



Australian Government

AusAID

31 July 2010

Request for Tender

Australia Indonesia Partnership for Justice (AIPJ) – Implementation Service Provider (ISP)

NOTE: Tenderers are advised that a Federal Election has been called for 21 August 2010. The Commonwealth Government has therefore entered into a ‘caretaker period’ which places limitations on Commonwealth Agencies entering into major new commitments.

The tender assessment process will proceed as normal. AusAID, however, will defer entering into a contract with a preferred tenderer until after the end of the caretaker period. Tenderers are further advised that there is also the possibility that any incoming Government may decide to terminate a tender process if it does not wish a particular activity to proceed.

REQUEST FOR TENDER

Australia Indonesia Partnership for Justice (AIPJ) – Implementation Service Provider (ISP)

AusAID is seeking proposals from organisations interested in providing services for the **Australia Indonesia Partnership for Justice (AIPJ) – Implementation Service Provider (ISP)** (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, Australian Capital Territory)

Tuesday 14 September 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 C to Part 5)

PDF (Portable Document Format)

Number of Copies of Tender:

(Clause 1.6, Part 5)

For electronic tender lodgement

Technical Proposal: One (1) electronic copy.

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

Financial Proposal: One (1) electronic copy in a separate file.

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

For hard copy tender lodgement

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

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 Original copy in a separate sealed envelope.

Endorsement of hard copy Tenders:

(Clause 1.17, Part 5)

“Tender for the Australia Indonesia Partnership for Justice (AIPJ) – Implementation Service Provider (ISP)”

Tender Validity Period:

(Clause 1.8, Part 5)

180 days

Contact Person:

(Clause 2.1, Part 5)

Byron Singline

Fax: +61 (2) 6206 4885

Email address: AIPJtender@ausaid.gov.au

Page limits:

(Clauses 7.15 and 7.17, Part 5)

Technical Proposal – maximum 8 pages plus annexes (see Clause 7.3 of this Part for page limits for each annex)

Curriculum Vitae – maximum 3 pages each

Information:

For the information of Tenderers the following documents are attached:

1. Australia Indonesia Partnership for Justice (AIPJ) Design Document (PDD)

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 in Jakarta, Indonesia, on **Wednesday, 18 August 2010**.
- 2.2 Tenderers planning to attend the pre-tender briefing are requested to send advanced notification by email, indicating the name of the organisation and the number of people planning to attend, to **the Contact Person** by COB **Thursday, 12 August 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. **ELIGIBILITY TO TENDER**

- 4.1 For the purpose of this Tender eligibility to tender is unrestricted, except where **Clause 13 of Part 5** of this RFT applies.

5. **CARETAKER PROVISIONS**

- 5.1 The Commonwealth Government is currently in a ‘caretaker period’ which places limitations on Commonwealth Agencies entering into major new commitments.
- 5.2 The tender selection process will proceed as described in this RFT. AusAID, however, will defer entering into a contract with a preferred tenderer until after the end of the caretaker period.
- 5.3 Tenderers should note that any incoming Government may decide to terminate the tender process if it does not wish the activity to proceed.

6. SCORE WEIGHTINGS

- 6.1 The technical assessment of the Tender will account for 85% of the overall score using the following formula:

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

- 6.2 Following consideration of the technical merit of Tenders, a like-for-like price assessment will be undertaken by AusAID of the Tenders that are assessed by the Technical Assessment Panel (TAP) as technically suitable.
- 6.3 The like-for-like price assessment will represent 15% of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

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

- 6.4 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 10 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.

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

- 7.1 **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 7.2 of this Part** taking into consideration “other factors” under **Clause 7.8, Part 5**; and
 - (b) the required annexes included in **Clause 7.3 of this Part**.

7.2 Selection Criteria

A.	MANAGEMENT CAPABILITY	(weighting 35%)
(i)	Experience in implementing law and justice programs in highly complex governance environments;	
(ii)	Demonstrated ability to monitor and evaluate progress in governance programs, preferably in the law and justice sector, and to take a proactive approach to continual program improvement and risk management; and	
(iii)	Demonstrated ability to promote and operationalise systems for harmonisation and alignment of aid activities with principles of development effectiveness.	

B.	PERSONNEL	(weighting 35%)
(i)	Proposed team to support effective implementation of AIPJ, including an appropriate team structure and appropriate mix of personnel with essential skills;	
(ii)	Strategic and practical approach to the engagement and management of a Technical Support Pool; and	
(iii)	Skills and experience of the proposed Team Leader.	
C.	APPROACH	(weighting 30%)
(i)	Approach to facilitating sustainable relationships between Australian and Indonesian stakeholders through the program, including an understanding and appreciation of the role of donor-funded law and justice assistance within Indonesia's broader development context;	
(ii)	Approach to engaging and utilizing all resources, including the Technical Support Pool, in order to achieve program outcomes, together with a strategic and practical approach to monitoring and evaluation; and	
(iii)	Approach to integration of gender equality and other cross cutting issues, such as people with disabilities and people living with HIV, across the program.	

7.3 Annexes

(a) Annex 1 – Past Experience Form (max. 5 A4 pages)

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 five (5) 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:	

(b) **Annex 2 – Specified Personnel Terms of Reference** (max. 2 A4 pages each)

Detailed Terms of Reference (TOR) must be provided for each Specified Personnel, as nominated in Tender Schedule B, up to a maximum of two (2) A4 pages each. TORs must include the roles and responsibilities of each position and the qualifications and experience required of personnel to fill the position.

TORs must be provided in accordance with the template below:

TERMS OF REFERENCE (TOR) – SPECIFIED PERSONNEL

Title:
Position Description: <i>Including reporting, location, duration, inputs (i.e. full-time or part-time)</i> <i>Summary of responsibilities</i>
Skills, knowledge and experience: <i>Essential / Desirable</i>
Other:

(c) **Annex 3 – Work Plans** (max. 1 A3 page and 2 A4 pages)

- (i) A work plan showing a detailed overview of dependencies, e.g. a Gantt Chart or Critical Path Method identifying resources and milestones for the first twelve (12) months of the program, to be presented on maximum one (1) A3 page.
- (ii) A brief written overview of dependencies for the full three (3) years of the program, up to a maximum of two (2) A4 pages.

(d) **Annex 4 – Team Member Inputs (Bar Charts)** (max. 2 A3 pages)

- (i) One bar chart will show the proposed inputs per team member for this project and indicate total person months or person days for the duration of the project (just denoting a person as “part-time” is not acceptable). This chart must be presented on one (1) A3 page.
- (ii) The second bar chart will show the proposed inputs by each team member and indicate the total person months or person days for each component for the duration of the Project. Both charts should clearly indicate inputs of team members in-country, not based in country (if relevant), and in total, as well as any expected usage of short-term inputs from the Technical Support Pool, if known. This chart must be presented on one (1) A3 page.

(e) **Annex 5 – Risk Management Plan** (max. 4 A4 pages)

A detailed Risk Management Plan to a maximum of four (4) pages that must identify:

- (i) all risks that can be reasonably anticipated;
- (ii) the level of probability of the risk eventuating;
- (iii) the impact on the project if the risk eventuates along with possible options for ameliorating the risk;
- (iv) the entity(s) responsible for managing the risk consistent with the PDD; and
- (v) the approach to be taken to mitigate any impact.

(f) **Annex 6 – Mobilisation Plan** (max. 2 A4 pages)

A detailed Mobilisation Plan for the first six (6) months of the Project, to a maximum of two (2) A4 pages. The Mobilisation Plan must include provision for:

- (i) establishment of communication channels with AusAID, the Australian Diplomatic Mission and Stakeholders;
- (ii) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including but not limited to:
 - (A) establishment of report preparation and delivery mechanisms;
 - (B) establishment of financial control procedures;
 - (C) establishment of all other management and administration requirements; and
- (iii) any other matters specified in the Scope of Services, Part 3 of this RFT.

(g) **Annex 7 – Letters of Association and other details of other proposed sub-contractors** (as needed)

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

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 a single page per organisation.

(h) **Annex 8 – Commonwealth Government Policies Compliance** (as needed)

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**.

Clause 17.6, Part 5 refers to the World Bank List and similar lists maintained by other donors of development funding. **Clause 13.4, Part 5** requires each Tenderer to disclose, in its Tender, the information specified in that clause regarding investigations, proceedings, informal processes, temporary suspension and listing by the World Bank or any other donor of development funding. Tenderers must disclose any relevant information in this annex.

8. **TENDER SCHEDULE B – SPECIFIED PERSONNEL**

8.1 **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 at **Table 1 below** and in accordance with the instructions included in **Clauses 8.2 and 8.3 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**.

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

8.3 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.

8.4 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.

- 8.5 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.
- 8.6 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.
- 8.7 For the information of Tenderers, a list of the skill sets that are anticipated to be required by the Implementation Service Provider's team in order to deliver the Services is provided below. This list is indicative only and Tenderers should expand or refine this list as appropriate in accordance with their chosen approach to the Selection Criteria B – Personnel as specified in **Clause 7.2** of this Part.
- (a) high level leadership, management and planning;
 - (b) knowledge of Indonesian legal system, governance systems, planning and budgeting, human rights, Indonesian civil society, anti-corruption;
 - (c) capacity building and institutional development;
 - (d) high level finance, budgeting, organisation and administration;
 - (e) high level monitoring and evaluation skills, outcome reporting, performance and development effectiveness;
 - (f) gender, social and other relevant geographical cross-cultural issues;
 - (g) high level oral and written communication skills (including fluencies in English and Indonesian as required by chosen approach), strong ability to communicate to external audiences;
 - (h) high level analysis, problem solving, relationship building and negotiation skills, ability to work well within teams, and strong stakeholder management skills;
 - (i) extensive networks/relationships with law and justice actors in Indonesia in order to suggest, negotiate and enact reform and change; and
 - (j) knowledge of international best practice in donor-funded law and justice reform programs.

Table 1: Specified Personnel

Position	Name	Total Inputs in person months		Referee Contact Details		Commitments	Leave Entitlements
		In-country	O/s	#1	#2		
Team Leader (TL)		36					
<i>Tenderer to nominate other positions</i>							
<i>(Add rows as needed)</i>							

9. TENDER SCHEDULE C – FINANCIAL PROPOSAL

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

9.2 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.

9.3 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.

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

Fixed Management Fee (FMF)

9.5 Tenderers must detail the Fixed Management Fee in **Tables 2A and 2B below**.

9.6 The Fixed Management Fees apply to the delivery of the program activities as detailed in the draft Scope of Services, **Part 3** of this RFT.

9.7 The Fixed Management Fees are set for the term of the Contract and paid as set out in the draft Basis of Payment (**Clauses 7 and 8**), **Part 4** of this RFT.

- 9.8 Tenderers must also provide a breakdown of the Fixed Management Fee in **Table 3 below**.
- 9.9 Note that the details of the breakdown of the Fixed Management Fees are included in **Clause 6** of the draft Basis of Payment, **Part 4** of this RFT. Tenderers should note that these do not represent an exhaustive list of cost items which could be included in the calculation of the Fixed Management Fees and should be careful to outline any additional costs they deem necessary specifically as part of the required cost breakdown.
- 9.10 Tenderers are also to provide any and all assumptions they have taken into account. The fee is fixed and will cover all necessary costs to provide the services for the duration of the Contract.

Long Term Personnel Costs

- 9.11 Tenderers must detail in **Tables 4A and 4B below** the costs of all Long Term Personnel in the format provided. These costs must include consideration of all factors of pay, including leave entitlement, as outlined in **Clauses 2** of the draft Basis of Payment, **Part 4** of this RFT.
- 9.12 Tenderers must give a breakdown of the Year 1 monthly fee for all Long Term Personnel, in **Table 5 below**, in accordance with **Clause 2.3** of the draft Basis of Payment, **Part 4** of this RFT.

Summary Tables

- 9.13 Tenderers must complete **Table 6A: Financial Proposal Summary** by inserting the totals from **Tables 2A and 4A** respectively.
- 9.14 Tenderers must complete **Table 6B: Financial Proposal Summary** by inserting the totals from **Tables 2B and 4B** respectively.

Table 2A: Fixed Management Fee (FMF)

	Escalator (%)	Year 1	Year 2	Year 3	Maximum Amount Payable (AUD)
Fixed Management Fee					XXX
<i>For example: Fixed Fees Per Annum inclusive of escalation factor</i>	2%	1000	$1000 \times 1.02 = 1,020$	$1020 \times 1.02 = 1040.4$	4100.80

Table 2B: Fixed Management Fee (FMF) – Option Period*

	Escalator (%)	Year 4	Year 5	Maximum Amount Payable (AUD)
Fixed Management Fee				XXX
<i>For example: Fixed Fees Per Annum inclusive of escalation factor</i>	2%	$1040.4 \times 1.02 = 1061.21$	$1061.21 \times 1.02 = 1082.43$	3,247.72

*Note to Tenderers: Years 4 and 5 fees apply only in the event that AusAID exercises its option to extend under **Clause 2** of **Part 2** (Project Specific Contract Conditions) to this RFT.

Table 3: Breakdown of the Fixed Management Fee (FMF) – Year 1

Item	Maximum Amount Payable (AUD)
(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 Part 4);	
(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) all allowances for risk and contingencies;	
(o) costs associated with the Performance Guarantee (Clause 20 of Part 2);	
(p) external audit and internal auditing and assurance costs;	
(q) any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor; and	
(r) all other costs not specifically identified in Clauses 2 to 5 of Part 4 .	
TOTAL	XXX

Table 4A: Long Term Personnel Costs

Position	Name	Year 1		Year 2		Year 3		Maximum Amount Payable (AUD)
		Inputs (months)	Monthly Rate	Input (months)	Monthly Rate	Input (months)	Monthly Rate	
Team Leader (TL)								
<i>Other Proposed Long Term Personnel</i>								
<i>Add rows as needed</i>								
TOTAL								XXX

Table 4B: Long Term Personnel Costs – Option Period*

Position	Name	Year 4		Year 5		Maximum Amount Payable (AUD)
		Inputs (months)	Monthly Rate	Input (months)	Monthly Rate	
Team Leader (TL)						
<i>Other Proposed Long Term Personnel</i>						
<i>Add rows as needed</i>						
TOTAL						XXX

*Note to Tenderers: Years 4 and 5 fees apply only in the event that AusAID exercises its option to extend under **Clause 2 of Part 2** (Project Specific Contract Conditions) to this RFT.

Table 5: Long-term Personnel – Breakdown of Monthly Fee Rates for Year 1

Position	Salary* (a)	Taxes (b) & (c)	Super- annuation (d)	Leave Allowance (e) & (f)	Accomm- odation (g)	Other (i) & (j)	Total Monthly Rate (AUD)	Escalator for subsequent years (h)
Team Leader (TL)								
<i>Other Proposed Long Term Personnel</i>								
<i>Add rows as needed</i>								

*Bidders must disclose to AusAID the “actual salary” paid by the Contractor to the personnel, and specify and list other included costs as applicable and as applied by the Contractor.

Note: AusAID reserves the right to include any actual cost items as reimbursables in the final contract.

Table 6A: Financial Proposal Summary

Item	Maximum Amount Payable (AUD)
Fixed Management Fee (FMF)	<i>(insert total from Table 2A)</i>
Long Term Personnel Costs	<i>(insert total from Table 4A)</i>
TOTAL	XXX

Table 6B: Financial Proposal Summary – Option Period*

Item	Maximum Amount Payable (AUD)
Fixed Management Fee (FMF)	<i>(insert total from Table 2B)</i>
Long Term Personnel Costs	<i>(insert total from Table 4B)</i>
TOTAL	XXX

*Note to Tenderers: Years 4 and 5 fees apply only in the event that AusAID exercises its option to extend under **Clause 2** of **Part 2** (Project Specific Contract Conditions) to this RFT.

10. TENDER SCHEDULE D – FINANCIAL ASSESSMENT

- 10.1 No Contract will be entered into unless AusAID has satisfied itself of the financial capacity of the Tenderer to undertake the contractual obligations. In this regard, AusAID requires that each Tenderer provide information on its financial status.
- 10.2 For this RFT, AusAID is trialling an alternative approach to financial assessment, and has appointed an independent financial assessor to evaluate Tenderers' financial capacity.
- 10.3 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.
- 10.4 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 not be limited to:
- (a) complete annual financial statements for the last three 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 10.4 (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.
- 10.5 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.
- 10.6 The financial information of Tenderers will be treated confidentially.
- 10.7 Failure by a Tenderer to provide financial information when requested by the financial assessor may result in the tender not being assessed further.
- 10.8 Tenderers should be aware that AusAID may wish to contact the nominated bid financial accountant to obtain further information to assess the financial capacity of the Tenderer to undertake the Contract.
- 10.9 AusAID reserves the right to engage appropriate external expertise to assist with the analysis of the financial information. A report on the financial capacity of the Tenderer to undertake the Contract may be provided to either the delegate or the TAP.

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.

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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**.

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

"Long Term Personnel" or **"LTP"** means an adviser working continuously for six (6) months or longer on the Project.

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

"Team Leader (TL)" means the specified person nominated in **Tables 2A and 2B** of Schedule 2 – Basis of Payment.

"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.

"Tender" means the tender submitted by the Contractor together with accompanying documentation as an offer to undertake the Services.

"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 on **insert date** in the Partner Country and must complete the Services by **insert date**, unless the option in **Clause 2.3 below** of this **Part A** is exercised by AusAID.

- 2.3 The Contractor grants to the Commonwealth an option to extend the period of the Services for a period of up to two (2) years. The option must be exercised by notice in writing to the Contractor prior to the date of completion of the Services as specified in **Clause 2.2** above of this **Part A**. If this option to extend is exercised, the Contractor shall continue to provide the Services for the extended period on the terms and conditions contained in this Contract, except that this **Clause 2.3** shall no longer apply.

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 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 one (1) month; and
- (d) forward expenditure and expenses by category for the period of one (1) month.

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:	Section/Branch Name
Attention:	Agreement Manager Name
Postal Address:	Australian Agency for International Development 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 pre-mobilisation briefings to Contractor Personnel, for example security, medical/health situation, cultural environment, detail on project objectives, relevant contract 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 OF SERVICES AND QUALITY MANAGEMENT PLAN

6.1 The Contractor must provide a detailed Mobilisation Plan for the first six (6) months of the Project, and a Quality Management Plan for the duration of the Project, within twenty-eight (28) days of the Project Start Date, in a form agreed with AusAID and for written approval by AusAID.

6.2 The Mobilisation and Quality Management Plans are subject to AusAID approval and 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 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 – Scope of Services.
- 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. Changes to the Mobilisation Plan will be subject to a Deed of Amendment as described in Standard Conditions **Clause 12** (Contract Amendment).
- 7. MONITORING REVIEW GROUP**
- 7.1 AusAID may establish a Monitoring Review Group (the “MRG”) 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 MRG meetings which AusAID directs it in writing to attend;
 - (b) when required by AusAID, consult with the MRG 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 MRG 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 MRG in the performance of its monitoring and review;
 - (d) co-operate with and assist the MRG 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 MRG copies of all reports, notices, information or other Project material which the MRG reasonably requires to fully and efficiently perform its monitoring and review as soon as practicable after such material is produced or received by the Contractor.

8. ANNUAL PLAN

- 8.1 The Contractor must provide to AusAID, within three (3) months of the Project Start Date, and by 31 March in each following year of the Project, an Annual Plan which, before it is implemented, must be approved by AusAID.
- 8.2 The Annual Plan must be prepared in accordance with directions provided in writing by AusAID, must be consistent with this Contract and must include the following matters:
 - (a) the Contractor's plan for performance of the Services required for the period of the Annual Plan;
 - (b) the Contractor's proposed strategy for coordinating any Third Party Issues and for providing the Services in a flexible manner as is appropriate; and
 - (c) a detailed budget for the period of the Annual Plan.
- 8.3 The Contractor must make amendments to the Annual Plan as reasonably requested by AusAID.
- 8.4 Within thirty (30) days of receipt of the Annual Plan in accordance with **Clause 8.1 above** AusAID shall notify the Contractor in writing when a decision is likely to be made to reject or accept the Annual Plan. If such Annual Plan has not been approved or rejected within the stated period of thirty (30) days AusAID shall give fair and reasonable consideration to granting an extension of time to the Contractor in respect of the performance of the Services.
- 8.5 Acceptance by AusAID of an Annual Plan does not represent a change to the Contract. The Contract may only be varied in accordance with the Standard Conditions **Clause 12** (Contract Amendment).

9. SUB-CONTRACTING

- 9.1 In addition to the Standard Conditions **Clause 11** (Sub-Contracting) the following conditions apply to sub-contracts entered into by the Contractor:
 - (a) the Contractor must obtain the prior written approval of AusAID to sub-contract with any party, except Specified Personnel, to the value of **AUD100,000** or more. In granting its approval AusAID may impose such conditions, in AusAID's opinion are appropriate, in relation to a proposed sub-contract; and
 - (b) if AusAID objects to the Contractor's recommended sub-contractor, or AusAID nominates a particular sub-contractor, the Contractor must enter into an agreement with such other sub-contractor as directed by AusAID on the basis of remuneration approved by AusAID and provide AusAID with a copy of the executed sub-contract.

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

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

10. **GRANT ADMINISTRATION**

10.1 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.

11. **MEETINGS**

11.1 The Team Leader 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 variations proposed to the Project including in relation to timing, whether or not any such variations have been agreed to by AusAID;
- (f) Contract performance matters;
- (g) the accuracy of invoices; and
- (h) such other matters in relation to which either Party provides five (5) Business Days' notice in writing to the other Party.

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

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

12. RIGHT OF AusAID TO RECOVER MONEY

- 12.1 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.
- 12.2 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 twenty-eight (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 (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 twenty-eight (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 twenty-eight (28) days of the refund determined by AusAID's review; or
 - (ii) calling for payment within twenty-eight (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.
- 12.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 12.2 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.
- 12.4 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.

13. GOVERNMENT TAXES, DUTIES AND CHARGES

- 13.1 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.
- 13.2 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.
- 13.3 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.
- 13.4 Subject to **Clause 13.8 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.
- 13.5 An increase in the Fees under **Clause 13.4 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.

13.6 A decrease in Fees under **Clause 13.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.

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

13.8 **Clause 13.4 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.

14. **INSURANCES**

14.1 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.

14.2 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.

- 14.3 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 **AUD20,000,000**.

15. **REDUCTION IN FEES FOR NON-PERFORMANCE**

- 15.1 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.

16. **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.

- 16.1 The Contractor must, at its expense, provide to AusAID within ten (10) Business Days of the Project Start Date, a performance guarantee executed by *[to be inserted]*, guaranteeing the performance by the Contractor of its obligations under the Contract, which must be substantially in the form appearing in **Schedule 5**.

PART 3 – DRAFT SCOPE OF SERVICES

Note to Tenderers: Although this Draft Scope of Services is presented as Part 3 of this RFT, in the consolidated Contract Conditions it will appear as Schedule 1.

SCHEDULE 1 – DRAFT SCOPE OF SERVICES

Australia Indonesia Partnership for Justice (AIPJ) – Implementation Service Provider (ISP)

1. INTERPRETATION

1.1 Definitions

In this scope of services, unless the context otherwise requires:

"**AIP**" means the Australia Indonesia Partnership.

"**AIPJ**" means the Australia Indonesia Partnership for Justice.

"**AusAID**" means the Australian Agency for International Development.

"**Bappenas**" means the Badan Perencanaan Pembangunan Nasional, the Indonesian State Development Planning Board.

"**BoP**" means Schedule 2 – Basis of Payment.

"**CSO**" means civil society organisation.

"**GoA**" means the Government of Australia.

"**GoI**" means the Government of Indonesia.

"**IALDF**" means the Indonesia Australia Legal Development Facility.

"**ISP**" means Implementation Service Provider (the "Contractor").

"**M&L**" means Monitoring and Learning.

"**PB**" means Partnership Board.

"**PD**" means Program Director.

"**RoU**" means Record of Understanding.

"**SA**" means Subsidiary Arrangement.

"**SoS**" means this Schedule 1 – Scope of Services.

"**TL**" means Team Leader.

"**TSP**" means Technical Support Pool.

2. BACKGROUND

Introduction

- 2.1 The Australia Indonesia Partnership for Justice (AIPJ), under the broader Australia Indonesia Partnership (AIP), builds upon the assistance AusAID has provided to Indonesia's law and justice sector over the past ten years, including through the Indonesia Australia Legal Development Facility (IALDF), which operated from April 2004 to December 2009, and the AIPJ Transition (AIPJt), which will run from January to December 2010.
- 2.2 The Contractor will report to the AIPJ Program Director (PD) and will be responsible for providing direct assistance to the PD in order to facilitate his/her overall management of the AIPJ implementation on behalf of AusAID.
- 2.3 AusAID will negotiate direct services support for AIPJ activities with selected Government of Australia (GoA) agencies and Australian courts through Records of Understanding (RoU). While the management of such services will essentially be outside of the control of the Contractor, Contractor systems may be required by AusAID to offer technical assistance and logistics support as determined on a case by case basis.

Key Documents

- 2.4 This **Schedule 1 – Scope of Services** should be read in conjunction with the AIPJ Design Document. In the event of inconsistencies between this Schedule 1 – Scope of Services and the AIPJ Design Document, this **Schedule 1 – Scope of Services** will take precedence.

Rationale for AIPJ

- 2.5 The law and justice sector is central to supporting Indonesia's status as an emerging middle-income country. The sector's performance, however, points to the need for donor assistance to focus on supporting Indonesia to make better use of its own resources.
- 2.6 One of the goals expressed in Indonesia's National Long-Term Development Plan 2005-25 is to "entrench the rule of law and uphold human rights". AIPJ has been designed as a vehicle for Australia to assist Indonesia in achieving this goal.
- 2.7 Significant positive structural reforms to the Indonesian law and justice sector have been undertaken over the past ten years, including the separation of the judiciary from the executive arm of government, the recognition of a broad range of basic human rights and the establishment of a number of new specialized and supervisory institutions.
- 2.8 However, the sector continues to face a range of challenges including the need to build public support for key sectoral institutions, without which the sector will not be able to attract the personnel, resources and constructive engagement with civil society required in order to make positive reforms.
- 2.9 The significance of the law and justice sector to Indonesia's broader development goals, the fact that Indonesia has made a number of recent high-level commitments to reform in the sector, and the existence of important relationships with Australian counterparts are the primary reasons Australia plans to continue assistance to the sector.

The focus of AIPJ

- 2.10 The focus of the AIPJ is primarily on working with national-level law and justice institutions to transform the high-level reform commitments made over the past ten years into concrete improvements in the way the sector can support the community.
- 2.11 In order to support the next phase in the development of Indonesia's law and justice sector, Australian assistance through AIPJ is targeted at priorities (described in **Clause 3 below**) which Indonesia has identified as being of critical importance to the sector and for which assistance is likely to bring about sustainable and meaningful impacts.

Partnership with the Government of Indonesia (GoI)

- 2.12 AIPJ's approach to working in the priority areas identified above involves a strong commitment to developing partnerships and promoting policy dialogue between Indonesian and Australian law and justice institutions.
- 2.13 AIPJ's governance arrangements reflect the importance both governments place on genuine partnerships in the sector. The governance of AIPJ comes under a Partnership Board (PB) comprising ex-officio representatives from a range of Indonesian and Australian partner bodies. The roles and responsibilities of the PB are explained in **Clauses 4.5 to 4.11 below**, and include oversight of AIPJ to ensure that its activities meet the established and emerging needs of the law and justice sector in Indonesia.

3. OBJECTIVES & FOCUS AREAS

Objectives

- 3.1 Indonesia's current Long-term Development Plan (2007) calls for the *"Entrenchment of the rule of law and enforcement of human rights, based on Pancasila and the 1945 Constitution, and a legal system that is truthful, just, accommodative and reflective of public aspirations"* to be brought about over the next 20 years. This is the long-term goal for AIPJ.
- 3.2 Indonesia's current Medium-term Development Plan (2010-2014) calls for a formal legal system that offers fair, accessible, transparent and predictable decisions and rules for all. Its goal is: "improved adherence to good governance principles, based on the rule of law and human rights and supported by government agencies which are clean, respected, responsible and professional". This is the medium-term goal for AIPJ.
- 3.3 Indonesia's long and medium-term goals for the sector have helped to define the core objective of AIPJ, which is:

"Increased access to better quality legal information and services"
- 3.4 The five outcomes to assist Indonesia to achieve its aims in the law and justice sector are:
 - (a) ***Improved judicial dispute resolution systems for marginalised groups (including the poor, women and people with a disability).***
 - (i) AIPJ will conduct analysis, share best practices (e.g. from the Religious Court system) and facilitate policy development to increase the community's access to court-based dispute resolution. This will include support for the courts to

utilise and expand budget allocations for pro deo (cases with fee waivers for poor litigants) cases and circuit courts, and assistance to improve their monitoring and evaluation systems in relation to access for poor and marginalised groups, such as women who fall within this category, people with disability and people living with HIV/AIDS.

- (ii) Work under this outcome area will also build on support to the Supreme Court's blueprint for reform, efforts to improve judicial transparency and the strong relationship between the Indonesian Supreme Court and Australia's Family and Federal Courts, which are a focus of AIPJ during 2010. Innovative pilot projects at the district level may be trialled for the purpose of informing central government policy and resource allocation. The Supreme Court's Judicial Reform Team Office will receive assistance to strengthen relevant law and justice institutions by identifying constraints to their capacity to deliver services at the local level.

(b) ***Prosecutorial agencies better able to process corruption cases.***

- (i) AIPJ will continue to develop the technical skills of the Attorney General's Office and Corruption Eradication Commission in investigating and prosecuting corruption-related crimes. It will assist in the establishment of systems for ensuring that prosecutions are carried out effectively and that these institutions themselves are free from corrupt practices. It will also assist strengthen capacity for international legal cooperation in combating corruption and assist the Indonesian Government to monitor and evaluate relevant sections of the National Strategy on Corruption Eradication, which links to the Performance cross-cutting issue.
- (ii) Support will be provided to Attorney-General's Program Management Office for similar activities to those undertaken by the Supreme Court's Judicial Reform Team office under Outcome 1.

(c) ***Increased public access to and use of legal information, particularly relating to human rights (including women's rights) and anti-corruption.***

- (i) AIPJ will continue to support Indonesia's efforts to achieve greater transparency of court information. Over the course of AIPJ, a significant increase in the number of decisions available on the internet (together with a reduction in the time taken to upload them) is expected. AIPJ will assist the Supreme Court to "socialise" SK 144 and UU KIP so that court officers at Intermediate Courts (Pengadilan Tinggi) and District Courts (Pengadilan Negeri) are aware of their obligations to provide court information to the public.
- (ii) Other ways AIPJ may support greater public access to and use of legal information include: assisting to establish Court information desks; establishing working public complaints mechanisms, helping develop visual and audio-visual tools to explain court processes to court users (including court users with visual impairment) and display of court fee information at courts; improving quality of Supreme Court Annual Reports; facilitate greater provision of primary information and analysis on anti-corruption and human

rights issues to the public; and consolidating and expanding online access to judicial decisions and/or legislation.

(d) ***Improved framework and delivery of a legal aid system.***

- (i) AIPJ will assist the Indonesian Government achieve its objectives regarding legal aid. It will support enhanced levels of policy dialogue between the Government, the National Parliament (DPR) and relevant civil society organisations on the issue. This may include, for example, assisting the Ministry of Law and Human Rights to ‘socialise’ a comprehensive Legal Aid Bill in conjunction with relevant NGOs, bar associations and/or law schools. The passing of such a law will not be an AIPJ outcome; rather, AIPJ will support the process for the development of a draft law which is inclusive and responsive to community concerns, and which is based on sound contextual and comparative analysis. If a legal aid law is passed, AIPJ will support policy dialogue in relation to its implementing regulations and budget allocation. AIPJ could also support the development and implementation of initiatives relating to legal aid more broadly, such as pro bono advice systems and paralegal movements.

(e) ***Increased capacity of civil society organisations and national commissions to support Indonesian law and justice sector reform efforts.***

- (i) Improvements to civil society’s capacity to monitor law and justice institutions and conduct analytical work will include consideration of support to:
 - (A) put in place effective management and leadership strategies, including strategies which facilitate greater participation by marginalised groups in civil society organisations;
 - (B) research and monitor the processing and management of anti-corruption cases and contributing to the Indonesian Government’s monitoring and evaluation of the proposed *National Strategy on Corruption Eradication*;
 - (C) research and monitor progress on improving access to court-based dispute resolution for marginalised groups;
 - (D) understand and promote domestic and international best practice with regard to combating corruption and promoting access to justice for women, people with disability and people living with HIV/AIDS;
 - (E) conduct research and analyses, socialisation and policy dialogue on issues relating to draft laws (*rancangan undang-undang*) and sub-national regulations (*perda*) concerning human rights, women’s rights and anti-corruption; and
 - (F) introduce and implement robust systems within bar associations for handling public complaints and disciplining corrupt members.

- (ii) Support will also be provided to national human rights commissions (particularly Komnas HAM and Komnas Perempuan) to play a ‘bridging’ role between civil society and the state. AIPJ will consider assisting Komnas HAM strengthen the capacity of its regional offices (located in Aceh, Papua, West Sumatera, West Kalimantan and Maluku) to respond to community expectations. AIPJ will also consider supporting the work of the national commissions responsible for monitoring and reporting on Indonesia’s compliance with international human rights instruments to which it is a party, and assisting relevant justice institutions to ensure such compliance, including through the review of existing legislation and the drafting of implementing legislation. This could include, for example, supporting Komnas HAM monitor Indonesia’s compliance with the Convention on the Elimination of All Forms of Racial Discrimination (CERD) as mandated under Law No. 40/2008.

Priority Cross-Cutting Issues

3.5 The AIP Country Strategy 2008-13 outlines four high priority cross-cutting issues: gender, partnerships, anti-corruption, and performance orientation. All of these are addressed under the four priority cross-cutting areas of AIPJ. All activities will be expected to highlight their approach to these cross-cutting areas explicitly, and separate monitoring will be established for each focus area that will track and report progress separately as part of the formal reporting processes. The program will be expected to respond to, and build on, opportunities for engagement in the following priority cross-cutting areas:

- (a) *Human rights* - AIPJ supports Indonesia to ensure the promotion, protection, and fulfilment of the rights of the most marginalised, particularly women and people with disability. This will include work on enhancing access to justice for poor and marginalised groups; improving the capacity of key national human rights institutions to act as a ‘bridge’ between civil society and the state; expanding access to legal information relating to human rights; and facilitating improved dialogue on legal aid for groups whose rights are regularly violated.
- (b) *Anti-corruption* - AIPJ’s support of this focus area will involve the judiciary, the Attorney-General’s Office, the Anti-Corruption Commission (KPK) and civil society, and will include work on: improving the capacity of prosecutorial agencies to process corruption cases (both in their own ranks and more broadly); enhancing the transparency of law and justice institutions; and increasing the capacity of civil society to monitor the availability and quality of key legal services.
- (c) *Partnerships and Policy Dialogue* - AIPJ will facilitate the achievement of its core objective by enhanced partnerships and policy dialogue between Indonesian and Australian law and justice institutions, and could include (but will not necessarily be restricted to) policy dialogue between relevant institutions on leadership, budget allocation and emerging international best practices in the law and justice sector. This may involve cooperation between: courts, notably between the Indonesian Supreme Court and the Federal and Family Courts of Australia; legal associations; high level agencies involved in the furtherance of rights of the disabled; high level agencies involved in the delivery and planning of legal education; and/or agencies involved in public legal information services.

- (d) *Performance* - AIPJ will aim to improve the systems and capacity of key law and justice sector institutions to monitor and evaluate activities, strategies and policies. AIPJ's approach to performance will involve: relying on, supporting and strengthening the Indonesian Government's performance systems where possible, thereby avoiding duplication and the establishment of parallel systems for performance evaluation; and employing best practice in relation to measurement of AIPJ's own contribution to the AIPJ core and focus areas, and ultimately the joint Indonesian Government-AIPJ long-term goal.

Operating Principles

3.6 The Contractor will ensure AIPJ funds are administered in accordance with the following principles:

- (a) *Partnership* - The Program should reflect both Australian and Indonesian Government priorities, and be driven by joint decision-making bodies. The development of long-term relationships between Australian and Indonesian government agencies provides a strong basis for policy dialogue on justice sector issues, as well as a useful framework for capacity development.
- (b) *Effective Demand* - At the operational level, the term 'effective demand' will be used to refer to demand from agencies for assistance through the AIPJ. To be effective, requests for assistance from partner organisations need to align with AIPJ's objectives, be accompanied by the capacity of the partner organisation to actually deliver the proposed benefits and be responsive to the needs of the requesting organisation rather than the individuals working for it. AIPJ needs to address the concept of effective demand through:
 - (i) communicating information about AIPJ's objectives clearly amongst stakeholders;
 - (ii) ensuring all partners have the capacity to deliver sustainable benefits from AIPJ-funded activities;
 - (iii) promoting demand by communicating information about successes; and
 - (iv) understanding the incentives that influence different actors at both individual and institutional levels, and leveraging these incentives to encourage constructive engagement with AIPJ.
- (c) *Critical Mass* - AIPJ should attempt to maintain a balance between assisting a range of different organisations and ensuring that its assistance does not become 'drops in the ocean'. It should do this by adhering to the principle of 'critical mass'. This means that, prior to funding any activity, a preliminary analysis will be undertaken by the Program Director (or the Contractor), to understand the full range of elements that are critical to its success and make available this analysis to the Partnership Board for consideration in assessing proposed activities.
- (d) *Incremental Engagement* - 'Incremental engagement' involves providing an initial level of support and then expanding this based on success. The intention is to avoid being over-ambitious and to build gradually on demonstrated success. This principle also has a useful incentivising effect – when partners understand that continued or

additional support is contingent on success, there is a greater likelihood of achieving that success.

- (e) *Use of Indonesian Expertise* - AIPJ will look to prioritise use of Indonesian expertise in all program activities. This reflects recognition that Indonesia holds a wealth of technical knowledge and expertise that can be both utilised and supported more effectively by donors.

Types of Assistance

- 3.7 AIPJ will be open to forms of assistance as permitted under the Australia Indonesia Partnership, including but not limited to:
 - (a) support for peer-to-peer relationships between Indonesian agencies and counterparts in Australia and elsewhere;
 - (b) grants to civil society for dissemination, monitoring and other activities;
 - (c) analysis and diagnostics, particularly those undertaken by Indonesian organisations;
 - (d) core funding for reform offices, human rights commissions and other key organisations;
 - (e) one-off and/or ongoing technical assistance to state and non-state institutions, particularly from Indonesians or persons with a long-term commitment to working in Indonesia; and
 - (f) training, particularly by Indonesian organisations and where there is evidence of sustainability.

4. THE ROLES AND RESPONSIBILITIES OF KEY STAKEHOLDERS

GoI and GoA as Parties

- 4.1 Overall authority for managing AIPJ rests with AusAID (on behalf of GoA) and Bappenas (on behalf of GoI) as the designated Managing Agencies of the respective governments and as Co-Chairs of the AIPJ Partnership Board.
- 4.2 AIPJ will be implemented under a Subsidiary Arrangement (SA) between the Government of Indonesia (GoI) and the Government of Australia (GoA), with Bappenas and AusAID as signatories, which defines the two Governments as parties to the partnership arrangements.
- 4.3 AusAID will have the sole authority to make final approvals of the Annual Plan, but will do so with Bappenas concurrence.
- 4.4 AIPJ's governance and management structure is shown diagrammatically in **Figure 1 below**.

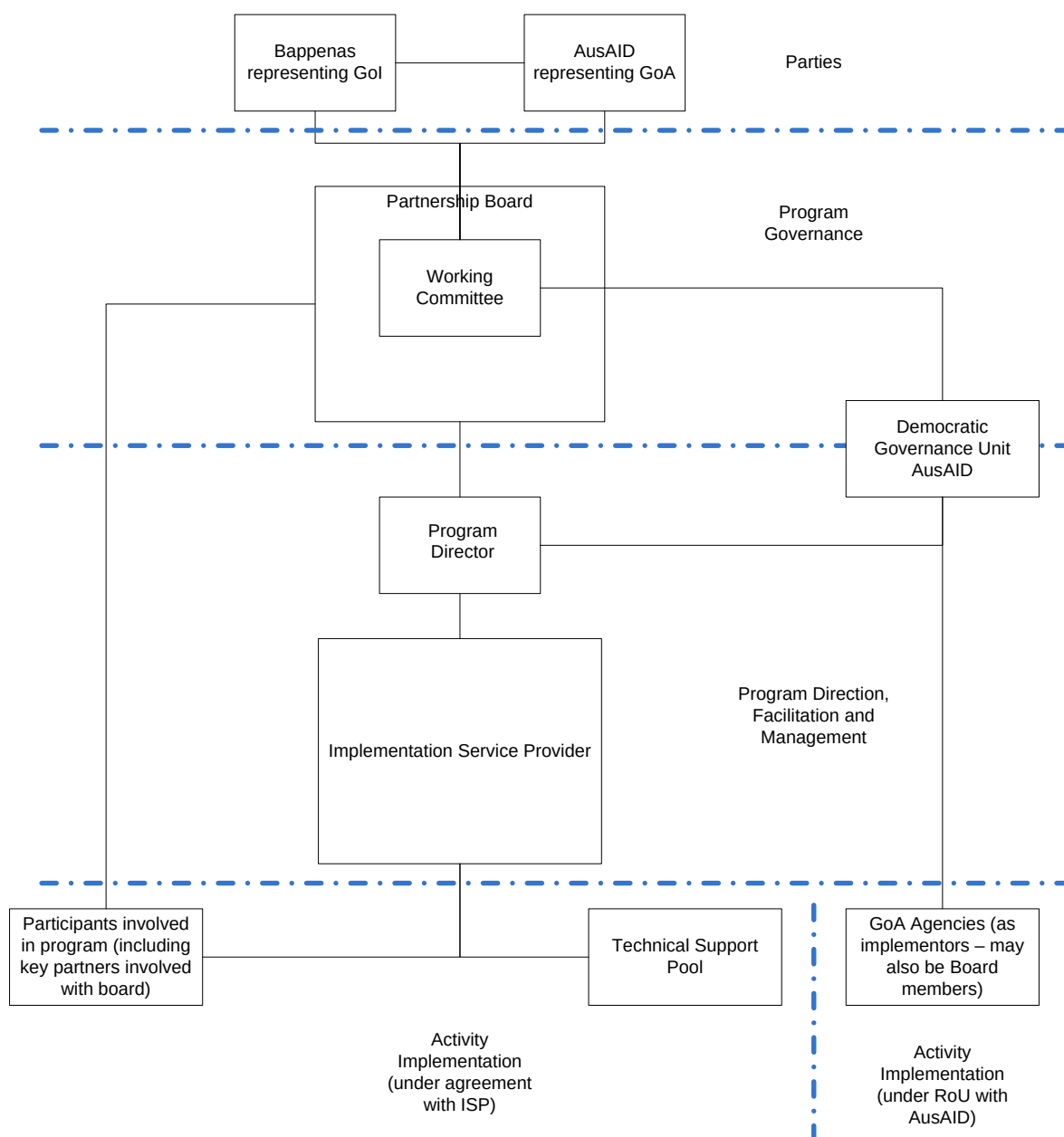


Figure 1: AIPJ Governance & Management Structure

The Partnership Board

- 4.5 The AIPJ Partnership Board (PB) guides and oversees the implementation of AIPJ. It is responsible for reviewing progress in AIPJ and establishing needs on an annual basis that reflect the needs of Indonesia's law and justice sector.
- 4.6 The PB will be Co-Chaired by the Bappenas Deputy responsible for the law and justice sector and by the AusAID Minister Counsellor for Indonesia (see also **Clause 4.8 below**) who will formulate the AIPJ Working Committee (see **Clauses 4.12 to 4.17 below**). Other permanent members of the PB will include representatives of:
- the Supreme Court of the Republic of Indonesia;
 - the Human Rights Commission of Indonesia (Komnas Ham);

- (c) the Australian Attorney-General's Department;
 - (d) the Australian Department of Foreign Affairs and Trade;
 - (e) representative(s) from Indonesian civil society organisations active in reform within the law and justice sector on a rotational basis; and
 - (f) other Indonesian or Australian law and justice sector agencies as appropriate. (For example, the PB could include representatives from the Indonesian Attorney General's Office and the Corruption Eradication Commission.)
- 4.7 The final decision to invite members to the PB will rest with AusAID in consultation with Bappenas.
- 4.8 AusAID and Bappenas, as representatives of the governmental parties, may jointly opt from time to time to engage as Chair of the Partnership Board for specific meetings a notable senior professional from within the law and justice sector. This engagement will not detract from the rights and responsibilities of AusAID and Bappenas as PB Co-Chairs.
- 4.9 The PB will convene at least once a year, at a time and place to be mutually agreed between all members. All funds and resources for the PB meetings will be made available through the AIPJ program as managed by the PD and the Contractor. The PB meetings will be the peak articulation of the AIPJ Partnership between Indonesia and Australia and as such will require the highest quality preparations and inputs from the PD and the Contractor to ensure its success.
- 4.10 The PB has the following responsibilities:
- (a) to guide the development of the AIPJ to ensure that cooperation through the Partnership is maximised, and to advise Bappenas and AusAID as Co-Chairs accordingly. The establishment by the PD and the Contractor of a culture of continuous learning and a capacity to incorporate learning into planning and implementation will be critical to ensuring the PB can effectively execute this mandate;
 - (b) to guide the development of the AIPJ, in particular by:
 - (i) reviewing Indonesian law and justice sector trends and developments on at least an annual strategic basis and determining in broad programmatic terms the most strategically useful and feasible options for AIPJ support to the sector. Professional support and advice from individuals within or external to AIPJ may need to be resourced to maximise the PB's role in AIPJ Program guidance. This will include the facilitation of PB consultations as appropriate with law and justice sector agencies and players; and
 - (ii) reviewing progress of AIPJ on an annual basis, utilising reports made by the PD and the Contractor and approved by the AIPJ Working Committee.
 - (c) to provide strategic level comment on Annual Plans as prepared by the PD and to be approved by the AIPJ Working Committee, in particular noting whether proposed activities are consistent with program directions as determined under **Clause 4.10 (b) above**.

- 4.11 Partnership Board responsibilities under **Clauses 4.10 (a) and (b)(b) above** will be undertaken in PB meetings. Responsibilities under **Clause 4.10 (c) above** will be undertaken inter-sessionally through e-mail and/or other written communications.

The AIPJ Working Committee

- 4.12 AusAID and Bappenas as Co-Chairs of the Partnership Board and as representatives of the Governmental Parties to the AIPJ Partnership Board will form the AIPJ Working Committee, which has the overall function to provide ongoing management and executive decision-making on an ongoing basis, particularly through the approval of Annual Plans and monitoring reports.
- 4.13 The AIPJ Working Committee will comprise the Bappenas Deputy responsible for the law and justice sector and by the AusAID Counsellor for Democratic Governance and Policy Coordination.
- 4.14 The Co-Chairs of the AIPJ Working Committee may co-opt or invite the attendance of other specialists to provide advice and support for AIPJ Working Committee.
- 4.15 The AIPJ Working Committee will convene regularly in Indonesia at times to be mutually agreed between the Co-Chairs, but most notably prior to and following Partnership Board meetings.
- 4.16 The AIPJ Working Committee has the following responsibilities:
- (a) ensure that the high level strategic concerns of GoI and GoA as governmental parties as identified by the Partnership Board are taken into account in the conduct of AIPJ and in particular the management and development of the AIPJ Partnership;
 - (b) review and approve biannual monitoring reports from AIPJ as prepared by the Contractor and delivered by the PD, taking into account the comments and recommendations of the Partnership Board and bearing in mind the need for learning within the partnership;
 - (c) review and approve Annual Plans as prepared and delivered by the Contractor and the PD, taking into account the guidance, comments and recommendations of the Partnership Board;
 - (d) ensure that AIPJ through the PD and the Contractor have the appropriate budgetary resources to enable the program to undertake its activities as outlined in each Annual Plan;
 - (e) provide oversight and executive support for all financial and contractual processes undertaken under the auspices of AIPJ including those relating to the PD, the Contractor and to GoA agencies cooperating under separate RoUs, where necessary calling for the use of audit and legal services;
 - (f) call for, as necessary, the deployment of review and evaluation teams by AusAID and review their evaluation outcomes; and
 - (g) make executive decisions on behalf of the Partnership Board that reflect strategic concerns of GoI and GoA, articulate the sectoral needs as outlined by the PB and

provide clear guidance to the PD and the Contractor in their implementation of AIPJ on a routine basis.

- 4.17 AIPJ Working Committee responsibilities as outlined in **Clause 4.16 above** will be primarily undertaken in two annual sessions of the working committee. However, it is expected that the AIPJ Working Committee can undertake inter-sessional decisions through e-mail and/or other written communications if so required with the support of the PD and the Contractor.

AusAID Jakarta

- 4.18 AusAID Jakarta will operate under the direction of the Counsellor for Democratic Governance and Policy Coordination. Its primary management role with regard to AIPJ is to establish, finalise, and monitor this Contract on behalf of the GoA. AusAID Jakarta also plays a major support role to the AIPJ Working Committee and through it to the AIPJ Partnership Board.
- 4.19 The work of AusAID Jakarta in regard to AIPJ is ongoing in nature and will require regular liaison with the PD, the Contractor and AusAID's Head Office in Canberra. The primary point of contact for the Contractor within AusAID Jakarta will be the Senior Program Manager designated as the AIPJ liaison point.
- 4.20 AusAID has the following responsibilities:
- (a) managing primary contracts associated with the AIPJ;
 - (b) managing performance assessment processes of the Contractor on an annual basis in accordance with Contract provisions, including decisions on performance payments available to the Contractor, taking into consideration the recommendations of the AIPJ Working Committee (WC). The Contractor Performance Assessment will be conducted in accordance with **Clause 9** of this Schedule 1 and any Performance Payments will be made in accordance with **Clause 9** of Schedule 2 – Basis of Payment;
 - (c) providing ongoing support and advice through the Counsellor to the AIPJ Working Committee and through it to the Partnership Board to assist in the governance of AIPJ in particular, but not limited to:
 - (i) management of the partnership process;
 - (ii) determination of program directions and strategies and approval of Annual Plans; and
 - (iii) overview of the monitoring and learning process.
 - (d) management of the flow of overall AIPJ funds, including providing final approval of performance payments;
 - (e) ongoing and higher level liaison with the PD and through him/her the Contractor to:
 - (i) keep a watching brief on program activities, including ongoing discussions on results of the monitoring and learning processes; and

- (ii) where considered of strategic value attend meetings with program implementers and participating organisations;
- (f) management of AusAID's interests in the conduct of high level official visits relating to AIPJ to Indonesia, Australia or third countries;
- (g) design and management of AusAID managed program reviews and evaluations;
- (h) support for high level meetings between the GoA and key Indonesian law and justice sector institutions; and
- (i) ensuring all key activities under AIPJ are consistent with the priorities of the GoA.

The Program Director (PD)

4.21 The Program Director is responsible for the strategic management and oversight of the AIPJ, working closely with the AusAID Jakarta. S/he will ensure that strategic decisions of the Partnership Board and the AIPJ Working Committee are implemented.

4.22 The PD has the following responsibilities:

- (a) providing strategic management and direction to the Contractor's team in line with the guidelines and decisions made by the PB and the AIPJ Working Committee;
- (b) providing feedback into the annual Contractor Performance Assessment for the Contractor conducted by AusAID;
- (c) assisting to develop the AIPJ Partnership through building relationships between key GoI and GoA organisations;
- (d) developing the capacities of the Partnership Board and AIPJ Working Committee by assisting all stakeholders to prepare for the meetings so as to ensure maximum levels of strategic direction for AIPJ;
- (e) staying abreast of the latest international thinking on development assistance in the law and justice sector, and ensuring that this is integrated into AIPJ's implementation where feasible and desirable;
- (f) providing strategic advice and written reports on request to both GoI and GoA on sector priorities, reform dynamics and donor coordination, notably through the AIPJ Working Committee and the Partnership Board;
- (g) providing strategic guidance over the development of annual and activity plans and where required, more detailed plans for the achievement of AIPJ outcomes;
- (h) ensuring the Monitoring and Learning Framework provides relevant information to inform the strategic direction of the program and builds on lessons learnt;
- (i) in conjunction with AusAID, promoting greater coordination of GoA agencies in Indonesia involved in the provision of development assistance to the Indonesian law and justice sector, including by:

- (i) identifying opportunities for policy dialogue and partnership development activities between Australia and Indonesia on law and justice issues; and
 - (ii) providing briefings to relevant GoA partners on legal development issues in Indonesia.
- (j) responding to GoI requests for support to relevant government agencies for greater sectoral coordination within the Indonesian law and justice sector and particularly in the AIPJ, including by:
 - (i) identifying opportunities for Australian support for improved whole-of-government coordination of law and justice sector institutions in Indonesia;
 - (ii) identifying opportunities for enhancing AIPJ's use of GoI systems (planning, budgeting, financing, auditing, etc); and
 - (iii) ensuring AIPJ is aligned with GoI priorities.
- (k) liaising with relevant donors in Indonesia and Australia; and
- (l) developing with the Contractor guidelines for the allocation of AIPJ funds through the Contractor's financial systems and, where possible, through GoI systems.

Implementation Service Provider (ISP) – the Contractor

- 4.23 Day-to-day responsibility for managing the implementation of AIPJ will be vested in the Contractor under the direction of the Program Director.
- 4.24 The duties of the Contractor will involve supporting the PD to take overall responsibility for delivering all activities and tasks linked to program outcomes. These duties will require the Contractor to:
- (a) manage detailed design, contracting, supervision and reporting of all activities implemented through AIPJ;
 - (b) support the PD in the development of the Annual Plan;
 - (c) manage all administrative, secretarial, logistic and procurement requirements for the Partnership Board, the AIPJ Working Committee and the Program Director;
 - (d) manage all administrative, secretarial, logistic and procurement requirements related to the Technical Support Pool (TSP);
 - (e) manage all administrative, logistic, procurement contracting and recruitment requirements for the work of other groups engaged to implement activities under AIPJ;
 - (f) ensure the program retains an ongoing focus on program monitoring and learning, incorporation of cross-cutting issues, program effectiveness and achievement of outcomes;
 - (g) under the leadership of the Program Director, maintain and foster strong relationships and partnerships with law and justice stakeholders, including AusAID;

- (h) provide support as required with administrative, logistic, procurement and recruitment requirements for Australian assistance in the law and justice sector; and
 - (i) respond to changing aid frameworks at the direction of AusAID and the Program Director, including those aimed at promoting enhanced interaction between Australian government and court institutions and their Indonesian counterparts, increasing aid effectiveness and working more closely with partner systems.
- 4.25 The Contractor will communicate with and report to AusAID on contractual, financial reporting and invoicing issues. It will be subject to regular independent audit.
- 4.26 The Contractor will communicate with and report to the Program Director on all issues regarding activity management, including but not limited to implementation, monitoring, quality assurance, programming and establishment of budgets.
5. **AIPJ ACTIVITIES**
- 5.1 AIPJ Activities will be implemented through one or more:
- (a) contracts between the Contractor and Indonesian or non-Indonesian organisations or service providers, under the direction of the PD;
 - (b) grants and/or core funding provided by the Contractor to non-government organisations/civil society groups, under the direction of the PD; or
 - (c) records of understanding between AusAID and other GoA agencies and/or Australian courts who will deliver services under AIPJ as approved by the AIPJ Working Committee.
- 5.2 Activities for inclusion in and support from AIPJ will be chosen through rigorous selection criteria and procedures as per **Clauses 8.12 to 8.19 below**.
- 5.3 The Annual Plan (in accordance with **Clause 7.4 below**) will at any time comprise several activities, all of which will link to the AIPJ goals, objective and outcomes. Each activity will have its own objective and a small number of outputs which will contribute to achieving the relevant AIPJ outcome.
- 5.4 The Program Director will be responsible for coordination of all activities including activities implemented through the Contractor.
- 5.5 Activities will generally not be implemented by the Contractor. Self-implementation by the Contractor may be approved in cases where the Contractor can demonstrate that they can provide competent services acceptable to AusAID and counterpart agencies. All instances of self-implementation must be approved by AusAID.
- 5.6 Requests for approval must be justified, demonstrating clear value for money and providing documentary evidence that the rates for the nominated personnel are in line with the rates that these personnel have received for comparable assignments over the previous two (2) years.

6. LOCATION

- 6.1 The Contractor and the Program Director will be located in office facilities to be sourced by the Contractor in a central area of Jakarta. The Contractor shall provide suitable office facilities. It is expected that Contractor staff will spend significant periods of time in GoI and other stakeholder offices in Jakarta, at the direction of the Program Director.
- 6.2 The Contractor acknowledges that the Program Director will spend up to one (1) day a week in AusAID's Jakarta office and/or the Australian Embassy consulting with AusAID.

7. PLANNING, MONITORING AND REPORTING

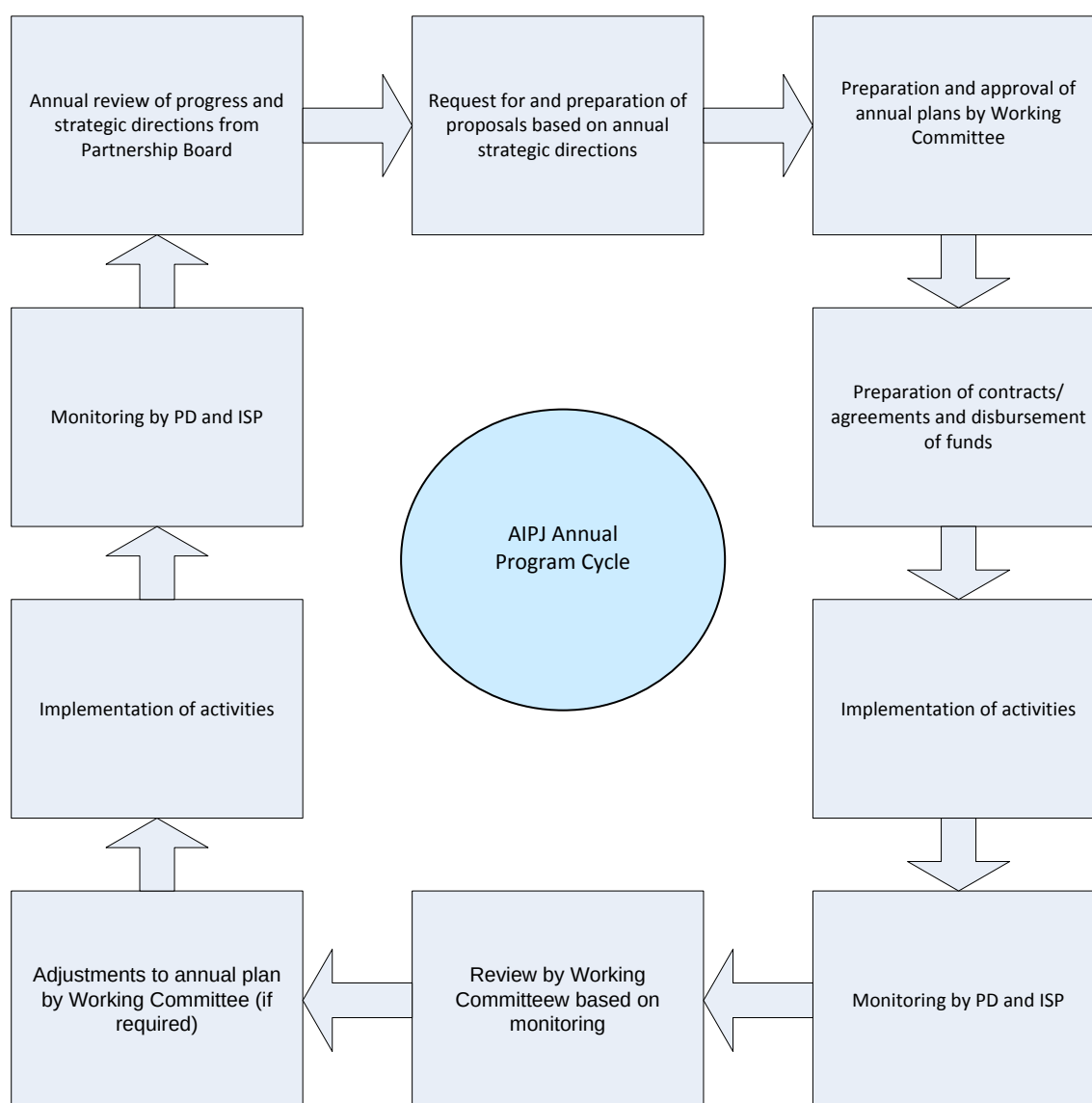


Figure 2: The AIPJ Planning Cycle

Planning

- 7.1 AIPJ will operate an annual planning cycle that is shown diagrammatically in **Figure 2 above**.
- 7.2 The AIPJ annual planning cycle is based around the preparation and approval of an Annual Plan. The Contractor will be responsible for preparing the Annual Plan under the direction of

the PD. Annual Plans will take into account the strategic directions provided by the Partnership Board which will meet for this purpose once a year.

7.3 Annual Plans will be prepared and submitted in accordance with **Clause 8 of Part A** of the Contract, for approval by the AIPJ Working Committee. The AIPJ Working Committee will be responsible for ensuring that the members of the Partnership Board have the opportunity for comment, prior to approval being given by the Working Committee. The Annual Plan will need to clearly align with Indonesian planning and budgeting schedules, but recognise that Australian resources will be subject to Australian Parliamentary allocations and procedures.

7.4 The **Annual Plan** will:

- (a) summarise progress against the achievement of AIPJ outcomes and the extent to which the cross-cutting issues have been integrated into AIPJ activities in the previous year, highlighting lessons learned;
- (b) note emerging trends for the law and justice sector and strategic directions for AIPJ as articulated by the PB;
- (c) provide in summary form rationale for proposed major program directions for the forthcoming year;
- (d) articulate the approach to gender equality, capacity building and implementing the communication strategy over the coming twelve (12) month period;
- (e) set out how the Program will report against the Monitoring and Learning (M&L) Framework, as well as actions that will be taken to improve M&L over the forthcoming period;
- (f) append summaries of each new or continuing activity that it is being proposed for AIPJ funding, including for emerging issues and partnership activities;
- (g) provide an implementation schedule that gives an overview of the AIPJ program for the year including identified activity milestones; and
- (h) provide a report of expenditure to date against the total approved program budget (i.e. from program commencement), expenditures during the previous year and a fully costed budget for AIPJ operations during the ensuing year.

Monitoring, learning, progress reporting and evaluation

7.5 The Contractor will design and implement a comprehensive monitoring, learning and evaluation framework, which will meet the information requirements of all major stakeholders in AIPJ.

7.6 Guiding principles for monitoring and learning activities will include:

- (a) working with, and through, Indonesian systems and building on those systems where appropriate;
- (b) all data collected will be gender disaggregated, and pay special attention to people with a disability;

- (c) the recognition that learning is an integral part of partnership development and that while managers need to have an ongoing understanding of progress and issues through monitoring, stakeholders need to be able to incorporate lessons from previous activities into the design and implementation of new activities;
 - (d) information collected will be reported in a way that can be directly used by managers at the operational, forward planning and strategic levels to inform ongoing decision-making; and
 - (e) regular reviews of the monitoring and learning system itself to ensure that it incorporates best practice developments of monitoring in the legal sector, and ensure it is meeting the needs of stakeholders.
- 7.7 During the inception phase, the Contractor will conduct an evaluability assessment of the AIPJ with full stakeholder participation. This assessment will include a review of the program logic and confirm a shared understanding of end-of-program outcomes. It will also examine potential data sources, particularly those in partner government systems, and outline plans to conduct baseline work, building on information gathered under the AIPJt. The evaluability assessment will be a pre-cursor to the development of the M&L Framework.
- 7.8 The **M&L Framework** developed by the Contractor during the inception phase will address the key principles and issues described in the monitoring and evaluation approach addressed in section 5.8 of the AIPJ Design Document.
- 7.9 As well as providing ongoing information to stakeholders, the M&L Framework is expected to contribute towards succinct progress reports on a six-monthly basis:
- (a) prior to Partnership Board meetings, to assist in the establishment of strategic direction by the Partnership Board, and in the preparation and approval of the Annual Plan for the following year; and
 - (b) six (6) months later to facilitate monitoring and mid-year decision making by the AIPJ Working Committee.
- 7.10 The Contractor will prepare **Six-monthly Progress Reports** containing:
- (a) an update on the operating context, i.e. constraints or opportunities the program is working within/with and how the program is managing any actual or potential risks;
 - (b) implementation progress: including updates on each outcome, broken down by activities;
 - (c) key results: analysis on how program activities are contributing, or otherwise, to AIPJ's objective and broader program outcomes, including distillation of the deliverables and key results achieved against indicators and milestones agreed in the program period;
 - (d) report on use and effectiveness of the M&L Framework, together with recommendations for M&L Framework improvements (for example better alignment with AusAID performance reporting framework);

- (e) updates on progress against broader program strategies and plans such as gender, capacity building, and communication;
- (f) recommendations for program improvement, broader sharing of lessons learned/progress, and ways to achieve broader program impacts that may not be captured in other ways through the program; and
- (g) an updated report of expenditures against total approved program budget (i.e. from program commencement) for the previous six-month period.

Review and Evaluation

7.11 Independent evaluation for AIPJ will be conducted by parties external to AIPJ stakeholders. Responsibility for engagement of evaluation specialists and management of the evaluation process will rest with AusAID, which will establish the timetable, terms of reference and team composition for evaluations in consultation with AIPJ stakeholders. At minimum evaluations will be undertaken as follows:

- (a) an independent review following the first twelve (12) months of implementation to ensure progress is on track;
- (b) a second independent review will be undertaken in the third year of implementation to provide GoA and GoI with an independent assessment of progress to date and recommendations for the future of AIPJ. This may if required make recommendations on exercising the option to extend (in accordance with **Clause 2.3 of Part A** of the Contract), or form the independent completion report;
- (c) if the option to extend is exercised by AusAID in accordance with **Clause 2.3 of Part A** of the Contract, a third independent review will be undertaken in the fourth year of implementation to provide GoA and GoI with independent assessment of progress to date and recommendations for the future of AIPJ. This may form the independent completion report; and
- (d) GoA and GoI may at their discretion undertake other evaluations of AIPJ either on a joint or individual basis. It is envisaged that there will be up to four independent reviews/evaluations covering specific aspects of AIPJ in addition to the major reviews detailed in **(b)** and **(c) above**.

Other reporting

7.12 An **Inception Report** is to be prepared by the Contractor three (3) months after the Project Start Date for approval by AusAID. The Inception Report will report on the inception phase and include a draft of the first Annual Plan. When AIPJ is mobilised the Program Director in consultation with the Contractor, having regard to GoI planning processes, will determine the period of the first Annual Plan that should align with GoI planning processes. The Inception Report will be accompanied by the following:

- (a) an **Operations Handbook** that will outline the management, financial management, procurement and other processes and issues required for AIPJ operations. Selection criteria and assessment guidelines for activities will be included as part of the Operations Handbook; and

- (b) revised **Contractor Performance Assessment Criteria** (see **Clause 9.2 below**).
- 7.13 The following reports are to be prepared by the Contractor within five (5) months of the Contract start date for approval by AusAID. Terms of reference for the development of these reports are to be approved by AusAID prior to their development.
- (a) an updated indicative three (3) year **Outcomes Work Plan**, detailing the sequencing of AIPJ inputs required in order to achieve the outcomes specified in **Clause 3 above**;
 - (b) the **Monitoring and Learning (M&L) Framework** for the life of the program with accompanying baseline information;
 - (c) a **Gender Strategy and Action Plan** for the AIPJ that will be updated annually by a member of the TSP with specific gender expertise;
 - (d) a **Capacity Development Strategy** to be updated annually by a member of the TSP with specific capacity development expertise; and
 - (e) a **Communications Strategy** that will outline how AIPJ will communicate with stakeholders (both state and non-state) and the general public (in both Indonesia and Australia) to highlight the work of the program (including results, human interest stories and benefits of engagement). The Communications Strategy will be reviewed annually. It will describe how the Contractor will engage with AusAID and Bappenas, and other government stakeholders on ongoing management and implementation issues. This will be drafted in consultation with AusAID.
- 7.14 The Contractor will prepare an **Activity Completion Report** to be submitted to AusAID three (3) months prior to the Contract end date, in accordance with AusAID quality requirements.

8. SCOPE OF THE CONTRACTOR'S SERVICES

- 8.1 The scope of the Contractor's services takes into account all of the considerations in **Clauses 1 to 7 above**. The Contractor is required to perform the following services in accordance with all other Clauses in this Schedule and the Terms and Conditions of Parts A and B of this Contract.
- 8.2 The Contractor shall take direction from the PD for all the activities, responsibilities and tasks to be carried out in accordance with this **Schedule 1 – Scope of Services**.

Administrative Services

- 8.3 The Contractor shall establish a lease for, furnish, provide and maintain a suitable AIPJ office in Central Jakarta, commensurate with all tasks in this Schedule 1 and this Contract.
- 8.4 The office will cater for the day to day requirements of the Contractor and its team, the Program Director, and visiting specialists and visitors from AIPJ participating organisations. It will support the operational requirements of all stakeholders involved in AIPJ as articulated under individual approved activities.

- 8.5 The Contractor shall provide administrative, logistical, procurement, financial, contracting and recruitment services for all aspects of the AIPJ as instructed by the Program Director and in line with the Operations Manual.

Program Director Support

- 8.6 The Contractor shall assist the PD, as required, to foster and develop the AIPJ Partnership, provide strategic advice and guidance to program participants, promote coordination within the sector and will work under the PD in the development of all AIPJ systems, handbooks, and guidelines.
- 8.7 The Contractor shall provide and finance all program related services for the PD, to include office accommodation, office equipment and consumables, communications services, meetings services, logistics, and local transport.
- 8.8 All other provisions for the PD (i.e. remuneration, insurances, mobilisation, leave, housing or any other personnel related arrangements) will be administered separately by AusAID and will not be the responsibility of the Contractor.

Partnership Board and AIPJ Working Committee Support

- 8.9 The Contractor shall ensure that the following services are available for the Partnership Board and the AIPJ Working Committee meetings:
- (a) provide secretariat services to the PB and AIPJ Working Committee including through the organisation and hosting of meetings, venues, keeping of minutes and the circulation of PB and AIPJ Working Committee papers a minimum of one (1) week prior to meetings;
 - (b) prepare PB and AIPJ Working Committee minutes for distribution within two (2) weeks of the meeting, including on decisions, instructions and guidance provided to the PD and the Contractor; and
 - (c) provide logistics services for PB members involved in travel for meetings in Indonesia or Australia as directed by the Program Director. This will include hotel accommodation, air and ground travel and per diem expenses as required.
- 8.10 In addition to the provision of meeting and associated logistics services for the PB and the AIPJ Working Committee as per **Clause 8.9 above**, the Contractor shall assist the PD to ensure that the PB and the AIPJ Working Committee are fully briefed and provided with information on significant law and justice sector issues in an accurate and timely manner.
- 8.11 Partnership Board meetings will be conducted in Bahasa Indonesia. The Contractor shall ensure that appropriate translation and interpreter services are provided for these meetings. Appropriate efficient meeting practises should be upheld.

Activity Design and Implementation

- 8.12 The Contractor shall, under the direction of the PD and with the approval of AusAID, establish the selection criteria (based on the indicative selection criteria specified in the AIPJ Design Document) and devise procedures for activities to be funded under AIPJ. These criteria will also be used for contracts and agreements to be managed through the Contractor

within which GoI, GoA, Indonesian civil society organisations and commercial service providers will participate. The Contractor will also devise procedures for such organisations to propose activities for funding under AIPJ (or to be invited to participate) and for contracts to be let for AIPJ. The selection criteria, proposal and tendering/contract procedures will be in line with Australian Government guidelines and will be included in draft form in the Operations Handbook which will be submitted for approval in accordance with **Clause 7.12(a) above** for approval by AusAID.

- 8.13 The Contractor shall ensure that all activity designs demonstrate robust/significant consideration of how implementation will target or affect men and women through implementation. Measures to ensure gender equality, beyond number of male and female participants, must be incorporated in activity design. The Contractor will also ensure that activity designs demonstrate robust/significant consideration of other relevant overarching policy issues, particularly (but not limited to) issues of disability.
- 8.14 The Contractor shall, under the direction of the PD and with the approval of AusAID, establish a system for pre-qualification of organisations eligible to provide services under AIPJ. The pre-qualification system will be included in draft form in the Operations Handbook.
- 8.15 The Contractor shall under the direction of the PD and within the establishment of the overall activity selection criteria for AIPJ, ensure that any system developed to disburse grants through AIPJ to Indonesian CSOs takes into account the need to ensure CSOs are fully recognised as stakeholders within the law and justice sector and that their capacity development needs are taken into account as part of activity design.
- 8.16 The Contractor shall, under the direction of the PD and AusAID, establish a system for support of AIPJ activities to be implemented by selected GoA agencies directly engaged by AusAID under RoU arrangements. The Contractor acknowledges that support for such activities will vary in nature and will need to be determined on a case-by-case basis. However support will likely include logistics in Indonesia and the provision of short-term specialists. The Contractor will negotiate with AusAID on an annual basis, at the time of finalisation of the Annual Plan a separate, quarantined fund with a specified maximum for each year, from which such administrative support will be resourced. The RoU support system will be included in draft form in the Operations Handbook.
- 8.17 The Contractor shall under the direction of the PD and the instructions of AusAID monitor use of program funds specifically for the development of partnerships between Australian and Indonesian law and justice sector institutions, and to allow the program to support emerging reform opportunities. It is estimated that up to 10% of program funds will be used for these activities. Funding proposals will be short-listed by the Program Director and endorsed by the Partnership Board.
- 8.18 The Contractor shall, under the direction of the PD, provide all services related to the tendering, contracting, contract supervision, monitoring and financial management of activities established under the provisions of **Clauses 8.12 to 8.17** above and in line with procedures in the Operations Handbook. This will also include the provision of specialist expertise as appropriate within the design of the agreed activities from Contractor Personnel and/or its TSP, as defined under **Clauses 8.20 to 8.30 below**.
- 8.19 The Contractor shall provide support services for the initial activities under AIPJ which will continue on from the AIPJ Transition (AIPJt).

Long-Term Personnel

- 8.20 The Contractor shall recruit, contract, manage and monitor the services of Specified Personnel to meet the aims of AIPJ.
- 8.21 The Contractor shall recruit contract, manage and monitor the services of administrative staff to cover the administrative, logistical and financial operational requirements of AIPJ.
- 8.22 The Contractor shall recruit contract, manage and monitor the services of any other long-term staff required to deliver services specified in this Scope of Services.
- 8.23 The Contractor shall obtain the endorsement of the PD for the engagement of all Long Term Personnel, and the approval of the Counsellor for Democratic Governance and Policy Coordination in AusAID Jakarta for all Specified Personnel.
- 8.24 The Contractor shall ensure that all Personnel keep up to date with, and if necessary attend occasional internal training or update sessions on AusAID performance reporting requirements, gender, anti-corruption and other relevant matters as agreed from time to time with the PD and AusAID Jakarta.
- 8.25 The Contractor will aim to maximise the recruitment of appropriate Indonesian long-term personnel.

Technical Support Pool (TSP)

- 8.26 The Contractor shall establish and manage a pool of qualified and available short-term specialists to provide ongoing technical assistance to all aspects of the AIPJ program.
- 8.27 The Contractor shall recruit, contract, manage and monitor the services of the TSP which will include program level support personnel able to offer short-term inputs in a range of specialisations that should include, but should not be limited to, law and justice; monitoring and learning; gender; disability; project design and appraisal; quality assurance; capacity building; and/or organisational/institutional change.
- 8.28 The Contractor shall develop the TSP progressively during the implementation of AIPJ with the aim of building a quality technical support base for the law and justice sector that can be drawn upon as needed by GoI, GoA and Indonesian civil society stakeholders to assist them in their implementation of AIPJ activities.
- 8.29 The Contractor shall obtain the approval of both the PD and AusAID for the engagement of all personnel engaged under the TSP, including Daily Professional Fees in accordance with **Clause 3.3 of Schedule 2 – Basis of Payment**.
- 8.30 The Contractor will aim to maximise the use of Indonesian specialists within the TSP.

Financial Management

- 8.31 In regard to financial management the Contractor shall:
 - (a) establish a financial management system that supports monthly financial reporting in a format acceptable to AusAID, document this system in the Operations Handbook, submit the Handbook for approval in accordance with **Clause 7.12 (a) above** and ensure that staff follow the Handbook once approved;

- (b) provide an acquittal of expenditures against the budget, and a forward projection of funding envelopes, on a six-monthly basis for inclusion in the Six-monthly Progress Reports; and
- (c) ensure that payment to sub-contractors is completed within thirty (30) days of receipt of a correctly rendered invoice and confirmation of satisfactory delivery of the sub-contracted work.

Monitoring and Learning (M&L)

8.32 In regard to the monitoring and learning requirements of AIPJ, the Contractor shall:

- (a) develop during the establishment phase, a framework for ongoing monitoring and learning and revise such plan on a yearly basis with the Annual Plan. The Monitoring and Learning (M&L) Framework shall:
 - (i) include an initial baseline study and/or set of information against which progress towards outcomes will be measured;
 - (ii) provide sufficient information on a regular basis to AusAID and Bappenas, as representing GoA and GoI respectively to be able to meet their own reporting obligations;
 - (iii) provide sufficient information to the Partnership Board to enable it to provide sound recommendations and advice about emerging law and justice sector issues and needs and directions for AIPJ;
 - (iv) provide sufficient information to the AIPJ Working Committee to enable it to make sound decisions for the AIPJ program, particularly in regard to finalising the Annual Plan;
 - (v) set out how M&L information shall be reported, recorded and made available; and
 - (vi) develop a Risk Management Matrix in accordance with advice from AusAID;
- (b) undertake M&L activities as set out in the M&L Framework;
- (c) prepare summary M&L and risk management information for inclusion in Six-monthly Progress Reports; and
- (d) provide other information as requested for input into reviews being undertaken by AusAID.

8.33 The Contractor shall be responsible for:

- (a) developing templates that enable systematic reporting against the performance measures defined in activity proposals and designs, work plans, and terms of reference, and which align with reporting required for AusAID's performance framework;

- (b) monitoring delivery of outputs by sub-contractors and/or organisations for whom grants are made to ensure they are in accordance to the terms of reference and contract;
- (c) monitoring the results of agreed activities and strategies and using the findings to further improve the effectiveness of the program, and through the PD to inform the AIPJ Working Committee and PB;
- (d) establishing an M&L database to record all relevant activity information required for each activity, including budget and expenditure, nature of the services, indicator measures, strategies and status;
- (e) managing the learning function of AIPJ thus ensuring that lessons learnt are identified and discussed in appropriate forums to improve the selection, design and delivery of activities and the overall direction of the program; and
- (f) assigning responsibilities to ensure that:
 - (i) all activities, designs and work plans clearly state the performance measures that need to be reported on;
 - (ii) all agreed activities are subject to appropriate quality and performance assessment measures; and
 - (iii) all reports are completed on time, are concise and to the point, reflect a sound and unbiased assessment of achievement, and are able to objectively demonstrate how activities directly contributed to progress towards program outcomes.

9. CONTRACTOR PERFORMANCE ASSESSMENT

- 9.1 The assessment of the Contractor's performance will be on an annual basis with the first assessment being held one (1) year after the Contract start date. The performance assessment process will be managed by AusAID Jakarta with input from the Program Director. 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.
- 9.2 The indicative criteria to be used to assess the Contractor's performance in delivering the required services and the results table are provided at **Annex 2** to this Schedule 1. In consultation with relevant stakeholders and as agreed by AusAID the Contractor will modify and/or confirm the suggested Contractor Performance Assessment Criteria within three (3) months of the Contract start date, for inclusion in the Inception Report.
- 9.3 These criteria may be reviewed and revised as appropriate at AusAID's discretion, in consultation with the Contractor and the AIPJ Working Committee. Performance ratings will not be averaged.
- 9.4 At the end of year AusAID will notify the Contractor as to performance assessment outcomes.
- 9.5 Where the Contractor receives an "Unsatisfactory" performance assessment on three (3) or more criterion, AusAID may conduct an additional performance assessment six (6) months

later. If the additional assessment determines that the Contractor's performance is still unsatisfactory on three (3) or more criterion AusAID may seek further remedy in accordance with the Terms and Conditions of this contract.

ANNEX 1

TERMS OF REFERENCE (TOR) FOR SPECIFIED PERSONNEL

1. TEAM LEADER

Reports to: Program Director (PD)

Location: AIPJ office in Jakarta

Duration: three (3) years full-time (with the potential to be extended for up to two (2) additional years).

General responsibilities of the Team Leader

The Team Leader will be responsible for assisting the PD to manage the AIPJ. The Team Leader will be directly responsible for AIPJ implementation, as well as the day-to-day management of staff, and the recruitment and management of Technical Assistance Personnel.

The Team Leader will provide leadership, guidance and direction to staff and to sub-contractors to ensure that all activities contribute to AIPJ outcomes.

Specifically the Team Leader will:

1. manage the AIPJ Contract, oversee planning and reporting, finance and physical resource management, human resource management for AIPJ staff, and ensure accounting and quality reporting standards are met;
2. provide useful inputs to the PD to assist with AIPJ direction and decision making, including in the development of the Annual Plan. This includes ensuring the program adequately integrates cross cutting issues, and retains a strong focus on delivering and reporting on quality outcomes;
3. prepare budgets and timelines as required;
4. manage the sub-contracting or direct implementation of activities (as approved);
5. supervise implementation of activities, monitor progress and deliver outcome reporting of a high standard;
6. contract and support technical advisers through the TSP as directed by the PD, the AIPJ Working Committee, or as identified in the Annual Plan, to support and reach AIPJ objectives; and
7. under the leadership of the PD, maintain and foster strong relationships and partnerships with law and justice stakeholders involved in program implementation.

Skills, knowledge and experience

Essential

The Team Leader will be required to have the following skills, knowledge and experience:

1. at least ten (10) years experience in leading and managing productive teams in a cross-cultural setting;
2. extensive experience in leading program management and delivering quality outcomes, including through effective monitoring and evaluation systems that promote program improvement and foster continual learning;
3. professional working experience in the development sector, with a strong background in governance and law and justice programs;
4. demonstrated experience in building and facilitating strong stakeholder relationships with colleagues, partners and donors, including in the law and justice sector and in cross-cultural contexts;
5. strong analytical and problem-solving skills with a strong understanding of AusAID's role in Indonesia and of the delivery of the AIPJ; and
6. demonstrated understanding and commitment to AusAID's approach to key development principles, including aid effectiveness, gender equality and capacity development.

Desirable

The following skills, knowledge and experience are highly desirable:

1. fluency in spoken and written Bahasa Indonesia;
2. in-country experience in Indonesia; and
3. post-graduate qualification in the legal field.

ANNEX 2

CONTRACTOR PERFORMANCE ASSESSMENT FRAMEWORK

This template is to be used annually to assess the Contractor's Performance.

The Generic Performance Assessment Criteria will remain constant for the period of the Contract, once finalised in consultation with the Contractor, PD, AIPJ Working Committee and approved by AusAID.

The Specific Performance Assessment Criteria will vary annually based on the approved Annual Plan, and as agreed in consultation with the Contractor, PD, AIPJ Working Committee and approved by AusAID.

Table 1: Performance Assessment Form

Name:	Address:
Project:	Contract No:
Country:	Activity Manager (AM):
	Reviewing Counsellor:
Activity Manager overall rating of Contractor:	AusAID Counsellor agreement with rating and subsequent payment/non-payment of Performance Payment: YES / NO
Date of this Assessment: / /	File Number:.....
Date of Next Assessment: / /	Related Documents:
Project/Activity Duration: From: / / To: / /	
RATINGS	
<u>Best Practice (B)</u> : The criterion is met and exceeded; the Contractor delivers the Services with a high degree of efficiency and effectiveness, and pro-active steps are taken to achieve outcomes above and beyond contracted responsibilities.	
<u>Effective (E)</u> : The criterion is met; the Contractor delivers the Services efficiently and effectively in line with contracted responsibilities.	
<u>Unsatisfactory (U)</u> : The Contractor does not meet the requirements of the criterion; AusAID needs to manage areas where the Contractor is not delivering; effort is needed to improve delivery of several indicators.	

PERFORMANCE ASSESSMENT CRITERIA	RATING
GENERIC CRITERIA	
1. Team Leader performance – Quality of overall support to the PD and management performance in line with services outlined in the Contract and TOR. <u>Comments:</u>	B / E / U
2. Other Long Term Personnel performance – Quality of team performance delivering program achievements as per expectations of the PD, the TL, and according to the Contract and TORs. <u>Comments:</u>	B / E / U
3. Head Office/Contractor responsiveness to AusAID/PD requests and instructions. High quality standard of communication upheld with AusAID (including accuracy, quality and timeliness of written reports and expenditure estimates and reporting). <u>Comments:</u>	B / E / U
4. Demonstrated risk management and problem solving and analysis and reporting (including timely identification of potential and actual risks/problems, and quality of sector analysis and reporting). <u>Comments:</u>	B / E / U
5. Fostering high quality relationships with stakeholders. High standard of activities subcontracted, reflecting the promotion of program objectives. <u>Comments:</u>	B / E / U
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SPECIFIC CRITERIA	RATING
6. Achievement of milestones required by the Annual Plan on time and to a high standard.	B / E / U
<u>Comments:</u>	
7. (Add specific criteria after each Annual Plan is approved)	B / E / U
<u>Comments:</u>	
8. (Add specific criteria after each Annual Plan is approved)	B / E / U
<u>Comments:</u>	
1. Factors affecting performance	
<i>AM 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 (e.g. cyclone).</i>	

2. Summary of stakeholder comments

3. Overall performance

Joint discussion on the extent to which performance has met the agreed Performance Assessment Criteria.

4. Summary of Ratings

Best Practice (B): out of 8 criteria

Effective (E): out of 8 criteria

Unsatisfactory (U): out of 8 criteria

5. Assessment of Overall Performance against the Performance Assessment Criteria

- ☐ **Best Practice (B):** Best practice rating on at least three (3) criteria and Effective rating on the remaining criteria.
- ☐ **Effective (E):** At least Effective rating for all criteria.
- ☐ **Unsatisfactory (U):** Unsatisfactory rating on one (1) or more criteria.

***A record of the discussion must be sent to the relevant Contractor and to the Director, Agreements, Safeguards and Partner Performance. 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.

Table 2: Performance Assessment Criteria Indicators

Criteria 1	Indicators
Team Leader performance – Quality of overall support to the PD and management performance in line with services outlined in the Contract and TOR.	1. Regular achievement of program budget and implementation targets (and/or adequate justifications where targets have not been met). 2. Useful and high-quality reporting provided in a timely manner. 3. Evidence provided that monitoring, learning, and evaluation is imbedded throughout the program and upheld on a day-to-day basis by Contractor staff. 4. Performance management arrangements in place for Contractor staff. 5. Performance assessed in accordance with Terms of Reference. 6. Induction and regular training provided for all Long Term Personnel on relevant cross-cutting and program issues. 7. Evidence of program-wide strategies implemented effectively (gender, capacity development and communications). 8. Evidence of strong working relationship with PD, including evidence of value-add to the work of the PD.
Criteria 2	Indicators
Other Long Term Personnel performance – Quality of team performance delivering program achievements as per expectations of the PD, the TL, and according to the Contract and TORs.	1. Regular achievement of activity budget and implementation targets (and/or adequate justifications where targets have not been met). 2. Useful and quality activity and issue reporting provided in a timely manner. 3. Evidence provided that monitoring, learning, and evaluation is imbedded throughout the program and upheld on a day-to day basis. 4. Good practice program results identified and highlighted. 5. Performance management and agreements in place and reviews held for Contractor staff.

	6. Performance assessed in accordance with Terms of Reference. 7. Personnel participate in training and development opportunities as appropriate.
Criteria 3	Indicators
Head Office/Contractor responsiveness to AusAID/PD requests and instructions. High quality standard of communication with AusAID upheld (including accuracy, quality and timeliness of written reports and expenditure estimates and reporting).	1. Logistical, administrative, financial and procurement support provided in a timely manner. 2. There are neither duplications nor contradictions between the policy support and activities implemented by the Contractor and the PD – activities link strongly to the overall objectives and goals of the AIPJ. 3. High proportion (i.e. 80%) of requests from the PD and AusAID are met to their satisfaction. 4. Procurements conducted in accordance with approved processes. 5. Overall performance evaluation of Contractor staff. (Staff selected through open recruitment as opposed to those recruited after selection by the PD. The latter will be considered administrative requests.) 6. Positive result from any financial audit conducted in the assessment period. 7. Subcontracting and activity design in accordance with approved processes. 8. Implementation in accordance with approved activity designs, contributing to Program outcomes. 9. Results and outcomes reported as stipulated in approved activity designs. 10. Identification and analysis of specific policy issues. 11. Promotion of results and recommendations at national and international levels. 12. Priority cross-cutting issues are incorporated into Activities as appropriate. 13. Operational manuals, standard operating procedures, program strategies, and supporting documents are available and used consistently by the Contractor. 14. Proactive approach towards communicating program outcomes regularly to the PD.

Criteria 4	Indicators
Demonstrated risk management and problem solving and quality analysis and reporting (including timely identification of potential and actual risks/problems, and quality of sector analysis and reporting).	1. Regular analysis conducted and documented and used as a basis for supporting decision making. 2. Risk management framework reviewed and updated on a regular basis with evidence of actions undertaken. 3. Emerging risks identified and communicated to AusAID (including PD) in a timely and appropriate manner. 4. Options for increasing use of Indonesian government systems assessed on an annual basis, including appropriate risk management strategies and recommendations.
Criteria 5	Indicators
Fostering high quality relationships with stakeholders. High standard of activities subcontracted, reflecting the promotion of program objectives.	1. Documentation of how program is contributing towards and/or achieving program objectives produced on a regular basis. 2. Australian and Indonesian Court officials regularly engaged on and/or updated about relevant program activities. 3. Australian Government agencies involved in program supported in a professional and high-quality manner. 4. Monitoring, learning and evaluation being undertaken in line with the Monitoring and Learning framework, generating rigorous assessments of high-quality and relevant activity implementation 5. All agreed external review findings incorporated within six (6) months. 6. Number of relevant program stakeholders involved in program maintained and/or increased in a meaningful manner. 7. Consultations with primary partners are facilitated on an annual basis on broad program directions. 8. Aid Effectiveness objectives assessed.

	9. High-level support provided to PD in establishing and maintaining good relationships with key stakeholders.
Criteria 6	Indicators
Achievement of milestones required by the Annual Plan on time and to a high standard.	<i>(to be added following Annual Plan approval)</i>
Criteria 7	Indicators
<i>(to be added following Annual Plan approval)</i>	<i>(to be added following Annual Plan approval)</i>
Criteria 8	Indicators
<i>(to be added following Annual Plan approval)</i>	<i>(to be added following Annual Plan approval)</i>

PART 4 – DRAFT BASIS OF PAYMENT

Note to Tenderers: Although this Draft Basis of Payment is presented as Part 4 of this RFT, in the consolidated Contract Conditions it will appear as Schedule 2.

SCHEDULE 2 – DRAFT BASIS OF PAYMENT

Australia Indonesia Partnership for Justice (AIPJ) – Implementation Service Provider (ISP)

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**.
- 1.2 AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.
- 1.3 The total amount payable is summarised in **Table 1 below**.

Table 1 – Summary Table

Clause Ref.	Item	Total Amount Payable (AUD)
Clause 2	Long Term Personnel Costs	XXXX
Clause 3	Technical Support Pool Fund	1,800,000
Clause 4	Reimbursable Procurement, Operational and Travel Costs	1,002,000
Clause 5	Mobilisation Costs	130,000
Clause 6	Activity Costs	18,600,000
Clause 8	FMF Monthly Payments	XXXX
Clause 9	Performance Payments	XXXX
TOTAL AMOUNT PAYABLE		XXXX

2. LONG TERM PERSONNEL

- 2.1 AusAID shall reimburse the Contractor up to a maximum of **AUDXXXX** plus GST, for Long Term Personnel Costs.
- 2.2 For each Specified Personnel, AusAID shall pay the Contractor on a monthly basis in arrears, an all-inclusive Monthly Professional Fee as detailed in **Tables 2A and 2B** of this Schedule.
- 2.3 The all-inclusive Monthly Professional Fee shall be inclusive of:
 - (a) Salary, at actual cost as paid to personnel, 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** (Standard Contract Conditions)];
 - (c) any relevant Indonesian employment conditions;

- (d) superannuation levy, if any, as appropriate;
 - (e) paid annual leave allowances of up to four (4) weeks per annum to accrue on a pro rata basis per twelve months' continuous engagement on AIPJ, including all applicable leave costs such as airfares to and from Indonesia;
 - (f) public holidays per annum as agreed by AusAID Jakarta;
 - (g) mobilisation and demobilisation costs (including airfares) at cost (subject to reasonableness) on a one-off basis, if applicable;
 - (h) housing accommodation, utilities and private transport costs;
 - (i) all escalators for the Term of the Contract;
 - (j) any language training costs for international personnel;
 - (k) all other costs not listed as reimbursable items; and
 - (l) any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor.
- 2.4 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.
- 2.5 AusAID will not reimburse leave costs in excess of those specified at **Clauses 2.3(e) and 2.3(f) above**.
- 2.6 If a Long Term Personnel member is absent for any period, aside for the periods of leave permitted in **Clauses 2.3(e) and 2.3(f) above**, the Monthly Rate Payable will be adjusted in accordance with the following formula:

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

3. TECHNICAL SUPPORT POOL FUND

- 3.1 AusAID shall reimburse the Contractor up to a maximum of **AUD1,800,000** plus GST for Technical Support Pool Personnel engaged in accordance with **Clauses 8.26 to 8.30 of Schedule 1 – Scope of Services**.
- 3.2 For Technical Support Pool Personnel AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears for actual inputs provided, an all-inclusive Daily Professional Fee depending on the length of inputs in accordance with **Clause 3.3 below**.
- 3.3 The Daily Professional Fee will be paid as follows:
- (a) daily rate for inputs of less than 30 days; or
 - (b) reduced daily rate for continuous inputs of 30 days or more.

- 3.4 The actual costs paid by the Contractor to or on behalf of Technical Support Pool 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.
- 3.5 Technical Support Pool Personnel inputs must be identified and approved as part of the relevant Annual Plan, or in accordance with updates to the Annual Plan as approved by the AIPJ Working Committee or otherwise approved in writing by AusAID. Costs for approved Technical Support Pool Personnel shall be drawn down from the Technical Support Pool Fund as defined in **Clause 3.1 above**.
- 3.6 The Daily Professional Fees for Technical Support Pool Personnel is to be inclusive of:
- (a) salary at actual cost to the Contractor; and
 - (b) all other inclusions and allowances/costs, as needed, but not limited to:
 - (i) 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];
 - (ii) any relevant Indonesian employment conditions;
 - (iii) superannuation levy, if any, as appropriate;
 - (iv) recruitment costs;
 - (v) all escalators for the Term of the Contract;
 - (vi) any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor for provision of short term personnel; and
 - (vii) travel costs, including domestic and international program-related travel and accommodation, per diems, and local transport costs where required.
- 3.7 When the Technical Support Pool Fund expenditure reaches 80% of the total specified in **Clause 3.1 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.

4. **REIMBURSABLE COSTS**

- 4.1 AusAID shall reimburse the Contractor up to a maximum of **AUD1,002,000** plus GST for the Reimbursable Costs listed below.
- 4.2 Reimbursable Costs include:
- (a) procurement and operational costs which means goods and services not already provided or handed over from previous law and justice sector programs that are required to be established, or already established goods and services that are required to be maintained for the duration of the Contract, including the following office maintenance costs:

- (i) lease/rental costs;
 - (ii) office supplies/stationary;
 - (iii) recurrent office costs (phone, fax, internet, printers, papers, photocopier and software, cleaning);
 - (iv) utilities; and
 - (v) vehicle purchase/hire as required by the Program.
- (b) travel costs, other than those covered by **Clause 5.2(a) below**, including:
- (i) 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;
 - (ii) Compulsory Arrival and Departure Taxes, and Travel to and from Airport: reimbursed at cost;
 - (iii) Hotel Accommodation: reimbursed at lesser of actual cost incurred or rates as agreed periodically with AusAID; and
 - (iv) Travelling Allowance: rates as agreed periodically with AusAID towards the costs of meals and incidentals.
- (c) logistics for Partnership Board and AIPJ Working Committee meetings, as directed by the PD, including:
- (i) venue hire;
 - (ii) accommodation, transport, and travelling allowance, as required; and
 - (iii) translation and interpreting services, as required.
- 4.3 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 3** of this Schedule may be reallocated between line items, with AusAID's prior written approval, but cannot exceed the total specified in **Clause 4.1 above**.
- 4.4 When expenditure reaches 80% of the total specified in **Clause 4.1 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.
- 4.5 The Contractor must maintain a Register of Assets in accordance with **Clause 10 of Part B** Standard Contract Conditions, as per **Annex 1** of this Schedule.

5. **MOBILISATION COSTS**

- 5.1 The total amount payable for Mobilisation Costs by AusAID to the Contractor shall not exceed the sum of **AUD130,000** plus GST.
- 5.2 Mobilisation Costs for the Contractor will be made up of the following AIPJ office establishment costs for items such as, but not limited to:
- (a) office lease/rental costs;
 - (b) purchase/lease of office furniture;
 - (c) purchase/lease of computers and other office equipment (i.e. phone, fax, internet, printers, photocopiers, software, etc);
 - (d) purchase of office supplies/stationary; and
 - (e) vehicle purchase/lease costs as required by the Program.
- 5.3 Mobilisation Costs will be paid in advance by AusAID to the Contractor within thirty (30) days of the Project Start Date and receipt of a correctly rendered invoice. This will be a one-off payment that must be acquitted by the Contractor within two (2) months of mobilising in-country, or with monthly acquittals until the office is setup, within the first year. The Contractor must return to AusAID any unspent Mobilisation Costs. AusAID may deduct the equivalent amount of unspent Mobilisation Costs from other Contract payments if not refunded by the Contractor within seven (7) days after a request by AusAID.

6. **ACTIVITY COSTS**

- 6.1 The maximum amount payable by AusAID to the Contractor for approved activities, as outlined at **Clause 5 of Schedule 1 – Scope of Services** shall not exceed the sum of **AUD18,600,000** plus GST.
- 6.2 The Contractor shall be reimbursed for the cost of each activity up to the amount approved by AusAID in the relevant Activity Proposal.
- 6.3 The costs shall be reimbursed in arrears within thirty (30) days of receipt of a correctly rendered invoice and AusAID's acceptance of the relevant Activity Completion Report or Activity Progress Report as determined in the approved Activity Proposal.

7. **FIXED MANAGEMENT FEE (FMF)**

- 7.1 AusAID shall pay the Contractor Fixed Management Fees up to a maximum of **AUDXXXX** plus GST, in the following components:
- (a) 60% of the Fixed Management Fee shall be paid as FMF Monthly Payments in accordance with **Clause 8 below**; and
 - (b) 40% of the Fixed Management Fee shall be set aside and paid to the Contractor in accordance with **Clause 9 below**.
- 7.2 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 **Tables 6A** and **6B** 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 B** (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) all allowances for risk and contingencies;
- (o) costs associated with the Performance Guarantee (**Clause 20 of Part A**);
- (p) external audit and internal auditing and assurance costs;
- (q) any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor; and
- (r) all other costs not specifically identified in **Clauses 2 to 5** of this Schedule.

8. FMF MONTHLY PAYMENTS

- 8.1 AusAID shall pay the Contractor FMF Monthly Payments which shall not exceed the sum of **AUDXXXX** plus GST.

- 8.2 FMF Monthly Payments shall be paid to the Contractor on a monthly basis within 30 days of AusAID's receipt of a correctly rendered invoice in accordance with **Tables 6A and 6B** of this Schedule.

9. **PERFORMANCE PAYMENTS**

- 9.1 AusAID shall pay the Contractor Performance Payments which shall not exceed the sum of **AUDXXXX** plus GST.
- 9.2 Performance Payments will be paid in accordance with **Tables 7A and 7B** of this Schedule within 30 days of AusAID's receipt of a correctly rendered invoice.
- 9.3 The actual amount payable will be determined, in accordance with **Table 8** of this Schedule, by the annual Contractor Performance Assessment which will be conducted in accordance with **Clause 9** and **Annex 2 of Schedule 1 – Scope of Services**.

10. **CLAIMS FOR PAYMENT**

- 10.1 The Contractor's tax invoice must be submitted when due pursuant to this Schedule in a form identifiable with the Services.
- 10.2 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;
 - (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.
- 10.3 All claims for payment must be made out to:

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

- 10.4 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
- 10.5 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 2A: Long Term Personnel Costs

Position	Name	Year 1		Year 2		Year 3		Years 1 – 3
		Inputs (months)	Monthly Rate	Input (months)	Monthly Rate	Input (months)	Monthly Rate	Maximum Amount Payable (AUD)
Team Leader (TL)								
Other Long Term Personnel								
TOTAL								XXX

Table 2B: Long Term Personnel Costs – Option Period*

Position	Name	Year 4		Year 5		Years 1 – 5
		Inputs (months)	Monthly Rate	Input (months)	Monthly Rate	Maximum Amount Payable (AUD)
Team Leader (TL)						
Other Long Term Personnel						
TOTAL						XXX

*Note: Years 4 and 5 apply only in the event that AusAID exercises the option to extend under **Clause 2** of **Part 2** (Project Specific Contract Conditions).

Table 3 – Reimbursable Procurement, Operational and Travel Costs

Items	Maximum Amount Payable (AUD)
Procurement and Operational Costs	687,000
Travel Costs	135,000
Partnership Board and AIPJ Working Committee Logistics Costs	180,000
TOTAL	1,002,000

*Note: Vehicle(s) provided are to be a shared resource between the Program Director (PD) and the Contractor.

Table 4A – Fixed Management Fees

Items	Year 1 (AUD)	Year 2 (AUD)	Year 3 (AUD)	Years 1 – 3
				Total (AUD)
FMF Monthly Payments				
Performance Payment Base Rate				
TOTAL				XXX

Table 4B – Fixed Management Fees – Option Periods*

Items	Year 4 (AUD)	Year 5 (AUD)	Years 1 – 5
			Total (AUD)
FMF Monthly Payments			
Performance Payment Base Rate			
TOTAL			XXX

*Note: Years 4 and 5 apply only in the event that AusAID exercises the option to extend under **Clause 2** of **Part 2** (Project Specific Contract Conditions).

Table 5: Breakdown of Fixed Management Fees (FMF) – Year 1

Item	Year 1 Fixed Management Fees (AUD)
(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 Tables 2A and 2B 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) all allowances for risk and contingencies;	
(o) costs associated with the Performance Guarantee (Clause 20 of Part A);	
(p) external audit and internal auditing and assurance costs;	
(q) any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor; and	
(r) all other costs not specifically identified in Clauses 2 to 5 of this Schedule.	
TOTAL	XXX

Table 6A: FMF Monthly Payments

FMF Monthly Payments	Year 1 (AUD)	Year 2 (AUD)	Year 3 (AUD)	Years 1 – 3
				Maximum Amount Payable (AUD)
Monthly Rate (60% of FMF)				
TOTALS				XXX

Table 6B: FMF Monthly Payments – Option Periods*

FMF Monthly Payments	Year 4 (AUD)	Year 5 (AUD)	Years 1 – 5
			Maximum Amount Payable (AUD)
Monthly Rate (60% of FMF)			
TOTALS			XXX

*Note: Years 4 and 5 apply only in the event that AusAID exercises the option to extend under **Clause 2** of **Part 2** (Project Specific Contract Conditions).

Table 7A: Performance Payment Base Rate

	Year 1 (AUD)	Year 2 (AUD)	Year 3 (AUD)	Years 1 – 3	
				Total (AUD)	Maximum Amount Payable (i.e. 120% on all payments) (AUD)
Base Rate (40% of FMF)					XXX

Table 7B: Performance Payment Base Rate – Option Period*

	Year 4 (AUD)	Year 5 (AUD)	Years 1 – 5	
			Total (AUD)	Maximum Amount Payable (i.e. 120% on all payments) (AUD)
Base Rate (40% of FMF)				XXX

*Note: Years 4 and 5 apply only in the event that AusAID exercises the option to extend under **Clause 2** of **Part 2** (Project Specific Contract Conditions).

Table 8: Performance Payments

Rating		Percentage of Base Rate Payable	Annual Performance Payments (AUD)				
			Year 1	Year 2	Year 3	Year 4*	Year 5*
Best Practice (B)		120%					
Effective Performance (E)		100%	<i>(Base Rate)</i>	<i>(Base Rate)</i>	<i>(Base Rate)</i>	<i>(Base Rate)</i>	<i>(Base Rate)</i>
Unsatisfactory Performance (U)	1 criterion	90%					
	2 criteria	80%					
	3 criteria	70%					
	4 criteria	60%					
	5 criteria	50%					
	6 criteria	40%					
	7 criteria	20%					
8 criteria		0	0	0	0	0	0

*Note: Years 4 and 5 apply only in the event that AusAID exercises the option to extend under **Clause 2** of **Part 2** (Project Specific Contract Conditions).

ANNEX 1 – ASSETS REGISTER

Identification Number	Description of Asset	Purchase Reference	Purchase Date	Purchase Price	Date & Location Received	Remarks – including disposal action & price received

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;
- (d) The completed and signed Tenderer Declaration in the form specified in **Annex B of this Part**; and
- (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 Canberra and the costs of the Tenderer's (and its personnel's) attendance must be borne by the Tenderer.
- 7.5 Tenderers should note that failure by a Tenderer or proposed Specified Personnel to attend the presentation (either in person or via teleconference) may disadvantage the Tender.
- 7.6 TAP members are required to maintain the “commercial-in-confidence” nature of the proceedings of the TAP meeting. TAP members must not discuss matters relating to the technical assessment of any tender with any party. Tenderers must not make contact with any members of the TAP, outside any TAP meeting, and any such contact will be considered a breach of confidentiality and may result in AusAID rejecting the tender of the Tenderer concerned.
- 7.7 AusAID reserves the right to take into account in the assessment of this Tender the past performance of the Tenderer or any proposed personnel contained in the Tender in accordance with **Annex A of this Part**.
- 7.8 In making its assessment the TAP or AusAID may have regard to other factors relevant to the suitability, capacity and qualifications of a Tenderer including but not limited to:
- (a) the Tenderer's ability to comply with AusAID policies referred to in this RFT and the Tenderer's ability to comply with the **Contract Conditions**;
 - (b) the resourcing of Tenders;
 - (c) information obtained from any source which is relevant to the capacity of the Tenderer or any proposed personnel to perform the Services and achieve the Project goals and objectives. Such information may be the result of inquiries made by AusAID; and
 - (d) the Tenderer's demonstrated understanding of the cultural environment of the Project.

These other factors have not been allocated any specific weightings.

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

Goods and Services Tax

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

Insurances

- 7.11 The financial proposal must be inclusive of all necessary insurances required by the Contract Conditions and for the performance of the Services. Notwithstanding the

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

Project Vehicles

- 7.12 For the purposes of this clause, “Project Vehicles” are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Project and that are provided primarily for Contractor Personnel use for Project activities. Vehicles purchased by the Project, but handed over to the Partner Country immediately (where maintenance and insurance are Partner Country responsibilities and Contractor Personnel do not use the vehicles or only use them on an exceptional basis) are not considered Project Vehicles for the purposes of requiring a financial contribution by the Contractor.
- 7.13 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute AUD250 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 three (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 Fair Work Principles

- (a) Tenderers should note that the Australian Government Fair Work Principles apply to this procurement. More information on the Fair Work Principles and their associated User Guide can be found at www.deewr.gov.au/fairworkprinciples.
- (b) In particular Tenderers should note that in accordance with the Fair Work Principles AusAID will not enter into a contract with a Tenderer who:
 - (i) fails, when required by the Commonwealth, to confirm it understands and complies with all relevant workplace relations law, occupational health and safety law, or workers' compensation law;
 - (ii) is subject to an order from any Court or Tribunal decisions relating to a breach of workplace relations law, occupational health and safety law, or workers' compensation law with which the Tenderer has not fully complied or is not fully complying;
 - (iii) has a *Fair Work Act 2009* agreement that was made on or after 1 January 2010 that does not include genuine dispute resolution procedures;

- (iv) fails to provide information when requested by AusAID relevant to their compliance with the Fair Work Principles;
- (c) For the purposes of **Clause 17.7(b)** above:
 - (i) a genuine dispute resolution procedure is one which provides each of the following processes to resolve workplace disputes:
 - (A) the ability for employees to appoint a representative in relation to the dispute;
 - (B) in the first instance procedures to resolve the dispute at the workplace level;
 - (C) if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and
 - (D) if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.
 - (ii) a decision or order with which the Tenderer has not fully complied or is not fully complying includes any relevant penalty or order of a Court or Tribunal, but it does not extend to infringement notices issued by workplace inspectors or a provisional improvement notice issued by an occupational health and safety inspector, or those instances where a penalty or a requirement has been imposed but the period for payment/compliance has not expired.

17.8 Other Australian Government and AusAID Policies

- (a) Tenderers should familiarise themselves with AusAID policies including:
 - (i) the policy *Gender Equality in Australia's Aid Program – Why and How* (March 2007). This document is available on AusAID's website at <http://www.ausaid.gov.au/publications/default.cfm>;
 - (ii) 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.ausaid.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.ausaid.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.ausaid.gov.au/publications/default.cfm>;

- (v) *Family Planning and the Aid Program: Guiding Principles* (August 2009). This document is available on AusAID's website at: <http://www.ausaid.gov.au/keyaid/health.cfm>; and
- (vi) any other policies published from time to time on <http://www.ausaid.gov.au> or as otherwise notified to Tenderers.

18. FURTHER REQUIREMENTS

- 18.1 Tenderers should be aware that current employees of AusAID cannot be included in Tenders for AusAID projects. Former AusAID employees may be included in Tenders if doing so does not represent a breach of conflict of interest.
- 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 fourteen (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 twelve (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.

[Note to Tenderers: The following Clauses 3.17 and 3.18 will be used by AusAID to confirm the Tenderer's compliance with the relevant requirements of the Fair Work Principles]

- 3.17 The Tenderer has read and understood the Fair Work Principles User Guide and understands that the Fair Work Principles will apply to the procurement for the Project.

- 3.18 Compliance with Fair Work Principles

- (a) The Tenderer declares the following:

- (i) The Tenderer has had _____ ***[Nil or specify number]*** adverse Court or Tribunal decision for a breach of workplace relations law, occupational health and safety law, or workers' compensation law in the past two years preceding the date of this Request for Tender.
[If response is nil adverse decisions go to 3.18(a)(iii) below]

- (ii) ***[Note to Tenderers: Strike through whichever option does not apply]***

The Tenderer has fully complied or is fully complying with all penalties or orders arising from the Court or Tribunal decisions declared above.

OR

The Tenderer has not fully complied with or is currently not fully complying with _____ ***[Number]*** of the penalties or orders arising from the Court or Tribunal decisions declared above and has provided as part of its Tender information about each of these penalties or orders in the form required in Appendix A to the Fair Work Principles User Guide.

Tenderers must provide additional information about each decision declared above in Clause 3.18(a)(ii) as specified in Appendix A to the Fair Work Principles User Guide. Tenderers should note that they will not be eligible for further consideration for this procurement if they have not fully complied with, or are not fully complying with, any Court or Tribunal decision, or have not appealed the decision prior to the end of the appeal period.

- (iii) The Tenderer understands its obligations under all applicable workplace relations, occupational health and safety, and workers' compensation laws. The Tenderer undertakes that it complies with all of these obligations.
- (iv) The Tenderer confirms that (except where it is an overseas based supplier to which these requirements do not apply in accordance with the Fair Work Principles User Guide) it:
- (A) has consultation arrangements which encourage cooperation and engagement of employees and management; and
 - (B) understands and respects their employees' rights in relation to freedom of association and the right to representation at work, including that the Tenderer allows its employees to be able to make a

free and informed choice about whether to join a union and be represented at work.

- (v) Where the Tenderer has a *Fair Work Act 2009* enterprise agreement that was approved on or after 1 January 2010 that enterprise agreement includes a genuine dispute resolution procedure that includes the following:
 - (A) the ability for employees to appoint a representative in relation to the dispute;
 - (B) in the first instance procedures to resolve the dispute at the workplace level;
 - (C) if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and
 - (D) if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.
 - (b) If at any time prior to entry into a contract with the preferred Tenderer, any information provided in this declaration changes, the Tenderer agrees to advise AusAID of that change within seven (7) calendar days.
 - (c) The Tenderer agrees AusAID may provide any information collected, or provided to it by the Tenderer during the course of this RFT process (including breaches of the Fair Work Principles) to other Commonwealth agencies or regulatory bodies including the Department of Education, Employment and Workplace Relations, Australian National Audit Office, Fair Work Ombudsman and Fair Work Australia.
 - (d) The Tenderer agrees that failure to comply with **Clause 3.18** of this Tenderer Declaration will result in its Tender being excluded from further consideration.
- 3.19 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.
- 3.20 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**.
- 3.21 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.
- 3.22 The Tenderer is genuinely competing for the Contract and its Tender is not a “cover bid”.
- 3.23 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.

3.24 I acknowledge that each party constituting the Tenderer is bound jointly and severally by this Tender.

4. ADDENDA TO TENDER DOCUMENTS

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

Number _____ Dated _____ Number _____ Dated _____

Number _____ Dated _____

5. ADDRESS OF TENDERER

Address or Registered Office of Tenderer

Address for service of notices (NOT PO. BOX)

Telephone Number: Fax Number:

SIGNED for and on behalf of *insert*)
organisation/ company name ABN (and)
ACN if applicable) by:)
)

insert name and title

Signature

ANNEX C – 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.

TENDERER’S SUBMISSION CHECKLIST	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 been submitted?	
Tender Schedule A: Technical Proposal and Annexes	
Does the Technical Proposal indicate the Tenderer’s nominated contact person and contact details on the cover page?	
Is the Technical Proposal within the specified page limit?	
Does the Technical Proposal address each of the selection criteria individually?	
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: - 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? - not included in the Tender as proposed team members? - not AusAID employees?	
Are both the Technical Proposal and annexes: - in a type font of no less than 12 point on A4 paper? - 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? - 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?	

TENDERER'S SUBMISSION CHECKLIST	Checked
For hard copy lodgement, has one (1) printed original 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: - 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? - not included in the Tender as proposed team members? - 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 been provided?	
Tender Schedule C: Financial Proposal	
Is the financial proposal in the required format?	
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: - escalation? - necessary insurances required by the Contract Conditions and for the performance of the Services? - 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	
Has the name, telephone number and email address of the tendering entity's nominated contact point for the financial assessment been provided?	

TENDERER'S SUBMISSION CHECKLIST	Checked
Is the Tenderer 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?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed copy been provided in a separate sealed envelope?	

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 Deregulation that governs purchasing by Commonwealth agencies and departments. Details are available at: <http://www.finance.gov.au/publications/fmg-series/procurement-guidelines/index.html>.

"**Contract**" means this agreement including all Parts, the Schedules and any annexes.

"**Contract Conditions**" means the provisions contained in Part A "**Project Specific Contract Conditions**" and Part B "**Standard Contract 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 all copyright and all rights in relation to inventions (including patent rights), trade marks, designs and confidential information, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

"**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 Contract Conditions" means Contract Conditions in **Part A** of this Contract.

"Project Start Date" means the date specified in the Project Specific Contract 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 Contract 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

1.2 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 "AUD" is to an amount in Australian currency.

Counterparts of the Contract

- 1.3 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.

Contract prevails

- 1.4 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.

Inconsistency

- 1.5 If there is any inconsistency (whether expressly or to be implied from the Contract or otherwise) between the Project Specific Contract Conditions and the Standard Contract Conditions, the Project Specific Contract Conditions are to be read subject to the Standard Contract Conditions and the Standard Contract Conditions prevail to the extent of the inconsistency, unless explicitly amended in the Project Specific Contract 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 AUD2000 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 Contract 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 ten (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 twelve (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 twelve (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 six (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 fourteen (14) days.

18.3 Where the Contractor does not respond within fourteen (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 thirty (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 thirty (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 Contract Conditions **Clause 15.1** (Accounts and Records) and may be audited by AusAID in accordance with Standard Contract 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 thirty (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 forty-five (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 ten (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 any of the warranties, regarding pre-listing proceedings, temporary suspension from tendering or 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 Contract 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 as far as practicable must 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 Notwithstanding paragraph 4.3 on page 4 of the Fair Work Principles User Guide, the Contractor must comply with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at www.deewr.gov.au/fairworkprinciples), including by:

- (a) complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;
- (b) informing AusAID of any adverse court of tribunal decision for a breach of workplace relations law, occupational health and safety laws, or workers' compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
- (c) providing AusAID any information AusAID reasonably requires to confirm that the Contractor (and any subcontractor) is complying with the Fair Work Principles;
- (d) participate in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.

37.5 Compliance with the Fair Work Principles shall not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.

37.6 If the Contractor does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Commonwealth, the Commonwealth shall be entitled to publish details of the Contractor's failure to comply (including the Contractor's name) and to otherwise provide those details to other Commonwealth agencies.

37.7 As far as practicable, the Contractor must:

- (a) not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and
- (b) ensure that all subcontractors impose obligations on subcontractors equivalent to the obligations under **Clauses 37.4 to 37.7** in this **Part B** of this Contract.

37.8 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 is in breach of **Clause 37.4** above in this **Part B** of this Contract.

37.9 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**.

37.10 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**.

37.11 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.

- 37.12 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.ausaid.gov.au/publications/pdf/FINAL%20AusAID Disability%20for%20All.pdf](http://www.ausaid.gov.au/publications/pdf/FINAL%20AusAID%20Disability%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.ausaid.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:
 - (i) ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;
 - (ii) 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
 - (iii) comply with all relevant environmental laws and regulations of the Partner Country.

The *Environmental Management Guide for Australia's Aid Program* can be found at: <http://www.ausaid.gov.au/keyaid/envt.cfm>.

38. INVESTIGATION BY THE OMBUDSMAN

- 38.1 In carrying out the Services, the Contractor, and an employee or subcontractor of the Contractor, may be a "Commonwealth service provider" under section 3BA of the Ombudsman Act 1976.
- 38.2 The Contractor must use its best endeavours, and must ensure that employees and subcontractors of the Contractor use their best endeavours, in undertaking the Services, not to engage in conduct that:
- (a) would, if the Contractor or an employee or subcontractor were an officer of AusAID, amount to a breach of duty or to misconduct; or
 - (b) should be brought to the attention of the principal officer of AusAID.

- 38.3 If the Commonwealth Ombudsman commences an investigation of conduct of the Contractor, as a Commonwealth service provider, the Contractor, at the cost of the Contractor, must cooperate with the investigator including:
- (a) providing all documentation required by the investigator,
 - (b) making Contractor Personnel available to assist the investigator and
 - (c) allowing the investigator, at any reasonable time of the day, to enter a place occupied by the Contractor and carry on the investigation at that place.
- 38.4 If the Ombudsman brings evidence to the notice of AusAID concerning the conduct of the Contractor, or of an employee or subcontractor of the Contractor, the Contractor must, at the cost of the Contractor, take whatever remedial action is required by AusAID or by the Ombudsman to rectify the situation.
- 38.5 The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including this requirement in relation to subcontracts.
- 38.6 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID, due to conduct of the Contractor or of an employee or subcontractor, which arise directly or indirectly, as a result of an investigation carried out by the Ombudsman.
- 38.7 This clause shall survive expiration or termination of this Contract.

39. RESOLUTION OF DISPUTES

- 39.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Contract. Subject to **Clause 20.11** (Payment) and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Contract.
- 39.2 A Party may give the other Party a notice of dispute ("**dispute notice**") in connection with this Contract. Following the giving of a dispute notice, the dispute must be referred to a senior officer of AusAID and a senior officer of the Contractor, who must use reasonable endeavours to resolve the dispute within 20 Business Days or such other period as is agreed by the Parties.
- 39.3 If the Parties have not been able to resolve the dispute in accordance with **Clause 39.2 above**, then the Parties may agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation.
- 39.4 In the event that the dispute, controversy or claim has not been resolved within 50 Business Days (or such other period as agreed between the Parties in writing) after the dispute notice has been received in accordance with clause headed 'Notices' in Part B (Standard Contract Conditions) of this Contract, then either Party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.
- 39.5 Nothing in this clause prevents either Party from seeking urgent injunctive relief.

40. NOTICES

- 40.1 A notice required or permitted to be given by one Party to another under this Contract must be in writing and is treated as having been duly given and received:
- (a) when delivered (if left at that Party's address);
 - (b) on the third Business Day after posting (if sent by pre-paid mail); or
 - (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

41. MISCELLANEOUS

Waiver

- 41.1 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.

Liability of Party

- 41.2 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.

Entire agreement

- 41.3 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.

Severance

- 41.4 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.

Assignment

- 41.5 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.

Governing Law and Jurisdiction

- 41.6 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.

Contra Proferentem

- 41.7 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.

False and Misleading Information

- 41.8 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**").

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

1.1 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 (“**AusAID**”)

AND:

[ABN of] (the
“**Subcontractor**”) of the second part;

AND:

Contractor's Name ACN# of **Contractor's Address** (the “**Contractor**”) of the third part.

WHEREAS:

- A. AusAID is concerned to ensure that the Services under the Contract are properly delivered.
- B. The Subcontractor is a subcontractor to the Contractor for the Services.
- C. The Subcontractor and Contractor have agreed with AusAID to novate the Subcontract to AusAID in the event that AusAID exercises its right under **Clause 31** and **32** of the Contract.
- D. The Subcontractor agrees that AusAID may novate the Subcontract to another Contractor at its sole and absolute discretion in the event that AusAID has exercised its right under **Clause 31** and **32** of the Contract.

NOW THIS DEED WITNESSES AS FOLLOWS:

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
Name of Director
(Print)

.....

Director/Secretary
Name of Director/Secretary
(Print)

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

.....

Director
Name of Director
(Print)

.....

Director/Secretary
Name of Director/Secretary
(Print)

SCHEDULE 5 – 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)