



Australian Government

AusAID

30 September 2010

Request for Tender

Papua New Guinea Electoral Support Program (Phase 3)

REQUEST FOR TENDER

Papua New Guinea Electoral Support Program (Phase 3)

AusAID is seeking proposals from organisations interested in providing services for the **Papua New Guinea Electoral Support Program (Phase 3)** (the “**Program**”). 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 5** of this RFT (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 – Tender Conditions details the Program Specific Tender Conditions (Part 1) and the Standard Tender Conditions (Part 2).

Section 2 – Contract Conditions details the Program Specific Contract Conditions (Part 3), the Standard Contract Conditions (Part 4), the Scope of Services (Part 5), and the Basis of Payments and other Schedules (Part 6).

The RFT is 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 Program.

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 Program Specific and Standard) when preparing their Tenders and to make any enquiries before the Tender enquiry closing time, referred to in **Clause 2, Part 2**, Standard Tender Conditions.

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 – TENDER CONDITIONS

PART 1 – PROGRAM SPECIFIC TENDER CONDITIONS

1. TENDER PARTICULARS

Closing Time:

(Clauses 1.11 and 1.15, Part 2)

2:00pm Canberra time Monday 15 November 2010. This closing time applies to the submissions of both hard and electronic copies as specified below.

Mode of Submission:

(Clause 1.1, Part 2)

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 2)

Via AusTender at <https://tenders.gov.au>

Canberra Tender Box Address:

(Clause 1.15, Part 2)

Tender Box, Ground Floor, AusAID,
255 London Circuit
Canberra ACT 2601
AUSTRALIA

Business Hours

for Hard Copy Lodgement:

(Clause 1.15, Part 2)

Monday to Friday, 8:30am to 5:00pm
Canberra time, excluding public holidays.

File Format for Electronic

Tenders:

(Clause 2.3, Annex D to Part 2)

PDF (Portable Document Format)

*Using grey scale, not colour.

Number of Copies of Tender:

(Clause 1.6, Part 2)

For Electronic Tender Lodgement

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

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

Financial Proposal: One (1) separate electronic file.

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

For Hard Copy Tender Lodgement

Technical Proposal: One (1) printed original and one (1) copy.

*To be printed double sided and without section dividers.

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

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

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

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

Endorsement of Hard Copy

Tenders:

(Clause 1.17, Part 2)

“Tender for the Papua New Guinea Electoral Support Program (Phase 3)”

Tender Validity Period:

(Clause 1.8, Part 2)

180 days

Contact Person:

(Clause 2.1, Part 2)

Dana Lubke

Email address: ESP3tender@ausaid.gov.au

AusTender Help Desk:

(Clause 1.2, Annex D, Part 2)

Phone: 1300 651 698 (within Australia)

Phone: +61 2 6215 1558 (outside Australia)

Email: tenders@finance.gov.au

Page Limits:

(Clauses 7.15 and 7.17, Part 2)

Technical proposal: maximum ten (10) pages plus annexes
Curriculum Vitae: maximum four (4) pages each

Attachments to the RFT:

The following documents are attached:

1. Supplementary Background Information for the Papua New Guinea Electoral Support Program (Phase 3)
2. Design Document from the Papua New Guinea Electoral Support Program (Phase 2)

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

2. **PRE-TENDER BRIEFING**

- 2.1 AusAID intends to hold the pre-tender briefing on **Tuesday 12 October 2010** in Port Moresby. Venue and time details will be provided to registered attendees closer to the date.
- 2.2 Tenderers planning to attend the pre-tender briefing are requested to register by email, indicating the name of the organisation and the number and names of people planning to attend, to **Contact Person** by **5:00pm Canberra time Thursday 7 October 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 Program 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 Technical Assessment Panel (TAP) assessment of conforming Tenders) will be assessed.
- 3.4 Alternative Tenders will be technically assessed against the selection criteria contained in this RFT.

4. **SCORE WEIGHTINGS**

- 4.1 The technical assessment of the proposal will account for **80%** of the overall score using the following formula:

$$\text{Technical Score} = \frac{\text{Tenderer's Weighted Technical Score (out of 100)}}{\text{Highest Weighted Technical Score (out of 100)}} \times 80$$

- 4.2 Following consideration of the technical merit of Tenders, a like-for-like price assessment will be undertaken by AusAID of the proposals that are assessed by the TAP as technically suitable.
- 4.3 The like-for-like price assessment will represent **20%** of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

$$\text{Price Score} = \frac{\text{Bid Price of Lowest Priced Technically Suitable Bid}}{\text{Tenderer's Bid Price}} \times 20$$

4.4 Following the final assessment and calculation of the final aggregate scores, confirmation of the Tenderer’s financial capacity to meet the contractual obligations referred to in **Clause 8 of this Part** and consideration of other factors referred to in **Clause 7.8, Part 2**, a recommendation for further action will be made to the appropriate AusAID delegate. Tenderers should be aware that the delegate is not bound to accept the TAP recommendation and may direct that other action be taken in accordance with this RFT.

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

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

- (a) a technical proposal that substantively and individually addresses the selection criteria provided in **Clause 5.2 of this Part** taking into consideration other factors under **Clause 7.8, Part 2**; and
- (b) the required annexes are included in **Clause 5.3 of this Part**.

5.2 **Selection Criteria**

Selection Criteria	Weighting
<p>A Strategic Understanding</p> <ul style="list-style-type: none"> (i) Demonstrate a strategic understanding of the Papua New Guinea Electoral Support Program (Phase 3) (the “Program”), its goal and objectives, key linkages and stakeholders; (ii) Demonstrate how Australian and Papua New Guinea (PNG) Government policies will be applied to: <ul style="list-style-type: none"> • the development, translation and communication of high level strategies into activities to be implemented on the ground; and • cross-cutting issues such as gender equality, HIV and AIDS, disability inclusiveness, peace and conflict, and anti-corruption. 	20%
<p>B Approach to Implementation</p> <ul style="list-style-type: none"> (i) Respond to the Scope of Services; (ii) Demonstrate monitoring and evaluation strategies; (iii) Demonstrate performance management approaches; and (iv) Demonstrate and identify strategies for capacity building and for balancing in-line, advisory and capacity building needs. 	35%
<p>C Personnel</p> <ul style="list-style-type: none"> (i) Demonstrate the skills and experience of the specified personnel in accordance with the relevant position descriptions; (ii) Demonstrate the ability to engage and manage relationships with men and women, key partnerships, and the Government of Papua New Guinea 	30%

- (GoPNG) to prioritise local needs and secure PNG ownership; and
- (iii) Demonstrate the proposed strategies to recruit and retain national, international and female personnel.

D Management Capability 15%

- (i) Demonstrate the ability to align with partner government systems; and
- (ii) Demonstrate the ability to harmonise with the work of other donors or Non-Governmental Organisations (NGOs).

5.3 Annexes

Annex 1 – Past Experience Form – up to one (1) A4 page per example

Details of relevant activities or programs in which the Tenderer has been involved which demonstrate the Tenderer’s ability to fulfil the objectives of the Program must be presented in the format outlined below. This annex must not contain more than four (4) examples.

Tenderers must provide information in the Referees section of the Past Experience Forms in accordance with **Clauses 7.19 – 7.22, Part 2** of the RFT.

PAST EXPERIENCE FORM

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

Annex 2 – Narrative Work Plan – up to one (1) A4 page

Provide a narrative work plan describing the Tenderer’s vision of program implementation and expectations for the first twelve (12) months of the Program.

Annex 3 – Team Member Inputs (Bar Charts) – up to one (1) A3 page

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

Annex 4 – Risk Management Plan – up to three (3) A4 pages

A detailed Risk Management Plan in narrative form that must identify:

- (a) all risks that can be reasonably anticipated;
- (b) the level of probability of the risk eventuating;
- (c) the impact on the Program if the risk eventuates along with possible options for ameliorating the risk;
- (d) the entity/entities responsible for managing the risk consistent with the Scope of Services, **Part 5** of this RFT; and
- (e) the approach to be taken to mitigate any impact.

Annex 5 – Mobilisation Plan – up to one (1) A4 page

Provide a detailed Mobilisation Plan for the first six (6) months of the Program. The Mobilisation Plan must include provision for:

- (a) establishment of communication channels with AusAID, the Australian Diplomatic Mission and Stakeholders;
- (b) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including but not limited to:
 - (i) establishment of report preparation and delivery mechanisms;
 - (ii) establishment of financial control procedures; and
 - (iii) establishment of all other management and administration requirements; and
- (c) any other matters specified in the Scope of Services, **Part 5** of this RFT.

Annex 6 – Letters of Association and Other Details of Other Proposed Sub-Contractors – up to one (1) A4 page per Letter of Association and up to one (1) A4 page per Organisation

Clause 9.2, Part 2 requires that AusAID is provided with assurance of the Associate’s corporate commitment and involvement in the Program in the form of a Letter of Association.

Clauses 9.4, Part 2 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 Program.

Annex 7 – Commonwealth Government Policies Compliance – up to one (1) A4 page

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 2**.

Clause 17.6, Part 2 refers to the World Bank List and similar lists maintained by other donors of development funding. **Clause 13.4, Part 2** 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.

6. TENDER SCHEDULE B – SPECIFIED PERSONNEL

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

- (a) a list of proposed team members in the table (in landscape format) provided and in accordance with the instructions included in **Clauses 6.2 and 6.3** below;
- (b) a skills matrix providing a summary illustration of the skills of the proposed Program team as a whole (broken down by individual team members) in the key skill areas required for the Program’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 2**.

6.2 Tenderers must provide the information in the Referees column of the Specified Personnel table in accordance with **Clauses 7.19 – 7.22, Part 2**.

6.3 The Commitments column in the Specified Personnel table must include details of proposed team members’ commitments to other programs (both AusAID and others) for the period of the Program. 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 program, Tenderers must also detail the duration of the position in the other AusAID program as reflected in the AusAID contract for that program.

6.4 Tenderers are reminded of the requirements of **Clause 8, Part 4** 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 program.

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

6.6 Tenderers are reminded of the requirements of **Clause 19.2, Part 2** particularly in relation to providing police clearance certificates for all Program 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 2**.
- (b) Tenderers should note that in Australia, national criminal record checks are available through the Australian Federal Police and take around twenty (20) working days. The type of employment should be specified as “overseas employment”. Overseas, different checking procedures apply in each country and may take six weeks or longer. Individuals need to give their consent to a criminal record check and should be informed of the purpose for which it will be used, including sighting by AusAID.

Table 1: Specified Personnel

Position	Working with Children	Name	Total Inputs in person months		Option to extend – Total Inputs in Person Months		Leave Entitlements (specify)	Referees		Commitments
			In-country	O/s	In-Country	O/s		#1	#2	
Program Manager	No									
Elections Operations Adviser	No									
Planning and Coordination Adviser	No									
Awareness Adviser	No									
Program Officer	No									
<i>Tenderer to specify other positions as required</i>										

7. TENDER SCHEDULE C - FINANCIAL PROPOSAL

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

7.2 It must:

- (a) be a fully costed fixed price based on the outputs and/or inputs as specified in the Scope of Services, **Part 5**, including:
 - (i) escalation and any allowance for foreign exchange rate variations; and
 - (ii) necessary insurances required by the Contract Conditions and for the performance of the Services;
- (b) be expressed in Australian dollars; and

(c) include detailed information on assumptions used in preparing the pricing.

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

Fixed Management Fee

- 7.5 Tenderers must detail in the financial proposal at **Tables 2A and 2B below** a Fixed Management Fee for the full two (2) year term of the Contract and for the Option Period in the event that AusAID exercises its option to extend under **Clause 2, Part 3** of this Contract.
- 7.6 The Fixed Management Fee applies to the delivery of the program activities as detailed in **Part 5, Scope of Services** and is inclusive of, but not limited to, all of the items listed in **Clause 2, Part 6 (Basis of Payment)** of this RFT.
- 7.7 The Fixed Management Fees are set for the term of the Contract and paid as set out in **Part 6** of this RFT (Basis of Payment).
- 7.8 Tenderers must also provide a breakdown of the Fixed Management Fee in **Table 2C below**.
- 7.9 Note that the details of the breakdown of the Fixed Management Fees are included in **Part 6** of this RFT, Basis of Payment. 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.
- 7.10 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

- 7.11 Tenderers must detail in the financial proposal **Tables 3A and 3B below** the costs of all Specified Personnel and any other long-term personnel as specified by Tenderers in the format provided, and include the costs for the Option Period in the event that AusAID exercises its option to extend under **Clause 2, Part 3** of this Contract. These costs must include consideration of all factors of pay, including leave entitlement.
- 7.12 Tenderers must give a breakdown of the Year 1 monthly fee for all Long-Term Personnel, in **Table 3C below**, in accordance with **Clause 5.3** of the **Part 6** of this RFT (Basis of Payment).

Short-Term Personnel

7.13 Tenderers must detail in the financial proposal **Tables 4A and 4B below** the costs of all short-term personnel as specified by Tenderers in the format provided, and include the costs for the Option Period in the event that AusAID exercises its option to extend under **Clause 2, Part 3** of this Contract.

Summary Table

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

Table 2A: Fixed Management Fees – Quarterly Payments

Fixed Management Fee	Escalator (%)	Year 1 (AUD)	Year 2 (AUD)	Maximum Amount Payable (AUD)
Quarterly Payment				
TOTAL				

Table 2B: Fixed Management Fees – Quarterly Payments – Option Period*

Fixed Management Fee	Escalator (%)	Year 3 (AUD)	Year 4 (AUD)	Maximum Amount Payable (AUD)
Quarterly Payment				
TOTAL				

** These fees shall apply only in the event that AusAID exercises its option to extend under Clause 2 of Part 3 (Program Specific Contract Conditions) to this Contract.*

Table 2C: Fixed Management Fee Breakdown – Year 1

Item	Maximum Amount Payable (AUD)
All high level management and management support costs for all Program personnel;	
The cost of any Contractor Head Office support, such as administrative, financial and management support;	
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 5A of Part 6);	
other leave entitlements not specified in Clause 5 (of Part 6) ;	
All domestic and international communication costs incurred;	
Financial management costs and financing costs, if any;	
External audit and internal auditing and assurance costs;	
Security costs;	
Taxation (other than personnel-related taxes and GST), as applicable;	
Insurance costs (including but not limited to, professional indemnity, workers' 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 4 (Standard Contract Conditions) and Clause 12 (Insurances) of Part 3 (Program Specific Contract Conditions) except any insurances required under Clause 12.3 of Part 3 ;	
Costs of complying with the Contractor's reporting and liaison obligations under the Contract;	
Costs associated with all personnel briefings;	
Recruitment costs;	
Costs associated with any sub-contracting and procurement of goods or services;	
All escalators for the Term of the Contract;	
All allowances for risk and contingencies;	
Costs associated with the Performance Guarantee (Clause 16 of Part 3);	
Costs associated with the Unconditional Financial Undertaking (UFU) (Clause 15 of Part 3).	
Any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor; and	
All other costs not specifically identified in Clauses 2 of Part 6 .	
TOTAL	

Table 3A: Reimbursable Long-Term Personnel Costs

Position	Name	Year 1		Year 2		Mobilis. and Demobili. (AUD)	Maximum Amount Payable (AUD)
		Inputs (Months)	Monthly Rate (AUD)	Input (Months)	Monthly Rate (AUD)		
Program Manager							
Elections Operations Adviser							
Planning and Coordination Adviser							
Awareness Adviser							
Program Officer							
<i>Tenderer to specify other positions as required</i>							

Table 3B: Reimbursable Long-Term Personnel Costs – Option Period*

Position	Name	Year 3		Year 4		Maximum Amount Payable (AUD)
		Inputs (Months)	Monthly Rate (AUD)	Input (Months)	Monthly Rate (AUD)	
Program Manager						
Elections Operations Adviser						
Planning and Coordination Adviser						
Awareness Adviser						
Program Officer						
<i>Tenderer to specify other positions as required</i>						

* These fees apply only in the event that AusAID exercises its option to extend under Clause 2 of Part 3 (Program Specific Contract Conditions) to this Contract

*The personnel specified for these positions are required to be maintained for a minimum period of six (6) months. Any approved changes to the personnel or the monthly rates for these positions will be implemented by a Deed of Amendment.

Table 3C: Reimbursable Long-Term Personnel Breakdown of Monthly Rates – Year 1

Position	Salary* (a) (AUD)	Taxes & employment conditions (b) & (c) (AUD)	Super-annuation (d) (AUD)	Leave Allowance (e) & (f) ** (AUD)	Accomm-odation (g) (AUD)	Other (i) (AUD)	Total Monthly Rate (AUD)	Escalator for subsequent years (h) (%)
Program Manager								
Elections Operations Adviser								
Planning and Coordination Adviser								
Awareness Adviser								
Program Officer								
<i>Tenderer to specify other positions as required</i>								

* Tenderers 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 - The information detailed above in this notes section is supplementary to Table 3A. This information is for general reference related to year 1 only and any changes to the Contractor’s assumptions listed here will not alter the amounts shown in Table 3A. In the event of any discrepancy between Tables 3A and 3C including notes, Table 3A prevails.

* Clause references in row one of Table 3C above refer to the clauses under Clause 5.3, Part 6 (Basis of Payment).

** Excluding other leave as per Clause 2.2.d of Schedule 2 (shown as Part 6 of this RFT)

Table 4A: Reimbursable Short-Term Personnel Costs

Position	Name	Year 1		Year 2		Maximum Amount Payable (AUD)
		Inputs (Days)	Daily Fee (AUD)	Input (Days)	Daily Fee (AUD)	
Contractor Representative						
M&E Adviser						
Financial Management Adviser						
Gender and HIV Adviser						
<i>Tenderer to specify other positions as required</i>						
Other short-term Advisers						200,000
TOTAL						

Table 4B: Reimbursable Short-Term Personnel Costs – Option Period*

Position	Name	Year 3		Year 4		Maximum Amount Payable (AUD)
		Inputs (days)	Daily Fee (AUD)	Input (days)	Daily Fee (AUD)	
Contractor Representative						
M&E Adviser						
Financial Management Adviser						
Gender and HIV Adviser						
<i>Tenderer to specify other positions as required</i>						
Other short-term Advisers						
TOTAL						

* These fees apply only in the event that AusAID exercises its option to extend under Clause 2 of Part 3 (Program Specific Contract Conditions) to this Contract

Table 5A: Summary Table

Item	Maximum Amount Payable (AUD)
Fixed Management Fee	<i>Insert total amount from Table 2A</i>
Long-Term Personnel Costs	<i>Insert total amount from Table 3A</i>
Short-Term Personnel Costs	<i>Insert total amount from Table 4A</i>
TOTAL TENDER PRICE (excluding GST)	

Table 5B: Summary Table – Option Period*

Item	Maximum Amount Payable (AUD)
Fixed Management Fee	<i>Insert total amount from Table 2B</i>
Long-Term Personnel Costs	<i>Insert total amount from Table 3B</i>
Short-Term Personnel Costs	<i>Insert total amount from Table 4B</i>
TOTAL TENDER PRICE (excluding GST)	

* These fees apply only in the event that AusAID exercises its option to extend under Clause 2 of Part 3 (Program Specific Contract Conditions) to this Contract

8. **TENDER SCHEDULE D – FINANCIAL ASSESSMENT**

- 8.1 No Contract will be entered into unless AusAID has satisfied itself of the financial capacity of the Tenderer to undertake the contractual obligations specified under the Contract.
- 8.2 For this RFT, AusAID is trialling an alternative approach to financial assessment, and has appointed an independent financial assessor to evaluate Tenderers' financial capacity.
- 8.3 The Tenderer should be prepared to provide the financial assessor with details of relevant financial data and other relevant information concerning the Tenderer, if so requested by the financial assessor. Financial data and other information may include, but will not be limited to:
- (a) complete annual financial statements for the last three (3) financial years, with all supporting notes;
 - (b) descriptions of any recent changes of substance in the Tenderer's financial position that are not reflected in the most recent financial information provided under **Clause 8.3 (a) above**;
 - (c) details of any other tendering opportunities currently being pursued by the tendering entity or related entities within the group; and
 - (d) details of any significant events, matters or circumstances that may significantly affect the Tenderer's capacity to perform the Services.
- 8.4 To facilitate the financial assessment process, Tenderers must provide the following details in **Tender Schedule D**:
- (a) The name, telephone number and email addresses of the tendering entity's nominated contact point for the financial assessment.
- 8.5 The financial assessor's report on the financial capacity of the Tenderer to undertake the Contract may be provided to either the delegate or the TAP.
- 8.6 The financial information of Tenderers will be treated confidentially.
- 8.7 Failure by a Tenderer to provide financial information when requested by the financial assessor may result in the Tender not being assessed further.

PART 2 – STANDARD TENDER CONDITIONS

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PART 2 – STANDARD TENDER CONDITIONS

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

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

- (a) Electronically, via AusTender at <https://tenders.gov.au> before the **Closing Time** and in accordance with the tender lodgement procedures set out in **Annex D to this Part** and on AusTender; or
- (b) Physically, by depositing by hand in the Canberra Tender Box before the **Closing Time**.

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

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

- (a) the technical proposal which includes:
 - (i) **Tender Schedule A** addressing the selection criteria and including the required annexes in the form specified in **Part 1**; and
 - (ii) **Tender Schedule B** providing details of Specified Personnel in the form specified in **Part 1**;
- (b) The financial proposal in the form specified in **Part 1 Tender Schedule C**. For electronic submissions, **Tender Schedule C** must be submitted as a separate file, and for hard copy submissions, **Tender Schedule C** must be submitted in a separate sealed envelope;
- (c) The financial assessment material in the form specified in **Part 1 Tender Schedule D**. For electronic submissions, **Tender Schedule D** must be submitted as a separate file, and for hard copy submissions, **Tender Schedule D** must be submitted in a separate sealed envelope; and
- (d) The completed and signed Tenderer Declaration in the form specified in **Annex B of this Part**.
- (e) The completed and signed Tenderer's Submission Checklist in the form specified in **Annex C of this Part**.

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

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

- 1.6 The Tenderer must submit the number of copies specified in the Tender Particulars (**Part 1 Clause 1** of this RFT). Different numbers of copies may be required for hard copy lodgement and for electronic lodgement.
- 1.7 Tenders submitted by facsimile or email will not be considered.
- 1.8 It is a condition of this RFT that each Tender must remain valid and available for acceptance by AusAID for the **Tender Validity Period** specified in the Tender Particulars (**Part 1 Clause 1** of this RFT).
- 1.9 A person or persons having authority to lodge the Tender and enter into a contract on behalf of the Tenderer must sign the Tenderer Declaration (**Annex B of this Part**).
- 1.10 AusAID may extend the **Closing Time** at its sole and absolute discretion, and will issue an Addendum notifying any decision to extend.

Conditions Applying to Electronic Tender Lodgement

- 1.11 Electronic tenders must be lodged electronically via the Australian Government Tender System, AusTender, at <https://www.tenders.gov.au> before the **Closing Time** and in accordance with the tender lodgement procedures set out in **Annex D of this Part** and on AusTender.
- 1.12 Where there is any inconsistency between the tender lodgement procedures set out on AusTender and those set out in this RFT, this RFT will prevail.
- 1.13 Tenders not submitted in accordance with **Clause 1.11 of this Part** 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 Program 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 fourteen (14) days prior to the **Closing Time**.

- 2.3 AusAID will respond to any Tenderer enquiries no later than seven (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 5 of 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 of this Part**, Tenders will be regarded as non-conforming if they fail to conform with one (1) 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 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 program 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 Port Moresby 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 Program 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 Program.

Note to Tenderers: 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 three (3) years, of the full Term of the Contract or earlier termination.

Program Vehicles

- 7.12 For the purposes of this clause, “Program Vehicles” are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Program and that are provided primarily for Contractor Personnel use for Program activities. Vehicles purchased by the Program, 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 Program Vehicles for the purposes of requiring a financial contribution by the Contractor.
- 7.13 In consideration of the Contractor being entitled to use Program Vehicles for non-program use the Contractor must contribute **AUD250** for each Program Vehicle for each month of the Program. 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 Program Vehicles:
- (a) Program demands must always take precedence over private use;
 - (b) the Contractor must ensure that any persons driving the Program Vehicle must have a current valid international or Partner Country drivers license for the class of Program Vehicle;
 - (c) the Contractor is responsible for ensuring Program 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 Program Vehicle is being privately used; and
 - (f) the Contractor must ensure that Program Vehicles are serviced in accordance with manufacturer’s requirements.

Note to Tenderers: compliance with the requirements detailed in **Clause 7.14 above** may be subject to a review undertaken by or on behalf of AusAID under **Clause 17 (Reviews)** of **Part 4**.

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 twelve (12) point on A4 paper;
- (c) have left and right page margins of no less than 2.5cm, and top and bottom page margins of no less than 3cm, 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 (CV)

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 Program 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."

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

Referees

- 7.19 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 (**Annex 1 of Part 1**, Past Experience Form is used) or the proposed team member (regarding **Tender Schedule B**). Referees who can supply character references only are not sufficient.
- 7.20 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.
- 7.21 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.
- 7.22 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 Program in the form of a single page Letter of Association in a separate annex to **Tender Schedule A**.
- 9.3 Details of Associate responsibilities, if any, will be included in the Contract.
- 9.4 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 Program. These details must also be included in a separate annex to **Tender Schedule A** in the form described in **Clause 9.5 below**.
- 9.5 Letters in which organisations express their willingness to be involved with the Tenderer in the Program 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.

Note to Tenderer: 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 Program.

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 For the purpose of this **Clause 13**:

- (a) **“Proposed Sub-contractor”** means a sub-contractor that the Tenderer intends to engage for the Program, whether or not nominated in its Tender;
- (b) **“Related Entity”** means any person or company which is:
 - (i) a Proposed Sub-contractor;
 - (ii) in the same group as the Tenderer or a Proposed Sub-contractor;
 - (iii) a ‘related body corporate’ of the Tenderer or a Proposed Sub-contractor, within the meaning of the *Corporations Act 2001*; or
 - (iv) associated with the Tenderer or a Proposed Sub-contractor in respect of its Tender;
- (c) **“Relevant List”** means any list maintained by a donor of development funding which is similar to the World Bank List; and
- (d) **“World Bank List”** means the World Bank’s “Listing of Ineligible Firms” or the “Listing of Firms Letters of Reprimand” posted at www.worldbank.org.

13.2 A Tenderer is ineligible to tender if the Tenderer or a Related Entity is listed on a World Bank List or on a Relevant List.

13.3 Each Tenderer warrants, by submitting its tender, that the Tenderer and its Related Entities are not listed on a World Bank List or on a Relevant List.

13.4 Tenderers must state in their Tenders whether the Tenderer or any Related Entity:

- (a) is listed on a World Bank List or on a Relevant List;
- (b) is subject to any proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List;
- (c) is temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process;
- (d) is temporarily suspended from tendering by a donor of development funding other than the World Bank; or
- (e) is the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.

13.5 If a Tenderer becomes aware of a circumstance referred to in **Clause 13.4** after it has submitted its Tender to AusAID, the Tenderer must immediately notify AusAID in writing.

13.6 AusAID will exclude any Tender from evaluation if the Tenderer is in breach of the warranty in **Clause 13.3**, or does not disclose any circumstance required under **Clause 13.4** or **13.5**.

13.7 AusAID reserves the right to exclude any Tender from evaluation if the Tenderer or a Related Entity:

- (a) becomes listed on a World Bank List or Relevant List, or is subject to proceedings or an informal process which could lead to such a listing;
- (b) is or becomes temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process; or
- (c) is or becomes temporarily suspended from tendering by a donor of development funding other than the World Bank.

13.8 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.

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 (7) 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 (7) 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 sub-contractor 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:
 - (i) 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/>
 - (ii) by the World Bank on its “Listing of Ineligible Firms” or “Listing of Firms Letters of Reprimand” posted at www.worldbank.org (the “World Bank List”); or
 - (iii) by any other donor of development funding on a list similar to the World Bank List.

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; and
 - (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 (6) 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 programs. 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 6, Part 1**) as working with children.
 - (a) Police Clearance Certificates must be provided for each country in which the individual has lived for twelve (12) months or longer over the last five (5) years, and for the individual's country of citizenship;
 - (b) Police Clearance Certificates must be dated no earlier than twelve (12) months before the Tender Closing Time;
 - (c) If any required Police Clearance Certificates are not provided to AusAID in accordance with **Clause 19.2 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 Program 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 twelve (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 **Clause 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 program 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 employer 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;

“**Related Entity**” has the meaning given in **Clause 13.1** (Ineligibility to Tender) of **Part 2** of the RFT;

“**Services**” means Services to be performed by the Contractor in the *[enter Program 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 2**.
- 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 its Related Entities are not:
- (a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 2** of the RFT; or
 - (b) listed on a Relevant List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 2** of the RFT.
- 3.13 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not subject to any proceedings or informal processes which could lead to listing on a World Bank List or listing on a Relevant List. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity is subject to proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List. I warrant that the Tenderer has included information regarding the proceedings in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).

- 3.14 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process, or temporarily suspended from tendering by a donor of development funding other than the World Bank. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity has been temporarily suspended from tendering by either the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the temporary suspension in Annex 7 (Commonwealth Government Policies Compliance) to **Tender Schedule A** (Technical Proposal).
- 3.15 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity is the subject of a formal or informal investigation by the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the investigation in Annex 7 (Commonwealth Government Policies Compliance) to **Tender Schedule A** (Technical Proposal).
- 3.16 I undertake that, if the Tenderer becomes aware of a circumstance referred to in **Clause 13.4** (Ineligibility to Tender) of **Part 2** of the RFT after it has submitted its Tender, I will immediately notify AusAID in writing.
- 3.17 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.
- 3.18 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.
- 3.19 No employees of the Tenderer, or its agents or contractors, who have been nominated in Program 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.
- 3.20 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 3.21 and 3.22** will be used by AusAID to confirm the Tenderer's compliance with the relevant requirements of the Fair Work Principles.

- 3.21 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 Program.
- 3.22 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 (2) years preceding the date of this Request for Tender. **[If response is nil adverse decisions go to Clause 3.22 (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 3.22 (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 3.22** of this Tenderer Declaration will result in its Tender being excluded from further consideration.
- 3.23 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.
- 3.24 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**.
- 3.25 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.
- 3.26 The Tenderer is genuinely competing for the Contract and its Tender is not a “cover bid”.
- 3.27 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.
- 3.28 I acknowledge that each party constituting the Tenderer is bound jointly and severally by this Tender.

4. **ADDENDA TO TENDER DOCUMENTS**

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

Number _____ Dated _____ Number _____ Dated _____

Number _____ Dated _____ Number _____ Dated _____

5. ADDRESS OF TENDERER

Address or Registered Office of Tenderer

Address for service of notices (NOT PO. BOX)

Telephone Number: Fax Number:

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

insert name and title

Signature

ANNEX C – TENDERER’S SUBMISSION CHECKLIST

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

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

	Checked
Tenderer’s Declaration	
Has the Tenderer’s Declaration been completed and signed?	
For electronic lodgement has one (1) electronic copy in a separate file been submitted?	
For hard copy lodgement, has one (1) printed original been submitted?	
Tender Schedule A: Technical Proposal and Annexes	
Is the Technical Proposal within the specified page limit?	
Does the Technical Proposal address each of the selection criteria individually?	
Does the Technical Proposal indicate the Tenderer’s nominated contact person and contact details on the cover page?	
Are the required annexes included and within the specified page limit(s)?	
<p>If the Past Experience Annex is used have at least two (2) referees been nominated and has it been confirmed that they are:</p> <ul style="list-style-type: none"> a) not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with the Tenderer or a subsidiary of the Tenderer? b) not included in the Tender as proposed team members? c) not AusAID employees? 	

	Checked
<p>Are both the Technical Proposal and annexes:</p> <ul style="list-style-type: none"> a) in a type font of no less than 12 point on A4 paper? b) formatted with left and right page margins no less than 2.5cm and top and bottom page margins no less than 3cm, excluding headers, footers and page numbers? c) absent of AusAID's logo or any representation or mark which indicates that the Tenderer is in any way related to or connected with AusAID? 	
For electronic lodgement, has one (1) electronic copy containing all parts and annexes been provided?	
For hard copy lodgement, has one (1) printed original and one (1) copy containing all parts and annexes been provided?	
Tender Schedule B: Specified Personnel	
Are the CVs within the specified page limit and certified and signed by the nominated personnel?	
Do the CVs include the name and personal contact details of the nominated personnel?	
Do the CVs include the nationality and, if relevant, permanent residency status of the nominated personnel?	
Do the CVs include details of the professional qualifications of nominated personnel (if relevant), including institution and date of award?	
Do the CVs include details of recent relevant professional and development work experience, including the duration and extent of inputs?	

	Checked
<p>Have at least two (2) referees been nominated on each of the CVs and has it been confirmed that they are:</p> <ul style="list-style-type: none"> a) not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with the Tenderer or a subsidiary of the Tenderer b) not included in the Tender as proposed team members? c) not AusAID employees? 	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed original and one (1) copy been provided?	
Tender Schedule C: Financial Proposal	
Is the financial proposal in the required format?	
<p>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:</p> <ul style="list-style-type: none"> (a) escalation? (b) necessary insurances required by the Contract Conditions and for the performance of the Services? (c) detailed information on assumptions used in preparing the pricing? 	
For electronic lodgement has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement has one (1) printed original been provided in a separate, sealed envelope?	
Tender Schedule D: Financial Assessment	
Details as per the RFT.	

ANNEX D – CONDITIONS FOR USE OF AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT TENDER SYSTEM

1.1 AusTender is the Australian Government's procurement information system. Access to and use of AusTender is subject to terms and conditions. In participating in this Tender process, Tenderers must comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender at <https://www.tenders.gov.au>.

1.2 All queries and requests for technical or operational support must be directed to:

AusTender Help Desk
Telephone: 1300 651 698
International: +61 2 6215 1558
Email: tenders@finance.gov.au

The AusTender Help Desk is available between 9am and 5pm ACT Local Time, Monday to Friday (excluding ACT and national public holidays).

2. PREPARING TO LODGE A TENDER ELECTRONICALLY

Virus Checking

2.1 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's 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

2.2 Tenderers must lodge their Tender in accordance with the requirements set out in this **Clause 2** 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.

2.3 AusAID will accept Tenders lodged in the **File Format for Electronic Tenders** specified in the Tender Particulars (**Clause 1 of Part 1** of this RFT).

2.4 The Tender file name/s:

- (a) should incorporate the Tenderer's company name;
- (b) should reflect the various parts of the bid they represent, where the Tender comprises multiple files;

- (c) must not contain \ / : * ? " < > | characters. Check your files and re-name them if necessary; and
- (d) must not exceed one hundred (100) characters including the file extension.

2.5 Tender files:

- (a) must not exceed a combined file size of five (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.

2.6 AusTender will accept up to a maximum of five (5) files in any one (1) upload of a Tender. Each upload should not exceed the combined file size limit of five (5) megabytes. If an upload would otherwise exceed five (5) megabytes, the Tenderer should either:

- (a) transmit the Tender files as a compressed (zip) file not exceeding five (5) megabytes; and/or
- (b) lodge the Tender in multiple uploads ensuring that each upload does not exceed five (5) megabytes and clearly identify each upload as part of the Tender.

2.7 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**.

2.8 Tenders must be completely self-contained. No hyperlinked or other material may be incorporated by reference.

3. **SCANNED OR IMAGED MATERIAL, INCLUDING STATUTORY DECLARATIONS**

3.1 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 five (5) megabyte limit. The use of scanned or imaged material, where it expands the Tender file size beyond the five (5) megabyte limit per upload, is prohibited.

4. **ELECTRONIC LODGEMENT PROCESS**

4.1 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's 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 2 above** or otherwise advised by AusAID or required by AusTender.

4.2 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**.

4.3 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**.

4.4 Tenders lodged through AusTender will be deemed to be authorised by the Tenderer.

4.5 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 1.2 above**) **prior to Closing Time**. Failure to do so will exclude a Tender from consideration.

5. **LATE TENDERS, INCOMPLETE TENDERS AND CORRUPTED FILES**

5.1 Any attempt to lodge a Tender after the **Closing Time** will not be permitted by AusTender. Such a Tender will be deemed to be a Late Tender.

5.2 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**.

5.3 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 5.2** will only apply to the final upload.

5.4 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.

6. **PROOF OF LODGEMENT**

- 6.1 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.
- 6.2 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 4.2 and 4.5 above**.

7. **AUSTENDER SECURITY**

- 7.1 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.
- 7.2 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.

SECTION 2 – CONTRACT CONDITIONS

PART 3 - PROGRAM SPECIFIC CONTRACT CONDITIONS

Note to Tenderers: Although these Program Specific Contract Conditions are presented as **Part 3** of this RFT, in the consolidated Contract Conditions they will appear as **Part A**.

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PART A – PROGRAM SPECIFIC CONTRACT CONDITIONS

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

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

“**Annual Plan**” means a plan as specified in **Clause 7 of this Part** and **Clause 8.1 (c) of Schedule 1** (Scope of Services).

“**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 Program.

“**Partner Country**” means the country/countries in which the Services are to be delivered in, as specified in **Schedule 1** (Scope of Services).

“**Payment Milestone**” means a milestone identified in the **Milestone Payments Tables in Schedule 2** (Basis of Payment) and for which the Contractor is entitled to receive a payment in accordance with the Contract.

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

“**Short-Term Personnel**” or “**STP**” means an adviser working on the Program for less than six (6) months continuously.

“**Stakeholders**” means any body, institution, organisation or governmental authority in the Partner Country or non-government organisation having any interest in the Program.

“**Third Party Issues**” means any issues or events which may affect the Services and which are clearly within the control of a party other than AusAID, the Australian Diplomatic Mission in or having responsibility for the Partner Country or the Contractor.

2. TERM OF CONTRACT

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

2.2 The Contractor must commence the Services in the Partner Country no later than **14 February 2011** and must complete the Services by **13 February 2013** unless the option in **Clause 2.3 below** of this **Part A** of the Contract is exercised by the Commonwealth.

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** of the Contract. 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 Program expenditure referred to in Standard Contract Conditions **Clause 15.1 (e)** (Accounts and Records) must be provided on a three (3) monthly basis and must indicate:

- (a) total expenditure of the Program to date;
- (b) disaggregated expenditure for the Program to date identifying all categories of expenditure including the Fees component and Reimbursable items;
- (c) total expenditure for the period of three (3) months; and
- (d) forward expenditure and expenses by category for the period of three (3) months.

4. NOTICES

4.1 For the purposes of Standard Contract 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: Second Secretary, AusAID Port Moresby
Attention: Ms Sophie Temby

Postal Address: Locked Bag 129
Waigani NCD
PAPUA NEW GUINEA

Street Address: Australian High Commission
Godwit Road (Waigani)
Port Moresby NCD
PAPUA NEW GUINEA

Contractor

To:

Attention:

Postal Address:

Street Address:

Facsimile:

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 including security, medical/health situation, cultural environment, details of the program objectives, and 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 Program; and
- (e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID.

6. PROGRAM BOARD

6.1 AusAID may establish a Program Board whose purpose is to provide AusAID with independent technical and other advice on any aspects of the Program and to assist AusAID to assess the performance of the Services (refer to **Clause 5** of **Schedule 1** (Scope of Services), shown as **Part 5** of this RFT).

6.2 The Contractor must:

- (a) attend and participate in those Program Board meetings which AusAID directs it in writing to attend;
- (b) when required by AusAID, consult with the Program Board on matters related to the Program 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 Program Board and suggest actions to avoid or counteract any adverse effects on the relationships;
 - (iii) any matters, circumstances or events which may affect the Program 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 Program Board in the performance of its monitoring and review;
- (d) co-operate with and assist the Program Board 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 Program Board copies of all reports, notices, information or other Program material which the Program Board 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.

7. ANNUAL PLAN

- 7.1 The Contractor must provide to AusAID an Annual Plan each year which, before it is implemented, must be approved by AusAID.
- 7.2 The Annual Plan must be prepared in accordance with directions provided in writing by AusAID (refer to **Clause 8.1 (c), Schedule 1** (Scope of Services), shown as **Part 5** of the RFT) and must be consistent with this Contract.
- 7.3 The Contractor must make amendments to the Annual Plan as reasonably requested by AusAID.
- 7.4 Within thirty (30) days of receipt of the Annual Plan in accordance with **Clause 7.1 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.
- 7.5 Acceptance by AusAID of an Annual Plan does not represent a change to the Contract. The Contract may only be amended in accordance with the Standard Contract Conditions **Clause 12** (Contract Amendment).

8. SUB-CONTRACTING

- 8.1 In addition to the Standard Contract 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.

8.2 Standard Contract 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.

8.3 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.

9. **GRANT ADMINISTRATION**

9.1 In administering the 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 (7) Key Principles for Grants Administration; and
- (b) maintain complete and accurate records documenting the procedures followed in selecting grant recipients.

10. **MEETINGS**

10.1 Contractor Personnel must attend meetings in Port Moresby at times determined by AusAID to review or discuss the Contract including the following matters:

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

10.2 AusAID may require an implementation briefing with the Specified Personnel in Port Moresby prior to mobilisation. AusAID may also require the Program Manager and other Specified Personnel to attend a meeting at the Australian Diplomatic Mission in or having responsibility for the Partner Country before commencement of implementation.

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

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

- 11.1 Without limiting AusAID's rights under any provision of the Contract, any payment or debt owed by the Contractor to AusAID in relation to the Contract may be deducted by AusAID from the amount of payment of any claim for Fees, including Reimbursable Costs or from any other moneys payable or due to the Contractor or may be recovered in any court of competent jurisdiction.
- 11.2 AusAID may review any payments made to the Contractor at any time and:
- (a) if the total of the amount paid to the Contractor is greater than AusAID determines by review to be payable under the Contract, then AusAID must notify the Contractor in writing of the amount of refund it has determined to be repayable;
 - (b) the Contractor must within 28 days after receipt of AusAID's notification:
 - (i) refund the excess to AusAID; or
 - (ii) provide AusAID with evidence supporting the Contractor's opinion concerning the amount of the refund;
 - (c) failure by the Contractor to provide evidence as required in **Clause 11.2(b)(ii) above** will, in the absence of payment in full of the refund claimed, be deemed to be evidence of the Contractor's acceptance that the amount of refund is correct and payable to AusAID on demand or deductible from subsequent payments due under the Contract; and
 - (d) AusAID must, within 28 days of receipt after the Contractor's evidence supporting its opinion concerning the amount of the refund, consider the Contractor's evidence and give the Contractor written notice either:
 - (i) calling for payment within 28 days of the refund determined by AusAID's review; or
 - (ii) calling for payment within 28 days of the refund as re-determined following its consideration of the Contractor's evidence; or
 - (iii) of AusAID's agreement that there is no refund payable.
- 11.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 11.2**, or pay any amount due to AusAID, the amount of the refund or payment is recoverable by AusAID from the Contractor by deducting the amount from subsequent payments owed to the Contractor or in any court of competent jurisdiction as a debt due and payable to AusAID by the Contractor.
- 11.4 Where AusAID deducts the amount of a debt or payment in accordance with this clause, it must advise the Contractor in writing that it has done so.

12. GOVERNMENT TAXES, DUTIES AND CHARGES

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

12.2 Except where the Contract, the Treaty between Australia and the Partner Country or the Memorandum of Understanding (MOU) provides otherwise, all taxes:

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

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

must be paid by the Contractor.

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

(a) the Contract, the Program, 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 Program; and

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

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

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

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

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

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

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

- (a) the claimed increase is actually attributable to that Changed Tax and takes into account reductions in any other Changed Tax; and
- (b) the net change in the Changed Tax has affected the Fees for supplying the Services, and the increase shall take effect from the date on which the Changed Tax became effective.

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

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

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

13. **INSURANCES**

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

- (a) AusAID is notified immediately if 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 program-related insurances;
- (c) in respect of public liability insurance and property insurance that:
 - (i) all insurance agreements and endorsements (with the exception of limits of liability) name, and operate as if there was a separate policy of insurance covering, AusAID, the Contractor and sub-contractors; and
 - (ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;
- (d) where AusAID is a joint insured under an insurance policy, the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against AusAID; and
- (e) all premiums are promptly paid.

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

13.3 In respect of the public liability insurance, Standard Contract 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** (20 million).

14. **UNCONDITIONAL FINANCIAL UNDERTAKING**

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

- 14.1 The Contractor must, on or before the Program Start Date, provide to AusAID a performance security in respect of the Services in the form of an unconditional and irrevocable financial undertaking from a financial institution authorised to carry on banking business under the *Banking Act 1959* (Cth) in Australia and approved by AusAID.
- 14.2 The performance security provided must be in the form appearing in **Schedule 5 of Part 6** of this RFT and must be provided at the Contractor's cost, for the maximum aggregate sum of **AUD1,500,000** (1.5 million) and be available for the Term of the Contract.
- 14.3 AusAID is not obliged to make any payments under the Contract, whether or not such payments are due, prior to receipt of the performance security duly executed and, where applicable, stamped, in accordance with **Clause 15.1 above**.
- 14.4 If AusAID becomes entitled to exercise all or any of its rights to recover moneys under or in relation to the Contract, AusAID may exercise all or any of its rights under the performance security.

15. **PERFORMANCE GUARANTEE**

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

- 15.1 The Contractor must, at its expense, provide to AusAID within ten (10) Business Days of the Program Start Date, a performance guarantee executed by {TO BE INSERTED} delivered to AusAID, guaranteeing the performance by the Contractor of its obligations under the Contract, which must be substantially in the form appearing in **Schedule 6 of Part 6** of this RFT.

PART 4 – STANDARD CONTRACT CONDITIONS

Note to Tenderers: Although these Standard Contract Conditions are presented as **Part 4** of this RFT, in the consolidated Contract Conditions they will appear as **Part B**.

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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 Program 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 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 “**Program 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** (Basis of Payment), 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.

“**Program 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 Program.

“**Program Specific Contract Conditions**” means Contract Conditions in **Part A** of this Contract.

“**Program Start Date**” means the date specified in the Program Specific Contract Conditions **Clause 2** (Term of Contract) as the date by which the Contractor must commence the Services.

“**Program Supplies**” means goods provided to the Partner Country by the Contractor during the course of the Program 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** (Basis of Payment).

“**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** (Scope of Services) 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** (Scope of Services).

“**Standard Contract Conditions**” means Contract Conditions in **Part B** of this Contract.

“**Supplies**” means Program Supplies and Program Administration and Equipment purchased by the Contractor for use in this Program.

“**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 “\$” 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 Program Specific Contract Conditions and the Standard Contract Conditions, the Program 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 Program 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 Program 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** (Scope of Services).
- 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 Program 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** (Scope of Services) 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 Program;
- (c) use its best endeavours to ensure the spirit and intent of the Program 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 Program, 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 Program;
- (i) if a Risk Management Plan for the Program has not been prepared prior to the Program Start Date, the Contractor must prepare a Risk Management Plan within thirty (30) days after the Program 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 **(i) above**, or was prepared prior to the Program Start Date (for example, as part of the Contractor's tender for the Program or as part of the Program 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 Program 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 Program;
- (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 Program;

- (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 Program, 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 Program.

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 Program,

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 Program position acknowledge that the Program 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 Program and for the minimum periods specified in **Schedule 1** (Scope of Services).
- 8.2 During the minimum periods specified in **Schedule 1** (Scope of Services), the Long-Term Personnel included in the Specified Personnel must be exclusively dedicated to the Program 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 three (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 Program. Where Specified Personnel are unavailable for work in respect of the Contract, for any period in excess of two (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 Program, 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 programs that will suffer detriment if accepted on this Program. 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 of this Part** and sue for damages.

9. PROGRAM VEHICLE CONTRIBUTION

9.1 For the purposes of this clause, “Program Vehicles” are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Program and that are provided for Program activities. Vehicles purchased by the Program, 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 Program Vehicles for the purposes of requiring a financial contribution by the Contractor.

9.2 In consideration of the Contractor being entitled to use Program Vehicles for non-program use the Contractor must contribute **AUD250** for each Program Vehicle for each month of the Program. 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 Program Vehicles:

- (a) Program demands must always take precedence over private use;
- (b) the Contractor must ensure that any persons driving the Program Vehicle must have a current valid international or Partner Country drivers license for the class of Program Vehicle;
- (c) the Contractor is responsible for ensuring Program 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 Program Vehicle is being privately used; and
- (f) the Contractor must ensure that Program 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 Program;
- (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 **AUD2,000** or more, which at a minimum contains the following information: reference identification number (which may be for example, a serial number, engine number or chassis number); description of the asset; date of procurement; cost; location; current status; and disposal or handover details.

10.5 The Register of Assets and associated documentation such as import documents, invoices and warranties shall be subject to audit by or on behalf of AusAID at any time and from time to time.

10.6 The Contractor must use the Supplies for purposes permitted under this Contract only and must ensure that the Supplies at all times remain free from any Encumbrance.

11. **SUB-CONTRACTING**

11.1 The Contractor may not sub-contract the whole of the Services. The sub-contracting of parts or elements of the performance of the Services is subject to compliance with the following requirements:

- (a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;
- (b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;
- (c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:
 - (i) comply with relevant and applicable laws, regulations and development policies, including AusAID's *Child protection policy* (<http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>) and child protection compliance standards (Attachment 1 to the policy), both in

Australia and in the Partner Country, and also *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.ausaid.gov.au/keyaid/health.cfm>);

- (ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;
 - (iii) be bound by the same obligations regarding **Clauses 15** (Accounts and Records), **18** (Audits), **19** (Access to the Contractor's Premises, Data and Records), **26** (Privacy), and **35.4** (Anti-corruption) of **this Part** and as required by Program 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** of **Part 6** of this RFT (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**, 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 8.1 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 Program, 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 Program 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 forty-five (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** (Basis of Payment), 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 Program 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 Program and in particular enables the Partner Country to manage ongoing maintenance requirements, as well as any other matters specified in **Clause 8.1 (k) Schedule 1** (Scope of Services). The Contractor must provide a copy of the Draft Handover Plan to AusAID within twelve (12) months of the Program 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 Program 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 Program, or one (1) month prior to the expected completion of the Program.
- 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 Program 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 Program expenditure on a regular basis for the duration of the Program. The details of the timing and content of the statement of expenditure are defined in **Part A** Program 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** (Scope of Services), 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 twenty-eight (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 9am and 5pm 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** (Basis of Payment); 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 **Clause 15.1 above** (Accounts and Records) and may be audited by AusAID in accordance with **Clause 17 above** (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 Program Vehicles in accordance with **Clause 9.2**;
 - (c) the invoice is based upon the calculation of Fees referred to in **Schedule 2** (Basis of Payment); 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** (Basis of Payment) 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** (Basis of Payment) 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 below**, 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 above** 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** (Deed of Confidentiality) of **Part 6** of this RFT, 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 authorised 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 Program.

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 program 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 Program 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 program 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 above** 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 below**, AusAID will only be liable to the Contractor for:

- (a) Fees, as payable under **Schedule 2** (Basis of Payment), 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 **AUD5,000,000** (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 1974* (Cth), 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 fourteen (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 **Clause 31 above** (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 sub-contractors' 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 five (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 Program under which AusAID funding is being provided;
- (b) name of any personnel or sub-contractors 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 (e.g., 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 sub-contractor of the Contractor has acted in a fraudulent manner, the Contractor shall:

- (a) where money has been misappropriated, pay to AusAID or the program 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 program 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 sub-contractor 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 sub-contractor 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 to 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.aisaid.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 above**.
- 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.aisaid.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 sub-contractor) 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 sub-contractor in relation to this Contract where the sub-contractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and
 - (b) ensure that all sub-contractors impose obligations on sub-contractors equivalent to the obligations under **Clauses 37.4 to 37.7 of this Part**.
- 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**.
- 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 above**.
- 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.usaid.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.usaid.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.usaid.gov.au/keyaid/envt.cfm>.

38. INVESTIGATION BY THE OMBUDSMAN

- 38.1 In carrying out the Services, the Contractor, and an employee or sub-contractor 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 sub-contractors 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 sub-contractor 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 sub-contractor 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 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 this requirement in relation to sub-contracts.
- 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 sub-contractor, 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) **above** 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 twenty (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 fifty (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 40** (Notices) **below**, 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 (1) 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 1 – DRAFT SCOPE OF SERVICES

PAPUA NEW GUINEA ELECTORAL SUPPORT PROGRAM (PHASE 3)

Note to Tenderers: Although this Draft Scope of Services is presented as **Part 5** of this RFT, in the consolidated Contract this will appear as **Schedule 1**.

1. INTERPRETATION

1.1 In this Contract, unless the context otherwise requires:

“**BC**” means the PNG Boundaries Commission;

“**CACC**” means the PNG Central Agencies Coordination Committee;

“**CSO**” means Civil Society Organisation;

“**CST**” means Core Support Team;

“**DET**” means the PNG Department of Education;

“**DNPM**” means the PNG Department of National Planning and Monitoring;

“**DPLLA**” means the PNG Department of Provincial and Local Level Affairs;

“**DTF**” means the PNG Departments of Treasury & Finance;

“**EM**” means Election Managers;

“**ESP2**” means the PNG Electoral Support Program (Phase 2)

“**GoA**” means Government of Australia;

“**GoPNG**” means Government of Papua New Guinea;

“**IDEC**” means the PNG Inter-Departmental Electoral Committee;

“**IPCC**” means the PNG Integrity of Political Parties & Candidates Commission;

“**LPV**” means Limited Preferential Voting;

“**M&E**” means Monitoring and Evaluation;

“**MEC**” means the PNG Ministerial Economic Committee;

“**MG**” means Management Group;

“**NEC**” means the PNG Department of Prime Minister and National Executive Council;

“**NPM**” means the PNG National Mapping Bureau;

“**NSO**” means the PNG National Statistics Office;

“**PDD**” means Program Design Document;

“**PESC**” means the PNG Provincial Election Steering Committee;

“**PNG**” means Papua New Guinea;

“**PNG systems**” means a range of existing procedures that are being, or are meant to be, adhered to by government and civil society stakeholders;

“**PNGDF**” means the Papua New Guinea Defence Force;

“**PNGEC**” means the Papua New Guinea Electoral Commission;

“**Program Board**” means the Electoral Support Program Board;

“**Program**” means the PNG Electoral Support Program (Phase 3); and

“**RPNGC**” means the Royal Papua New Guinea Constabulary.

2. **BACKGROUND**

2.1 Free and fair elections are critically important to strengthening democracy, governance and stability in Papua New Guinea (PNG). Support to free and fair elections in PNG is also of critical importance to Australia’s national interest, given Australia’s close relationship with, and proximity to, PNG. Historically, elections in PNG have been affected by corruption and violence.

2.2 The management of elections in PNG presents unique challenges because of:

- (a) Broad issues relating to geography and culture of PNG, such as security, logistics of reaching remote areas, localised political corruption, electoral fraud, violence and intimidation;
- (b) Specific election-related issues, such as the recruitment and training of a large temporary workforce of returning officers and polling officials, uncertainty over electoral boundaries, mobile polling, voter education and the lack of accuracy and integrity of the common roll; and
- (c) Low levels of literacy, numeracy, and understanding about the electoral system and PNG civics among the voting population.

2.3 AusAID-funded support to the PNG Electoral Commission (PNGEC) began in April 2000 and involved strengthening the capacity of the PNGEC to plan and conduct the 2002 national elections. Phase 2 of support (ESP2) had an additional focus of improving broader electoral systems and environment.

2.4 Phase 3 of support (ESP3) reflects lessons learnt from the previous two phases of support to the PNGEC.

2.5 There is a potential risk that the Government of Australia’s (GoA) involvement in electoral support in PNG through ESP3 could be perceived as constituting external interference in domestic processes and politics. AusAID, the Contractor and the PNGEC will support PNG stakeholders to lead on processes and activities.

2.6 The PNGEC will make all final decisions around the administration of elections as per their constitutional responsibilities.

3. **GOAL AND PRINCIPLES**

3.1 The goal of the PNG Electoral Support Program (Phase 3) (the “**Program**”) is to contribute to strengthened Papua New Guinea electoral systems.

- 3.2 The Program aims to build on past phases of AusAID funded activities of electoral support to PNG and support the current efforts of the Government of Papua New Guinea (GoPNG) through the PNGEC to plan for, and administer, elections.
- 3.3 The Program will be governed by the following principles:
- (a) *Whole-of-government coordination*: effective operation of the PNG Inter-Departmental Electoral Committee (IDEC) and support of GoPNG ownership of the reforms initiated by the Program;
 - (b) *Ownership*: support of initiatives by both government and civil society organisations (CSOs) to improve the PNG electoral systems. The PNGEC is responsible for all key decisions on electoral management with the Program supporting the use of PNG systems wherever possible;
 - (c) *Performance-based activities*: inputs that are clearly linked to specific, measurable objectives or reforms and tied to achievement of results or progress against objectives.
 - (d) *Flexibility*: flexible approach to implementation based on an agreed annual budget ceiling and regular reviews of Program priorities and activities funded under the Program;
 - (e) *Consultation*: implementation of consultative management arrangements through the Electoral Support Program Board (the “**Program Board**”);
 - (f) *Additional services*: support will add to the overall resources available to the governance sector in PNG and will not replace or fund core recurrent GoPNG costs associated with elections management;
 - (g) *Appropriateness*: activities will be tailored to the PNG context;
 - (h) *Affordability*: activities will support service delivery that is affordable and sustainable;
 - (i) *Training and support*: provision of appropriate training for the PNGEC;
 - (j) *Systems development*: strengthen the development of systems for strategic management, election planning management and evaluation, and corporate planning and management; and
 - (k) *Continuous improvement*: through an effective monitoring and evaluation system of Program outputs, outcomes and sharing examples of best practice and lessons learnt with AusAID, GoPNG and other stakeholders.

4. OVERVIEW AND COMPONENTS

Overview

- 4.1 The Program will support a series of activities that will be developed, proposed and submitted by various program partners (national and provincial government agencies, civil

society organisations) either individually or jointly, to achieve one (1) or more of the component objectives.

- 4.2 The implementation of activities will be supported by the Contractor, with the approach designed to ensure that the Program remains focused upon the needs of the electoral system as identified by stakeholders, including PNGEC, GoPNG and CSOs.
- 4.3 The Annual Plan will provide the detail of activities to be funded under each component and the process for selecting activities for funding will involve two stages. Firstly, the Program Board will agree to the strategic focus areas to be addressed in the coming year and secondly, proposals for specific activities addressing demand and the focus areas will be assessed and selected for recommendation to the Program Board. Ideally, the PNGEC, other GoPNG departments and CSOs, will be committed to ownership of the projects they implement.
- 4.4 There are four (4) Program components as outlined below:

Component 1

- (a) *Objective:* To strengthen electoral governance.
- (b) *Description:* This component relates to matters of electoral governance, policy, legislation and electoral management, and will seek to address some of the broader, fundamental issues that lead to electoral problems.
- (c) *Proposed Outcome:* Improved legal and policy implementation to enable more effective electoral administration.

Component 2

- (a) *Objective:* To strengthen PNGEC capacity to manage elections.
- (b) *Description:* This component relates to the specific assistance for planning and conducting any by-elections and recounts; assistance to the PNGEC in preparing for the 2012 national election or any other electoral events; and continuation of the PNGEC organisational capacity work so that the competency of the PNGEC to organise, plan and conduct elections is realised and sustained.
- (c) *Proposed Outcomes:* Electoral events are comparatively well-managed by the PNGEC, based on the organisation's improved capacity; and sub-national actors are more engaged with PNGEC head quarters in electoral administration.

Component 3

- (a) *Objective:* To increase the PNG electoral system and civics awareness.
- (b) *Description:* This component relates to the funding relationships between the PNGEC and CSOs to promote the sharing of electoral awareness content and in the monitoring of awareness activities.
- (c) *Proposed Outcome:* PNG voters have an increased understanding of their democratic rights, and how to vote.

Component 4

- (a) *Objective:* To improve research, analysis, program management and coordination.
- (b) *Description:* This component relates to monitoring and evaluation activities and research to support the mainstreaming of key development issues, funding to conduct evidence-based research, PNG electoral coordination mechanisms, and provision of technical advice to these bodies.
- (c) *Proposed Outcomes:* Research and analysis is applied to GoPNG systems for elections management; and the PNGEC is supported by GoPNG partners at national and sub-national levels to manage elections.

5. ROLES AND REPONSIBILTIES OF KEY STAKEHOLDERS

Electoral Support Program Board (the “Program Board”)

5.1 The Program Board will have responsibility for:

- (a) Reviewing and approving all aspects of the Annual Plan activities;
- (b) Refusing approval of an activity;
- (c) Assisting the Contractor to deliver Program objectives;
- (d) Reviewing and approving Program targets;
- (e) Considering, approving, declining or deferring activity funding proposals;
- (f) Assessing, approving and monitoring a Monitoring and Evaluation Framework for the Program, which should be closely aligned to PNGEC and IDEC’s performance management plans;
- (g) Ensuring that proposed activities are within the Program guidelines and if not, to recommend changes;
- (h) Reviewing effectiveness of funded activities and recommend changes in cases of weak performance;
- (i) Guiding the Contractor in implementation of policy and strategic direction of the Program;
- (j) Participating in an annual assessment of the Contractor’s management and implementation of the Program by AusAID;
- (k) Requesting relevant electoral information and communicate appropriate Program information to other key stakeholders;
- (l) Assisting in the management of risk; and
- (m) Assessing the aid effectiveness and sustainability of the Program.

- 5.2 The Program Board shall meet within three (3) months of the Program Start Date and thereafter on a three (3) monthly basis. Membership may include representatives from:
- (a) PNG IDEC;
 - (b) PNGEC;
 - (c) relevant GoPNG departments;
 - (d) CSOs; and
 - (e) AusAID.
- 5.3 Program Board Members shall have skills and expertise in a range of areas, including, but not limited to:
- (a) Electoral governance;
 - (b) Policy and management;
 - (c) Community awareness and education campaigns;
 - (d) Civil society in PNG;
 - (e) Governance and program management;
 - (f) HIV and AIDS;
 - (g) Fraud and anti-corruption; and
 - (h) Gender equality.
- 5.4 A Program Board existed under ESP2 and it may be appropriate for individuals on the previous Program Board to be considered for the new Program Board.

Government of PNG

- 5.5 GoPNG will have responsibility for:
- (a) The reforms that the Program will support; and
 - (b) With support from the Contractor, contributing to the design and implementation of activities and activity outcomes.

AusAID

- 5.6 AusAID will have responsibility for:
- (a) Supporting the Program in order to add to the overall resources available to the governance sector in PNG;
 - (b) Identifying and managing risks associated with the Program; and

- (c) Program funds, which will not be seen as a replacement for current GoPNG finance or development allocations and will not be used to fund core, recurrent GoPNG costs associated with elections management.

Other Key Stakeholders

5.7 A list of other key stakeholders and their functions in election management are set out below in **Table 1**.

Table 1: Other Key Stakeholders

PNGEC (national office)	The PNGEC remains the key Program stakeholder and needs to be viewed as a source of technical competency and expertise for other GoPNG Agencies and for Civil Society Organisations (CSO)s.
Department of Prime Minister and National Executive Council (NEC)	'Home' department for the work of the PNGEC.
Ministerial Economic Committee (MEC)	The MEC is a sub-committee of the NEC and is comprised of the Deputy Prime Minister, the Treasurer and the Minister for Planning. The MEC scrutinises submissions of a macro-level strategic nature or with significant budget implications that are referred to it by the NEC, and subsequently makes recommendations to NEC. This is an influential committee that needs to be included in the PNGEC's ambitions.
Central Agencies Coordination Committee (CACC)	Coordinates GoPNG central agencies. It's a high-level forum for discussion of priority government needs, including to support electoral events.
Departments of Treasury & Finance	Responsible for funds allocation and release to enable the conduct of elections.
Department of National Planning and Monitoring (DNPM)	Coordinates and monitors donor contributions to GoPNG's development priorities.
Department of Provincial and Local Level Affairs	Responsible for monitoring Provincial and Local Level Governments, and implementing Government Policy at the sub-national level.
Integrity of Political Parties & Candidates Commission (IPPC)	The IPPCC is required to establish and manage systems to register political parties, scrutinise the financial returns from successful candidates and all political parties, and manage the allocation of government funding to parties.
The Royal Papua New Guinea Constabulary (RPNGC)	The Police play a critical role at election time in providing security for polling and counting. The PNGEC and the RPNGC must work closely in planning and conducting the polling. The RPNGC co-opts other agencies, such as the Defence Forces, if further election security is required.
Papua New Guinea Defence Force (PNGDF)	The PNGDF provided back-up security services to RPNGC during the 2007 national elections.
National Statistics Office	Responsible for the collection and dissemination of official statistics, including the census.
Department of Education	Includes electoral system awareness in school curricula. This has the potential to be expanded to electoral and civics awareness for adult voters.
National Mapping Bureau	Responsible for producing maps of provinces, districts (electorates), local government wards and villages. Authority for correct names of villages.

PNG Boundaries Commission	Responsible for determining and reviewing electoral boundaries. Members are the Electoral Commissioner, Chief Statistician and the head of the National Mapping Bureau. The Boundaries Commission is functionally (and legally) housed within the PNGEC.
Provincial Election Steering Committee (PESC)	Coordinates planning and logistics for election events at the Provincial level.
Provincial, District and LLG administrations	Officers in the provinces and districts play a key role in the conduct of elections as Returning Officers (ROs), Assistant ROs, presiding officers and polling clerks. Provincial Electoral Steering Committees (PESCs) are established in each Province to conduct electoral administration.
Civil society, including NGOs, churches and community-based organisations	Organisations such as the National Council of Women, Transparency International PNG (TI PNG), Community Coalition Against Corruption, churches, business sector, media, academics, etc are involved in voter and civics education in addition to advocating for electoral reform. They also have the potential to be involved in education and awareness on civics, awareness of Limited Preferential Voting (LPV), electoral roll accuracy activities, and for monitoring Program results.
Inter-Departmental Electoral Committee (IDEC)	Coordinates planning and logistics for electoral events at an operational level, and includes core PNG Government Departments. IDEC provides a forum for discussion of electoral reform in PNG as well as overseeing preparation for elections and other electoral matters from a whole-of-government perspective

6. STAFFING AND LOCATION OF SERVICES

6.1 The Contractor must recruit personnel to fill the following positions described in the Terms of Reference (**Annex 1** to this Schedule):

Specified Long-Term Personnel

- (a) Program Manager;
- (b) Elections Operations Adviser;
- (c) Planning and Coordination Adviser; and
- (d) Awareness Adviser.

Other Long-Term Personnel

- (a) Program Officer.

Short-Term Personnel

- (a) Contractor Representative;
- (b) M&E Adviser;

- (c) Financial Management Adviser; and
- (d) Gender and HIV Adviser.

- 6.2 The Contractor must ensure that personnel mentor, coach, provide on-the-job training and encourage a learning environment wherever possible with stakeholders.
- 6.3 Additional personnel may be provided on a long or short-term basis and may serve either advisory capacity building, or in-line “surge-capacity” support functions.

Location

- 6.4 The Contractor will staff one (1) office, to be located in Port Moresby, PNG.
- 6.5 It is envisaged that there would be some travel between the Contractor’s office and PNG provinces as required.

Recruitment

- 6.6 Where new or replacement staff are required, the Contractor must:
- (a) Undertake a rigorous, value-for-money selection exercise in accordance with the principles of the Commonwealth Procurement Guidelines including at least two (2) of the following advertising means:
 - (i) Targeted print advertising in relevant national and local press, technical publications, and other major periodicals;
 - (ii) Advertising on websites and other web-based means as relevant to the position; and
 - (iii) Word-of-mouth advertising through local, national and/or international networks.
- 6.7 When recruiting new staff for positions with no existing Terms of Reference, the Contractor must also undertake the following steps to:
- (a) Propose any short-term positions for inclusion into the Annual Plan;
 - (b) Ensure that the provision of personnel is in response to funding requests approved in the Annual Plan;
 - (c) Provide a rationale to why the input is seen as the best option;
 - (d) Develop Terms of Reference in consultation with and for approval by the PNGEC and AusAID. Terms of Reference should include a mentoring and on-the-job training plan for work with PNGEC and program partner staff;
 - (e) Seek and review applications;
 - (f) Forward the CVs and the proposed rates of short-listed applicants to AusAID for review;

- (g) Conduct referee checks for the above short-listed applicants;
 - (h) Following an agreed selection process, recommend a preferred candidate and recruit the agreed candidate;
 - (i) Ensure that personnel are recruited in a timely and efficient manner that does not delay delivery of the relevant Annual Plan; and
 - (j) Provide an overall quality assurance role with respect to all program personnel, including, but not limited to, quality control in relation to the standard and delivery of advice, mentoring, coaching and training, and any reports or documentation prepared by personnel.
- 6.8 The Contractor must comply with relevant local and Australian legislation. Non-discrimination policies (on basis of gender, religion, ethnicity, etc) must be clearly articulated and employed and wherever possible, the Contractor must endeavour to recruit PNG nationals, including through using appropriate local recruitment strategies.
- 6.9 The Contractor must submit to AusAID and the PNGEC, a copy of the preferred specified personnel's application with a two (2) page report:
- (a) On the recruitment strategy;
 - (b) Interview and referee checks;
 - (c) Any other assessments used (including value –for-money); and
 - (d) Comments on any alternative short-listed candidates.
- 6.10 AusAID reserves the right to reject the Contractor's preferred specified personnel at AusAID's absolute discretion and to require the Contractor to undertake further recruitment activities at the Contractor's expense.

7. **SERVICES**

Overview

- 7.1 The Contractor shall undertake the Services in accordance with the terms and conditions of this Contract.
- 7.2 The Contractor shall be responsible for management of the Program through a combination of:
- (a) 'Third-party' activities (proposed, implemented and managed by stakeholder organisations including the PNGEC);
 - (b) Recruitment and management of Personnel or Advisers;
 - (c) Procurement of approved equipment or materials;
 - (d) Financial management of Program funds;

- (e) Quality assurance for delivery of all components of the Program;
- (f) Affordable service delivery that is sustainable within the budget per component or activity;
- (g) Provision of appropriate training and support;
- (h) Strengthen the development of systems for strategic management, election planning management and evaluation, and corporate planning and management; and
- (i) Development of an effective M&E system to allow continuous improvement and the sharing of examples of best practice and lessons learnt with AusAID, GoPNG and other stakeholders.

Transition

- 7.3 There will be a transition period of approximately two (2) weeks from the Contract Start Date where the Contractor will work with AusAID Port Moresby and the previous ESP2 Contractor. This is to transition the support to the PNGEC, handover ongoing activities, build the Contractor's knowledge of work conducted to date, introduce the Contractor to key stakeholders, and prepare planning documents.
- 7.4 During this transition period, the Contractor will be responsible for the following:
- (a) Ensure appropriate staff are available to participate in briefings and planned handover activities;
 - (b) Actively participate in handover activities as set out in the Transition Plan (to be prepared by AusAID Port Moresby and the Contractor) or as otherwise agreed;
 - (c) Provide continuous support for those partners implementing agencies activities, without disruption to financial payments;
 - (d) Finalise office and staffing plans (in consultation with AusAID Port Moresby and Contractor staff, as appropriate); and
 - (e) Undertake any other transition tasks as required by AusAID.
- 7.5 For continuity, especially with GoPNG agencies and to meet budgeting timeframes, the Contractor will continue to implement existing activities.

Component Activities

- 7.6 The Contractor shall be responsible for managing delivery of activities under each of the components including to:
- (a) Work with the PNG Boundaries Commission through component 1 and research issues such as:
 - (i) Whether existing electoral legislative sanctions could be more effectively enforced; or

- (ii) Whether additional legislative sanctions could also be considered;
- (b) Support the PNGEC in their work to improve electoral roll accuracy through component 2 including:
 - (i) Working with GoPNG coordination mechanisms, e.g. the IDEC, PESCs, Provincial Administrations, at national and sub-national levels;
 - (ii) Provision of targeted support through technical assistance personnel inputs;
 - (iii) Piloting and monitoring activities;
 - (iv) Supporting the PNGEC to target provinces with particular skills gaps or technical issues; and
 - (v) Identifying and coordinating “surge capacity” support roles for electoral events;
- (c) Support the PNGEC’s Information, Communications and Awareness Branch (ICAB) to conduct electoral awareness activities, in line with the PNGEC Communications Strategy and through component 3, including through:
 - (i) Support for relationships between the PNGEC and large-scale CSOs, including the provision of funds to those CSOs, to conduct awareness on behalf of ICAB;
 - (ii) Coordination and alignment with other AusAID programs, particularly the Strongim Pipol Strongim Nesen Program, which will manage a small grants stream that will be available to fund civic education projects;
 - (iii) Assist in developing strong working relationships between the PNGEC and CSOs and Strongim Pipol Strongim Nesen, to inform the appropriate selection of CSOs for funding, sharing of electoral awareness content, and the monitoring of awareness activities; and
 - (iv) Assist in supporting linkages between CSOs, RPNGC at District level, with technical supervision/input by Election Managers, for activities such as electoral roll verification;
- (d) Conduct M&E and research through component 4, to support:
 - (i) The mainstreaming of key development issues, particularly gender equality, HIV/AIDS awareness, anti-corruption and peace and conflict;
 - (ii) Funding to conduct evidence-based research into challenges to electoral processes;
 - (iii) PNG electoral coordination mechanisms, such as the IDEC, the Central Agencies Coordination Committee (CACC), and at sub-national levels Provincial Administrations and Provincial Election Steering Committee (PESC);

- (iv) PNGEC to provide technical advice to the above organisations to allow them to effectively plan, budget and manage their electoral roles; and
- (v) Coordinate with other AusAID programs with partner GoPNG agencies with electoral roles.

Planning, Management and Implementation

7.7 The Contractor shall be responsible for:

- (a) Providing strategic direction in planning, management and implementing the Program;
- (b) Maintaining a critical analysis of the prevailing political, economic and social situation as it relates to electoral reform and development in PNG;
- (c) Ensuring the Program is implemented to be as consistent as possible with GoPNG priorities and supports the PNGEC corporate and Annual Plans;
- (d) Managing resources to achieve the agreed Program objectives and outputs within the time and budget set;
- (e) Supporting continuous improvement and learning in a culturally and gender sensitive and appropriate manner including through, for example, the Annual Plans and Quality Management Plan reporting processes (**Clause 8.1 below**);
- (f) Maximising the use of PNG systems and in particular the PNGEC systems;
- (g) Coordinating the process of selecting activities under all four (4) components, including the selection criteria, with the PNGEC Senior Management Team, and recommend activities to the Program Board;
- (h) Following the established principles to select and fund activities, ensuring that funding is:
 - (i) Directed at activities that fall within the approved Program Strategic Focus Areas, as set by the Program Board;
 - (ii) Demand driven and results focused targeting long-term sustainable improvements;
 - (iii) Demonstrates effective responses to HIV/AIDS, gender equality and fraud and anti-corruption;
 - (iv) For advisory positions, only where:
 - (A) Alternative approaches to capacity building have been considered;
 - (B) Assistance is needed to support and advise PNGEC and IDEC agencies to sustain election related beneficial change in the long-term;

- (C) It is determined that the activity is time-critical (such as reviewing the electoral roll and delivering on specific electoral events); or
- (D) It is necessary to provide discrete specialist support to build specific capacity (such as effective voter education and awareness, risk management or alternative approaches to election practice);

and that there is:

- (v) Senior level commitment to the activities;
 - (vi) Value-for-money and affordability;
 - (vii) Maximum use of local consultants and organisations;
 - (viii) Quality of activity proposal; and
 - (ix) A track record of previous activities relating to achievement of results and accountability;
- (i) Identifying needs and opportunities, and encouraging appropriate organisations to develop activity submissions, particularly to address strategic needs;
 - (j) Providing advice on concepts, development considerations, ideas and specific proposals to ensure that the proposals address the needs and selection criteria;
 - (k) Screening initial activity submissions in association with the PNGEC, who will then develop recommended activity proposals; and
 - (l) Holding planning workshops at least annually with stakeholders to ensure consultation opportunities occur throughout the annual planning process.

Electoral Support Program Board

7.8 The Contractor shall be responsible for:

- (a) Managing the establishment of the Program Board (in accordance with **Clause 5.1 above**) in consultation with the PNGEC and AusAID;
- (b) Ensuring the ongoing effectiveness of the Program Board through:
 - (i) Facilitation of timely meetings;
 - (ii) Preparation of activity funding submissions;
 - (iii) Provision of secretariat support to the Program Board, including development of a schedule of meetings, ensuring adequate time is provided for consideration of documents, preparation and circulation of agenda, papers and Program Board minutes (detailing the decisions of the Program Board) and ensuring follow-up of agreed actions;

- (iv) Provision of technical support as required to facilitate conflict resolution and collaborative relationships between Program Board members;
 - (v) Provision of assistance regarding establishing policies such as, governance frameworks, communication protocols and roles and responsibilities;
 - (vi) Facilitation of Program Board decisions through email in the event that a Program Board meeting is not imminent but a matter requires Program Board deliberation and decision; and
 - (vii) Reporting on Program activities to the Program Board; and
- (c) Enabling the Program Board, as individual members and as a group, to make decisions and contribute to the Program's direction and priorities and assist in the management of risk.

Relationships Management

7.9 The Contractor shall be responsible for:

- (a) Working in partnership with the GoPNG and other stakeholders to assist them to plan, target and manage activities (in accordance with the priorities determined by the Program Board);
- (b) Conducting participatory and consultative processes with GoPNG, CSOs and other stakeholders;
- (c) Maintaining regular communication with the AusAID Activity Manager(s) including:
 - (i) Alerting AusAID when strategic policy input is required;
 - (ii) Liaising with AusAID in relation to any proposed Contract amendment; and
 - (iii) Ensuring that the Program Manager attends six (6) monthly AusAID Program review meetings as required; and
- (d) Working with and maintaining regular contact with the Senior Management Team and the staff of the PNGEC in:
 - (i) Developing Annual Plans for the Program;
 - (ii) Engaging appropriate technical experts or specialist personnel (as per **Clauses 6.3 and 6.6 above**) to assist the PNGEC in undertaking projects or activities approved by the Program Board;
 - (iii) Assisting the PNGEC to draft funding proposals where required;
 - (iv) Making recommendations on suitable proposals to the Senior Management Team of PNGEC for their consideration, and if agreed, make recommendations to the Program Board; and

- (v) Assessing both GoPNG and Program funds against component objectives as appropriate.

Risk Management

7.10 The Contractor shall be responsible for:

- (a) Ensuring that the PNGEC makes all final decisions regarding the administration of elections, as per their constitutional responsibilities;
- (b) Minimising risks in line with the Risk Management Plan and Quality Management Plan and through the engagement of stakeholder organisations to maintain a flexible Program that can adapt to electoral challenges; and
- (c) Identifying and managing the risks associated with the Program in relation to:
 - (i) Financial control and accounting;
 - (ii) The preparation and update of detailed reporting;
 - (iii) The review of funding submissions against selection criteria and presentation of a short-list of technically acceptable proposals to the Program Board;
 - (iv) Recruitment and management of personnel;
 - (v) Support to the Program Board; and
 - (vi) The M&E and reporting of activities and projects to be implemented under the Program.

Financial Management

7.11 The Contractor shall:

- (a) Manage funds, distributed to various PNG electoral stakeholders, including government agencies and CSOs, to conduct activities approved by the Program Board. The Contractor will be reimbursed according to **Clause 7, Schedule 2** (shown as **Part 6** of this RFT);
- (b) Establish and maintain financial management and accounting systems and records including fraud control and audit procedures. These are to be appropriately documented as part of the Financial Operations Manual in accordance with **Clause 8.1 (a) below** of the Contract;
- (c) Facilitate the provision of funds to sub-contractors/delivery organisations in a timely and efficient manner including briefings to sub-contractors/delivery organisations; and
- (d) Monitor the use of funds.

Procurement

7.12 The Contractor shall be responsible for:

- (a) Procuring equipment and materials as needed and as approved in the Annual Plan; and
- (b) Managing all procurement in accordance with the Commonwealth Procurement Guidelines including the core principle of value-for-money.

Monitoring and Evaluation

7.13 The Contractor shall be responsible for:

- (a) Continually monitoring progress towards the Program's goals; and
- (b) Identifying, recommending and implementing changes to the outputs, activities and projects to improve the likelihood of achievement of the Program's goals and proposed outcomes.

Policy Implementation

7.14 The Contractor shall be responsible for:

- (a) Mainstreaming and monitoring AusAID policies into Program implementation such as:
 - (i) *Gender Equality in Australia's Aid Program – Why and How;*
 - (ii) *Meeting the Challenge: Australia's International HIV/AIDS Strategy;*
 - (iii) *Development for All: Towards a Disability-Inclusive Australian Aid Program;*
 - (iv) *Peace, Conflict and Development Policy Tackling Corruption for Growth and Development;*
 - (v) *Australian Aid: Approaches to Building Demand for Better Governance;*
 - (vi) *Child Protection Policy;*
 - (vii) *Aid and the Environment - Building Resilience, Sustaining Growth;* and
 - (viii) *Australia's Aid Program to Papua New Guinea: Framework Paper.*

Copies of the relevant strategies/policies are available from the AusAID website:
www.usaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments

- (b) Conducting awareness raising, training and on-going mentoring as part of integrating and modelling good practice in relation to the above policies. This could include for example:

- (i) Improved gender and HIV awareness training for electoral staff (including police);
- (ii) Assisting the PNGEC and other stakeholders to review and improve their own workplace practices; and
- (iii) Assisting the PNGEC to develop a corporate strategy for how it may be able to contribute to HIV prevention in PNG more broadly, in line with PNG's HIV/AIDS Act.

8. REPORTING REQUIREMENTS

8.1 The Contractor must also provide two (2) hard copies and one (1) electronic copy of each of the following reports by the date indicated:

- (a) **Financial Operations Manual** to be submitted for approval within one (1) month of the Program Start Date. The Manual must detail the arrangements and operational procedures for managing finances;
- (b) **Personnel Guidelines Strategy** to be submitted to AusAID within two (2) months of the Program Start Date. The strategy must outline the use of support and include a protocol for GoPNG to access surge capacity support, for example.
- (c) **Annual Plans** to be drafted in consultation with the PNGEC and submitted electronically to AusAID and the Program Board for approval by 1 December each year, for the subsequent calendar year period. The first Annual Plan is to cover the remainder of the 2011 calendar year and must be submitted within two (2) months of the Program Start Date. Each draft Annual Plan must be updated within two (2) weeks of return of the revised draft by AusAID. The Annual Plans must include:
 - (i) An outline of the activities to be funded under each component;
 - (ii) A discussion of Program strategic (and funding) priorities for the coming year as identified by the Program Board;
 - (iii) Updates on Annual Plan progress over the previous six (6) month period;
 - (iv) A reflection of GoPNG and CSOs' planning and priorities as developed in stakeholder planning workshops and as directed by AusAID in consultation with the Program Board;
 - (v) Criteria to be used for identifying and prioritising activities;
 - (vi) Costed activities including resource inputs required from AusAID, PNGEC, or other stakeholders, and a recommendation for the mode of implementation;
 - (vii) Information from the results of the annual planning workshops;
 - (viii) Strategic priorities for the Program and details of the activities proposed for implementation during the coming year such as timing and duration, details of how the work will be implemented showing responsibilities,

- organisations involved, outputs to be achieved, proposed performance and evaluation criteria, and the estimated costs of each activity;
- (ix) Any other AusAID requirements, including change frames, updated M&E Framework, updated Risk Matrix and resource and implementation schedules;
 - (x) A statement of expenditure and projection of funds as per Program Specific Contract Conditions, **Clause 3** (Accounts and Records); and
 - (xi) A Purchasing Plan for procuring equipment and materials.
- (d) **Six-Monthly Reports** to be submitted to the Program Board following AusAID approval by 1 June and 1 December each year. (Please note that the first report is due 1 June 2011 and will cover a shorter period of time). The report must detail progress made against the Annual Plan for the previous six (6) month period. The report must include:
- (i) Progress against the relevant Annual Plan and the other plans such as the Quality Management Plan or M&E Framework;
 - (ii) Progress relative to Program Components, staff movements, finance, and implementation of activities;
 - (iii) Any difficulties which have occurred and proposed action to alleviate problems;
 - (iv) A statement of Program expenditure, in accordance with Program Specific Conditions **Clause 3** (Accounts and Records), and should indicate cash flow projections; and
 - (v) A table showing contracts awarded by the Contractor to PNG agencies, organisations, nationals and/or companies registered in PNG, together with details of expenditure on each contract.
- (e) **Quality Management Plan** to be submitted electronically to AusAID and the Program Board for approval within two (2) months of the Program Start Date. The plan should be updated as part of the Six-Monthly Report. The report must focus on:
- (i) Program planning;
 - (ii) Program communication, supported by a formal Communication Strategy developed in conjunction with stakeholders;
 - (iii) Sub-contract procurement and management;
 - (iv) Personnel recruitment and management;
 - (v) Partner development; and
 - (vi) Financial management.

- (f) **Monitoring and Evaluation (M&E) Framework** to be submitted within two (2) months of the Program Start Date, and to be implemented within one (1) month of approval. The M&E Framework is to be updated as part of the Six-Monthly Report. The framework should:
- (i) Focus on three (3) levels of activity including program management and implementation, project and activity results, and program development impacts;
 - (ii) Facilitate the transfer of both qualitative and quantitative information;
 - (iii) Monitor the Program in accordance with AusAID Project Quality Standards and with the Program's goal and component objectives;
 - (iv) Build on existing reporting information, formats and structures used by other similar programs in PNG;
 - (v) Identify gaps and work needed to fill these, rather than establishing parallel or duplicative systems; and
 - (vi) Assess the effectiveness of technical assistance and advisory assistance in building PNGEC capacity, and supporting organisational and strategic development for the Program.
- (g) **Risk Management Plan** to be submitted within two (2) months of the Program Start Date and to be updated as part of the Six-Monthly Reports. The plan must:
- (i) Include a comprehensive Risk Management Matrix for the Program, to manage a range of high risks, for example, the security of personnel, the electoral roll, and financial management;
 - (ii) Monitor the Program in accordance with AusAID Project Quality Standards and with the Program's goal and component objectives;
 - (iii) Allow for responses to emerging needs and risks; and
 - (iv) Identify external risks that could impact on Program implementation and strategies to mitigate these risks.
- (h) **Communication Strategy** to be submitted within two (2) months of the Program Start Date and to be updated as part of the Six-Monthly Reports. The strategy must:
- (i) Identify ways to strengthen the electoral reform process by supporting improvements in communication; and
 - (ii) Identify ways to improve communication between PNGEC Head Quarters and Provincial Election Managers (EMs), and with other stakeholders, including the Royal PNG Constabulary (RPNGC), the Department of Finance and Treasury and the National Executive Council.
- (i) **Gender Strategy** to be submitted within two (2) months of the Program Start Date and to be updated as part of the Six-Monthly Reports. The strategy must outline:

- (i) How the Program will ensure gender is addressed as a cross-cutting issue; and
 - (ii) How gender equality and AusAID's Gender and Development Policy will be incorporated into the Program.
- (j) **HIV/AIDS Strategy** to be submitted within two (2) months of the Program Start Date and to be updated as part of the Six-Monthly Reports. The strategy must outline:
- (i) How the Program will ensure HIV/AIDS is addressed as a cross-cutting issue; and
 - (ii) How HIV/AIDS will be incorporated into the Program.
- (k) **Exit/Transition Strategy** to be submitted in a format developed in consultation with AusAID within one (1) month prior to the Program End Date. The Exit/Transition Strategy must:
- (i) Outline activities for the last stages of the Program;
 - (ii) Include procedures to cover the handover of assets and wind down/handover of activities funded under the Program; and
 - (iii) Discuss the sustainability of Program reforms.
- (l) **Activity Completion Report** to be drafted in consultation with AusAID and submitted electronically within one (1) month prior to the Program End Date in accordance with **Clause 2 of Part A**. The report must focus on:
- (i) Program achievements and lessons learnt;
 - (ii) Supporting sustainability through the joint identification of ongoing needs; and
 - (iii) The collection and recording of performance data; and
- (m) **Exception Reports or Briefing Requests** to be completed as required by AusAID.

8.2 All reports must:

- (a) be provided in accordance with Standard Conditions clause headed "**Reports**";
- (b) be accurate and not misleading in any respect;
- (c) be prepared in accordance with AusAID requirements;
- (d) allow AusAID to properly assess progress under the Contract;
- (e) be provided in the format and on the media approved or requested by AusAID;

- (f) not incorporate either the AusAID or the Contractor's logo, including consistency with the latest AusAID instructions on use of logos;
- (g) be concise, clear and easily readable;
- (h) be provided by the dates specified in this Schedule; and
- (i) incorporate sufficient information that allows AusAID to monitor and assess the success of the Services in achieving the objectives of AusAID's policy frameworks, particularly those listed in **Clause 7.14 above**.

9. **CONTRACTOR PERFORMANCE ASSESSMENT**

- 9.1 AusAID shall conduct an annual performance review every anniversary of the Program Start Date.
- 9.2 The criteria used to assess the Contractor's performance are detailed in **Annex 4** to this **Schedule**. The criteria may be reviewed and revised as appropriate at AusAID's discretion, in consultation with the Contractor and the Program Board. Performance ratings will not be averaged.
- 9.3 At the conclusion of the annual review AusAID will notify the Contractor of the performance assessment outcomes. Where the Contractor receives two performance assessments in a row in which the ranking is "unsatisfactory rating on two or more criterion" for each assessment, AusAID may conduct an additional performance assessment. The additional assessment will be conducted two months after the second of the two unsatisfactory performance assessments. If the additional assessment determines that the Contractor's performance is still rated "unsatisfactory rating on more than one (1) criterion", AusAID may terminate the Contract in accordance with **Clause 31** of **Part B** of the Contract.

Disputes

- 9.4 In the event of a dispute between AusAID and the Contractor over the Contractor's performance, the standard Dispute Resolution Clause of the Contract (**Clause 39** of **Part B**) will be utilised.

List of Annexes:

Annex 1: Terms of Reference for Personnel

Annex 2: Mobilisation Plan

Annex 3: Risk Management Plan

Annex 4: Sample Contractor Performance Assessment Discussion Guide and Record

ANNEX 1: TERMS OF REFERENCE FOR PERSONNEL

PROGRAM MANAGER

Reports To: Contractor Representative

Position Description

The Program Manager has overall responsibility for management and coordination of the Program, and to ensure that all stakeholders are working to “contribute to strengthened Papua New Guinea electoral systems”. The Program Manager will provide high level strategic and technical oversight of the Program’s direction and activity content. The Program Manager will manage the coordination of all Program activities under the four components and facilitate their successful implementation. The Program Manager will lead a team of Program personnel, working closely with PNGEC colleagues. This will require the Program Manager to establish and maintain effective relationships and undertake all duties to a high professional standard.

Specific Duties

- (a) Maintain and manage the Program office and administrative staff, provide supervisory and management support to the Program’s personnel, and monitor the inputs of all Program personnel members (both Long-Term and Short-Term).
- (b) Oversee the Program’s strategic and annual planning, implement the Program’s annual plans, and monitor progress against the plans.
- (c) Lead the completion of all reporting and milestone requirements for submission to AusAID in a timely manner.
- (d) Work with the Monitoring and Evaluation Adviser to implement a Monitoring and Evaluation Framework, collect ongoing data for the Program as a whole, as well as for activities funded under the program.
- (e) Manage the successful implementation of the Program’s Monitoring and Evaluation Framework and provide input to the PNGEC’s ongoing Monitoring and Evaluation Framework, Risk Management and Performance Management.
- (f) Assure that the HIV/AIDS, gender and fraud and anti-corruption considerations are integrated into activities.
- (g) Provide leadership, strategic advice, mentoring and assistance as required to the main stakeholders, particularly to the PNGEC.
- (h) Manage the process of developing selection criteria, setting priorities, seeking and encouraging Program activity submissions, and developing and agreeing the annual plan of activities in a way that will improve stakeholder involvement and commitment.
- (i) Review submitted proposals, provide feedback on proposals that do not meet selection criteria, and prepare short list of acceptable proposals for further review by the Program Board.

- (j) Monitor the progress and effectiveness of activities, provide strategic advice as needed to help stakeholders mobilise and implement agreed activities, and make recommendations to the Program Board and AusAID to reduce or stop funding any project or activity which is not complying with agreed requirements (including not meeting objectives, not carrying out the agreed program of activities, mismanaging funds, etc.).
- (k) Develop terms of reference for any personnel positions, in consultation with PNGEC and AusAID, and manage and monitor their inputs.
- (l) Manage and implement the Program's operating systems, procedures, processes, forms and financial management processes. Wherever possible, systems should be integrated with existing GoPNG/PNGEC systems.
- (m) Oversee risk management, reporting risks (and potential risks) to AusAID and PNGEC in a timely, strategic and proactive manner.
- (n) Optimise synergies with other aid programs with complementary development objectives.

Core Competences

- (a) Demonstrated senior level experience in management and policy advice, in government or the private sector, on a long-term program involving a wide variety of stakeholders.
- (b) Facilitation and representation skills at a senior level, including negotiation, management of stakeholder boards and committees, problem solving, change management, presentation and report writing, and monitoring and evaluation.
- (c) Knowledge of the factors likely to contribute to sustainable development programs, particularly those aimed at achieving organisational change.
- (d) Management and supervisory experience, including office and financial management skills, and demonstrated ability to work in teams, share knowledge, coach people and transfer skills.
- (e) Demonstrated analytical, reporting, problem solving and risk management skills.
- (f) Demonstrated interpersonal, relationship management and negotiation skills.
- (g) Success in mainstreaming gender outcomes into all aspects of work.
- (h) Understanding of impact of HIV/AIDS in the electoral context of PNG.
- (i) Experience working in a developing country to ensure development and capacity building.
- (j) High level experience and knowledge of electoral systems and processes.

ELECTIONS OPERATIONS ADVISER

Reports To: Program Manager

Position Description

The Elections Operations Adviser will provide ongoing assistance to the PNGEC to support the planning, conduct and monitoring of elections in PNG, as well as to foster whole-of-government support for election management through IDEC agencies. The Elections Operations Adviser will assist PNGEC in devising activities for funding under Component 2 of the Program to strengthen their capacity to manage elections.

Specific Duties

- (a) Work with PNGEC senior management team and IDEC member agencies to assist the development of well coordinated and integrated whole-of-government strategic approach to election management.
- (b) Support the development of management skills, processes and procedures within the PNGEC including their integration with other government agencies and Civil Society.
- (c) Support the PNGEC in devising activities for funding from the Program that will result in improvements to strategic planning and coordination processes that are commensurate with the capacity of PNGEC and other agencies involved in elections.
- (d) Provide ongoing coaching of PNGEC personnel and relevant and timely advice to PNGEC senior management.
- (e) Support the collaboration between the Australian Electoral Commission and PNGEC to help maximise the potential of the Twinning arrangements funded separately from the Activity Bank Account.
- (f) Provide progress reports in the required format to enable the PNGEC, Program Manager and Program Board to monitor the success of the specialist's work and the impact on the planning, delivery, monitoring and reform and improvement of the PNG election system.
- (g) Provide input to the PNGEC's ongoing Monitoring and Evaluation Framework, Risk Management and Performance Management as necessary.
- (h) Work with PNGEC personnel to institutionalise election management skills, processes and systems and integrating those with other agencies so as to achieve a whole-of-government approach to elections.
- (i) In collaboration with the CST and the senior management team of PNGEC to identify activities that will build the capacity of PNGEC in conducting well planned and executed elections.
- (j) Assist the PNGEC to work with IDEC member agencies.
- (k) Assist the PNGEC to improve the capacity of Election Managers at a Provincial level.

- (l) Develop PNGEC personnel, particularly in building skills in election management.
- (m) Actively engage with the senior management team of PNGEC.
- (n) Work with the PNGEC Director of Operations to ensure efficient and effective election management systems are in place that will provide sustainable improvement in planning and implementing future elections.
- (o) Optimise synergies with other aid programs with complementary development objectives.

Core Competences

- (a) Demonstrated experience in conducting elections with responsibility for their delivery at a senior level.
- (b) Success in developing and integrating management principles, processes and procedures within an electoral body.
- (c) Management and supervisory experience, including demonstrated ability to work in teams, share knowledge, coach people and transfer skills.
- (d) Demonstrated analytical, reporting, problem solving and risk management skills.
- (e) Demonstrated interpersonal, relationship management and negotiation skills.
- (f) Experience working in a developing country to ensure development and capacity building.
- (g) Demonstrated understanding of gender inequalities and HIV/AIDS issues in a development context.

PLANNING AND COORDINATION ADVISER

Reports To: Program Manager

Position Description

The Planning and Coordination Adviser will support the PNGEC and the IDEC agencies to institutionalise integrated planning and coordination processes and plans that facilitate the achievement of the corporate and annual plans of PNGEC and the planning, delivery and monitoring and continuous reform and improvement of the PNG electoral system.

Specific Duties

- (a) Work with PNGEC senior management team and IDEC member agencies to support a well coordinated and integrated whole-of-government strategic planning and management approach for elections management.
- (b) Support the formal strategic and operational linkages between provincial governments, provincial steering committees, IDEC members, and the PNGEC.
- (c) Provide facilitation to the senior management team in devising activities for funding by the Program that will result in improvements to strategic and detailed planning and coordination processes that are in line with the capacity of PNGEC and other agencies involved in elections.
- (d) Develop PNGEC personnel, particularly in skills in strategic planning, coordination and development. Support training and coaching for PNGEC staff and other entities on the role of strategic planning and coordination.
- (e) Assure that the HIV/AIDS, gender and fraud and anti-corruption considerations are integrated into activities.
- (f) Identify activities that will build the capacity of PNGEC and IDEC member agencies to conduct well planned and executed elections that redress gender equity imbalances within the electoral system.
- (g) Support PNGEC to determine clear themes for research that are linked to PNGEC's Strategic Plan.
- (h) Support PNGEC Senior Management and line managers to translate and articulate policies into practical strategies and activities for implementation.
- (i) Provide progress reports to enable the PNGEC, Program Manager and Program Board to monitor the impact of the adviser's work.
- (j) Monitor and collate data to evaluate progress in the effectiveness and efficiency of the PNGEC and provide input to the PNGEC's ongoing Monitoring and Evaluation Framework, Risk Management and Performance Management.
- (k) Actively engaging with the senior management team of PNGEC to help them use the management framework for planning and monitoring their priorities and producing their plans and budgets.

- (l) Working with the two Deputy Electoral Commissioners to ensure the organisation has a clear strategic focus and that planning processes are developed and implemented to achieve the Commissions strategic objectives.
- (m) Build relationships with other whole-of-government agencies and assisting them to ensure that their personnel can fulfil their specific responsibilities in relation to elections.
- (n) Optimise synergies with other aid programs with complementary development objectives.

Core Competences

- (a) Experience in facilitating the development of organisations through strategic planning and coordination frameworks.
- (b) Experience in the development of strategic and operational links between government agencies in a developing country context.
- (c) Management and supervisory experience, including demonstrated ability to work in teams, share knowledge, coach people and transfer skills.
- (d) Demonstrated analytical, reporting, problem solving and risk management skills.
- (e) Demonstrated interpersonal, relationship management and negotiation skills.
- (f) Success in mainstreaming gender outcomes into all aspects of work.
- (g) Understanding of impact of HIV/AIDS in the electoral context of PNG.
- (h) Experience working in a developing country to ensure development and capacity building.

AWARENESS ADVISER

Reports To: Program Manager

Position Description

The Awareness Adviser will support the PNGEC's Information, Communications and Awareness Branch (ICAB) to conduct electoral awareness activities, in line with the PNGEC Communications Strategy. The Awareness Adviser will assist PNGEC in devising activities for funding under Component 3 of the Program to build the understanding and awareness in PNG about free elections. This could include funding relationships between the PNGEC and CSOs to promote the sharing of electoral awareness content and in the monitoring of awareness activities. This could include support for funding relationships between the PNGEC and up to four large-scale CSOs to conduct awareness on behalf of ICAB. Activities under this Component will also require coordination and alignment with other AusAID programs, particularly *Strongim Pipol Strongim Nesen* (SPSN), which will manage a small grants stream that will be able to fund civic education projects. Work under this Component could include assisting linkages between the PNGEC and CSOs/SPSN, in the selection of CSOs, sharing of electoral awareness content, and in the monitoring of awareness activities. Activities under Component 3 could also explore supporting linkages between CSOs, RPNGC at District level, with technical supervision/input by Election Managers, for activities such as Electoral Roll verification.

Specific Duties

- (a) Assist PNGEC in devising activities for funding under Component 3 of the Program to build the understanding and awareness in PNG about free elections.
- (b) Assist the PNGEC and the IDEC agencies to continue to educate and raise awareness about the procedural aspects of elections, including how Limited Preferential Voting works, the meaning of representative government, the implications of illegal voting practices, the rights of women in elections, the reasons for voter secrecy, and the importance of transparency in electoral processes.
- (c) Support ongoing relationships between PNGEC, IDEC entities and key non-government stakeholders facilitating electoral awareness across the country
- (d) Support training and coaching for PNGEC staff and other entities in how to undertake education and awareness, including consultation, partnering and networking skills, policy and strategy development about electoral awareness, and education and training skills.
- (e) Assure that the HIV/AIDS, gender and fraud and anti-corruption considerations are integrated into education and awareness activities.
- (f) Provide progress reports to enable the PNGEC, Program Manager and Program Board to monitor the impact of the adviser's work.
- (g) Monitor and collate data to evaluate progress in the effectiveness and efficiency of the PNGEC and provide input to the PNGEC's ongoing Monitoring and Evaluation Framework, Risk Management and Performance Management.

- (h) Support PNGEC's relationships with other whole-of-government agencies (for example, the Department of Education) to assist them to fulfil their specific responsibilities, and work collaboratively with the PNGEC, in relation to education and awareness.
- (i) Work with PNGEC personnel and provincial steering committees to institutionalise education and awareness that is integrated with civil society and other agencies.
- (j) Identify activities that will build the capacity of the team to plan, manage, deliver and evaluate election awareness in collaboration with provincial staff and steering committees and a network of CSOs.
- (k) Actively engage with the senior management team of PNGEC and provincial staff and electoral committees, to help them deliver nationwide electoral awareness in partnership with external stakeholders (IDEC agencies and CSOs).
- (l) Optimise synergies with other aid programs with complementary development objectives.

Core Competences

- (a) Experience working with a range of diverse stakeholders both governmental and non-governmental in community awareness processes.
- (b) Management and supervisory experience, including demonstrated ability to work in teams, share knowledge, coach people and transfer skills.
- (c) Demonstrated analytical, reporting, problem solving and risk management skills.
- (d) Demonstrated interpersonal, relationship management and negotiation skills.
- (e) Success in mainstreaming gender outcomes into all aspects of work.
- (f) Understanding of impact of HIV/AIDS in the electoral context of PNG.
- (g) Experience working in a developing country to ensure development and capacity building.

PROGRAM OFFICER

Reports To: Program Manager

Position Description

The Program Officer will work in a team with Program personnel, the PNGEC and the Program Board, under the direction of the Program Manager. The Program Officer will maintain and implement all administrative, accountancy and financial management processes, to ensure the effective management of the Program.

Specific Duties

- (a) Maintain and implement all Program administrative and financial management processes and systems, advising the Program Manager of any irregularities.
- (b) Maintain management of information systems, program and project databases and other relevant databases.
- (c) Maintain Program accountancy requirements.
- (d) Undertake spot audits.
- (e) Manage any fraud cases in line with AusAID policy.
- (f) Contribute to reports produced for AusAID, the Program Board and the Program Manager.
- (g) Participate in Program meetings.
- (h) Assure the provision of secretarial functions for the Program.
- (i) Supervise any other office personnel.

Core Competences

- (a) High level administrative and financial management and reporting skills.
- (b) Ability to supervise a small team.
- (c) Ability to set up and maintain manual and electronic information management systems.
- (d) Ability to monitor financial reports and identify potential irregularities.
- (e) Computing skills in word processing, spreadsheets and financial management packages.
- (f) Experience in providing secretarial support and minute taking.

CONTRACTOR REPRESENTATIVE

Reports To: Managing Contractor

Position Description

The Contractor Representative (CR) will oversee the implementation of the Contractor's responsibilities in line with the intention of the Contract. In particular the CR will coordinate and provide the Contractor support to the Program Manager (and other program personnel) to support their responsibilities.

In collaboration with the Program Manager, the CR will take the lead role in raising, discussing and proposing solutions to AusAID, on any matters related to the Contractual performance of the team or the systems and procedures employed. The CR will work with the Program Manager to ensure the administrative burden placed on the Program Manager and specialist personnel is minimised to allow them to focus on implementation, technical management, relationship management and strategic issues. The CR will be a permanent employee of the Contractor (with part-time Program inputs) and may be based at either the Contractor's Head Office or in PNG.

Specific Duties

- (a) Oversee the contractual obligations and administrative processes of the Program to ensure they meet AusAID, GoPNG and Managing Contractor requirements.
- (b) Be responsible for reviewing the final quality of all Contractual deliverables (milestones, reports, billings and financial statements) before submission to AusAID and addressing any issues and concerns with the Program Manager and Program team.
- (c) Ensure that effective collaborative relationships are maintained between the Contractor's employees, consultants, AusAID, GoPNG and other stakeholders and be pro-active in addressing any concerns before they affect program delivery.
- (d) Provide high level management advice to the Contractor on operational requirements of the Program.
- (e) Oversee Human Resource processes, including overseeing the timely engagement of personnel based on the requirements in the Annual Plan.

Core Competences

- (a) Proven senior program management experience or qualifications.
- (b) Strong working knowledge of AusAID contractual processes and cross cutting policies especially those related to procurement, fraud, gender equality, HIV/AIDS, and corruption.
- (c) Permanent employee of the Managing Contractor with sufficient seniority to coordinate Managing Contractor administrative and support services for the Program.

MONITORING AND EVALUATION ADVISER

Reports To: Contractor Representative

Position Description

The Monitoring and Evaluation Adviser will work to develop the Program's Monitoring and Evaluation (M&E) Framework with stakeholders, and develop M&E systems and procedures to operationalise the M&E Framework. The M&E Adviser will also assist in the preparation of analysis for reports from M&E information and reporting, including participation in direct evidence gathering and consultations as required. The M&E system should allow for continuous improvement of Program, by monitoring progress towards the Program's goals as well as identifying, recommending and implementing changes to the outputs and activities. This includes the Contractor sharing examples of best practice and lessons learnt with AusAID, GoPNG and other stakeholders.

Specific Duties

Specific inputs will be agreed in the Annual Plan, but could include:

- (a) Work with stakeholders to develop the Program's M&E Framework. The M&E Framework is to be updated every six months. The system should build on existing reporting information, formats and structures used by similar PNG programs to avoid establishing duplicate structures.
- (b) Assess the effectiveness of technical assistance and advisory assistance in building PNGEC capacity, and supporting organisational and strategic development for the Program.
- (c) Develop a range of options and approaches to improve quality and effectiveness for both Program and PNGEC program use.
- (d) Conduct analysis of collected Program data and relevant documents.
- (e) Contribute to the preparation of reports and other performance related documentation.
- (f) Support program personnel to fulfil their M&E obligations.

Core Competences

- (a) Demonstrated experience in the design and implementation of M&E systems, including identification of key performance indicators and data collection processes.
- (b) Demonstrated experience in analysing qualitative and quantitative data to report on performance and impacts.
- (c) Experience with participatory M&E tools and techniques.
- (d) Demonstrated conceptual, analytical, reporting, and problem solving skills.
- (e) Demonstrated interpersonal, relationship management and negotiation skills.
- (f) Understanding of data collection constraints and the capacities of the public sector in PNG.
- (g) An understanding of gender issues and a commitment to equal employment opportunity principles in organisational development.

FINANCE MANAGEMENT ADVISER

Reports To: Program Manager

Position Description

The Finance Adviser will provide Short-Term inputs (as agreed in the Annual Plan) to support improved financial management procedures, responsibilities and accountabilities of the PNGEC so that the PNGEC can devise and manage budgets and deliver elections that meet the requirements of PNG public finance legislation and election plans.

Specific Duties

Specific inputs will be agreed in the Annual Plan, but could include:

- (a) Maintain working relationships with PNGEC personnel, senior management and its Finance Branch personnel to support high quality financial processes and systems that support a well performing organisation.
- (b) Work with PNGEC personnel to improve financial management and accountability in headquarters and in the provinces, ensuring full compliance with the Public Finance Act and improve control of budgets.
- (c) Engage with whole of government agencies such as Treasury and Finance Departments and provincial treasuries, to assist them to fulfil their specific responsibilities, and work collaboratively with the PNGEC, in relation to election financial management.
- (d) Support internal audits for the PNGEC.
- (e) Support PNGEC to implement their budget strategy and financial management framework to meet legislative requirements.
- (f) Assist PNGEC in devising activities for funding by the Program that will result in improvements to financial management practices for PNGEC.
- (g) Contribute to the development of capacity of PNGEC personnel, particularly the Finance Branch, in financial planning, multi year budgeting, cash flow forecasting, risk management and acquittal activities.
- (h) Provide coaching and training to PNGEC in financial management policies and practices.
- (i) Provide progress reports to enable the PNGEC, Program Manager and Program Board to monitor the impact of the adviser's work.
- (j) Monitor and collate data to evaluate progress in the effectiveness and efficiency of the PNGEC and provide input to the PNGEC's ongoing Monitoring and Evaluation Framework, Risk Management and Performance Management.

Core Competences

- (a) Demonstrated knowledge of public sector financial management at a senior level, and experience working with public sector agencies.

- (a) Management and supervisory experience, including demonstrated ability to work in teams, share knowledge, coach people and transfer skills.
- (b) Success in developing organisations and building financial management and risk management capabilities.
- (c) Demonstrated analytical, reporting, problem solving and risk management skills.
- (d) Demonstrated interpersonal, relationship management and negotiation skills.
- (e) Experience working in a developing country to ensure development and capacity building.

GENDER AND HIV/AIDS ADVISER

Reports To: Program Manager

Position Description

The Gender and HIV/AIDS Adviser will provide Short-Term inputs (as agreed in the Annual Plan) to support the PNGEC and Program incorporate gender and HIV/AIDS considerations into strategic and operational activities. To this end PNGEC has developed a draft HIV/AIDS in the Workplace Policy. The PNGEC has also started to develop a gender policy but this still needs to be finalised. The level of female representation amongst temporary electoral staff engaged during elections has traditionally been very low. Strategies need to be developed to increase the level of female staff and to ensure that gender equity considerations are addressed in the management of elections.

Specific Duties

Specific inputs will be agreed in the Annual Plan, but could include:

- (a) Maintain working relationships with PNGEC personnel and senior management and provide advice on how to improve integration of gender and HIV/AIDS considerations into PNGEC operational activities.
- (b) Assist PNGEC in devising activities for funding by the Program that will result in improvements to gender equality and HIV/AIDS integration.
- (c) Support the PNGEC to implement its HIV/AIDS in the Workplace and Gender in the Workplace policies.
- (d) Support PNGEC Human Resources to increase female representation among temporary electoral staff can be significantly increased and to develop strategies to promote gender equality in elections management.
- (e) Support the PNGEC and Awareness Adviser to further integrate HIV/AIDS and gender equality messages in PNGEC's civic education materials.
- (f) Provide coaching and training to PNGEC in gender and HIV/AIDS awareness.
- (g) Provide progress reports to enable the PNGEC, Program Manager and Program Board to monitor the impact of the adviser's work.
- (h) Monitor and collate data to evaluate progress in the effectiveness and efficiency of the PNGEC and provide input to the PNGEC's ongoing Monitoring and Evaluation Framework, Risk Management and Performance Management.
- (i) Optimise synergies with other aid programs with complementary development objectives.

Core Competences

- (a) Demonstrated experience in developing organisational strategies, policies and advice in the areas of gender and HIV/AIDS and in monitoring and evaluating gender strategies and policies.

- (b) Demonstrated understanding of gender inequalities and HIV/AIDS issues in a development context.
- (c) Management and supervisory experience, including demonstrated ability to work in teams, share knowledge, coach people and transfer skills.
- (d) Demonstrated analytical, reporting, problem solving and risk management skills.
- (e) Demonstrated interpersonal, relationship management and negotiation skills.
- (f) Experience working in a developing country to ensure development and capacity building.

ANNEX 2: MOBILISATION PLAN

{from Tenderer's proposal}

ANNEX 3: RISK MANAGEMENT PLAN

{from Tenderer's proposal}

**ANNEX 4: SAMPLE CONTRACTOR PERFORMANCE ASSESSMENT DISCUSSION
GUIDE AND RECORD**

<u>Contractor Details</u>																	
Name:																	
Activity:	Agreement No:																
Country:	Activity Manager (AM):																
Date of this Performance Review Discussion: / /	File Number:.....																
Date of Next Discussion / /	Related Documents:																
Assessment Period: From / / To / /																	
Managing Contractor Performance																	
<p>The contractor performance assessment matrix affixed is a guide to assess and record contractor performance discussion outcomes. The matrix outlines AusAID’s generic critical performance factors during contract management and provides indicators as a tool to a fair and transparent assessment of contractor performance against these factors.</p> <p>When required, rows may be added to the matrix for more specific performance factors. Additionally, the indicators provided may be tailored where deemed necessary.</p> <p>It is essential that performance factors and indicators are discussed and agreed with the contractor at the commencement of the assessment period.</p> <p>The performance of the contractor is to be determined using the tabled ratings scale below:</p>																	
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="background-color: #d3d3d3;">Satisfactory</th> <th colspan="2" style="background-color: #d3d3d3;">Less than satisfactory</th> </tr> </thead> <tbody> <tr> <td style="width: 5%;">6</td> <td style="width: 45%;">Outstanding – all contracted responsibilities delivered with a high degree of efficiency and effectiveness efficiently, and pro-active steps taken to achieve outcomes above and beyond contracted responsibilities</td> <td style="width: 5%;">3</td> <td style="width: 45%;">Less than satisfactory – effort needed to improve delivery of one or more core contracted responsibilities</td> </tr> <tr> <td>5</td> <td>Very Good – all contracted responsibilities delivered efficiently and effectively</td> <td>2</td> <td>Weak – major effort needed to improve delivery of core contracted responsibilities, AusAID very hands on in managing areas where contractor is not delivering</td> </tr> <tr> <td>4</td> <td>Satisfactory – minor effort needed to improve delivery of some areas of contracted responsibilities</td> <td>1</td> <td>Very Weak – serious underperformance, not meeting most contract deliverables</td> </tr> </tbody> </table>		Satisfactory		Less than satisfactory		6	Outstanding – all contracted responsibilities delivered with a high degree of efficiency and effectiveness efficiently, and pro-active steps taken to achieve outcomes above and beyond contracted responsibilities	3	Less than satisfactory – effort needed to improve delivery of one or more core contracted responsibilities	5	Very Good – all contracted responsibilities delivered efficiently and effectively	2	Weak – major effort needed to improve delivery of core contracted responsibilities, AusAID very hands on in managing areas where contractor is not delivering	4	Satisfactory – minor effort needed to improve delivery of some areas of contracted responsibilities	1	Very Weak – serious underperformance, not meeting most contract deliverables
Satisfactory		Less than satisfactory															
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4	Satisfactory – minor effort needed to improve delivery of some areas of contracted responsibilities	1	Very Weak – serious underperformance, not meeting most contract deliverables														

*** 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 ***

Critical Performance factors	Indicators	AusAID score	Contractor score
GENERIC CRITERIA			
Organisation			
In-Australia management and administrative support	<ul style="list-style-type: none"> ▪ Ability to plan and administer the activity in accordance with the contract ▪ Support services provided to the in-country team ▪ Regular monitoring of and engagement with in-country team 		
In-country management and administrative support	<ul style="list-style-type: none"> ▪ Management responsiveness particularly to change and appropriately the development context ▪ Appropriate planning and monitoring of activities ▪ Quality of advice to AusAID Activity Manager 		
Relationship with AusAID	<ul style="list-style-type: none"> ▪ Co-operation in all matters relating to the contract ▪ Open and honest in addressing problems ▪ Regular communication and updates 		
Quality of activity financial management, including budget management, estimates of expenditure, acquittal and invoicing processes	<ul style="list-style-type: none"> ▪ Responsiveness to AusAID's requests for financial information – timely, concise & informative ▪ Ability to deliver activities within budget ▪ Accuracy of financial information including invoices, estimates of forward expenditure etc. 		
Approach			
Pro-activeness in identifying and responding to activity risks, issues and problems	<ul style="list-style-type: none"> ▪ Promptly identifying and informing AusAID of substantive issues likely to adversely affect the timing, cost or quality of the activity ▪ Provide recommendations for actions to manage the issues 		
Quality of communication and relationship with activity stakeholders	<ul style="list-style-type: none"> ▪ Feedback received from partner government on satisfaction with consultation ▪ Time and effort invested in developing 		

	a partnership with counterparts		
Efforts to engage in continuous improvement	<ul style="list-style-type: none"> ▪ Proactively identifies areas for improvements 		
Quality of key planning documentation eg. Annual Plans	<ul style="list-style-type: none"> ▪ Timely submission of documentation which meets AusAID's and counterparts requirements ▪ Documentation does not require multiple re-writes 		
Attention to AusAID's policies eg. gender and development, environment and child protection	<ul style="list-style-type: none"> ▪ Evidence of plans, monitoring and results which show progress towards these aid policy commitments 		
Personnel			
Performance of team leader	<ul style="list-style-type: none"> ▪ Effective communication and leadership ▪ Achieves results against TOR/Duty Statement ▪ Relationship with stakeholders ▪ Management of team 		
Performance of other key activity personnel	<ul style="list-style-type: none"> ▪ Achieve results against TOR/Duty Statement ▪ Relationships with stakeholders 		
Ability to maintain quality project personnel	<ul style="list-style-type: none"> ▪ Suitability of staff ▪ Staff turnover levels 		
Timeliness in replacing activity personnel	<ul style="list-style-type: none"> ▪ Minimal disruption ▪ Proactively informing AusAID of staff changes ▪ Satisfactory recruitment process ▪ Quality of replacement staff 		
Management of unsatisfactory personnel performance, where appropriate	<ul style="list-style-type: none"> ▪ Management control of personnel performance ▪ Timely identification of issues with personnel and proactively proposing solutions ▪ Willingness to replace personnel where necessary 		
Project Management			
Quality and timeliness of activity milestones and deliverables	<ul style="list-style-type: none"> ▪ Ability to achieve milestones and deliverables within the set timeframe ▪ Strategies for management of delays ▪ Milestones and deliverables do not require substantial reworking by AusAID and meet quality standards 		
Effective measurement of activity progress, including quality of monitoring information	<ul style="list-style-type: none"> ▪ M&E framework has clearly defined and measurable objectives ▪ M&E framework has effective quantitative and qualitative indicators ▪ Where appropriate, demonstrated strengthening of partner government 		

	systems		
Appropriately addressing sustainability, with due account of partner government systems, stakeholder ownership and phase out	<ul style="list-style-type: none"> ▪ Understanding of key factors promoting or inhibiting sustainability and strategy to promote sustainability ▪ Appropriately preparing for transition following the completion of the activity 		
Responsiveness to AusAID requests and instructions	<ul style="list-style-type: none"> ▪ Timely response to AusAID requests ▪ Ability to respond to unexpected requests ▪ Acceptance of AusAID decisions 		
SPECIFIC CRITERIA			

*** THIS SECTION IS COMPLETED BY THE AM AT EACH PERFORMANCE MEETING ***

1. Factors Affecting Performance

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 (eg. Cyclone).

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

3. AusAID Comments against Critical Performance Factors

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

Contractor Signature

Activity Manager Signature

Contractor Comments against Critical Performance Factors:

Attachments	Yes/No
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WILL BE PLACED ON THE CONTRACTOR'S PERFORMANCE FILE AND MAY BE USED BY AUSAID AS PART OF ANY FUTURE CONTRACTOR SELECTION PROCESS ***

SCHEDULE 2 – DRAFT BASIS OF PAYMENT

PAPUA NEW GUINEA ELECTORAL SUPPORT PROGRAM (PHASE 3)

Note to Tenderers: Although this Draft Basis of Payment is presented as **Part 6** of this RFT, in the consolidated Contract this will appear as **Schedule 2**.

1. TOTAL AMOUNT

- 1.1 The total amount payable by AusAID to the Contractor shall not exceed the sum of **AUDxx** plus GST, if any to a maximum of **AUDxx**.
- 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: Total Amount Payable

Clause Reference	Item	Maximum Payable (AUD)
3	Fixed Management Fees – Quarterly Payments	
4	Fixed Management Fees – Milestone Payments	
5	Reimbursable Long-Term Personnel Costs	
6	Reimbursable Short-Term Personnel Costs	
7	Reimbursable Operational, Travel and Activity Costs	7,420,000
	TOTAL (excluding GST)	

- 1.4 The Term of this Contract is for two (2) years however should AusAID choose to extend the Contract as per **Clause 2.3 of Part A**, the costs and fees specified for Year Three (3) and Year Four (4) in the following Tables of this **Schedule 2** will apply.

2. FIXED MANAGEMENT FEES

- 2.1 AusAID shall pay the Contractor a Fixed Management Fee (FMF) of **AUDxx**.
- 2.2 The Fixed Management Fee includes but is not limited to the following:
- (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 5A** of this Schedule);

- (d) other leave entitlements not specified in **Clause 5** below;
- (e) all domestic and international communication costs incurred;
- (f) financial management costs and financing costs, if any;
- (g) external audit and internal auditing and assurance costs;
- (h) security costs;
- (i) taxation (other than personnel-related taxes and GST), as applicable;
- (j) 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 and **Clause 15** (Insurances) of **Part A** (Program Specific Contract Conditions) except any insurances required under **Clause 12.3** of **Part A** (Program Specific Contract Conditions);
- (k) costs of complying with the Contractor's reporting and liaison obligations under the Contract;
- (l) costs associated with all personnel briefings;
- (m) recruitment costs;
- (n) costs associated with any sub-contracting and procurement of goods or services;
- (o) all escalators for the Term of the Contract;
- (p) allowances for risk and contingencies;
- (q) costs associated with the Performance Guarantee (**Clause 20** of **Part B**);
- (r) costs associated with the Unconditional Financial Undertaking (**Clause 18** of **Part A**);
- (s) any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor;
- (t) profit, management overheads and commercial margins/mark-up for all personnel; and
- (u) all other costs not specifically identified in this Schedule.

BUT exclusive of:

- (v) personnel listed in Table 5A of this Schedule; and
- (w) any insurances required under Clause 12.3 of Part A (Program Specific Contract Conditions).

2.3 The Fixed Management Fees shall be paid as follows:

- (a) Forty percent (40%) shall be paid as Quarterly Payments
- (b) Sixty percent (60%) shall be paid as Milestone Payments.

3. **FIXED MANAGEMENT FEES – QUARTERLY PAYMENTS**

3.1 Forty percent (40%) of the Fixed Management Fees payable to the Contractor **AUDxx** will be paid progressively on a quarterly basis within thirty (30) days of AusAID's receipt of a correctly rendered invoice including certification that the inputs have been provided as required by the contract. (Refer to **Tables 2A/B** of this Schedule). The first payment may be invoiced three (3) months after the Program Start Date.

4. **FIXED MANAGEMENT FEES - MILESTONE PAYMENTS**

4.1 Sixty percent (60%) of the Fixed Management Fees payable to the Contractor **AUDxx** will be paid progressively upon satisfactory submission of the inputs as per **Tables 4A/B**, and within thirty (30) days of AusAID's acceptance of a correctly rendered invoice.

4.2 AusAID shall not be obliged to make payment until all of the outputs to be achieved by the Contractor in the period covered by the plan, report or strategy have been achieved.

4.3 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.

5. **REIMBURSABLE LONG-TERM PERSONNEL COSTS**

5.1 AusAID shall reimburse the Contractor up to a maximum of **AUDxx** for the Long-Term Personnel.

5.2 For each Long-Term Personnel specified in **Tables 5A/B** of this Schedule, AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears, an all-inclusive Monthly Professional Fee. The actual costs paid by the Contractor to or on behalf of Long-Term Personnel shall be reimbursed by AusAID up to the limit specified in **Table 5A/B** of this Schedule and paid within thirty (30) days of AusAID's receipt of a correctly rendered invoice.

5.3 The all-inclusive Monthly Professional Fee shall be inclusive of:

- (a) salary, based on a five (5) day working week;

- (b) all personnel-related taxes, levies and insurances incurred in Australia, with the exception of GST for Services performed in Australia (refer to **Clause 21** (Goods and Services Tax) of **Part B** of the Contract];
- (c) any relevant employment conditions;
- (d) superannuation levy, if any, as appropriate;
- (e) paid annual leave allowances of up to four (4) weeks per annum (in accordance with **Clause 5.5 or 5.6 below**), to accrue on a pro-rata basis per twelve (12) months' continuous engagement, including all associated leave costs;
- (f) public holidays per annum as designated by AusAID Canberra;
- (g) housing accommodation, utilities and private transport costs;
- (h) all escalators for the Term of the Contract;
- (i) all other costs not listed as reimbursable items;

BUT exclusive of:

- (j) any profit, overheads, administration or management fee or any other mark-up on the part of the Contractor;
- (k) travel costs, including domestic and international program-related travel and accommodation, per diems, and local transport costs where required; and
- (l) other leave entitlements not specified in **Clause 5**;

5.4 In addition to the items listed under **Clause 5.3 above**, AusAID shall reimburse the Contractor for any mobilisation and demobilisation costs applicable to Long-Term Personnel (including airfares, any necessary medical clearances and inoculations, uplift of effects, passport and visa costs, and storage) at cost (subject to reasonableness) and in arrears, up to the maximum amounts specified in **Table 5A** of this Schedule on a one-off basis, if applicable.

5.5 Leave accrued during the assignment for Long-Term Personnel shall be deemed to be taken in the year it falls due and cannot be accumulated or paid out.

5.6 Where Contractor leave entitlements for Personnel exceed one (1) trip or a total of four (4) weeks per twelve (12) month period, a satisfactory justification must be provided to AusAID of how the Contractor will ensure, during Specified Personnel absences, the continued quality of the Services. AusAID will not reimburse leave costs in excess of those specified at **Clauses 5.3 and 5.4 above**.

6. REIMBURSABLE SHORT-TERM PERSONNEL COSTS

6.1 AusAID shall reimburse the Contractor up to a maximum of **AUDxx** for Short-Term Personnel engaged in accordance with **Clause 6 of Schedule 1** (Scope of Services).

- 6.2 For each Short-Term Personnel specified in **Tables 6A/B**. AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears for actual inputs provided, an all-inclusive Daily Professional Fee. The actual costs paid by the Contractor to or on behalf of Short-Term Personnel shall be reimbursed by AusAID in accordance with necessary approval and paid within thirty (30) days of AusAID's receipt of a correctly rendered invoice.
- 6.3 Short-Term Personnel inputs must be identified and approved as part of the relevant Annual Plan, or otherwise approved in writing by AusAID. Costs for approved Short-Term Personnel shall be drawn down from the Reimbursable Other Short-Term Personnel category described in **Clause 6.1 above** and **Tables 6A/B**.
- 6.4 The Daily Professional Fee for Short-Term Personnel is inclusive of:
- (a) all salary and allowances;
 - (b) all personnel-related taxes, levies and insurances incurred in Australia, with the exception of GST for Services performed in Australia (refer to **Clause 21** (Goods and Services Tax) of **Part B** of the Contract);
 - (c) any relevant employment conditions;
 - (d) superannuation levy, if any, as appropriate;
 - (e) recruitment costs for technical personnel; and
 - (f) all escalators for the Term of the Contract;
- BUT exclusive of:
- (g) any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor.
- 6.5 When the Reimbursable Short-Term personnel category expenditure reaches **80%** of the amount specified 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.

7. **REIMBURSABLE OPERATIONAL, TRAVEL AND ACTIVITY COSTS**

- 7.1 AusAID shall reimburse all reasonable costs actually incurred by the Contractor for Reimbursable Operational, Travel and Activity Costs as shown in **Table 7** of this Schedule, up to a maximum of **AUD7,420,000**.
- 7.2 Reimbursable Operational costs means:
- (a) Office establishment such as office furniture or computers,;
 - (b) Transport hire or vehicle purchase;
 - (c) Recurrent office costs such as supplies/stationery, phone, fax, printers, papers, photocopier and software,

- (d) Utilities or office rent required by the Contractor for the day-to-day administration; and
- (e) any insurances required under **Clause 12.3 of Part A** (Program Specific Contract Conditions).

7.3 Reimbursable Travel costs means:

- (a) Airfares reimbursed at economy class for flight legs under four (4) hours and business class for flight legs over four (4) hours. Any travel undertaken at cheaper rates (e.g. discount fares) does not entitle the Contractor to reimbursement of the cost of any higher class of travel. Travel must be via the most direct and cost effective route;
- (b) Compulsory Arrival and Departure Taxes, Visas, and Travel to and from Airport: reimbursed at cost;
- (c) Hotel Accommodation: reimbursed at lesser of actual cost incurred or **AUDxx** per city; and
- (d) Travelling Allowance: an agreed daily rate of **AUDxx** in cityxxx (or **AUDxx** for other locations not specified in AusAID standard rates), towards the costs of meals and incidentals.

7.4 Reimbursable activity costs means:

- (a) Costs for funding approved activities funded under the Program, distributed to various PNG electoral stakeholders, including government agencies and CSOs, to conduct activities approved by the Program Board in the Annual Plan.

7.5 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 7** of this Schedule may be reallocated between line items, with AusAID's prior written approval, but cannot exceed the total specified in **Clause 7.1 above**.

7.6 When expenditure reaches 80% of the specified limit for these Costs, the Contractor must advise AusAID of the remaining commitments and whether the upper limit is likely to be exceeded, and, if so, provide justification and seek AusAID approval for an increase.

8. **FINANCIAL MANAGEMENT REQUIREMENTS**

8.1 Within one (1) month of the Program Start Date AusAID will provide the Contractor with Payment Event numbers for all expected payments.

8.2 The Contractor must advise AusAID if amounts, dates of services or any other changes to financial estimates occur in between the invoice submission points.

8.3 The Contractor must quote the Contract number and the Payment Event number in all invoices.

9. **CLAIMS FOR PAYMENT**

- 9.1 The Contractor's tax invoice must be submitted when due pursuant to this Schedule in a form identifiable with the Services.
- 9.2 All tax invoices must include a certification by a Company director of the Contractor, or their delegate:
- (a) that the invoice has been correctly calculated; and
 - (b) that the Services included in it have been performed in accordance with the Contract.
 - (c) that the invoice is addressed to the AusAID Activity Manager.
- 9.3 All claims for payment must be **made out to:**
- Chief Finance Officer
Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601
AUSTRALIA
- 9.4 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 and copied to the AusAID Officer specified in **Clause 4** (Notices) of **Part A** of this Contract.
- 9.5 Invalid invoices will be returned to contractors. Information on what constitutes a valid tax invoice can be found at:
<http://www.ato.gov.au/businesses/content.asp?doc=/content/50913.html>

Table 2A: Fixed Management Fee Quarterly Payments

Fixed Management Fee	Year 1 (AUD)	Year 2 (AUD)	Maximum Amount Payable (AUD)
Quarterly Payment			
TOTAL			

Table 2B: Fixed Management Fees Quarterly Payments – Option Period *

Fixed Management Fee	Year 3 (AUD)	Year 4 (AUD)	Maximum Amount Payable (AUD)
Quarterly Payment			
TOTAL			

* These fees shall apply only in the event that AusAID exercises its option to extend under Clause 2 of Part A (Program Specific Contract Conditions shown as Part 3 of this RFT).

Table 3A: Fixed Management Fee (FMF)

	Escalator (%)	Year 1 (AUD)	Year 2 (AUD)	Maximum Amount Payable (AUD)
Fixed Management Fee				

Table 3B: Fixed Management Fee (FMF) – Option Period*

	Escalator (%)	Year 3 (AUD)	Year 4 (AUD)	Maximum Amount Payable (AUD)
Fixed Management Fee				

* These fees shall apply only in the event that AusAID exercises its option to extend under Clause 2 of Part A (Program Specific Contract Conditions shown as Part 3 of this RFT).

Table 3C: Fixed Management Fee – Breakdown of Year 1 rates

Item	Maximum Amount Payable (AUD)
all high level management and management support costs for all Program personnel;	
the cost of any Contractor Head Office support, such as administrative, financial and management support;	
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 5A of this Schedule);	
other leave entitlements not specified in Clause 5 (of this Schedule);	
all domestic and international communication costs incurred;	
financial management costs and financing costs, if any;	
external audit and internal auditing and assurance costs;	
security costs;	
taxation (other than personnel-related taxes and GST), as applicable;	
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 4 (Standard Contract Conditions) of the Contract;	
costs of complying with the Contractor’s reporting and liaison obligations under the Contract;	
costs associated with all personnel briefings;	
recruitment costs;	
costs associated with any sub-contracting and procurement of goods or services;	
all escalators for the Term of the Contract;	
all allowances for risk and contingencies;	
costs associated with the Performance Guarantee (Clause 16 of Part A of the Draft Contract);	
costs associated with the Unconditional Financial Undertaking (UFU) (Clause 15 of Part A of the Draft Contract).	
any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor; and	
all other costs not specifically identified in Clause 2 of this Schedule.	
TOTAL	

Table 4A: Milestone Payments

Milestone	Deliverable Output	Verifiable Indicator	Completion Date	Payment (AUD)
	Annual Plans		14 April 2011	
	Annual Plans		1 December 2011	
	Six Monthly Report		1 June 2011	
	Six Monthly Report		1 December 2011	
	Six Monthly Report		1 June 2012	
	Six Monthly Report		1 December 2012	
	Exit/ Transition Strategy		13 January 2013	
	Completion Report		13 January 2013	
TOTAL				

Table 4B: Milestone Payments – Option period*

Milestone	Deliverable Output	Verifiable Indicator	Completion Date	Payment (AUD)
TOTAL				

* These fees shall apply only in the event that AusAID exercises its option to extend under Clause 2 of Part A (Program Specific Contract Conditions shown as Part 3 of this RFT).

Table 5A: Reimbursable Long-term Personnel

Position	Name	Year 1		Year 2		Mobilis. and Demobili. (AUD)	Maximum Amount Payable (AUD)
		Inputs (months)	Monthly Rate (AUD)	Input (months)	Monthly Rate (AUD)		
Program Manager							
Elections Operations Adviser							
Planning and Coordination Adviser							
Awareness Adviser							
Program Officer							
<i>{Tenderer to specify other positions}</i>							

Table 5B: Long-Term Personnel Costs – Option Period*

Position	Name	Year 3		Year 4		Maximum Amount Payable (AUD)
		Inputs (months)	Monthly Rate (AUD)	Input (months)	Monthly Rate (AUD)	
Program Manager						
Elections Operations Adviser						
Planning and Coordination Adviser						
Awareness Adviser						
Program Officer						
<i>{Tenderer to specify other positions}</i>						

* These fees shall apply only in the event that AusAID exercises its option to extend under Clause 2 of Part A (Program Specific Contract Conditions shown as Part 3 of this RFT).

*In accordance with Clauses 6.1 of Schedule 1 (Scope of Services), the personnel specified for these positions are required to be maintained for a minimum period of six (6) months. Any approved changes to the personnel or the monthly rates for these positions will be implemented by a Deed of Amendment.

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

Position	Salary* (a) (AUD)	Taxes (b) & (c) (AUD)	Super- annuation (d) (AUD)	Leave Allowance (e) & (f) (AUD)	Accomm- odation (g) (AUD)	Other (i) (AUD)	Total Monthly Rate (AUD)	Escalator for subsequent years (h) (%)
Program Manager								
Elections Operations Adviser								
Planning and Coordination Adviser								
Awareness Adviser								
Program Officer								
<i>{Tenderer to specify other positions}</i>								

* Tenderers 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 - The information detailed above in this breakdown section is supplementary to Table 5B. This information is for general reference related to year 1 only and any changes to the Contractor’s assumptions listed here will not alter the amounts shown in Table 5A. In the event of any discrepancy between Tables 5A and 5C including notes, Table 5A prevails.

Table 6A: Reimbursable Short-term Personnel

Position	Name	Year 1		Year 2		Maximum Amount Payable (AUD)
		Inputs (days)	Daily Fee (AUD)	Input (days)	Daily Fee (AUD)	
Contractor Representative						
M&E Adviser						
Financial Management Adviser						
Gender and HIV Adviser						
<i>{Tenderer to specify other positions}</i>						
Other Short-Term Personnel						200,000
TOTAL						

Table 6B: Short-term Personnel Costs – Option Period*

Position	Name	Year 3		Year 4		Maximum Amount Payable (AUD)
		Inputs (days)	Daily Fee (AUD)	Input (days)	Daily Fee (AUD)	
Contractor Representative						
M&E Adviser						
Financial Management Adviser						
Gender and HIV Adviser						
<i>{Tenderer to specify other positions}</i>						
Other Short-Term Personnel						
TOTAL						xx

* These fees shall apply only in the event that AusAID exercises its option to extend under Clause 2 of Part A (Program Specific Contract Conditions shown as Part 3 of this RFT).

Table 7: Reimbursable Operational, Travel and Activity Costs

Item	Maximum Amount Payable (AUD)
Operational and Travel Costs	720,000
Activity Costs	6,700,000
TOTAL	7,420,000

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 program in **Country**.
- B) The Recipient has been engaged by the Contractor to work on the program.
- 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 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

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 “**Sub-contractor**”);

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 Sub-contractor is a sub-contractor to the Contractor for the Services.
- C. The Sub-contractor and Contractor have agreed with AusAID to novate the Sub-contract to AusAID in the event that AusAID exercises its right under **Clause 31** and **32** of Part B the Contract.
- D. The Sub-contractor agrees that AusAID may novate the Sub-contract to another Contractor at its sole and absolute discretion in the event that AusAID has exercised its right under **Clause 31** and **32** of Part B of the Contract.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. **DEFINITIONS**

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

“**Commencement Date**” has the same meaning as in the Contract;

“**Contract**” means the Contract for the provision of Services between AusAID and the Contractor dated on or about [_____];

“**Deed**” means this Deed of Novation;

“**Services**” means the services to be provided by the Contractor to AusAID under the Contract;

“**Party**” means AusAID, the Sub-contractor or the Contractor;

“**Sub-contract**” means the contract between the Contractor and the Sub-contractor for the provision of the Sub-contractor Services; and

“**Sub-contractor Services**” means the services that the Sub-contractor is obliged to provide to the Contractor under the Sub-contract.

2. APPLICATION OF DEED

2.1 The Contractor and the Sub-contractor 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 Sub-contract.

3. NOVATION

3.1 AusAID may issue a notice of substitution to the Sub-contractor if AusAID is entitled to exercise its rights under **Clauses 31 or 32** of Part B 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 Sub-contract in respect of the Sub-contractor Services as if AusAID was originally the Party to the Sub-contract instead of the Contractor, and all references in the Sub-contract 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 Sub-contractor under the Sub-contract to the Sub-contractor and the receipt of the Sub-contractor 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 Sub-contract and enjoys all the rights and benefits of the Contractor under the Sub-contract; and
- (d) the performance by the Sub-contractor of services under the Sub-contract, is instead of, and not in addition to, any performance by the Contractor of its obligations under that Sub-contract.

3.3 If AusAID exercises its rights of novation under this deed, AusAID may further novate the Sub-contract 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 Sub-contractor with respect to the Contractor shall become the rights and obligations of the Sub-contractor with respect to the new contractor.

4. RELEASE

4.1 Except in relation to payment due from the Contractor to the Sub-contractor under the Sub-contract 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 Sub-contract prior to the date of the notice of substitution in respect of the Sub-contractor 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 Sub-contractor nor the Contractor are discharged or released or excused from this Deed by an arrangement made between the Contractor and the Sub-contractor prior to the issue of a notice of substitution with, by any change to the Sub-contract, or by any forbearance whether as to payment, time or otherwise.

6.2 The Contractor undertakes to notify AusAID of any alterations to the Sub-contract 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 Sub-contractor's obligations under this Deed.

6.3 This Deed by the Sub-contractor for AusAID to assume the obligations of the Contractor is discharged in relation to the Sub-contract only on completion by the Sub-contractor of all its obligations under the Sub-contract in respect of the Sub-contractor Services, or, in the event of the issue of a notice of substitution, on the due and proper performance of the Sub-contract by the Sub-contractor.

6.4 The obligations of AusAID under this Deed in its application to the Sub-contract must not exceed the obligations of the Contractor under the Sub-contract.

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**

Sub-contractor

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 Sub-contractor 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 Sub-contractor and the Contractor respectively;
- (b) the Sub-contractor 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 Sub-contractor and the Contractor respectively, enforceable in accordance with its terms by appropriate legal remedy; and
- (d) to the best of each of the Sub-contractor's or the Contractor's knowledge, there are no actions, claims, proceedings or investigations pending or threatened against or by the Sub-contractor or the Contractor respectively that may have a material effect on the ability of the Sub-contractor 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 [*Sub-*
contractor] 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 - UNCONDITIONAL FINANCIAL UNDERTAKING

THIS DEED POLL made 20

BY:

[] (the
“Guarantor”)

FOR THE BENEFIT OF:

COMMONWEALTH OF AUSTRALIA (represented by the Australian Agency for International Development (“**AusAID**”).

RECITALS:

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

THE GUARANTOR DECLARES as follows:

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

4. The Guarantor may at any time pay to AusAID the maximum aggregate sum or such lesser sum remaining after any part payment or payments, which payment shall discharge this Undertaking.

5. **EXECUTED** as a deed poll.

SIGNED, for and on behalf of the
GUARANTOR by:

Signature of Director

Signature of Director/Secretary

Name of Director
(Print)

Name of Director/Secretary
(Print)

OR

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

Signature of Attorney

Signature of Witness

Name of Attorney
(Print)

Name of Witness
(Print)

Date of Power of Attorney

SCHEDULE 6 – PERFORMANCE GUARANTEE

THIS DEED OF GUARANTEE is made the _____ day of _____ 20

BETWEEN

COMMONWEALTH OF AUSTRALIA represented by the Australian Agency for International Development (“**AusAID**”)

AND

[_____] ABN [_____] (the “**Guarantor**”)

RECITALS

- A. AusAID wishes to procure certain services.
- B. **Contractor's Name** (the “**Contractor**”) has agreed to supply the services to AusAID under the annexed Contract (the “**Contract**”).
- C. The Guarantor agrees to provide the guarantees and indemnities appearing in this Deed.

AGREEMENT

1. The Guarantor guarantees to AusAID the performance of the obligations undertaken by the Contractor under the Contract on the conditions set out in this Deed.
2. If the Contractor (unless relieved from the performance of the Contract by AusAID expressly or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its obligations under the Contract, the Guarantor shall, if required to do so by AusAID, complete or cause to be completed the obligations set out in, and in accordance with the conditions of, the Contract. If the Contractor commits any breach of its obligations, and such breach is not remedied by the Guarantor under this Deed and the Contract is then terminated for default, the Guarantor shall indemnify AusAID against losses, damages, costs and expenses directly incurred by reason of that default.
3. The Guarantor shall not be discharged or released or excused from this Deed by an arrangement made between the Contractor and AusAID with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise. The guarantee by the Guarantor in this Deed to assume the obligations of the Contractor shall continue in force and effect until completion of all the Contractor’s obligations under the Contract or until the completion of the undertakings under this Deed by the Guarantor.
4. The undertakings of the Guarantor under this Deed shall not exceed the obligations of the Contractor under the Contract. Any liability of the Guarantor shall be coextensive, but not in excess of any liability of the Contractor to AusAID under the Contract. The Guarantor shall be entitled to all rights, privileges and defences otherwise available, to the Contractor with respect to any such liability, including without limitation all provisions of the Contract relating to the limitation of liability and the resolution of disputes.
5. This Deed is subject to, and is to be construed in accordance with, the laws in force in the Australian Capital Territory and the parties agree that the courts of that Territory have jurisdiction to entertain any action in respect of, or arising out of, this Deed and the parties submit themselves to the jurisdiction of those courts.

6. For the purpose of this Deed, where an obligation of the Contractor under the Contract has not been performed, the Contractor shall be taken to have failed to perform that obligation notwithstanding that the Contractor has been dissolved or is subject to external administration procedures under Chapter 5 of the *Corporations Law* or any other law.
7. The guarantee in this Deed is a continuing guarantee to AusAID until the obligations and liabilities of the Contractor under the Contract have in all respects been performed, observed and discharged.
8. The following notice arrangements apply:
 - (a) notice or other communication which may be given to or served on the Guarantor under this Deed shall be deemed to have been duly given or served if it is in writing, signed on behalf of AusAID and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Guarantor or its agent at any registered office of the Guarantor or posted to the Guarantor's address set out above or such other address as is notified in writing to AusAID from time to time;
 - (b) a notice or other communication which may be given to or served on AusAID under this Deed shall be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Guarantor and is either delivered by hand, posted or faxed or a copy transmitted electronically to AusAID at the address set out above or such other address as is notified in writing to the Guarantor from time to time;
 - (c) a notice sent by post shall be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent; and
 - (d) a notice sent by facsimile transmission or transmitted electronically shall be deemed to have been given when the machine on which the notice is sent reports that the notice has been transmitted satisfactorily.

SIGNED, for and on behalf of the
**COMMONWEALTH OF
AUSTRALIA** by:

In the presence of:

.....

Signature of Witness

.....

Name of Witness

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

.....

Director
Name

.....

Name and Position

.....

Director/Secretary
Name