
- 2. The Guarantor’s liability under this Undertaking shall be a continuing liability and shall continue until payment is made under this Undertaking of the said maximum aggregate sum or AusAID notifies the Guarantor that this Undertaking is no longer required.
- 3. This Undertaking shall be governed by and construed in accordance with the laws for the time being in force in the Australian Capital Territory.
- 4. The Guarantor may at any time pay to AusAID the maximum aggregate sum or such lesser sum remaining after any part payment or payments, which payment shall discharge this Undertaking.

EXECUTED as a deed poll.

SIGNED, for and on behalf of **the**
GUARANTOR, **by:**

Signature of Director

Signature of Director/Secretary

Name of Director
(Print)

Name of Director/Secretary
(Print)

OR

SIGNED, for and on behalf of **the**
GUARANTOR **under power of attorney in**
the presence of:

Signature of attorney

Signature of witness

Name of attorney
(Print)

Name of witness
(Print)

Date of power of attorney

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:
 Name and Position
 Signature of witness **(Print)**

.....
 Name of witness (print)

SIGNED, for and on behalf of)
[Guarantor] by:)
)

.....
 Director Director/Secretary
 Name Name
(Print) **(Print)**