



Australian Government

AusAID

25 September 2010

Request for Tender

**KIRIBATI EDUCATION IMPROVEMENT PROGRAM
(KEIP)**

REQUEST FOR TENDER

Kiribati Education Improvement Program (KEIP)

AusAID is seeking proposals from organisations interested in providing services for the **Kiribati Education Improvement Program** (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 3 - Scope of Services.

STRUCTURE OF THE RFT

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

Section 1 details the:

- Project Specific Tender Conditions (**Part 1**);
- Project Specific Contract Conditions (**Part 2**);
- Scope of Services (**Part 3**); and
- Basis of Payments (**Part 4**).

Section 2 details the:

- Standard Tender Conditions (**Part 5**); and
- Standard Contract Conditions (**Part 6**).

The two sections are designed to clearly identify standard clauses applicable to AusAID tenders and contracts and by extension to highlight particular requirements (either in tendering or the contract) that will apply for this particular 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 5**.

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

AusAID Contracts Charter

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

SECTION 1 – PROGRAM SPECIFIC TENDER AND CONTRACT CONDITIONS

PART 1 – PROGRAM SPECIFIC TENDER CONDITIONS

1. TENDER PARTICULARS

Closing Time:

(Clauses 1.11 and 1.15, Part 5)

**2.00pm local time in Canberra, Australia
Wednesday 10 November 2010**

Mode of submission:

(Clause 1.1, Part 5)

Either:

- Electronically, via AusTender at <https://tenders.gov.au> before the tender **Closing Time**;

or

- in hard copy, by depositing by hand in the Australian High Commission (Suva) Tender Box before the tender **Closing Time**.

Electronic Tender Lodgement

Address:

(Clause 1.11, Part 5)

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

Suva Tender Box Address:

(Clause 1.15, Part 5)

Tender Box, Australian High Commission
37 Princes Road, Suva, Fiji

Business Hours

for hard copy lodgement:

(Clause 1.15, Part 5)

Monday to Friday, 8.30 am to 5.00 pm
local time in Suva, Fiji
Excluding Public holidays.

File Format for Electronic Tenders:

(Clause 4.3, Annex C to Part 5)

PDF (Portable Document Format)

Number of Copies of Tender:

(Clause 1.6, Part 5)

For electronic tender lodgement

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

Technical Proposal: One (1) electronic copy.

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

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

For hard copy tender lodgement

Technical Proposal: One (1) printed Original

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

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

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

Endorsement of hard copy Tenders:

(Clause 1.17, Part 5)

"Tender for the Kiribati Education Improvement Program."

Tender Validity Period:

(Clause 1.8, Part 5)

180 days

Contact Person:

(Clause 2.1, Part 5)

Richelle Turner

Fax: (679) 338 2695

Email address: keip@ausaid.gov.au

Tender Proposal Structure and Page limits:

(Clauses 7.15 and 7.17, Part 5)

Tenderer's Submission Checklist

Tender Schedule A - Technical Proposal

Cover Page

Response to Selection Criteria:

(A) Approach (up to four (4) A4 pages)

(B) KEIP Team Leader and Administrative Personnel (up to three (3) A4 pages)

(C) Technical Assistance (up to eight (8) A4 pages)

(D) Management Capacity (up to five (5) A4 pages)

Annex 1 – Past Experience (up to four (4) examples)

Annex 2 – Work Plan (on A3 paper)

Annex 3 – Team member Inputs (two (2) bar charts on A3 paper: administrative personnel and technical assistance)

Annex 4 – Letters of Association (one A4 page per Association or Sub-contract)

Annex 5 - Commonwealth Government Policies Compliance

Tender Schedule B – Proposed Personnel

Table: KEIP Team Leader and Technical Assistance

Curriculum Vitae for Team Leader and Technical Assistance (up to three (3) pages each)

Position Descriptions for Technical Assistance (up to three (3) pages each)

Tender Schedule C – Financial proposal
Tables 1 – 10

Tender Schedule D – Financial Assessment
Option 1 or Option 2

Tender Declaration

Information:

The following documents are attached:
Design Document, and associated annexes
Word version of Tenderers Submission Checklist and
Personnel and Financial Tables
Kiribati National Education Summit Outcomes/ ESSP 2008
– 2011

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

2. **ALTERNATIVE TENDERS**

- 2.1 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”.
- 2.2 Alternative Tenders will be considered only after completion of the technical assessment of conforming Tenders.
- 2.3 Only the alternative Tender of the preferred tenderer (following TAP assessment of conforming Tenders) will be assessed.
- 2.4 Alternative Tenders will be technically assessed against the selection criteria contained in this RFT.

3. **SCORE WEIGHTINGS**

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

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

- 3.2 The TAP will shortlist tenderers based on tenderer's written response to the RFT. Only shortlisted tenderers may be invited to interview. Up to three (3) personnel will be invited by AusAID to participate in the interview. The following personnel will be required to participate in the interview: the proposed KEIP Team Leader and one (1) company representative nominated by the Tenderer. AusAID will inform tenderer's of the other individual requested to participate on confirmation of the date/time and venue of the interview. Tenderers are required to participate in the interview at their own cost and participation may be via teleconference or in person. Interviews may be conducted in either Canberra, Australia or Nadi/Suva, Fiji. AusAID does not intend to interview personnel from any more than four (4) tenderers, unless advantageous to AusAID. Tenderers not invited to interview will be notified that their tender will not be considered further.
- 3.3 A like-for-like price assessment will be undertaken by AusAID on shortlisted tenderers that are assessed by the Technical Assessment Panel (TAP) as technically suitable.

- 3.4 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:

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

- 3.5 Following the final assessment and calculation of the final aggregate scores, confirmation of at least the preferred tenderer's financial capacity to meet the contractual obligations referred to in **Clause 86.11(b) of this Part** and consideration of other factors referred to in **Clause 7.8, Part 5** will be undertaken. Based on this, 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.

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

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

- (a) a technical proposal that substantively and individually addresses the selection criteria provided in **Clause 5.2 of this Part** taking into consideration “other factors” under **Clause 7.8, Part 5**; and
- (b) the required annexes included in **Clause 5.3 of this Part**.

4.2 **Selection Criteria**

(A) APPROACH

Weighting: 20%

Up to **four (4) A4 pages** demonstrating the tenderer's:

- (a) understanding of the KEIP objectives;
- (b) recognition of and response to the critical constraints of the KEIP; and
- (c) approach, both practical and strategic, to fulfilling the short and long term objectives of KEIP.

[Please note that information provided in Annex 2 – Work Plan and Annex 3 – Team Member Inputs will also be used in the assessment of this criteria.]

(B) KEIP TEAM LEADER AND ADMINISTRATIVE PERSONNEL

Weighting: 10%

Up to **three (3) A4 pages** which demonstrates that the KEIP Team Leader has the right skills, experience and qualifications, and is supported by sufficiently experienced administrative personnel, to work in a remote developing country to:

- (a) harmonise with the work of other donors;
- (b) align with Partner Government systems and priorities;
- (c) deliver multiple outputs efficiently;
- (d) manage reporting requirements on time;

- (e) support technical assistance and subcontractors to achieve deliverables effectively; and
- (f) deliver accurate financial forecasts and acquittals.

[Please note that information provided in Annex 3 – Team Member Inputs (KEIP Team Leader and Administrative Personnel) and Tender Schedule B (KEIP Team Leader) will also be used in the assessment of this criteria.]

(C) TECHNICAL ASSISTANCE

Weighting: 40%

Up to **eight (8) A4 pages** which demonstrates that the nominated technical assistance are well balanced, have a clear management structure and have the right mix of skills, experience and qualifications to: harmonise with the work of other donors; align with Partner Government systems and priorities; develop capacity of partner government officers while delivering outputs efficiently; and manage reporting requirements on time, under each of the following four priority areas:

- (a) facilities improvement (15%);
- (b) policy and legislation (5%);
- (c) workforce development (15%); and
- (d) improving curriculum and assessment (5%).

[Please note that information provided in Annex 2 – Work Plan and Annex 3 – Team Member Inputs (Technical Assistance) and Tender Schedule B will also be used in the assessment of this criteria.]

(D) MANAGEMENT CAPACITY

Weighting: 30%

A statement of up to **five (5) A4 pages** demonstrating the tenderer's experience managing an activity in a remote location, such as Kiribati, and an ability to facilitate the following:

- (a) source and provide flexible arrangements and strategies to support technical assistance;
- (b) manage financial arrangements of a program; and
- (c) manage effective quality control strategies/processes.

[Please note that information provided in Annex 1 – Past Experience Forms and Annex 4 – Letters of Association (if any) will also be used in the assessment of this criteria.]

4.3 Annexes

Annex 1 – Past Experience Form

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** and details of each activity must not exceed **one (1) A4 page**.

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

PAST EXPERIENCE FORM

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

Annex 2 – Work Plan

A detailed work plan of Phase 1 activity implementation on **A3 paper** showing dependencies, eg. A Gantt Chart or Critical Path Method identifying resources, dependencies and milestones. Dates referring to commencement or mobilisation are indicative only and may be varied by AusAID.

Annex 3 – Team Member Inputs (Bar Charts)

Two bar charts that shows the proposed inputs for each team member and indicates the total person months or person days for Phase 1 of KEIP. The charts should clearly indicate inputs of team members in-home country, in-Kiribati and in total.

The first bar chart should include the KEIP Team Leader and administrative personnel and the second bar chart should include all nominated Technical Assistance. Technical Assistant inputs should be indicated by each priority area. (i.e. policy and legislation; facilities improvement, workforce development and improving curriculum and assessment)

These charts must be presented on **A3 paper**.

Annex 4 – Letters of Association and other details of other proposed sub-contractors

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

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

Annex 5 – Commonwealth Government Policies Compliance

Tenderers are required to disclose in this annex if they are non compliant and/or have (or have had) issues associated with policies named in **Clause 17, Part 5**.

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

5. TENDER SCHEDULE B – KEIP TEAM LEADER AND TECHNICAL ASSISTANCE

- 5.1 Tender Schedule B** must contain all information on the KEIP Team Leader and proposed Technical Assistance (collectively referred to as “team members”) in the following format:
- (a) a list of proposed team members in the table (in landscape) format provided and in accordance with the instructions included in **Clauses 6.2 – 6.3** below; and
 - (b) a curriculum vitae of up to three (3) A4 pages each and position description (*Note: Team Leader position description is not required*) for each proposed team member that conforms with the requirements outlined in **Clauses 7.16 and 7.17, Part 5**.
- 5.2** Positions described in the design document are provided for information purposes only. Based on the nature of Services detailed in **Part 3 Scope of Services**, tenderers are asked to provide appropriate team members and positions descriptions to achieve the detailed deliverables. Terms of Reference for the KEIP Team Leader (only) contained in **Part 3 Scope of Services**, will be used as the basis for assessing the person proposed by tenderer’s and will be included in the final contract.
- 5.3** Tenderers must provide the information in the Referees column for the KEIP Team Leader and Technical Assistance Table in accordance with **Clauses 7.18 - 7.21, Part 5**. Tenderers must also indicate where the Long Term Personnel Positions will be located. This may include fly in fly out arrangements as necessary. Where this is the case, the tenderer should indicate how time will be split between different locations.
- 5.4** The Commitments column in the table must include details of proposed team members’ commitments to other projects (both AusAID and others) for the period of the Project. In addition to existing commitments, tenderers must detail potential commitments. Potential commitments include nominations in any contemporaneous AusAID or other tenders. Where a proposed team member has an existing commitment to another AusAID project,

Tenderers must also detail the duration of the position in the other AusAID project as reflected in the AusAID contract for that project.

- 5.5 Tenderers are reminded of the requirements of **Clause 8, Part 6** particularly in relation to the availability of specified personnel. AusAID will consider as materially inaccurate, and will therefore reject, any Tender which does not disclose the fact that a proposed team member has an existing and continuing commitment to another AusAID project.
- 5.6 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.
- 5.7 Tenderers are reminded of the requirements of **Clause 19.2, Part 5** particularly in relation to providing police clearance certificates for Personnel who may be nominated by AusAID as positions working with children. AusAID will confirm with the preferred tenderer which of their nominated positions would be nominated as 'working with children'. In this instance, the preferred tenderer will request the required criminal record checks in sufficient time to ensure that police clearance certificates can be provided in accordance with **Clause 19.2, Part 5**.
- (a) Tenderers should note that in Australia, national criminal record checks are available through the Australian Federal Police and take around 20 working days. The type of employment should be specified as 'overseas employment.' Overseas, different checking procedures apply in each country and may take six weeks or longer. Individuals need to give their consent to a criminal record check and should be informed of the purpose for which it will be used, including sighting by AusAID.

PERSONNEL: KEIP TEAM LEADER AND TECHNICAL ASSISTANCE

Long Term Personnel ¹						
Position	Name	Total Inputs in person months		Referee Contact Details		Commitments
		Overseas	In-Kiribati	#1	#2	
KEIP Team Leader						
<i>[please include all required Long Term Technical Assistance]</i>						
Short Term Personnel ²						
Position	Name	Daily Inputs		Referee Contact Details		Commitments

¹ "Long Term Personnel" or "LTP" means an individual working continuously for **six (6) months** or longer on the Program regardless of where they are geographically located.

² "Short Term Personnel" or "STP" means an individual working on the Program for less than **six (6) months** continuously regardless of where they are geographically located.

		Overseas	In-Kiribati	#1	#2	
<i>[please include all required Short Term Technical Assistance]</i>						

6. TENDER SCHEDULE C - FINANCIAL PROPOSAL

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

6.2 It must:

- (a) Be in the format of Tables 1 to 10 at **Annex 1** of this Part 1 Program Specific Tender Conditions;
- (b) be a fully costed fixed price based on the outputs and/or inputs as specified in the Scope of Services, including:
 - (i) escalation and any allowance for foreign exchange rate variations;
 - (ii) necessary insurances required by the Contract Conditions and for the performance of the Services;
- (c) be expressed in Australian dollars; and
- (d) include detailed information on assumptions used in preparing the pricing.

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

6.2 Information provided in **Table 10** will be used for any financial assessment and for the like-for-like price assessment.

Financial Proposal Tables

6.3 The Financial Proposal is to include the following components:

1. Reimbursable Tables

- (a) Long Term Personnel Costs and Allowances – **Table 1(a) & (b) and 2**
- (b) Short Term Personnel Costs – **Table 3(a) & (b)**
- (c) Procurement Costs – **Table 4**

2. Procurement and Management Fees

- (a) Procurement Fees such as freight and insurances – **Table 5**

- (b) Escalation Rate of Procurement Fee – **Table 6**
- (c) Management Fee – overheads and profit – **Table 7**
- (d) Escalation Rate for Reimbursable Personnel Costs – **Table 8**
- (e) Escalation Rate for Management Fee – **Table 9**

4. Like for Like Assessment

- (a) Summary of costs - **Table 10**

6.4 All Tables are provided at **Annex 1** of this Part 1 Project Specific Tender Conditions.

6.5 Notes and Instructions for Financial Proposal **Table 1 – 3**

- (a) Personnel Costs include the KEIP Team Leader, all administrative personnel and Technical Assistance. Tenderers must include all positions they consider will be required to deliver Services detailed in the **Part 3 Scope of Services**. Information provided in the Design Document regarding proposed personnel is for information purposes only.
- (b) For Long Term Personnel engaged for more than six (6) months consecutively, the monthly salary rate is a fixed monthly rate including: salary; all personnel related taxes, levies and insurances incurred in Australia or overseas; superannuation levy, if any, as appropriate; and leave costs.
- (c) For Short Term Personnel engaged for less than six (6) months consecutively, the daily professional fees is a fixed daily rate including: salary; all personnel related taxes, levies and insurances incurred in Australia or overseas; superannuation levy, if any, as appropriate; and leave costs.
- (d) The Contractor must not include any profit, overheads, administration or management fee or any other mark-up on the part of the Contractor or any Australian Goods and Services Tax (GST).
- (e) Leave will only be accrued for Long Term Personnel. Short Term Personnel will not be entitled to paid leave. Accrual of leave, up to four (4) weeks per annum, during the assignment shall be taken within each twelve (12) month period of the personnel's commencement date and in the relevant year it falls due. Except Locally Engaged Personnel for whom the local national labour laws and awards shall apply. Leave also includes up to thirteen (13) public holidays per annum as designated by the Australian High Commission in Kiribati.

6.6 Notes and Instructions for Financial proposal **Table 4:**

- (a) Procurement Costs cover all goods and sub-contracted services required to deliver the Services detailed in **Part 3 Scope of Services**, such as: furniture; office fit out costs, as required; IT equipment (computers and printers), office hardware and software; communication equipment (printer/scanner, fax, satellite/ land/ mobile phone); office consumables, such as paper; vehicles for work related purposes; work related flight costs within Kiribati for Long and Short Term Personnel; sub

contracted services for construction or the refurbishment of schools including: classrooms, library, ablution blocks, teacher accommodation etc, as necessary, and in accordance with the National Infrastructure Standards; and other items as detailed by the Tenderer.

- (b) In the event the Ministry of Education is not able to accommodate any members of the Preferred Tenderer's team, Tenderers are requested to cost the establishment of a full external Program Office.
- (c) Tenderers have an option to add procurement items as required to **Table 4**.

6.7 Notes and Instructions for Financial proposal **Table 5:**

- (a) Tenderers must ensure the nominated Procurement Fee is fully inclusive of, but not limited to, the following: all insurances, including insurances associated with any subcontracting, workers compensation, liability and indemnity, freight costs, and management and administrative fees associated with the procurement of goods and services as outlined in **Clause 6.5** above but exclusive of any Personnel related insurances such as travel/medical insurance.
- (b) The basis for the Procurement Fee should be provided by the tenderer in the form of a short narrative of no more than ½ **an A4 page**.

6.8 Notes and Instructions for Financial proposal **Table 6:**

- (a) In the event AusAID exercises the option beyond 2011-12 then the Contractor will propose a revised Procurement Fee for the period of the extension.

6.9 Notes and Instructions for Financial proposal **Table 7:**

- (a) Tenderers must ensure the Management Fee is fully inclusive of, but not limited to, the following Contractor costs: financial management costs and financing costs, if any; corporate overheads; all management support costs for all Personnel, including any language training costs, related Personnel insurances, Australia based preparation (pre mobilisation) and professional development costs, as required; all legal costs; taxation, as applicable; health, medivac, worker's compensation, liability and indemnity insurance; costs associated with personnel briefings in Australia or in-country; costs, including financial costs, associated with any subcontracting and procurement of goods and services except where these are covered by the Procurement Fee; utilities such as phone (domestic and international), water, power and sewerage; security and cleaning services, as required; IT services for internet and intranet provision; costs of complying with the Contractor's reporting obligations under the Contract; all costs associated in supporting KEIP Oversight Committee meetings; costs associated with managing an effective monitoring and evaluation system; all other costs not specified as reimbursable costs; allowances for risks and contingencies; all escalators on costs for the term of the Contract; but exclusive of any Australian Goods and Services Tax (GST).

6.10 Notes and Instructions for Financial proposal **Table 8:**

- (a) In the event AusAID exercises the option beyond 2011-12 then the Contractor will propose a escalation rate (%) to be applied to Reimbursable Personnel Costs for the period of the extension.
- (b) The application of this rate will be applied to the 2011-12 Reimbursable Personnel Costs, in the first instance, and then applied annually as of 1 January each year for any extension year offered.

6.11 Notes and Instructions for Financial proposal **Table 9:**

- (a) In the event AusAID exercises the option beyond 2011-12 then the Contractor will propose a escalation rate (%) to be applied to the Management Fee for the period of the extension.
- (b) The application of this rate will be applied to the 2011-12 Management Fee rate, in the first instance, and then applied annually as of 1 January each year for any extension year offered.

6.12 Notes and Instructions for Financial proposal **Table 10:**

- (a) The totals required for each of the components of the program, drawn from completed Tables 1 – 9, and the overall total will be used as a basis for a like for like assessment.

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

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

Option 1

This option is mandatory for:

- (a) those Tenderers who have not been subject to a financial assessment by AusAID in the 12 months preceding the date of release of this Tender; or
- (b) those Tenderers who have been subject to a financial assessment by AusAID within the 12 months preceding the date of release of this Tender who have experienced a material change in financial position since the last financial assessment was completed by AusAID; or
- (c) those Tenderers who have finalised their latest annual financial statements since the Tenderers last financial assessment by AusAID.

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

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

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

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

- a) a balance sheet;
- b) a profit and loss statement; and
- c) a cashflow statement

each prepared on an accrual accounting basis.

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

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

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

Option 2

This option may be considered by a Tenderer where:

- (a) a Tenderer has been subject to an AusAID financial assessment in the previous twelve months, except where the Tenderers latest annual financial statements have been finalised since the last financial assessment by AusAID; and
- (b) the Tenderer can demonstrate to the satisfaction of AusAID that their financial circumstances have not materially changed since the time of the previous financial assessment.

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

- 1. the date of its most recent financial assessment and the name of the tender for which this assessment was undertaken;
- 2. an explanation of why a Tenderer believes a further financial assessment is not warranted; and
- 3. a statutory declaration declaring that the Tenderer's financial position has not altered materially since the date of the previous assessment.

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

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

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

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

The financial information of Tenderers will be treated confidentially.

Financial Tables

Table 1a: Long Term Personnel Costs 2011: Salary Costs

Position	Monthly Salary*	Taxes	Superannuation	Leave Costs	Total Monthly Rate
(a)	(b)	(c)	(d)	(e)	(f)
KEIP Team Leader					
Technical Assistance					
<i>[add/ delete rows as required]</i>					
Administrative Personnel					
<i>[add/ delete rows as required]</i>					

* 'Actual' Salary paid by Contractor to personnel.

Table 1b: Long Term Personnel Costs 2011: all inclusive

Position	Name	Salary		Total Base Salary (A\$) [(c) x (d)]	Travel*		Total Travel Costs (A\$) [(f) x (g)]	Allowance (Monthly Rate)	Total Allowances [(c) x (i)]	Total Costs (A\$) [(e) + (h) + (j)]
		No. Mths	Mthy Rate		No. flights	Flight Costs (A\$)				
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
KEIP Team Leader			[taken from Table 1a above, column (f)]							
Technical Assistance										
[add/ delete rows as required]			[taken from Table 1a above, column (f)]							
Administrative Personnel										
[add/ delete rows as required]			[taken from Table 1a above, column (f)]							
SUB TOTAL					SUB TOTAL			SUB TOTAL		
TOTAL										

* Return economy flight from home residence to Kiribati. Travel Costs will be paid on a reimbursable basis up to the amount specified or actual cost incurred which ever is lowest.

Table 2: Allowances for Long Term Personnel

Allowance item	2011
	Monthly Rate
Housing (incl. utilities, security and house help)	
<i>[insert additional allowance items as required]</i>	
	Once off payments
Mobilisation Allowance, payable on signing of personnel contract (incl. hotel accommodation up to two (2) weeks on arrival in Kiribati, shipment and storage of goods)	
Demobilisation Allowance, payable two (2) month prior to departure (incl. hotel accommodation up to two (2) weeks on return, shipment of goods and storage of goods)	
<i>[insert additional allowance items as required]</i>	

Table 3a: Short Term Personnel Costs 2011: salary costs

Position	Daily Rate Salary*	Taxes	Superannuation	Leave Costs	Total Daily Rate
(a)	(b)	(c)	(d)	(e)	(f)
KEIP Team Leader					
Technical Assistance					
<i>[add/ delete rows as required]</i>					
Administrative Personnel					
<i>[add/ delete rows as required]</i>					

*‘Actual’ Salary paid by Contractor to personnel.

Table 3b: Short Term Personnel Costs 2011: all inclusive

Position	Name	Salary		Total Base Salary (A\$) [(c) x (d)]	Travel*		Total Travel Costs (A\$) [(f) x (g)]	Per Diem (Daily Rate)	Accommodation (Nightly Rate)	Upper Limit Allowances [(d) x ((i) + (j))]	Total Costs (A\$) [(e) + (h) + (k)]
		No. Days	Daily Rate		No. rtn flights	Flight Costs (A\$)					
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
Technical Assistance											
[add/ delete rows as required]			[taken from Table 3a above, column (f)]								
Administrative Personnel											
[add/ delete rows as required]			[taken from Table 3a above, column (f)]								
SUB TOTAL					SUB TOTAL			SUB TOTAL			
TOTAL											

* Return economy flight from home residence to Kiribati. Travel Costs will be paid on a reimbursable basis up to the amount specified or actual cost incurred which ever is lowest.

Table 4: Procurement Costs

Procurement Item	Costs (A\$)
KEIP Management Office	
Furniture	
Office Fit Out Costs, as required	
IT equipment – office hardware (e.g. computers, printers) & software	
Communications equipment (printers, scanners, fax, satellite, land, mobile phones, as required)	
Office consumables, such as paper	
Vehicles for work related purposes	
Work related flight costs within Kiribati for Long and Short Term Personnel	
<i>[other items as detailed in the Tenderer's Proposal]</i>	
School Building/Refurbishment	
Sub contracted services for construction or the refurbishment of schools including, classrooms, library, ablution blocks, teacher accommodation etc, as necessary, and in accordance with the National Infrastructure Standards	
<i>[other items as detailed in the Tenderer's Proposal]</i>	
Other items as agreed by AusAID.	5,000
TOTAL	

Table 5: Procurement Fee

Value of Procurements over a three (3) month period	Procurement Fee (%)
	2011
Procurement Total for Quarter valued between A\$0 – A\$500,000	
Procurement Total for Quarter valued between A\$500,001 – A\$1,000,000	
Procurement Total for Quarter valued between A\$1,000,001 – A\$1,500,000	
Procurement Total for Quarter valued between A\$1,500,001 – A\$2,000,000	
Procurement Total for Quarter valued between A\$2,000,001 – A\$2,500,000	
Procurement Total for Quarter valued between A\$2,500,001 – A\$3,000,000	

Table 6: Extension Period ONLY: Procurement Fee

Value of Procurements over a three (3) month period	Procurement Fee (%) 2012	Procurement Fee (%) 2013	Procurement Fee (%) 2014	Procurement Fee (%) 2015
Procurement Total for Quarter valued between A\$0 – A\$500,000				
Procurement Total for Quarter valued between A\$500,001 – A\$1,000,000				
Procurement Total for Quarter valued between A\$1,000,001 – A\$1,500,000				
Procurement Total for Quarter valued between A\$1,500,001 – A\$2,000,000				
Procurement Total for Quarter valued between A\$2,000,001 – A\$2,500,000				
Procurement Total for Quarter valued between A\$2,500,001 – A\$3,000,000				

Table 7: Management Fee

Monthly Management Fee (A\$)	2011
	<i>[insert amount]</i>

Table 8: Escalation Rates for Reimbursable Personnel Costs

Percentage Escalator	<i>[insert amount]</i> %
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Table 9: Escalation Rate for Management Fee

Percentage Escalator	<i>[insert amount]</i> %
-----------------------------	--------------------------

Table 10: Summary of Costs

Costs and Fees	Summary of Estimated Costs exclusive of GST A\$
Reimbursable Costs	
Long Term Personnel	<i>[insert total from Table 1b]</i>
Short Term Personnel	<i>[insert total from Table 3b]</i>
Procurement Costs	<i>[insert total from Table 4]</i>
Procurement and Management Fees	
Management Fee	<i>[insert amount from Table 7 x 12]</i>
Procurement Fee (<i>for the purposes of the tender the amount procured in the most recent Quarter is \$600,000</i>)	<i>[insert relevant procurement % from Table 5 x \$600,000]</i>
TOTAL	<i>[insert overall total]</i>

PART 2 – PROGRAM SPECIFIC CONTRACT CONDITIONS

*NOTE TO TENDERERS: ALTHOUGH THESE PROGRAM SPECIFIC CONTRACT CONDITIONS
ARE PRESENTED AS PART 2 OF THIS RFT, IN THE CONSOLIDATED CONTRACT
CONDITIONS THEY WILL APPEAR AS PART A.*

CONTRACT

BETWEEN

COMMONWEALTH OF AUSTRALIA

represented by the Australian Agency for International Development
(AusAID)

ABN 62 921 558 838

and

CONTRACTOR'S NAME

ABN XX XXX XXX XXX

FOR

KIRIBATI EDUCATION IMPROVEMENT PROGRAM

AusAID AGREEMENT NUMBER 00000

CONTRACT made _____ day of []

BETWEEN:

COMMONWEALTH OF AUSTRALIA represented by the Australian Agency for International Development ("AusAID") ABN 62 921 558 838.

AND

Contractor's Name, ABN xx xxx xxx xxx of Street Address (the "**Contractor**").

RECITALS:

- A. AusAID requires the provision of certain Services for the purposes of **Kiribati Education Improvement Program** (the "**Program**").
- B. The Contractor has expertise in the provision of the Services and has offered to provide the Services to AusAID subject to the terms and conditions specified in this Contract.

OPERATIVE:

AusAID and the Contractor promise to carry out and complete their respective obligations in accordance with the attached Parts A and B.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA
represented by the Australian Agency
for International Development by:

in the presence of:

Signature of FMA Act s44 Delegate

Delegate Name

Name

Position, Section

Position, Section

Signature of witness

Name of witness
(Print)

SIGNED for and on behalf of
CONTRACTOR'S NAME by:

Name and Position
(Print)

Signature

By executing this Contract the signatory warrants that the signatory is duly authorised to execute this Contract on behalf of the Contractor.

in the presence of:

Name of witness
(Print)

Signature of witness

STRUCTURE OF THE CONTRACT

This contract has two (2) parts and four (4) schedules as follows:

Part A	Program Specific Contract Conditions
Part B	Standard Contract Conditions
Schedule 1	Scope of Services
Schedule 2	Basis of Payment
Schedule 3	Deed of Confidentiality
Schedule 4	Deed of Novation and Substitution
Schedule 5	Performance Guarantee <i>[AusAID reserves the right to include this obligation is AusAID deems necessary]</i>

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PART A – PROGRAM SPECIFIC CONTRACT CONDITIONS

In addition to the Standard 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:

“Administrative Personnel” includes personnel engaged to manage the finances, human resources, reporting, logistics and other day to day administrative tasks necessary to deliver an aid program.

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

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

"Construction Works" includes all the construction and building work of any kind including the installation of equipment required for the Project and referred to in **Clause 8 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.

“Individual” refers to Technical Assistance, administrative personnel and the KEIP Team Leader.

"KEIP Team Leader" means the specified person nominated in **Annex B to Schedule 1**

"Long Term Personnel" or **"LTP"** means an individual working continuously for **six (6) months** or longer on the Program regardless of where they are geographically located.

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

“Parties” refers to AusAID and the Contractor.

"Payment Milestone" means a milestone identified in **Schedule 2** 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*.

"Schedule of Rates" means the rates in **Schedule 2** and associated Annexes.

"**Short Term Personnel**" or "**STP**" means an individual working on the Program for less than **six (6) months** continuously.

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

"**Technical Assistance**" means an individual engaged by the Contractor who works in an in-line position within the counterpart government or provides technical expertise and advice to the counterpart government, other in-country development partners, and/or AusAID. They may also be engaged to provide leadership and oversight in the delivery of KEIP.

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

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

2. TERM OF CONTRACT

- 2.1 The term of this Contract commences upon execution by both parties, being the date indicated at the front of this Contract, and continues until all obligations under this Contract have been fulfilled or earlier notice of termination under this Contract.
- 2.2 The Contractor must commence the Services in the Partner Country no later than **17 January 2011** [*indicative only – to be confirmed by AusAID with preferred tenderer*], which will be considered as the Program Start Date, and must complete the Services by **31 December 2011**, which will be considered as the Program End Date, unless the options in **Clause 2.3 and 2.4** below of this **Part A** of this Contract are exercised by the Commonwealth.
- 2.3 The Contractor grants to the Commonwealth an option to extend the period of the Services for up to four (4) years. The option must be exercised by notice in writing to the Contractor prior to Program End Date as specified in **Clause 2.2** above of this **Part A** of this 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.
- 2.4 The Contractor grants to the Commonwealth a second option to extend the period of the Services for up to a further four (4) years. This option must be exercised prior to the date of completion of the first option period. 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 2.4** shall no longer apply.

3. ACCOUNTS AND RECORDS

- 3.1 The statement of Program expenditure referred to in Standard Conditions **Clause 15.1(e)** (Accounts and Records) must be provided on a **three (3) monthly** basis and must indicate:
 - (a) total expenditure of the 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 Conditions **Clause 40** (Notices), the address of a Party is the address set out below or another address of which that Party may from time to time give notice in writing to each other Party:

AusAID

To: Section/Branch Name
 Attention: Agreement Manager Name

Postal Address: Australian Agency for International Development (AusAID)
 PO BOX 77
 Bairiki, Tarawa
 KIRIBATI

Street Address: Australian Agency for International Development (AusAID)
 Bairiki, Tarawa
 KIRIBATI

Facsimile: (686) 21 440

Contractor

To: Contractor's Name
 Attention: Title First Name Surname

Postal Address: Postal Address

Street Address: Street Address

Facsimile: Fax

5. MANAGEMENT SERVICES

- 5.1 The Contractor must provide all Management Services necessary for the provision of the Services. In addition to the other requirements specified by the Contract, at a minimum the Contractor must provide the following Management Services:
- (a) provide pre-mobilisation briefings to Contractor Personnel covering among other things security; medical/health situation; cultural, work and living environment in Kiribati;
 - (b) decision-making within the Contractor's organisation and 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. ANNUAL WORK PLAN

- 6.1 The Annual Work Plan should be prepared and provided to AusAID in accordance with directions provided in **Schedule 1 Scope of Services**.
- 6.2 The Contractor must make amendments to the Annual Work Plan as reasonably requested by AusAID and the OC.
- 6.3 Within 30 days of receipt of the Annual Work Plan in accordance with **Clause 6.1 above** AusAID shall notify the Contractor in writing when a decision is likely to be made to reject or accept the Annual Work Plan. If such Annual Work Plan has not been approved or rejected within the stated period of 30 days AusAID shall give fair and reasonable consideration to granting an extension of time to the Contractor in respect of the performance of the Services.
- 6.4 Acceptance by AusAID of an Annual Work Plan does not represent a change to Schedule 2 Basis of Payment of the Contract. Schedule 2 Basis of Payment may only be varied in accordance with the Standard Conditions **Clause 12** (Contract Amendments).

7. SUB-CONTRACTING

- 7.1 In addition to the Standard Conditions **Clause 11** (Sub-Contracting) the following conditions apply to sub-contracts entered into by the Contractor:
 - (a) the Contractor must obtain the prior written approval of AusAID to sub-contracts with any party, except Specified Personnel, to the value of **A\$100,000 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.
- 7.2 Standard Conditions **Clauses 11.1** (Sub-contracting) **(d) and (e) (with respect to Deeds of Novation and Substitution)** will only apply to sub-contracts valued at **A\$100,000 or more**.
- 7.3 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.

8. CONSTRUCTION SERVICES

- 8.1 The Contractor must engage Construction sub-contractors to undertake all Construction Work. However, the engagement of Construction sub-contractors shall not relieve the Contractor from any liability for the performance of this contract in accordance with Standard Conditions **Clause 11** (Sub-contracting).
- 8.2 The Contractor must ensure that all construction design work is carried out:
- (a) in accordance with and so as to comply with any design brief or functionality requirements notified by AusAID;
 - (b) to a high standard of skill, care and diligence expected of a design professional; and
 - (c) to ensure that the design work is fit for its intended purpose.
- 8.3 The Contractor must ensure that all Construction Work is carried out:
- (a) in accordance with AusAID approved plans and specifications;
 - (b) so that it is fit for its intended purpose;
 - (c) using good workmanship and, unless otherwise approved or specified, new materials;
 - (d) employing competent and appropriately qualified personnel; and
 - (e) in a manner which clearly seeks to achieve the aims of the Program.
- 8.4 When engaging a Construction sub-contractor, the Contractor must undertake a competitive tendering process that complies with the Commonwealth Procurement Guidelines and AusAID's policy on applying the Mandatory Procedures in Division 2 of the CPGs.
- 8.5 If AusAID reasonably considers that the Contractor has not adhered to appropriate processes or policies with respect to advertising for, or the evaluation of, tenders, AusAID may require the Contractor to cancel the tender selection process. In such circumstances the Contractor may be required to repeat the competitive tender process at no additional cost to AusAID.
- 8.6 The Contractor warrants that it will exercise a duty of care and good faith to AusAID in performing its obligations under the Contract including the preparation of all tender documentation and the administration of any Construction sub-contract, including ensuring that such sub-contracts allow for the correction of any Construction Defects.

9. MEETINGS

- 9.1 The **KEIP Team Leader** must attend meetings in Tarawa, Kiribati, 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.

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

10. RIGHT OF AusAID TO RECOVER MONEY

10.1 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.

10.2 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 10.2(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.

10.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 10.2**, 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.

10.4 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.

11. GOVERNMENT TAXES, DUTIES AND CHARGES

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

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

- (a) imposed or levied in Australia or overseas during the term of the Contract in connection with the performance of the Contract; and
- (b) which are not already included in the Fees payable by AusAID under the Contract, must be paid by the Contractor.

11.3 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.

11.4 Subject to **Clause 11.8 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.

11.5 An increase in the Fees under **Clause 11.4 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.

11.6 A decrease in Fees under **Clause 11.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.

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

11.8 **Clause 11.4 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.

12. INSURANCES

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

- (a) AusAID is notified immediately the Contractor becomes aware of any actual, threatened or likely claims under all of the insurances required by this Contract or any act or omission by the Contractor which could materially reduce the available limit of indemnity;
- (b) AusAID is notified in writing whenever the insurer gives the Contractor a notice of cancellation of 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.

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

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

12.4 In addition to the Contractor's obligations regarding insurance detailed in Standard Conditions **Clause 34** (Insurances) the Contractor must ensure sub-contractors involved in construction arrange and maintain insurance to cover:

(a) the Contract Works against fire, flood, earthquake, storm and extraneous perils; and

(b) the Contractor's plant and equipment against all risks.

13. COMPLIANCE WITH AusAID POLICIES

13.1 In respect to its obligations to comply with AusAID's Policies the Contractor must upon mobilisation implement plans contained in their Tender for compliance with AusAID's Gender and Development Policy and/or Environmental Policy and report regularly to AusAID on any anticipated or unanticipated issues that may alter the Program Environmental Management Plan.

14. PERFORMANCE GUARANTEE *[AusAID reserves the right to include this obligation if AusAID deems it necessary]*

14.1 The Contractor must, at its expense, provide to AusAID; within 10 Business Days of an AusAID request, a performance guarantee executed by a guarantor delivered to AusAID, guaranteeing the performance by the Contractor of its obligations under the Contract, which must be substantially in the form appearing in **Schedule 5**.

PART 3 - SCOPE OF SERVICES

KIRIBATI EDUCATION IMPROVEMENT PROGRAM (KEIP) 2010 -2020

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

SCHEDULE 1 – SCOPE OF SERVICES

KIRIBATI EDUCATION IMPROVEMENT PROGRAM (KEIP)

ABBREVIATIONS AND ACRONYMS

The following abbreviations and acronyms are used in this Scope of Services and Basis of Payments:

“DP” means Donor Partners

“EFA” means Education For All

“ESSP” means Education Sector Strategic Plan

“KEIP DD” means Kiribati Education Development Program Design Document, dated August 2010

“KDP” Kiribati Development Plan

“KEMIS” means Kiribati Education Management Information System

“OC” means (KIEP) Oversight Committee

“KTC” means Kiribati Technical College

“MDG” means Millennium Development Goals

“MFED” means Ministry of Finance and Economic Development

“MISA” means Ministry of Internal and Social Affairs

“MLHRD” means Ministry of Labour and Human Resource Development

“MOE” means Ministry of Education

“MOP” means Ministry Operation Plan

“NIS” means National Infrastructure Standards

“PFM” means Public Financial Management

“PSO” means Public Service Office

“SEMS” means Senior Education Management Specialist

“SMT” means (Ministry of Education) Senior Management Team

1. BACKGROUND

- 1.1 The Republic of Kiribati is a safe, peaceful and politically stable nation with a strongly egalitarian culture united by a single indigenous language. It is also a country facing major

demographic, economic, social and environmental challenges and an uncertain future. Kiribati has a population of approximately 92,000 people living on 23 of its 33 scattered islands, all of which are low-lying coral atolls vulnerable to coastal erosion, tidal variations and rises in sea level. Just under half of Kiribati's population (40,000) lives on South Tarawa, placing significant pressure on the fragile atoll environment and its limited resource base. Kiribati's population is growing quickly and is expected to double by 2025. Half the population is under 21 and projections are for there to be 80,000 I-Kiribati of working age by 2025, compared to 53,000 in 2005.

- 1.2 Although Kiribati has built a reputation for fiscal prudence, this is under challenge and its economic outlook is not encouraging. Gross Domestic Product (GDP) per capita is the lowest in the Pacific, with the government dominating the economy in response to the narrow domestic production base. Government spending is around 115 percent of GDP, the highest in the region. Yet to reach Millennium Development Goals (MDGs) increased public expenditure both on public services such as education will be required. Without sustained reforms, growth will fail to match the 2 percent population growth leading to deteriorating average living standards.
- 1.3 The Government recognises that a focus on providing a relevant and quality education for all children is important to strengthen the economic base of the country. Remittances will only continue if there are skilled human resources to export and the revenues will only be used effectively if there is a qualified domestic work force.
- 1.4 The Government of Kiribati (GoK) is committed to a number of international education initiatives including the Education For All (EFA) goals and MDGs. MDG 2 ensuring 'that by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling' is a key driver of GoK education policy and influences its sector priorities over the medium term.
- 1.5 In 2007, GoK released the Kiribati Development Plan 2008-11(KDP), the theme of which is 'enhancing economic growth for sustainable development'. The KDP aims to operationalize the GoK's sector policy and sector strategies to achieve GoK's goal of raising education standards and quality, and increasing retention of school students to continue on to higher classes or forms.
- 1.6 In 2009 the Government of Australia and Kiribati signed the Australia-Kiribati Partnership for Development. The areas of focus are improved basic education, workforce skills development and improved growth and economic management. The Partnership will be the instrument used to facilitate the macro reform process.
- 1.7 The Ministry of Education's (MoE) Education Sector Strategic Plan 2008-11 (ESSP), endorsed by Cabinet in 2008, has as its theme 'a quality and balanced education for all'. ESSP's highest priority is ensuring that basic education in Kiribati gives all children a fair opportunity to access the pathways beyond compulsory schooling.
- 1.8 Government of Kiribati figures for 2009 reveal Kiribati primary school children are not performing well with performance declining at primary school levels. At the class four level in English literacy, for example, 44% of children showed little or no evidence of achieving the learning outcomes appropriate for that level. For Kiribati literacy and numeracy, the figures were 20% and 39%, respectively. At the class six level, the results were slightly more disappointing; students who did not achieve appropriate learning

outcomes for that level in English literacy, Kiribati literacy and numeracy were 50%, 25% and 69%, respectively.

- 1.9 At the grade four level girls are outperforming boys in each of the three areas. In English literacy, 44% of girls and 34% of boys were performing at or above grade levels; in Kiribati literacy, 69% of girls and 54% of boys performed at that level; and in numeracy the figures were 39% for girls and 31% for boys. At the grade six level girls again outscored boys in all three areas in terms of performing at or above the grade level. In English literacy, Kiribati literacy and numeracy the figures were 42%, 63%, 20% and 23% and 56% and 48% for girls and boys respectively.
- 1.10 Government capacity constraints and poorly coordinated donor assistance have not served to maximise efficiency in improving access and quality of education. In response, recent joint donor efforts in support of the sector are showing signs of progress and there is a growing expectation for improved alignment and harmonisation.
- 1.11 Building on the Kiribati-Australia Partnership for Development; the UNICEF/MoE Country Programme Action Plan; and the Kiribati UNESCO National Education Support Strategy which have as a basis the Paris, Accra and Cairns agreements, the intention of the Government of Kiribati, AusAID, UNESCO and UNICEF is that donor support for education in Kiribati will progressively move to a Kiribati-led, sector program. In support of this donors will take a phased approach to re-shaping their support.
- 1.12 KEIP will be implemented in three distinct phases to align with the GoK and MoE planning cycles. Phase 1 (2011) will align with the remaining period of the current four year KDP and ESSP. Phases 2 and 3 will be aligned with the next two KDP and ESSP cycles. KEIP's monitoring, reporting and budget discussions are to be scheduled to align with MoE's annual planning cycles.
- 1.13 The timeframe for the three phases of KEIP are:

Phase 1: June 2010 to December 2011 (project-based aid delivery)

Phase 2: January 2012 to December 2015 (program-based /SWAp approach)

Phase 3: January 2016 to December 2019 (program-based /SWAp approach)

Program Description

- 1.14 The **Kiribati Education Improvement Program (KEIP)** is the framework within which the major donors to the education sector will support the GoK to address its most pressing education issues up until 2020. The donors participating in KEIP as at 2010 are AusAID, UNESCO and UNICEF. Collectively these donors are referred to as KEIP partners.
- 1.15 The implementation of KEIP is underpinned by the *Kiribati Education Sector Statement of Partnership Principles* between the Government of Kiribati and Development Partners. The statement – approved by all parties – declares that education sector assistance will be guided by the principles of the Paris Declaration on Aid Effectiveness: country ownership and leadership; alignment with national development strategies; managing for results; harmonisation between donors and mutual accountability.

- 1.16 KEIP will focus resources on *access* to and the *quality* of schooling in Kiribati. It is intended to improve the standard of education across all 115 primary and junior secondary schools in Kiribati, and to ensure progress towards the MDG2 target (shared by the Government of Kiribati) of a net primary completion rate of 100 percent by 2015. It also intends to: encourage and facilitate high transition rates from primary to junior secondary school; to strengthen the capacity of the teaching force; to improve learning outcomes so all children are literate and numerate; and to establish a strong educational foundation for young I-Kiribati who wish to progress to higher education and training.

2. GOAL

- 2.1 The goal of the KEIP program is:

All children have access to relevant and quality education by 2020.

3. PROGRAM OBJECTIVES

- 3.1 The KEIP program outcomes are:

- (a) *All children achieve functional literacy and numeracy after six (6) years of basic education and are equipped with the skills to continue to the next stage of education.*
- (b) *A comprehensive, inclusive education sector adequately funded and effectively managed providing quality services to all children.*

4. KEY DOCUMENTS

- 4.1 The following key documents are relevant:

- (a) KEIP Design Document (KEIP DD) – dated August 2010;
- (b) Kiribati National Education Summit Outcomes/ Education Sector Strategic Plan, February 2008;
- (c) Kiribati Education Sector Statement of Partnership Principles; and
- (d) Kiribati – Australia Partnership for Development.

Precedence of Contract over the KEIP Design Document

- 4.2 This Scope of Services outlines the role of the Contractor in supporting the implementation of the KEIP and should be read in conjunction with the KEIP DD. The KEIP DD sets out the context, scope, objectives and principles of KEIP and is the primary reference document from which to gain an understanding of the intent, purpose and features of KEIP. Where there is an inconsistency between the KEIP DD and the Contract, the Contract will take precedence.

5. CONTRACTOR SERVICES

Overview

- 5.1 The Contractor is responsible for the implementation of AusAID funded KEIP activities, coordinating monitoring and reporting on all KEIP activities and where possible facilitating donor harmonisation.
- 5.2 The Contractor will establish and maintain a constant presence in Kiribati. A Program Office in Tarawa will be established to facilitate this presence and deliver, among other things, the following services:
- (a) in-country management of the program, including the provision of secretariat services to the OC, and providing the first point of contact for KEIP donors, SEMS and MoE in relation to KEIP implementation;
 - (b) establishing and maintaining positive and service-oriented relationships with all MoE staff and with other development partners and stakeholders, which may include:
 - (i) regular operational coordination meetings between partners, with the participation of GoK partners as much as possible,
 - (ii) the development of standard templates for use by KEIP stakeholders to request additional Contractor assistance. Subject to funds and approval by AusAID additional work may be undertaken and must be reported in the relevant Quarterly Progress Report /Annual Work Plan submitted to the OC; and
 - (iii) design and implementation of OC agreed activities including all procurement or recruitment activities including contracting and mobilisation of program inputs (either undertaking these tasks directly, or supporting GoK agencies to undertake these tasks);
 - (c) identify and pursue opportunities to increase GoK capacity for large-scale program management that will permit the progressive transfer of KEIP functions into GoK budgetary and financial systems and decision-making structures with the goal that, by the end of Phase 2, KEIP is able to operate within those systems, and procure support to implement the Phase 3 program as agreed with AusAID;
 - (d) assist GoK agencies with capacity diagnostic work, including regulations, policies and standards to ensure an evidence based approach;
 - (e) providing logistical assistance to Contractor financed technical assistance (**refer Annex B**), and as requested GoK managed technical assistance, (e.g. accommodation, transport, communications etc), and providing comprehensive inductions for technical assistance which address contextual, cross-cultural and capacity development issues to ensure that technical assistance achieve maximum impact;
 - (f) cooperating with the Senior Education Management Specialist (SEMS), with MoE, and other counterpart agencies to prepare and report against KEIP work plans to agreed OC standards;
 - (g) monitoring of program performance including input into the Education Sector Strategic Plan (ESSP), MOP and budget preparation and reporting, results-oriented

performance reports for the MoE Senior Management Team (SMT) and the OC, and modelling and fostering a culture in MoE of organisational learning, reflection and improvement;

- (h) actively monitoring and reporting on KEIP outcomes in accordance with the Monitoring and Evaluation Framework, updated annually in accordance with the relevant Annual Work Plan;
 - (i) development and implementation of all KEIP plans and reports on time and to an acceptable quality standards;
 - (j) procurement of materials, equipment and services necessary for the provision of the Services in keeping with the principles articulated in the Commonwealth Procurement Guidelines, AusAID policies and procedures, and in accordance with the requirements of this Contract. The Commonwealth Procurement Guidelines are available at http://www.finance.gov.au/ctc/commonwealth_procurement_guide.html;
 - (k) provide adequate oversight and assurances that construction work is completed fit for purpose, in line with Government of Kiribati National Infrastructure Standards, GoK Environmental Act (1999) and the National Building Codes. All construction work will be sub-contracted by the Contractor;
 - (l) identification and resolution of emerging risks associated with the Contractor's services and KEIP operations more broadly, including those risks relating to the performance of KEIP Personnel;
 - (m) support the KEIP's emphasis on gender equality by mainstreaming support for gender, as well as HIV/AIDS, climate change and disability, in all of the KEIP's operations and functions and supporting all the Contractor's technical assistance and administration personnel to do so in an integrated and practical manner;
 - (n) provide program and policy support as requested by AusAID; and
 - (o) perform other management tasks as reasonably required for the effective delivery of the Contractor Services in support of the KEIP.
- 5.3 The General Services provided above will be delivered by the Contractor for the duration of the contract period and, subject to **Part A Clause 2.3 and Clause 2.4** of this Contract, across Phases 2 and 3
- 5.4 Specific activities to be implemented by the Contractor each year will be detailed in Annual Work Plans for approval by the OC prior to implementation, refer to **Clause 12.6 to 12.10**.
- 5.5 Phase 1 outcomes and outputs are detailed in **Annex A** to this Schedule. The scheduling of these outputs will be confirmed in the Implementation Plan, refer to **Clause 12.2 to Clause 12.5** which will take precedence over **Annex A** on written approval from the OC.
- 5.6 In addition, the Contractor will support AusAID to:

- (a) provide advice and strategic guidance on education sector management and reform issues in Kiribati, particularly as they relate to the implementation of the relevant ESSP;
- (b) enable coherence of priorities and activities within KEIP and identify proposals that can achieve quick wins that will establish program and GoK credibility;
- (c) ensure timely advice to support AusAID in policy dialogue between Australia and GoK on education sector issues, particularly in relation to priority setting through the Annual Work Plan, and measuring progress towards achieving the goal and result areas under KEIP;
- (d) enable coherence of program priorities and activities with other AusAID programs, and enable cross-program learning and coordination; and
- (e) enable coordination and coherence of all Australian whole of government inputs in the sector.

6. **PHASE 2 AND 3 DESIGN**

- 6.1 The design of KEIP Phase 2 will be undertaken by the Contractor in consultation with KEIP partners and the Government of Kiribati.
- 6.2 The Contractor will procure technical assistance to work with the MoE, UNESCO, UNICEF, AusAID and other relevant donors, to develop and resource an approach to the design of the next Phase.
- 6.3 The approach will be agreed between all KEIP partners and will be designed to integrate closely with the development of the 2012-2015 Education Sector Strategic Plan (ESSP). (The development process for ESSP is still to be specified by GoK) In addition the M&E Framework will be revised for the application in Phase 2 and beyond through a comprehensive and participatory M&E development process integrated with the development of the ESSP and the Phase design.
- 6.4 The design period will be April to September in 2011. It is anticipated that approved KEIP work activities will be implemented as of January 2012.
- 6.5 Subject to performance, the design of KEIP Phase 3 will be undertaken by the Contractor and will follow the method outlined above in **Clause 6.2** and **Clause 6.3**. The design period will be April to September in 2015. It is anticipated that approved KEIP work activities will be implemented as of January 2016.

7. **USE OF GOVERNMENT SYSTEMS**

- 7.1 It is the intention of KEIP partners to progressively align with GoK policies, priorities, strategies, operational plans and public financial management (PFM) systems. It is recognised that while full alignment will remain a long term goal, its achievement will depend to a substantial degree on the rate at which government systems develop and on how well sector governance, systems and leadership evolve over the coming years.
- 7.2 The Contractor will develop a performance-based incentive program during Phase 1 as the first step in meeting this commitment in the education sector. The development of the

program will be in parallel to AusAID's efforts in the public financial management reform sector. In the development of this program the Contractor should incorporate the lessons learned from the Kiribati Fisheries Incentive program and lessons learned from other education incentive programs that have been used to strengthen government Public Financial Management systems.

- 7.3 The proposed incentives program will be developed in close consultation with AusAID and submitted to AusAID (only) for approval by **15 September 2011**.

8. KEIP STAKEHOLDERS AND LINES OF ACCOUNTABILITY

- 8.1 Kiribati's engagement in KEIP will be led by the MoE. The management and governance arrangements for KEIP are collaborative, and over time will become increasingly integrated with MoE and national planning and budget processes to enable effective management of the aid investment, while taking account of existing capacity.

The Government of Kiribati

- 8.2 The Government of Kiribati, through MoE and other Ministries, will undertake to ensure the success of KEIP by:
- (a) ensuring that all MoE staff are aware of and support the implementation of KEIP directly or indirectly, depending on their role;
 - (b) ensuring that the roles and responsibilities of MoE staff in relation to KEIP are clear, and performance of MoE staff in relation to their responsibilities is monitored and corrective action taken by senior management as necessary;
 - (c) ensuring the active participation of senior GoK officials and external stakeholders in the OC;
 - (d) providing, if possible, office space in MoE headquarters, Curriculum Development Resource Centre and/or at KTC for KEIP personnel and the KEIP Program Office;
 - (e) through MoE, monitor direct funding to the Development Fund and provide guidance to the KEIP on aligning the program more closely with government financial management systems;
 - (f) ensuring that all appropriate offices and agencies both facilitate and play an active part in KEIP monitoring and reporting and in KEIP activity evaluations;
 - (g) coordinating support to the sector from other donors to ensure no duplication of effort and that only GoK high priority activities are undertaken; and
 - (h) taking action to ensure supportive policy or regulations are in place to assist the education sector achieve results.

Donors: UNICEF and UNESCO

- 8.3 The donors will:

- (a) engage in regular policy dialogue with GoK on directions and performance of KEIP;
- (b) ensure that there will be a predictable flow of inputs (TA and funds) into KEIP, as agreed between the respective agencies and GoK; and
- (c) participate in an informal round table meeting either via teleconference or in person if needed every six (6) weeks to improve collaboration and coordination of KEIP activities in Kiribati.

AusAID

- 8.4 AusAID Tarawa will ensure and facilitate coordination between KEIP and other relevant AusAID bilateral and regional programs and initiatives to foster ‘whole of aid program’ coherence, and liaise with AusAID Suva to facilitate coordination between KEIP and AusAID regional programs. AusAID Tarawa and Suva will facilitate opportunities for increased donor harmonisation in the sector.
- 8.5 AusAID Tarawa will be a member of the OC and in partnership with GoK monitor the Contractor’s performance against this Contract.

Senior Education Management Specialist

- 8.6 In consultation with MoE, AusAID has recruited an in-line position , Senior Education Management Specialist (SEMS) to provide executive advice, mentoring and support to the MoE Secretary and their senior management team. The SEMS will be a critical point of intersection for all elements of donor support through KEIP.
- 8.7 In summary, the nature of support provided by the SEMS will ensure:
 - (a) effective ESSP implementation;
 - (b) relevant policy and planning activities are undertaken by MoE;
 - (c) KEIP Phase 1 roll-out and Phase 2 and 3 planning;
 - (d) donor coordination and improved aid effectiveness, and
 - (e) sector monitoring and reviews.
- 8.8 The SEMS will work closely with the KEIP Team Leader and will also provide strategic and quality assurance advice to AusAID Kiribati, UNESCO and UNICEF.
- 8.9 The Contractor will support the SEMS’s capacity to lead and coordinate policy and to support greater coherence across GoK programs, including providing additional advice and support to SEMS for their consideration of program matters if necessary.

9. KEIP GOVERNANCE ARRANGEMENTS

- 9.1 The Contractor will be directed by and report to the OC, refer **Clause 9.5 – 9.7**. On a day-to-day operational basis the Contractor will be managed by and report to AusAID. As part of the overall management process the Contractor will also arrange regular briefings and

meetings with OC members, relevant GoK ministry personnel, and the Senior Education Management Specialist.

- 9.2 AusAID will provide financial direction to the Contractor on AusAID funded components of the KEIP to assist in the planning and implementation of the annual rolling program of activities under the agreed Priority Areas.
- 9.3 AusAID, in consultation with KEIP stakeholders, will conduct an annual review of the Contractors performance as detailed in **Clause 11**.
- 9.4 Where necessary, AusAID may request the Contractor directly to undertake additional services and provide additional advice outside the agreed Annual Work Plan process. It is anticipated that in the case of any potential workload conflicts, such request will be made in consultation with the OC.

KEIP Oversight Committee (OC)

- 9.5 The OC will comprise senior representatives of MoE, MISA, PSO, MLHRD, MFED, Ministry of Health, UNICEF, UNESCO and AusAID. Meetings will be convened by the Secretary, MoE and be convened at three (3) monthly intervals. The New Zealand Aid Program will be invited as an observer.
- 9.6 The OC will provide strategic guidance and oversight of policy direction and implementation of the program. OC will coordinate and direct education reform activities and provide strong executive support for the MOE's direction in its reform process.
- 9.7 The OC will be responsible for operational decision-making and oversight of program implementation, including consideration of and approval of the Implementation Plan, Annual Work Plan, Quarterly Progress Reports, draft designs of KEIP Phase 2 and 3; and the KEIP Activity Completion Report.

10. KEIP PROGRAM OFFICE

- 10.1 The Contractor is to establish a Program Office in Tarawa within six (6) weeks of the Program Start Date which will be managed and directed by the KEIP Team Leader.
- 10.2 It is the intention that GoK will provide sufficient space within MoE. However, the KEIP Program Office should be of sufficient size, equipment, staffing, security and operating resources, necessary to manage KEIP for the duration of the Contract. It may be necessary, therefore, for the Program Office to be located elsewhere either in full or part. If an additional venue is required then the location of the Program Office will be approved by AusAID and must allow safe and secure access for both KEIP personnel and GoK stakeholders.
- 10.3 The KEIP Program Office will provide technical advice and support to all contracted program inputs as well as any additional inputs as directed by AusAID.
- 10.4 The Contractor is to provide all necessary technical assistance and administrative personnel required to support the provision of the Contractor Services as agreed and specified in this Contract.

- 10.5 It is anticipated that KEIP Program Office administrative personnel will include a mix of expertise to ensure efficient and effective management of the KEIP Program. Collectively, administrative personnel should have expertise and experience in, but not be limited to, the following areas:
- | | |
|---|--|
| (a) capacity development; | (b) information and communications; |
| (c) monitoring & evaluation; | (d) understanding of the Kiribati development context; |
| (e) training, learning and development; | (f) education sector reform in a developing country context; |
| (g) human resource management; | (h) gender equity; |
| (i) financial management; | (j) HIV mainstreaming; |
| (k) program management; | (l) climate change; and |
| (m) disability inclusiveness. | |

11. CONTRACTOR PERFORMANCE ASSESSMENT

- 11.1 The Contractor Performance Assessment relates to the Contractor's performance in terms of administration and management services required under the Contract, for example, Contractor reporting requirements, financial management and technical assistance recruitment and support.
- 11.2 Review of the Contractor's performance will be undertaken through the following:
- (a) identification of performance issues related to the indicators defined in **Annex C**, as they arise and are communicated to the Contractor in writing during each twelve-month period of the Contract Term, including minuted comments at meeting or other forms of written communications; and
 - (b) regular performance assessments at the end of each twelve month period of the Contract Term.
- 11.3 AusAID will conduct the annual performance assessment, at AusAID's expense, which will comprise the following:
- (a) consideration of performance issues documented in accordance with **Clause 11.2(a)** and **Clause 11.2(b)** above
 - (b) assessment of the Contractor's files and records as required to demonstrate compliance with the indicators defined in **Annex C**.
 - (c) interviews with relevant Ministry staff, KEIP donors to assist in demonstrating compliance with indicators defined in **Annex C**.
- 11.4 AusAID shall determine the timing of the performance assessment and notify the Contractor. The Contractor is required to co-operate.

- 11.5 AusAID may engage the services of an external organisation to assist in undertaking the performance assessment.
- 11.6 AusAID may amend the indicators in **Annex C** in consultation with the Contractor for application to any subsequent twelve month period. Once approved in writing by both parties the Performance Assessment Indicators will be deemed to be annexed to this Contract. The most recent amended version of the Performance Assessment Indicators for the relevant twelve month period will take precedence. Only where changes to Schedule 2 Basis of Payment are required will a Deed of Amendment as described in **Standard Conditions Clause 12 (Contract Amendment)** be required.
- 11.7 The Contractor's performance against each of the indicators defined in **Annex C** will be assessed using the following rating scale:

Table 1: Performance Scale

Performance Indicators	Ranking (%) Score	Performance Rating
Unsatisfactory Performance	0 to < 50%	The Contractor fails to meet all the requirements of the indicators.
Business as Usual	51 – 100%	The Contractor is meeting all the requirements of the indicators.

- 11.8 An unsatisfactory result against any sub-heading within an indicator will deem performance against that indicator unsatisfactory.
- 11.9 Where AusAID has communicated potentially unsatisfactory performance under **Clause 11.8** above, during the course of the twelve-month period under review, and the Contractor has demonstrably rectified the issue to AusAID's satisfaction within a reasonable time period, a satisfactory rating may be applied by AusAID at the annual performance assessment.
- 11.10 If, at the annual performance assessment, an unsatisfactory assessment is made against any indicator, AusAID will communicate to the Contractor in writing the basis for the assessment and the Contractor must respond within seven (7) days if it is not in agreement with the assessment.
- 11.11 AusAID will review the assessment and the Contractor's response. AusAID shall, at its sole discretion, decide whether a rating should be amended (or not) given the Contractor's response within seven (7) days.
- 11.12 AusAID's decision as at **Clause 11.11** is final and not subject to negotiations.

12. REPORTING REQUIREMENTS

- 12.1 The Contractor must provide OC members with the following reports (with the exception of the Quarterly Financial Reports) by the date indicated for written approval:
- 12.2 An **Implementation Plan** for Phase 1, which includes:
- (a) a work plan for Phase 1 incorporating any lessons from the review of progress to date, provide justification for proposed activities, the expected outputs and development benefits, including without limitation:
 - (i) confirmation of all obligations required to be performed by the Contractor to implement the Services, and their timing, including without limitation:
 - (A) the supply and deployment of Long and Short Term Personnel and overall approach to their assignments;
 - (B) the establishment of procedures relevant for any construction activities, including identification of supplies and construction work requirements, mobilisation of personnel and obtaining necessary approvals; and
 - (C) a planned approach to coordinating all aspects of Contractor Services as detailed in **Clause 5**,
 - (b) the establishment of financial control procedures;
 - (c) a forecast budget for Phase 1 with accurate estimates for the coming year;
 - (d) a strategy to integrate gender, disability, sustainability and capacity development considerations into all KEIP processes;
 - (e) a revised Monitoring and Evaluation Framework and Risk Management Plan [*draft as provided in the KEIP Design Document dated August 2010*]; and
 - (f) the establishment of all other management and administration requirements, including reporting and communications.
- 12.3 The Implementation Plan will be submitted to OC six (6) weeks after **Program Start Date** for agreement. Acting on guidance from the SEMS, the OC will provide directions to the Contractor in the implementation and prioritisation of proposed activities.
- 12.4 Both Parties shall give fair and reasonable consideration to changes in costs necessarily incurred by either Party as a consequence of proposed OC changes to the Implementation Plan.
- 12.5 Once approved in writing by AusAID the Implementation Plan will be deemed to be annexed to this Contract. Changes to the Implementation Plan will be subject to written confirmation from both Parties. The most recent amended version of the Implementation Plan will take precedence. Only where changes to **Schedule 2 Basis of Payment** are required will a Deed of Amendment as described in **Standard Conditions Clause 12 (Contract Amendment)** be required.

- 12.6 An **Annual Work Plan** will be developed by the Contractor, in close cooperation with KEIP Partners. The Annual Work Plan will be in response to GoK priorities, in accordance with the relevant ESSP priorities, and include activities considered essential for improving public sector performance, service delivery and growth in the education sector.
- 12.7 The Contractor is to ensure each Annual Work Plan:
- (a) incorporates any lessons from the review of progress to date, providing justification for proposed activities, the expected outputs and development benefits, including without limitation:
 - (i) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including without limitation:
 - (A) the supply and deployment of Long and Short Term Personnel and overall approach to their assignments;
 - (B) the establishment/revision of procedures relevant for any construction activities, including identification of supplies and construction work requirements, mobilisation of personnel and obtaining necessary approvals; and
 - (C) an updated approach to coordination of all aspects of implementation of Contractor Services as detailed in **Clause 5**,
 - (ii) activities are developed so that results and outcomes are clear and measurable and align to high level commitments outlined in the relevant ESSP and Australia-Kiribati Partnership for Development;
 - (b) includes a forecast budget with accurate estimates for the coming year;
 - (c) updated strategy integrating gender, disability sustainability, and capacity development into KEIP processes, as required;
 - (d) includes a revised Monitoring and Evaluation Framework and Risk Management Plan;
 - (e) addresses value for money;
 - (f) leverages GoK funding to joint initiatives, including under co-financing arrangements with appropriate consideration to fiduciary risk; and
 - (g) includes a review of progress to date and addressing any issues affecting implementation.
- 12.8 Annual Work Plans will be submitted to the OC for agreement by **15 November** each year. Acting on guidance from the SEMS, the OC will provide directions to the Contractor in the implementation and prioritisation of activities under the Annual Work Plan.
- 12.9 The Implementation Plan for Phase 1 is considered as the first Annual Work Plan.

- 12.10 Once approved in writing by AusAID, the Annual Work Plan will be deemed to be annexed to this Contract. Changes to the Annual Work Plan will be subject to written confirmation from both Parties. The most recent amended version of the Annual Work Plan will take precedence. Only where changes to Schedule 2 Basis of Payment are required will a Deed of Amendment as described in **Standard Conditions Clause 12 (Contract Amendment)** be required.
- 12.11 **Quarterly¹ Progress Reports** are due to the OC within two (2) weeks of the end of each Quarter. The Quarterly Progress Reports will cover:
- (i) major procurements in the period;
 - (ii) a table indicating progress of activities implemented, or scheduled to have been implemented, in the past three (3) months, including progress in accordance with the Annual Work Plan; and
 - (iii) a section on monitoring and reviewing risks and assumptions (including evaluation of new risks as they emerge with recommendations for their management/treatment).
- 12.12 **Quarterly² Financial Reports** are due to AusAID (only) within two (2) weeks of the end of each Quarter. Quarterly Financial Reports must include all the information required in **Part A Clause 3.1** of this Contract.
- 12.13 The Contractor will prepare a **Design Document** for Phase 2 and subject to performance Phase 3. The Contractor must provide a design document based on consultations with GoK and the development and support required to implement the new ESSP. The requirements of the Design Document will be established with KEIP donors prior to any work being undertaken. The Design Document is due by **30 September 2011 (Phase 2) and 30 September 2015 (Phase 3)**.
- (i) The Design Document will cover analysis of, among other things:
 - (A) the extent to which key stakeholders are meeting Phase 1 obligations as set out in the legal and other agreements that confirm the Phase 1 program;
 - (B) whether Phase 1 management and governance arrangements provide GoK with sufficient national ownership of the program, and a description on the extent that KEIP is being implemented through government systems;
 - (C) whether the approach to capacity development under the Phase 1 is producing the desired results;
 - (D) if the KEIP policy, legislative, monitoring and reporting activities under Phase 1 are providing government with the policy and management information they need; and

¹ Quarterly Periods: 01 Jan – 31 Mar; 1 Apr – 30 Jun; 1 Jul – 31 Sept; 1 Oct – 31 Dec

² Quarterly Periods: 01 Jan – 31 Mar; 1 Apr – 30 Jun; 1 Jul – 31 Sept; 1 Oct – 31 Dec

- (E) if there are indications that KEIP is resulting in better donor/government harmonization around government priorities and in an effective use of aid.

- 12.14 **Exception Reports** are to be provided as soon as possible after critical KEIP issues, such as fraudulent activities, unfavourable media reports etc, are identified and need to be brought to the prompt attention of AusAID. They will incorporate proposed responses to issues that have emerged and will not be seen as progress reports.
- 12.15 **Risk Management Plan** will be revised and updated in line with annual and periodic program reporting processes, and in any case annually and annexed to the Annual Work Plan. Revision of the Risk Management Plan will be agreed by OC.
- 12.16 **Monitoring and Evaluation Framework** will be revised and updated in line with the annual and periodic program reporting processes, and in any case annually and annexed to the Annual Work Plan. Revision of the Monitoring and Evaluation Framework will be agreed by OC. The Monitoring and Evaluation Framework provides indicators by which progress towards the Goal, Outcomes and Priority Areas of KEIP will be monitored. It covers all activities implemented under KEIP by all KEIP donors.

The Contractor will be responsible for establishing a baseline for all indicators and facilitating the joint agreement between OC members of intermediate outcome targets.

- 12.17 **Completion Report** -will be prepared within **two (2) months of the Program End Date**. The Completion Report should be prepared in accordance with any written instructions that may be issued by AusAID and address the following issues:
 - (i) confirm that the KEIP has been implemented according to the processes specified;
 - (ii) examine actual achievements against the KEIP goal and outcome;
 - (iii) provide a full reconciliation and acquittal of funds; and
 - (iv) document lessons learned from the KEIP.

- 12.18 All reports must:

be provided in accordance with the specification under Standard Condition **Clause 7** (Reports);

- (a) be accurate and not misleading in any respect;
- (b) be prepared as directed in writing by AusAID;
- (c) allow AusAID to properly assess progress under the Contract;
- (d) be provided in the format, number and on the media approved or requested by AusAID;
- (e) not incorporate either the AusAID or the Contractor's logo;
- (f) be provided at the time specified in this Schedule; and

- (g) incorporate sufficient information to allow AusAID to monitor and assess the success of the Services in achieving the objectives of AusAID's Gender and Development Policy.

KEIP

PHASE 1: JANUARY 2011 – 31 DECEMBER 2011

CONTRACTOR DELIVERABLES

This annex is to be read in conjunction with **Schedule 1 Clause 5**.

1. CONTEXT

- 1.1 Phase 1 is a program development phase which will build on the foundations of support already in place. Phase 1 outputs will develop the elements of a sector program (policy and strategy, financing, results, institutions, donor harmonisation) and the performance assessment framework (PAF) to allow for the transition of a program based approach to a SWAP approach. Agreeing an appropriate level of support and the sequencing and implementation plan for Phase 2 is also a key deliverable of Phase 1.

2. PRIORITY AREAS

- 2.1 Given the above, the Contractor will continue and/ or initiate activities in four priority areas of work identified by MoE:

Priority Area 1: Facilities Improvement

Outcome: *A safe and conducive learning environment for 1,079 school children.*

- 2.2 Overall, Kiribati's education facilities are in a state of disrepair. Exacerbating an already difficult situation is long-standing confusion over maintenance responsibilities; inadequate maintenance planning and asset management systems; and insufficient funding. In 2005, with AusAID financing, Kiribati developed a Facilities Management Plan (FMP). The Facilities Management Unit (FMU) was established in November 2008, with the intent of improving asset management in the sector by implementing the FMP. The following responsibilities were transferred from the Ministry of Public Works and Utilities (MPWU), the District Education Officers (DEOs) and the Senior Assistant Secretary to the FMU:
- (a) the procurement of maintenance works for South Tarawa schools' permanent buildings;
 - (b) the identification of new teacher housing needs; and
 - (c) responding to all school, community, stakeholder and GoK enquiries concerning Primary, Junior Secondary and Senior Secondary facilities and resourcing.
- 2.3 At present the capacity of the FMU is constrained and despite its significant responsibilities the continuation of FMU is at risk.
- 2.4 The Contractor will ensure the following outputs are achieved:

- (a) full rehabilitation of six primary schools identified by GoK, including water and sanitation upgrades, in line with the National Infrastructure Standards (NIS) for primary schools. This will be done with a view to rehabilitate remaining primary and junior secondary schools in the latter phases of KEIP (**Activity 1.1, 1.2, 1.3(a)**);
 - (b) improved capacity at the Facilities Management Unit (FMU) to oversee a program of sustainable facilities maintenance. This will be achieved through support in ongoing management of school rehabilitation and construction (**Activity 1.1**); and
 - (c) a school rehabilitation schedule for Cabinet consideration (**Activity 1.1**).
- 2.5 In parallel with this, AusAID will provide funding to UNICEF to implement water and sanitation upgrading in up to 15 primary schools in conjunction with an accompanying educational programme for school children (**Activity 1.3(b)**).
- 2.6 Environmental considerations will be incorporated into all facilities work in accordance with the GoK Environment Act (1999). In addition, the Contractor will ensure school site inspections are conducted prior to rehabilitation which will include an assessment of disaster and climate change risks to inform decision making on school sites, materials and construction techniques. Each school will take into consideration the specific needs of girls and students with disabilities.

Activity 1.1 - Continuing support to the FMU.

- 2.7 The Contractor will provide ongoing support to FMU to manage school rehabilitation and construction, and to oversee a program of sustainable facilities maintenance. The MoE will set performance targets for the FMU and the Contractor will support the FMU in meeting those targets. A key task for the Contractor will be to work with GoK and KEIP partners to update and expand the MoE plan for the rehabilitation of all schools in Kiribati, in a format suitable for submission to Cabinet in late 2011. The plan should be developed after **Activity 1.3(a)** is completed, so it can consider any lessons from the review and design work.
- 2.8 In addition, the Contractor will identify the steps required to bring the FMU to a point where it could oversee the rehabilitation contract(s) to be tendered in KEIP Phase 2, which will include considering how to effectively finance an appropriate and sustainable facilities management function in MoE.

Activity 1.2 The rehabilitation of six priority primary schools.

- 2.9 Based on the NIS Review (**Activity 1.3(a)**) rehabilitation of the following schools in the context of KEIP Phase 1 will be assessed. Adjustments to the list of priority schools will be made, if necessary, on the basis of the NIS Review and rehabilitation, if feasible, conducted in Phase 1 and/or a plan of assistance provided to the OC for approval for implementation in Phase 2.
- 2.10 The indicative list of schools is:
- (a) Ainen Karawa Primary School (Northern District/ Butaritari Island)
 - (b) Nikierere Primary School (Northern District/ Marakei Island)

- (c) Linda Burns Primary School (Central District/ Kuria Island)
 - (d) Kauake Primary School (Central District/ Aranuka Island)
 - (e) Margaret Field Primary School (Southern District/ Tamana Island)
 - (f) Tiona Primary School (Southern District / Arorae Island)
- 2.11 The entire process of rehabilitation of clusters of schools and of applying the NIS in varying locations will be considered a pilot and the Contractor will provide an evaluation report and recommendations on a suitable rehabilitation plan on completion of the initial cluster of up to six (6) schools.
- Activity 1.3(a) NIS Rapid Review**
- 2.12 To ensure that the rehabilitation and maintenance model developed under Phase 1 is comprehensive, cost effective, and draws heavily on past experience in school construction and maintenance in Kiribati and the region there will be an initial rapid review process. The rehabilitation work will commence with support for FMU to conduct a rapid review of the NIS against the six (6) priority schools that have been selected for rehabilitation in Phase 1.
- 2.13 The Contractor will visit the six (6) selected schools to assess their condition and develop guidelines for their rehabilitation and extension if necessary. The Contractor will provide an assessment of the implementation modality i.e. (i) building contract or (ii) project management of community based construction. The rapid review will also consider teacher housing on a case-by-case basis and the Contractor will undertake minor repairs to teacher housing where it is critical, and where budgets allow. All proposals for renovation or construction will take into consideration the specific needs of girls and students with disabilities (physical access, auditory and visual challenges etc).

Activity 1.3(b) - Rehabilitation Implementation

- 2.14 The rehabilitation of the priority schools will be undertaken by the Contractor in partnership with GoK. AusAID will also provide funding to UNICEF for its water and sanitation upgrading project across several additional schools which do not include the six (6) priority schools the Contractor will be rehabilitating. UNICEF will also provide support to GoK in implementing good practice in community consultation and engagement. The Contractor is expected to liaise effectively with UNICEF to ensure harmonisation of the rehabilitation process.

Priority Area 2: Policy and Legislation

Outcome: *A legislation which allows MoE to manage school systems more efficiently.*

- 2.15 The Education Act has not been revised since about the 1970s. The result is the MoE is highly centralised with limited provision for any delegation of responsibilities at the school level. This, together with difficulties in communication with schools, has tended to result in slow, poorly-informed, centralized decision-making processes and an absence of autonomy at the school level. The need for greater decentralisation is widely recognised.
- 2.16 In addition, accurate and timely data is critical to enabling MoE to make informed policy and planning decisions across the education sector. At present the sector under-utilises the

data it does have access to, and that data is limited and of varying degrees of reliability. Central to more informed sector planning and management is the development of a sector-wide M&E system designed to meet multiple stakeholder needs for information.

- 2.17 The Contractor will ensure the following outputs are achieved:
- (a) a draft legislative and regulatory review of the Education Act for MoE consideration. This will be developed in close collaboration with MoE and the Attorney General's office and will include extensive consultations, including with the Disabled People's Organisation, and with women and youth groups (**Activity 2.1**);
 - (b) strengthened monitoring and evaluation processes through an institutionalised Kiribati Education Management Information System (KEMIS), which provides ongoing monitoring of key education indicators through collection of accurate and timely data which is critical to enabling MoE to make informed policy and planning decisions. This will be supported by MoE staff capacity development in policy engagement and strategic program design, management and monitoring (**Activity 2.2**).
- 2.18 To complement the Contractor outputs, UNESCO and its partners are undertaking a capacity building project to develop the monitoring and evaluation framework for the ESSP.

Activity 2.1 Legislative and regulatory review.

- 2.19 The Contractor, working under the leadership of the Deputy Secretary MoE, and in partnership with the Attorney General's Office will assist the MoE to review the status, relevance, strengths and weaknesses of existing sector legislation and regulation. The Contractor will undertake extensive consultation across government, and ensure that consultations occur with, but not be limited to the, disabled peoples' organisations (Te Toa Matoa and the School and Centre for Children with Special Needs), women's groups (Aia Maea Aine ni Kiribati 'AMAK'), youth groups (National Youth Group), Kiribati Union of Teachers (KUT) and church groups, amongst others. Based on GoK consultations, the Contractor will then assist the MoE to draft a reform workplan for revising legislation and regulations for the sector. It is anticipated that this reform workplan will be reviewed by key government stakeholders and taken to the public through community consultations.
- 2.20 The Contractor should liaise with UNESCO who will be providing capacity building for all senior management staff on policy formulation and revision as well as use of evidence as a basis for planning.

Activity 2.2 Strengthened monitoring and evaluation

- 2.21 UNESCO and its partner (SPBEA) will provide capacity building and technical assistance to develop the monitoring and evaluation framework for the Kiribati Education Strategy, especially for the period 2011. The Contractor will assist in identifying performance indicators to be used. This includes linking the M&E and performance indicators with the KEMIS and ensuring that data in KEMIS are aligned to indicators in order to identify data gaps. A special effort will be made by the Contractor in consultation with UNESCO and

SPBEA to track Kiribati's performance on the EFA and education related Millennium Development Goals.

- 2.22 The Contractor will consider future support for KEMIS in subsequent Phases and how it will be integrated with the sector M&E development, including:
- (a) building the skills and confidence of MoE staff to ensure they can fully utilise the tools and features of KEMIS relevant to their roles;
 - (b) strengthening and improving information management processes and procedures to ensure data in KEMIS are accurate, relevant and available when needed; and
 - (c) Extending or enhancing KEMIS and the MoE ICT operating environment to meet new or changed requirements of MoE.

Priority Area 3: Workforce development

***Outcome:** 6,400 children will be taught by teachers who have improved knowledge, skills and training in teaching English.*

- 2.23 There is evidence that teacher performance has declined over the years. Current standards and competency levels required of teachers are low, and no consistent set of standards is applied through teacher training institutions and the teacher registration and promotion system. MoE is committed to setting and applying qualification and performance benchmarks (minimum service standards) for teachers at each stage of their professional careers, including a prescribed level of English competency. Ensuring that initial and in-service teacher training is consistent with these benchmarks will assist in establishing a base for career development and help ensure that improved teaching standards are carried into the classroom.
- 2.24 Staff capacity and management systems within MoE also need to be strengthened if the Ministry is to successfully deliver the promise of the reforms that KEIP will support over the coming years. Staff development will provide the Ministry with the competence and confidence to lead. System reform will provide the tools necessary to manage and guide service delivery, and to complement higher level sector strengthening. In addition, school principals and head teachers would benefit substantially from leadership training as this would enhance their skills and confidence to effectively and efficiently guide schools towards their potential.
- 2.25 The Contractor will ensure the following outputs are achieved:
- (a) to complement the SEMS, high level professional support is provided to MoE senior management to help MoE establish and lead the sector reform process **(Activity 3.1)**;
 - (b) a Teacher Professional Development Framework is designed that will give all teachers the opportunity to meet GoK approved national minimum standards **(Activity 3.2)**;
 - (c) a KTC Training Upgrade Design which will assist MoE to determine how to position KTC as a quality higher education provider **(Activity 3.3)**.

(d) the upgrade of teachers English skills (**Activity 3.4**).

- 2.26 The Contractor will ensure outcomes of the training delivered by using an internationally recognised protocol.

Activity 3.1 High level professional support to the MoE senior management.

- 2.27 The Contractor is expected to work effectively with the Senior Education Management Specialist (SEMS) to ensure that the KEIP moves at an appropriate pace, that the work of Contractor technical assistance is integrated into the work of the ministry, and to monitor the quality as well as the progress of adviser inputs and outputs.
- 2.28 The SEMS has been appointed to provide long-term professional support to the Secretary and the MoE senior management team. The role of the SEMS is to help the MoE to establish and lead the sector reform process. The SEMS and the Contractor will work with GoK to ensure that the KEIP is not driven by deliverables, to the detriment of much-needed capacity development (which has in the past resulted in ownership getting lost in the process).

Activity 3.2 Design of a Teacher Professional Development Framework.

- 2.29 The Contractor will assist the MoE to develop consensus regarding a model of teacher professional development, the Teacher Professional Development Framework that will give all teachers the opportunity to meet GoK-approved national minimum standard (i.e. qualification and performance benchmarks). The Contractor will integrate this work with the work they are undertaking as part of the feasibility study for the rehabilitation of the Kiribati Teachers College, lessons learned from the recently completed AusAID project, Language Education Pilot Project (LEPP), and will also work closely with the UNESCO, SPBEA and USP to achieve a single, integrated approach to teacher professional development and management in Kiribati.
- 2.30 The Contractor will ensure that in the development of the Framework it is established 'what teachers in Kiribati should know and be able to do', through a participatory process that builds a consensus view. This set of statements would then be used to guide those who support new teachers through a mentoring program in schools and clusters, and how 'evidence' would be assembled to demonstrate that a new teacher is meeting a performance standard expected against the statements.
- 2.31 The Framework will also consider teacher educator performance standards, qualifications and accreditation. Moreover, attention will be given to programs that ensure an understanding or and capacity to provide inclusive education to all children including children with a disability. In developing the Framework, consideration should be given to current activities implemented by UNESCO and UNICEF and the roll out of LEPP activities.
- 2.32 It is intended that the implementation of the professional development framework will begin in Phase 2 of KEIP.

Activity 3.2(a) Language Education Pilot Program (LEPP) Roll-out

- 2.33 The Contractor will consider the outcomes of the independent completion report and independent assessment of the proposed work plan to roll out LEPP and confirm

implementation arrangements in Phase 1 of KEIP. The Contractor will confirm details of implementation including resource requirements in the Implementation Plan detailed in **Clause 12.2 of Schedule 1 to the Contract**.

Activity 3.3 KTC Teacher Training Upgrade Design.

- 2.34 The Contractor will assist the MoE to determine how to position KTC as a quality higher education provider, drawing on work already completed by the New Zealand Aid Program. The Contractor will help determine the structure and program of a reformed KTC that will qualify and train both new and serving teachers. It will also provide recommendations regarding the staff development programs KTC will require to deliver its programs and services (consideration will be given for access by teachers with a disability).

Priority Area 4: Improving curriculum and assessment

***Outcome:** Improved literacy outcomes.*

- 2.35 Over the past 15 years, studies have identified major curriculum and assessment issues in Kiribati. These studies have highlighted the need to: introduce a cohesive curriculum based on national goals and a framework for teaching, learning and assessment; improve achievement levels, especially in literacy & numeracy; and develop appropriate and effective approaches to pedagogy. The National Education Summit (2008) noted particular concerns with the decline in Te-Kiribati and English, lack of inclusiveness of the curriculum, over emphasis on academic subjects and failure of the junior secondary schooling to develop a vocational orientation. The lack of teacher confidence to speak English is contributing to the decline in the English language ability of students, which is being addressed in Priority Area 3.
- 2.36 The MoE has prioritized the development of a National Curriculum and Assessment Framework which includes the review of language and literacy curriculum, setting of national benchmarks and providing curriculum resources and training to support implementation of new curriculum. The MoE, with assistance from AusAID, developed a proposal for a comprehensive ten year curriculum and assessment reform: the Curriculum and Assessment Improvement Strategy (CAIS), although that strategy and its Action Plan have not yet been endorsed by GoK. In addition, the Curriculum Development Resource Centre (CDRC) has recently completed a Language Policy, with assistance from AusAID, which emphasises bilingual education that has potentially significant implications for curriculum, syllabus and teacher training.
- 2.37 The Contractor will ensure the following outputs are achieved:
- (a) a curriculum improvement stock take including a language and syllabus review of issues, strategies and current activities **(Activity 4.1)**; and
 - (b) develop a detailed plan for Curriculum Assessment Improvement Strategy (CAIS) implementation, development of supplementary material for integration and utilising resources to achieve improved literacy rates **(Activity 4.1)**.
- 2.38 In addition, UNESCO is currently working with the South Pacific Board of Education Assessment (SPBEA) to support Kiribati in developing and improving the assessment of literacy and numeracy and life skills at a national level. UNICEF is working with MoE to

support the formation and utilisation of reading centres in up to 20 primary schools to achieve improved literacy outcome

Activity 4.1 Curriculum Improvement Stocktake.

- 2.39 The Contractor will work with MoE (especially CDRC) to undertake a stock take of curriculum, language and syllabus review issues, strategies and current activities. The Stocktake will enable MoE to develop a detailed plan for CAIS implementation by providing a comprehensive understanding of the complex operating context for curriculum change in Kiribati, and enabling the development of a well-informed consensus about the way forward. The Stocktake will also feed into the design of Phase 2 and the specification of further support for curriculum and assessment work.
3. **PREPARATION FOR PHASE 2 DESIGN**
- 3.1 Critical to the design of Phase 2 will be the completion of detailed sector analysis in Phase 1. The Contractor will undertake research into addressing the following:
- (a) system efficiency, to include intra and inter sectoral issues, commencing with a detailed sector analysis on:
 - (i) the causes for poor learning outcomes (literacy and numeracy); and
 - (ii) barriers to enrolment and participation and causes of drop out.
- 3.2 A report addressing the issues in **Clause 3.1** will be provided to OC for approval by **31 May 2011**.
- 3.3 Outcomes of this analysis will also inform work activities under KEIP for subsequent Phases.

POSITION DESCRIPTIONS OF KEIP TEAM LEADER AND TECHNICAL ASSISTANCE

KEIP Team Leader

To coordinate and manage technical and other support to the Government of Kiribati, in support of: effective ESSP implementation; KEIP implementation and roll-out; donor coordination and improved aid effectiveness; facilities rehabilitation and sub-contractor/TA procurement and management.

Key responsibilities

Management and Coordination

As Team Leader:

- (a) support the Secretary and MoE Senior Management Team in coordinating technical assistance inputs provided to the MoE, and other relevant parts of GoK;
- (b) facilitate assistance to MoE partners and the Senior Education Management Specialist (SEMS) to identify, develop and manage prioritised capacity development initiatives, towards sustainable professional development and institutional strengthening;
- (c) support the Secretary and Senior Management Team in the planning of KEIP Phase 2 capacity building and institutional strengthening approaches, sequencing and resourcing;
- (d) develop and maintain an effective relationship with the SEMS. This relationship is critical to the success of KEIP;
- (e) work collaboratively with the SEMS at all times; and
- (f) ensure that KEIP is not driven by deliverables, to the detriment of much needed capacity development.

Aid effectiveness and development partner coordination

The Team Leader will:

- (a) support the MoE Secretary and Senior Management Team in proactive donor coordination, and in developing a strategy for increasing alignment, harmonisation and related aspects of aid effectiveness over time;
- (b) cooperate with the SEMS to support the MoE and development partners, in line with the Paris and Accra agreements, to:

- (i) expand GoK leadership and accountability and;
 - (ii) improve development partner alignment with GoK policies, priorities, strategies, operational plans and PFM systems, wherever practicable.
- (c) report jointly to AusAID Tarawa and to the MoE Secretary. The KEIP Team Leader, together with the MoE Secretary (or the Secretary's delegate), will meet with DP representatives at least monthly.

Duration and phasing

[to be inserted based on the preferred tenderers proposal]

Performance Management

The work of the KEIP Team Leader will be monitored by the Secretary MoE and AusAID through progress reports and liaison meetings with the Secretary of Education, AusAID and other donors.

Risk Management

The KEIP Team Leader is to take actions to mitigate risks that threaten the delivery of agreed outcomes, and take lead responsibility for the overall KEIP Phase 1 Risk Management Plan. Coordination Meetings, Progress Reports and the Final Report are to include a standing agenda item/section on identifying major risks and measures, actions and strategies to reduce their likelihood and impact.

Professional Requirements

- (a) Experience leading and directing cross-functional teams to deliver projects within the set timeframes, scope and budget as set out in the Kiribati Education Improvement Program.
- (b) Demonstrated success in the procurement, contracting and management of national and international technical assistance.
- (c) Financial and administrative management skills relevant to KEIP management responsibilities.
- (d) A relevant tertiary qualification, ideally at postgraduate level.
- (e) Demonstrated knowledge of aid effectiveness principles and experience in donor coordination.
- (f) Demonstrated experience in building capacity of counterparts.
- (g) Excellent communication and facilitation skills, particularly in cross-cultural settings.
- (h) Fluent command of spoken and written English.
- (i) Experience working in Pacific Island Nations, small island states, fragile environments or a developing country.

- (j) Knowledge of the Kiribati language would be an advantage.

[technical assistance position descriptions to be inserted from preferred tenderer's proposal]

Each Position Description will, at a minimum, include: the title of the technical assistance position, short overview; list of key responsibilities; skills, knowledge and experience requirements, reporting lines]

CONTRACTOR PERFORMANCE ASSESSMENT INDICATORS

Indicators	Means of Verification
1. Program Planning, Reporting and Monitoring (a) Reports are submitted on time and to the standard indicated; (b) Timely incorporation of OC agreed report recommendations into operational procedures; and (c) Planning maximises use of GoK systems.	(a) Assessment by OC (b) – (c) Assessment of processes/procedures by OC and AusAID
2. Technical Assistance and administrative personnel management (a) Personnel identified, selected and recruited (in consultation with GoK as required) in line with the principles of the Commonwealth Procurement Guidelines, in particular, observing the core principle of achieving value for money together with all supporting principles; (b) Timely mobilisation of Technical Assistance and administrative personnel; (c) Comprehensive briefings for all Technical Assistance and administrative personnel, prior to/ or immediately on mobilisation; (d) Security, logistical and management support provided to enable Technical Assistance and administrative personnel to perform their duties as set out in their ToR; (e) Contractor has a structured performance appraisal system	Assessment by AusAID and OC members, where appropriate of: (a) Recruitment processes; (b) - (e) mobilisation and briefing processes; and (f) performance appraisal processes; and

including annual performance review and management of unsatisfactory performance for all staff; and (f) Low turnover of Technical Assistance and administrative personnel, and in the event of turnover timely and appropriate replacement of personnel.	
3. Financial Management (a) Accounting systems and financial records conform to statutory and Contract requirements; (b) Invoices are submitted on time with supportive documentation as required; (c) Cash flow estimates are provided by due dates and as accurate as possible; (d) Contractor proactive on notifying AusAID of significant variations in actual expenditure, with justification and proposed solution; and (e) Contractor responsive to AusAID requests for adjustment to cash flow in accordance with adjustments in AusAID programming priorities.	(a) – (c) Periodic audit by AusAID or a nominated representative (d) – (e) Assessment by AusAID or a nominated representative based on AusAID records/file notes of significant instances of non-compliance, and finance related communications with the Contractor.
4. Communications (a) Open and effective communications maintained with key KEIP stakeholders including GoK, SEMS, and KEIP Donors; (b) Open and effective communication maintained with AusAID; (c) Significant factors likely to impact on achievement of Program Objectives are identified and communicated to AusAID in a proactive manner;	(a) – (e) Assessment by AusAID, supported by records/ file notes of communications with the Contractor, the OC and feedback from all stakeholders.

(d) Requests from AusAID and/or OC members for information relating to the Program responded promptly and effectively; and (e) Timely and accurate proposals for contract amendments provided to AusAID.	
5. Procurement and Sub-Contracting (a) Where appropriate fiduciary control measures are in place, GoK systems are maximised; (b) The Contractor has effectively met its obligations in Clause 11 (Sub Contracting) Standard Contract Conditions; and (c) Goods and services procured in a timely manner and within Contract financial limits.	(a) – (c) Periodic audit by AusAID, or a nominated representative, of sub-contracting and significant procurement under the Program.

PART 4 - BASIS OF PAYMENT

KIRIBATI EDUCATION IMPROVEMENT PROGRAM

TO BE NEGOTIATED WITH PREFERRED TENDERER

Note to Tenderers: This Part forms a key Schedule of the Contract Conditions and will appear as Schedule 2 in the final Contract.

1. TOTAL AMOUNT

- 1.1 The total amount payable by AusAID to the Contractor shall not exceed the sum of **A\$XXXXXX** plus GST, if any to a maximum of **A\$XXXX**.
- 1.2 AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.
- 1.3 Subject to the provisions of this Basis of Payment, AusAID will pay the Contractor the following Costs and Fees (up to the maximums specified in **Table 1**):
- (a) Reimbursable Costs comprising:
 - (i) Personnel Costs, including Long and Short Term Personnel – **Tables 2 – 5** and **Clause 2** and **Clause 3**;
 - (ii) Procurement Costs, including sub-contracted construction/rehabilitation work – **Clause 4** and **Table 6**;
 - (b) Procurement and Management Fees comprising:
 - (i) Management fee relates to all administrative costs, overheads and profit – **Table 9** and **Clause 5**.
 - (ii) All associated procurement fees such as freight and insurances – **Table 7** and **Clause 6**; and

Table 1: Maximum Contract Amount

Costs and Fees	Summary of Estimated Costs exclusive of GST A\$
Reimbursable Costs	
Long Term Personnel	
Short Term Personnel	
Procurement Costs	
Procurement and Management Fees	
Management Fee	
Procurement Fee	
TOTAL	

2. PERSONNEL COSTS

- 2.1 The maximum amount payable by AusAID to the Contractor for Personnel Costs is up to **A\$XXXX** plus GST up to a maximum amount of **A\$XXX**.
- 2.2 Personnel Costs include the KEIP Team Leader, Administrative Personnel and Technical Assistance.
- 2.3 Personnel Costs will be reimbursed on a monthly basis on receipt of a correctly rendered invoice.

Long Term Personnel

- 2.4 Monthly Salary Rates for Long Term Personnel listed in **Table 2(a)** are based on the following formula if the person is absent for any period, aside from the periods of leave permitted:

$$\text{Adjusted monthly payment} = \frac{(\text{no. of worked days} + \text{designated leave days}^1)}{(\text{no of working days in relevant month} + \text{designated leave days})} \times \text{monthly fee}$$

- 2.5 The Monthly Salary Rates, as payable directly to the Contractor to, or on behalf of, the personnel, are **fully inclusive** of:
- (a) salary;
 - (b) all personnel related taxes, levies and insurances incurred in Australia or overseas;
 - (c) superannuation levy, if any, as appropriate;
 - (d) leave costs in accordance with **Clause 3** below;

but exclusive of:

- (e) any profit, overheads, administration or management fee or any other mark-up on the part of the Contractor;
 - (f) all allowances as defined in **Clause 2.6** below and
 - (g) any Australian Goods and Services Tax (GST) as referred to in **Clause 21** of the Standard Contract Conditions.
- 2.6 Allowances will be provided for long term personnel only. Allowances for long term personnel will vary given individual circumstances, in particular if someone is engaged locally or if the individual is accompanied. Given the circumstances of each personnel an allowance will be calculated based on the rates provided in **Table 3**.

¹ Refer to **Clause 3**.

Short Term Personnel

- 2.7 Daily Fee Rates listed in **Table 4(a)** will be payable on actual days worked. Daily Fee Rates are based on an eight (8) hour working day. Any additional work undertaken within any one twenty-four (24) hour period shall not be claimed.
- 2.8 The Daily Fee Rates, as payable directly to the Contractor to, or on behalf of, the personnel, are **fully inclusive** of:
- (a) salary;
 - (b) all personnel related taxes, levies and insurances incurred in Australia or overseas;
 - (c) superannuation levy, if any, as appropriate;
 - (d) leave costs in accordance with **Clause 3** below;
- but exclusive of:**
- (e) any profit, overheads, administration or management fee or any other mark-up on the part of the Contractor;
 - (f) all per diem and accommodation rates as defined in **Clause 2.6** below and
 - (g) any Australian Goods and Services Tax (GST) as referred to in **Clause 21** of the Standard Contract Conditions.
- 2.9 Short Term Personnel, providing Services away from their home base, will be provided with a per diem and accommodation rate for the duration of their Services. Annual per diem and accommodation rates for Short Term Personnel are provided at **Table 5**. This Table will be updated annually by AusAID on the anniversary of the Contract Start Date.

3. LEAVE

- 3.1 Leave days will only be accrued for Long Term Personnel. Short Term Personnel will not be entitled to leave. Accrual of leave, up to four (4) weeks per annum, during the assignment shall be taken within each twelve (12) month period of the personnel's commencement date and in the relevant year it falls due. Except Locally Engaged Personnel for whom the local national labour laws and awards shall apply.
- 3.2 Leave days also refers to up to thirteen (13) public holidays per annum as designated by the Australian High Commission in Kiribati each year.

4. PROCUREMENT COSTS

- 4.1 The maximum amount payable by AusAID to the Contractor for Procurement Costs will be reimbursed on the basis of the actual costs incurred for items, up to the maximum value of **A\$XXXXXX** plus GST, if any to a maximum of **A\$XXXXXX**.
- 4.2 Procurement Costs will be reimbursed on a monthly basis on receipt of a correctly rendered invoice. The invoice will be submitted at the same time as Personnel Costs in accordance with **Clause 2.3**.

4.3 Procurement Costs are **fully inclusive** of, but not limited to, the following:

KEIP Management Office

- (a) Furniture;
- (b) Office fit out costs, as required;
- (c) IT equipment (computers and printers) and office hardware and software;
- (d) Communication equipment (printer/scanner, fax, satellite/ land/ mobile phone);
- (e) Office consumables, such as paper;
- (f) Vehicles for work related purposes;
- (g) work related flight costs within Kiribati for Long and Short Term Personnel;
- (h) *[other items as detailed in the Preferred Tenderer's Proposal];*

School building/refurbishment

- (i) sub contracted services for construction or the refurbishment of schools including, classrooms, library, ablution blocks, teacher accommodation etc, as necessary, and in accordance with the National Infrastructure Standards;
- (j) *[other items as detailed in the Preferred Tenderer's Proposal];and*
- (k) other items as agreed by AusAID.

4.4 Procurement Costs, as detailed in **Table 6**, are **exclusive** of any procurement fees; profit, overheads, administration or management fee, freight costs or any other mark-up on the part of the Contractor, as these costs are covered by the Management and/or Procurement Fee.

5. MANAGEMENT FEE

5.1 The maximum amount payable by AusAID to the Contractor for Management Fees is up to **A\$XXXXXX** plus GST up to a maximum of **A\$XXXXX**.

5.2 The Management Fee will be paid on the satisfactory completion of milestones as detailed in **Clause 7** and **Table 9** below.

5.3 The Management Fee is **fully inclusive** of, but not limited to, the following Contractor costs:

- (a) financial management costs and financing costs, if any;
- (b) corporate overheads;
- (c) all management support costs for all Personnel, including any language training costs, related Personnel insurances, Australia based preparation (pre mobilisation) and professional development costs, as required;

- (d) all legal costs;
- (e) taxation, as applicable;
- (f) health, medivac, worker's compensation, liability and indemnity insurance;
- (g) costs associated with personnel briefings in Australia or in-country;
- (h) costs, including financial costs, associated with any subcontracting and procurement of goods and services except where these are covered by the Procurement Fee;
- (i) utilities such as phone (domestic and international), water, power and sewerage;
- (j) security and cleaning services, as required;
- (k) IT services for internet and intranet provision;
- (l) costs of complying with the Contractor's reporting obligations under the Contract;
- (m) all costs associated in supporting KEIP Oversight Committee meetings;
- (n) costs associated with managing an effective monitoring and evaluation system;
- (o) all other costs not specified as reimbursable costs;
- (p) allowances for risks and contingencies;
- (q) all escalators on costs for the term of the Contract;

but exclusive of

- (r) any Australian Goods and Services Tax (GST) as referred to in **Clause 21** of the Standard Contract Conditions.

6. PROCUREMENT FEE

- 6.1 The Contractor will be entitled to a Procurement Fee as detailed in **Table 7** below. The Procurement Fee is payable on the actual cost of Program Supplies procured in the relevant quarter (three (3) months) for the purposes of the Program.
- 6.2 The Procurement Fee is **fully inclusive** of, but not limited to, the following:
 - (a) insurance, as required in accordance with **Clause 34 of Part B - The Standard Contract Conditions** including insurances associated with any subcontracting, workers compensation, liability and indemnity but excluding any Personnel related insurances such as travel/medical insurance;
 - (b) freight costs; and
 - (c) management and administrative fees associated with the procurement of goods and services as outlined in **Clause 5** above.

7. MILESTONE PAYMENTS

- 7.1 Milestone Payments shall be paid progressively, within thirty (30) days of the satisfactory achievement of milestones and the acceptance by AusAID in writing of achievement of milestones and as specified in **Table 9**.
- 7.2 The criteria for “satisfactory completion” of an identified output will be as specified in **Table 9** as the “verifiable indicators”.
- 7.3 Where a Milestone Payment is to follow acceptance of a report, 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 report have been achieved.
- 7.4 It is AusAID corporate practice to inform Contractors as soon as reasonably possible, and in any case within 30 days of receipt of notice of the completion of an identified output or provision of a report whether or not that output or report is accepted.

8. ESCALATION OF REIMBURSABLE PERSONNEL COSTS

- 8.1 All Long and Short Term Personnel Costs as defined in **Clause 2** are inclusive of escalation for the Term of the Contract.
- 8.2 If AusAID exercises the option(s) to extend the Term of the Contract under **Clause 2.3 and 2.4 of Part A - The Program Specific Contract Conditions** then the following will apply:
 - (a) A fixed escalation rate of *[X% as agreed in preferred tenderer’s proposal]* will be applied to all Long and Short Term Rates as of 1 January each year of the extension granted.
 - (b) The application of this rate will be applied to the 2012 rate, in the first instance, and then applied annually as described above.

9. ESCALATION OF MANAGEMENT FEE

- 9.1 The Management Fee as specified in **Clause 5** of this Schedule, above, is inclusive of any escalators for the Term of the Contract.
- 9.2 If AusAID exercises the option(s) to extend the Term of the Contract under **Clause 2.3 and 2.4** of the Program Specific Contract Conditions then the following will apply:
 - (a) A fixed escalation rate of *[X% as agreed in preferred tenderer’s proposal]* will be applied on the Monthly Management Fee on 1 January each year of the extension granted.
 - (b) The application of this rate will be applied to the 2012 rate, in the first instance, and then applied annually as described above.
- 9.3 AusAID, shall in consultation with the Contractor, apportion the Management Fees across new Milestone Payments for any extension period offered.

10. **ESCALATION OF PROCUREMENT FEE**

- 10.1 The Procurement Fee as specified in **Clause 6** of this Schedule, above, is inclusive of any escalators for the Term of the Contract.
- 10.2 If AusAID exercises the option to extend the Term of the Contract under **Clause 2.3 and 2.4** of the Program Specific Contract Conditions then the Procurement Fees in **Table 9** shall apply.
- 10.3 In the event AusAID exercises the option beyond end 2015 then the Contractor will propose a revised Procurement Fee for the period of the extension. Sufficient justification should also be provided to AusAID to ensure an informed decision can be made by AusAID of the proposed figures.

11. **CLAIMS FOR PAYMENT**

- 11.1 The Contractor's tax invoice must be submitted when due pursuant to this **Schedule** in a form identifiable with the Services.
- 11.2 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.
- 11.3 All claims for payment must be **made out to:**
- Chief Finance Officer**
Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601
- 11.4 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 cced to the AusAID Activity Manager in Kiribati.
- 11.5 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.htm>

Table 2a: Long Term Personnel Costs 2011: Salary Costs

Position	Monthly Salary*	Taxes	Superannuation	Leave Costs	Total Monthly Rate
(a)	(b)	(c)	(d)	(e)	(f)
KEIP Team Leader					
Technical Assistance					
<i>[add/ delete rows as required]</i>					
Administrative Personnel					
<i>[add/ delete rows as required]</i>					

* 'Actual' Salary paid by Contractor to personnel.

Table 2b: Long Term Personnel Costs 2011: all inclusive

Position	Name	Salary		Total Base Salary (A\$) [(c) x (d)]	Travel*		Total Travel Costs (A\$) [(f) x (g)]	Allowance (Monthly Rate)	Total Allowances [(c) x (i)]	Total Costs (A\$) [(e) + (h) + (j)]
		No. Mths	Mthy Rate		No. flights	Flight Costs (A\$)				
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
KEIP Team Leader			[taken from Table 2a above, column (f)]							
Technical Assistance										
[add/ delete rows as required]			[taken from Table 2a above, column (f)]							
Administrative Personnel										
[add/ delete rows as required]			[taken from Table 2a above, column (f)]							
SUB TOTAL					SUB TOTAL			SUB TOTAL		
TOTAL										

* Return economy flight from home residence to Kiribati. Travel Costs will be paid on a reimbursable basis up to the amount specified or actual cost incurred which ever is lowest.

Table 3: Allowances for Long Term Personnel

Allowance item	2011
	Monthly Rate
Housing (incl. utilities, security and house help)	
<i>[insert additional allowance items as required]</i>	
	Once off payments
Mobilisation Allowance, payable on signing of personnel contract (incl. hotel accommodation up to two (2) weeks on arrival in Kiribati, shipment and storage of goods)	
Demobilisation Allowance, payable two (2) month prior to departure (incl. hotel accommodation up to two (2) weeks on return, shipment of goods and storage of goods)	
<i>[insert additional allowance items as required]</i>	

Table 4a: Short Term Personnel Costs 2011: salary costs

Position	Daily Rate Salary*	Taxes	Superannuation	Leave Costs	Total Daily Rate
(a)	(b)	(c)	(d)	(e)	(f)
KEIP Team Leader					
Technical Assistance					
<i>[add/ delete rows as required]</i>					
Administrative Personnel					
<i>[add/ delete rows as required]</i>					

*‘Actual’ Salary paid by Contractor to personnel.

Table 4b: Short Term Personnel Costs 2011: all inclusive

Position	Name	Salary		Total Base Salary (A\$) [(c) x (d)]	Travel*		Total Travel Costs (A\$) [(f) x (g)]	Per Diem (Daily Rate)	Accommodation (Nightly Rate)	Upper Limit Allowances [(d) x ((i) + (j))]	Total Costs (A\$) [(e) + (h) + (k)]
		No. Days	Daily Rate		No. rtn flights	Flight Costs (A\$)					
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
Technical Assistance											
[add/ delete rows as required]			[taken from Table 4a above, column (f)]								
Administrative Personnel											
[add/ delete rows as required]			[taken from Table 4a above, column (f)]								
SUB TOTAL					SUB TOTAL			SUB TOTAL			
TOTAL											

* Return economy flight from home residence to Kiribati. Travel Costs will be paid on a reimbursable basis up to the amount specified or actual cost incurred which ever is lowest.

Table 5: Allowances for Short Term Personnel*

	Accommodation** (per night)	Per Diem*** (per day)
Kiribati	A\$100	A\$82

* Provided by AusAID and updated annually as of 1 January each year.

**Accommodation rate is reimbursed at lesser of actual cost incurred or up to the rates provided in Table 6.

*** A per diem is a non acquittal daily rate for breakfast, lunch, dinner and daily incidentals such as newspaper etc

Table 6: Procurement Costs

Procurement Item	Costs (A\$)
KEIP Program Office	
Furniture	
Office Fit Out Costs, as required	
IT equipment – office hardware (e.g. computers, printers) & software	
Communications equipment (printers, scanners, fax, satellite, land, mobile phones, as required)	
Office consumables, such as paper	
Vehicles for work related purposes	
Work related flight costs within Kiribati for Long and Short Term Personnel	
<i>[other items as detailed in the Tenderer's Proposal]</i>	
Activity Costs	
Activity 1.2 - Sub contracted services for construction or the refurbishment of schools including, classrooms, library, ablution blocks, teacher accommodation etc, as necessary, and in accordance with the National Infrastructure Standards	2,400,000
Activity 3.4 - Language Education Pilot Program roll- out	1,600,000
<i>[other items as detailed in the Tenderer's Proposal]</i>	
Other items as agreed by AusAID.	5,000
TOTAL	

Table 7: Procurement Fee

Value of Procurements each Quarter (three (3) month period)	Procurement Fee (%) 2011
Procurement Total for Quarter valued between A\$0 – A\$500,000	
Procurement Total for Quarter valued between A\$500,001 – A\$1,000,000	
Procurement Total for Quarter valued between A\$1,000,001 – A\$1,500,000	
Procurement Total for Quarter valued between A\$1,500,001 – A\$2,000,000	
Procurement Total for Quarter valued between A\$2,000,001 – A\$2,500,000	
Procurement Total for Quarter valued between A\$2,500,001 – A\$3,000,000	

Table 8: Extension Period ONLY: Procurement Fee

Value of Procurements over a three (3) month period	Procurement Fee (%) 2012	Procurement Fee (%) 2013	Procurement Fee (%) 2014	Procurement Fee (%) 2015
Procurement Total for Quarter valued between A\$0 – A\$500,000				
Procurement Total for Quarter valued between A\$500,001 – A\$1,000,000				
Procurement Total for Quarter valued between A\$1,000,001 – A\$1,500,000				
Procurement Total for Quarter valued between A\$1,500,001 – A\$2,000,000				
Procurement Total for Quarter valued between A\$2,000,001 – A\$2,500,000				
Procurement Total for Quarter valued between A\$2,500,001 – A\$3,000,000				

Table 9: Milestone Payments

No.	Milestone Description	Due Date	Means of Verification	Payment Amount (A\$) <i>[to be inserted based on preferred tenders accepted costings]</i>
1	Implementation Plan	Six (6) weeks after contract start date	OC written acceptance	
2	First Quarterly Financial Report	14 April 2011	AusAID written acceptance	
3	First and Second Quarterly Progress Reports	13 June 2011	OC written acceptance of both reports	
4	Second Quarterly Financial Report	14 September 2011	AusAID written acceptance	
5	Annual Work Plan 2012	15 November 2011	Based on Phase 2 design and on OC written acceptance	

SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

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PART 5 – STANDARD TENDER CONDITIONS

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

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

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

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

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

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

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

Conditions Applying to Electronic Tender Lodgement

- 1.11 Electronic tenders must be lodged electronically via the Australian Government Tender System, AusTender, at <https://www.tenders.gov.au> before the **Closing Time** and in accordance with the tender lodgement procedures set out in **Annex C of this Part** and on AusTender.
- 1.12 Where there is any inconsistency between the tender lodgement procedures set out on AusTender and those set out in this RFT, this RFT will prevail.
- 1.13 Tenders not submitted in accordance with **Clause 1.11** will be excluded from evaluation.
- 1.14 It is the responsibility of tenderers to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on AusTender. Neither AusAID nor the Commonwealth takes any responsibility for any problems arising from tenderers' infrastructure and/or Internet connectivity.

Conditions Applying to Hard Copy Tender Lodgement

- 1.15 For hard copy lodgement, the Tenderer is responsible for the delivery of their Tender. The Tender must be placed in AusAID's **Australian High Commission (Suva) 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 14 days prior to the **Closing Time**.

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

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

3. **LATE TENDERS**

Conditions Applying to Tenders Lodged Electronically

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

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

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

Conditions Applying to Tenders Lodged in Hard Copy

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

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

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

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

4. **NON-CONFORMING TENDERS**

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

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

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

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

5. **CLARIFICATION OF TENDERS**

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

- (a) respond to any request for clarification within the time period specified by AusAID;
- (b) ensure that additional information provided answers AusAID's enquiry and is fully consistent with the Tender submitted by the Tenderer; and
- (c) not seek to change any aspect of their Tender by providing additional information to AusAID.

5.2 Clarifications are provided on the terms of the RFT.

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

6. **AMENDMENT OF THE RFT**

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

7. **ASSESSMENT OF TENDERS**

7.1 Tenders will be assessed on the following basis:

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

- (b) financial

to achieve the best value for money outcome.

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

Technical Assessment

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

7.4 AusAID may invite a Tenderer (shortlisted or otherwise) to give AusAID a short presentation and be interviewed by the TAP. Specified Personnel, such as the proposed in-country team leader and the 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 Canberra and the costs of the Tenderer's (and its personnel's) attendance must be borne by the Tenderer.

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

These other factors have not been allocated any specific weightings.

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

Goods and Services Tax

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

Insurances

- 7.11 The financial proposal must be inclusive of all necessary insurances required by the Contract Conditions and for the performance of the Services. Notwithstanding the requirements of the Contract AusAID strongly recommends that all Tenderers seek advice on and consider arranging professional indemnity insurance as a matter of prudent commercial practice. Where such insurance is arranged, AusAID recommends that it be maintained for the duration, plus a further 3 years, of the full Term of the Contract or earlier termination.

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 \$250.00 for each 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.

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

Technical proposal format

- 7.15 The technical proposal must:
- (a) indicate the Tenderer’s nominated contact person and contact details on the cover page;
 - (b) be in a type font of no less than 12 point on A4 paper;
 - (c) have left and right page margins of no less than 2.5 cm, and top and bottom page margins of no less than 3 cm, excluding headers, footers and page numbers;
 - (d) not have the AusAID logo or any other representation or mark which may indicate that the Tenderer is in any way related to or connected with AusAID; and

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

Curricula vitae

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

- (a) name and personal contact details (this can be an email address or phone number);
- (b) nationality and if relevant permanent resident status;
- (c) professional qualifications, including institution and date of award; and
- (d) details of recent relevant professional and development work experience, including the duration and extent of inputs.

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

“I, *[insert name]*, declare that:

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

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

Referees

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

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

- (a) are not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with, the Tenderer or a subsidiary organisation of the Tenderer;
- (b) are not included in the Tender as proposed team members; and

(c) are not AusAID employees.

7.20 Tenderers must further ensure that nominated referees:

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

(b) are able to provide comments in English.

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

8. **JOINT VENTURES AND CONSORTIUMS**

8.1 AusAID intends to contract with a single legal entity.

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

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

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

9. **ASSOCIATES AND OTHER SUB-CONTRACTORS**

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

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

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

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

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

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

9.4 Letters in which organisation's express their willingness to be involved with the Tenderer in the 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.

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

10. OWNERSHIP OF TENDERS AND RFT

10.1 All Tenders become the property of AusAID on lodgement.

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

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

10.4 Copyright in the RFT is reserved to AusAID.

11. CONFLICT OF INTEREST

11.1 Tenderers must:

- (a) identify any actual or potential conflict of interest; and
- (b) the procedures they intend to implement for dealing with, any actual or potential conflicts of interest,

which may arise in connection with the submission of their Tender or the conduct of the Services described in this RFT. Tenders should include details of any known circumstances that may give rise to either an actual conflict or potential of conflict of interest in relation to the 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 Subcontractor”** means a subcontractor 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 Subcontractor;
 - (ii) in the same group as the Tenderer or a Proposed Subcontractor;
 - (iii) a ‘related body corporate’ of the Tenderer or a Proposed Subcontractor, within the meaning of the *Corporations Act 2001*; or
 - (iv) associated with the Tenderer or a Proposed Subcontractor 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 years from the date of expiration or termination.
- (c) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997* on their participation in the RFT process and any subsequent contract.

17.4 Access by Ombudsman

- (a) Attention of Tenderers is drawn to the *Ombudsman Act 1976* which gives Australians access to a government officer, known as an ombudsman, who investigates complaints from the public about government agencies and their operations and decisions, and reports on ways in which they may be resolved.
- (b) In addition to the ombudsman's powers under the *Ombudsman Act 1976*, the Draft Contract provides that the Contractor will provide the ombudsman, access to information, documents, records and agency assets, including those on the Contractor's premises. Such access will apply for the term of the contract and for a period of seven years from the date of expiration or termination.
- (c) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Ombudsman Act 1976* on their participation in the RFT process and any subsequent contract.

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

- (a) Australian Government policy prevents AusAID from entering into contracts with suppliers who are currently named as non compliant under the *Equal Employment Opportunity for Women in the Workplace Act 1999* (EEO Act).
- (b) AusAID will exclude from consideration any Tender from a Tenderer who is named or whose subcontractor is named as not complying with the EEO Act.

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

- (a) AusAID will exclude from consideration any Tender from a Tenderer who is listed:
 - (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.
 - (ii) a decision or order with which the Tenderer has not fully complied or is not fully complying includes any relevant penalty or order of a Court or Tribunal, but it does not extend to infringement notices issued by workplace inspectors or a provisional improvement notice issued by an occupational health and safety inspector, or those instances where a penalty or a

requirement has been imposed but the period for payment/compliance has not expired.

17.8 Other Australian Government and AusAID Policies

- (a) Tenderers should familiarise themselves with AusAID policies including:
 - (i) the policy *Gender Equality in Australia's Aid Program – Why and How* (March 2007). This document is available on AusAID's website at <http://www.ausaid.gov.au/publications/default.cfm>;
 - (ii) the strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014', and in particular the strategy's six guiding principles, located at http://www.ausaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;
 - (iii) AusAID's policy on the environment as set out in the *Environmental Management Guide for Australia's Aid Program*. This document is available on AusAID's website at <http://www.ausaid.gov.au/keyaid/envt.cfm>.
 - (iv) AusAID's *Child protection policy*, in particular the child protection compliance standards at Attachment 1 to the policy. This document is available on AusAID's website at <http://www.ausaid.gov.au/publications/default.cfm>;
 - (v) *Family Planning and the Aid Program: Guiding Principles* (August 2009). This document is available on AusAID's website at: <http://www.ausaid.gov.au/keyaid/health.cfm>; and
 - (vi) any other policies published from time to time on <http://www.ausaid.gov.au> or as otherwise notified to Tenderers.

18. FURTHER REQUIREMENTS

- 18.1 Tenderers should be aware that current employees of AusAID cannot be included in Tenders for AusAID 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 14 days of written notification from AusAID that it has been selected as preferred Tenderer, provide AusAID with originals of Police Clearance Certificates for all Personnel nominated in their Tender in positions specified in the Specified Personnel Table (**Clause 7, Part 1**) as working with children.
- (a) Police Clearance Certificates must be provided for each country in which the individual has lived for 12 months or longer over the last five years, and for the individual's country of citizenship;
 - (b) Police Clearance Certificates must be dated no earlier than 12 months before the Tender Closing Time;
 - (c) If any required Police Clearance Certificates are not provided to AusAID in accordance with **Clause 18.2** above, AusAID may exercise its right, specified at **Clause 14.2** above, to terminate negotiations with the preferred Tenderer and commence negotiation with any other Tenderer. AusAID recognises that in limited instances it may prove impossible to obtain a reliable Criminal Record Check, and will take non-provision of a Criminal Record Check into account upon request;
 - (d) AusAID reserves the right to require the preferred Tenderer(s) to replace any Personnel whose Police Clearance Certificate shows conviction of criminal offences of, or relating to, child abuse where AusAID, in its absolute discretion, considers that the Personnel poses an unacceptable risk to children's safety or well-being. Nominated replacement Personnel must have qualifications and experience equal to or better than those of the personnel being replaced, and must be acceptable to AusAID.
- 19.3 It is AusAID's intention to contract on the basis of the Contract Conditions contained in this RFT. Following the selection of a preferred Tenderer AusAID may enter into negotiations with the preferred Tenderer in respect of the Scope of Services and the Basis of Payments of the contract. Such negotiations will be strictly limited to matters of detail rather than substance.
- 19.4 If the Scope of Services is reduced as a result of constraints imposed on AusAID before or after the **Closing Time**, AusAID and the preferred Tenderer must negotiate, in good faith, a proportionate reduction, if necessary, to the fixed price quote.
- 19.5 Enhancements to the Scope of Services included in the Tender in accordance with the selection criteria should be costed into the fixed price quote for the purposes of the like-for-like price assessment. Where AusAID has instructed that the like-for-like price assessment is to be based on indicative values, the Tenderer must clearly specify all cost implications of enhancements proposed in the Tenderer's technical proposal.

20. **CONTRACT PLANS**

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

21. **APPLICABLE LAW**

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

ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION

1. AusAID reserves the right to take into account in the assessment of this Tender the past performance, in previous AusAID and non-AusAID activities, or activities of:
 - (a) any Tenderer; and
 - (b) any member of the proposed personnel,in its capacity as:
 - (c) contractor, consultant or sub-contractor;
 - (d) an associate or employee of a contractor, consultant or sub-contractor; or
 - (e) a joint venture partner.
2. AusAID may:
 - (a) include in the assessment any contractor performance information contained in any internal AusAID contractor performance reporting systems in relation to performance of the Tenderer or proposed management, administrative and 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 12 months.
3. AusAID reserves the right to use any relevant information obtained in relation to a Tenderer or proposed personnel member obtained either during the Tender period or within the previous 12 month period by providing it to the Technical Assessment Panel (TAP) or to any other relevant person for the purposes of Tender assessment, and such information may be taken into account in the course of assessment of the Tender by the TAP and AusAID. Where information has been received in accordance with paragraph 2 (a) above, this may also be introduced into the TAP process.
4. AusAID may, at any time, make independent inquiries of:
 - (a) any person or entity which it reasonably believes to have actual knowledge of the performance of the Tenderer or proposed personnel member/s on a previous 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 5** 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 5**.

3.7 I agree:

- (a) that the Tenderer will be bound by this Tender for the Tender Validity Period of 180 days after the **Closing Time**; and
- (b) that this Tender may be accepted by AusAID at any time before the expiration of that period or any additional period to which we may agree.

3.8 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.

3.9 I understand that AusAID is not bound to accept the lowest priced or any Tender.

3.10 I warrant that in preparing the Tender for the Services the Tenderer did not act in any way which did or could have had the effect of reducing the competitiveness of the tender process for the Services. In particular I warrant that the Tenderer did not engage in:

- (a) any discussion or correspondence with other tenderers concerning the amount of the Tender;
- (b) any collusive tendering or other anti-competitive practices with any of the other Tenderers or any other person; or
- (c) any conduct or have any arrangement or arrive at any understanding with any of the other Tenderers.

3.11 **[This clause applies to government owned Tenderers only.]** I warrant that in preparing the Tender, the Tenderer has complied with the principles of competitive neutrality.

3.12 I warrant that the Tenderer and its Related Entities are not:

- (a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of the RFT; or
- (b) listed on a Relevant List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** 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 5** 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 years preceding the date of this Request for Tender.
[If response is nil adverse decisions go to 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 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 – CONDITIONS FOR USE OF AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

- 1.1 AusTender is the online tendering system for Australian Government Agencies. AusTender allows tenderers to download tender documentation and upload tender responses. Tenderers must first register with AusTender at <https://www.tenders.gov.au>.
- 1.2 Access to and use of AusTender is subject to terms and conditions. Tenderers must agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender.
- 1.3 It is the responsibility of tenderers to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on AusTender. Neither AusAID nor the Commonwealth take any responsibility for any problems arising from tenderers' infrastructure and/or Internet connectivity.
- 1.4 Tenderers must inform themselves concerning all security measures and other aspects of the AusTender technical environment. Tenderers must make their own assessment of the AusTender system prior to using it for any matter related to this RFT and no responsibility will be accepted by AusAID arising in respect of any use or attempted use by any party of AusTender.

2. REGISTERED TENDERERS AND NOTICES

- 2.1 In the event that AusAID elects to vary or supplement this RFT or change the conditions of tender, it will make reasonable efforts to inform tenderers in accordance with this **Clause 2**.
- 2.2 Tenderers may be informed by notices and other information issued as addenda posted on the webpage for this RFT on AusTender.
- 2.3 Tenderers who have registered and downloaded the tender documentation will be notified by AusTender via email of any addenda issuance. It is in the interest of tenderers to ensure they have correctly recorded their contact details prior to downloading tender documentation. If tenderers have not recorded their details correctly, they should amend their details and download the tender documentation again.
- 2.4 Tenderers are required to log in to AusTender and collect addenda as notified.
- 2.5 The Commonwealth will accept no responsibility if a tenderer fails to become aware of any addendum notice which would have been apparent from a visit to the AusTender page for this RFT.
- 2.6 If a tenderer has obtained tender documentation other than from AusTender, they must visit AusTender, register as a user and download the tender documentation for this RFT.

3. AUSTENDER HELP DESK

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

AusTender Help Desk

Telephone: 1300 651 698

Email: tenders@finance.gov.au

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

4. **PREPARING TO LODGE A TENDER ELECTRONICALLY**

Virus Checking

- 4.1 In submitting their tenders electronically, tenderers warrant that they have taken reasonable steps to ensure that tender response files are free of viruses, worms or other disabling features which may affect AusTender and/or AusAID computing environment. Tenders found to contain viruses, worms or other disabling features will be excluded from the evaluation process.

Tender File Formats, Naming Conventions and Sizes

- 4.2 Tenderers must lodge their tender in accordance with the requirements set out in this **Clause 4** for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the tender not uploading successfully and/or may eliminate the bid from consideration.
- 4.3 AusAID will accept tenders lodged in the **File Formats for Electronic Tenders** specified in the Tender Particulars (**Clause 1 of Part 1** of this RFT).
- 4.4 The tender file name/s must:
- (a) incorporate the tenderer's company name
 - (b) reflect the various parts of the bid they represent, where the tender comprises multiple files;
 - (c) not contain \ / : * ? " < > | characters. Check your files and re-name them if necessary; and
 - (d) not exceed 100 characters.
- 4.5 Tender files:
- (a) must not exceed a combined file size of 5 megabytes per upload;
 - (b) should be uploaded from a high level directory on a tenderer's desktop, so as not to impede the upload process; and
 - (c) should be zipped (compressed) together for transmission to AusTender.
- 4.6 AusTender will accept up to a maximum of five files in any one upload of a tender. Each upload should not exceed the combined file size limit of 5 megabytes. If an upload would otherwise exceed 5 megabytes, the tenderer should either:
- (a) transmit the tender files as a compressed (zip) file not exceeding 5 megabytes; and/or

- (b) lodge the tender in multiple uploads ensuring that each upload does not exceed 5 megabytes and clearly identify each upload as part of the tender.
- 4.7 If a tender consists of multiple uploads, due to the number of files or file size, tenderers should ensure that transmission of all files is completed before the **Closing Time**.
- 4.8 Tenders must be completely self-contained. No hyperlinked or other material may be incorporated by reference.

Scanned or Imaged Material, including Statutory Declarations

- 4.9 Scanned images of signed and/or initialled pages within the tender, including Statutory Declarations and Deeds of Confidentiality, where they are required, are permitted so long as the total file size does not exceed the 5 megabyte limit. The use of scanned or imaged material, where it expands the tender file size beyond the 5 megabyte limit per upload, is prohibited.

5. ELECTRONIC LODGEMENT PROCESS

- 5.1 Before submitting an electronic tender, tenderers must:
 - (a) ensure their technology platform meets the minimum requirements identified on AusTender;
 - (b) refer to AusTender's Help guidance, if required, on uploading tenders;
 - (c) take all steps to ensure that the tender is free from anything that might reasonably affect useability or the security or operations of AusTender and/or AusAID computing environment;
 - (d) ensure that the tender does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by AusAID; and
 - (e) ensure that the tender complies with all file type, format, naming conventions, size limitations or other requirements specified in **Clause 4** above or otherwise advised by AusAID or required by AusTender.
- 5.2 Tenderers must allow sufficient time for tender lodgement, including time that may be required for any problem analysis and resolution prior to the **Closing Time**.
- 5.3 Tenderers should be aware that holding the "Lodge a Response" page in the web browser will not hold the electronic tender box open beyond the **Closing Time**. An error message will be issued if the lodgement process is attempted after the **Closing Time**.
- 5.4 Tenders lodged through AusTender will be deemed to be authorised by the tenderer.
- 5.5 If tenderers have any problem in accessing the AusTender website or uploading a tender they must contact AusAID via the nominated **Contact Person (Clause 1 of Part 1)** or the AusTender Help Desk (**Clause 3.1** above) **prior to the Closing Time**. Failure to do so will exclude a tender from consideration.

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

- 6.1 Any attempt to lodge a tender electronically after the **Closing Time** will not be permitted by AusTender. Such a tender will be deemed to be a Late Tender.
- 6.2 Where electronic submission of a tender has commenced prior to the **Closing Time** but concluded after the **Closing Time**, and upload of the tender file/s has completed successfully, as confirmed by AusTender system logs, the tender will not be deemed to be a Late Tender. Such tenders will be identified by AusTender to AusAID as having commenced transmission prior to, but completed lodgement after, **Closing Time**.
- 6.3 Where a tender lodgement consists of multiple uploads, due to the number and/or size of the files, tenderers must ensure that transmission of all files is completed and receipted before the **Closing Time** and **Clause 6.2** above will only apply to the final upload.
- 6.4 Late Tenders, incomplete tenders, including those with electronic files that cannot be read or decrypted, tenders which AusAID believes to potentially contain any virus, malicious code or anything else that might compromise the integrity or security of AusTender and/or AusAID's computing environment, will be excluded from evaluation.

7. **PROOF OF LODGEMENT**

- 7.1 When a tender lodgement has successfully completed, an official receipt is provided on screen. The on-screen receipt will record the time and date the tender was received by AusTender and will be conclusive evidence of successful lodgement of a tender. It is essential that tenderers save and print this receipt as proof of lodgement. A separate email confirming receipt of the tender will also be automatically dispatched to the email address of the registered user whose details were recorded at login.
- 7.2 Failure to receive a receipt means that lodgement has not completed successfully. Where no receipt has been issued by AusTender, the attempted lodgement will be deemed to have been unsuccessful. Tenderers should refer to **Clauses 5.2 and 5.5** above.

8. **AUSTENDER SECURITY**

- 8.1 Tenderers acknowledge that although the Commonwealth has implemented the security measures described on AusTender, the Commonwealth does not warrant that unauthorised access to information and data transmitted via the Internet will not occur.
- 8.2 Tenderers acknowledge that:
 - (a) lodgement of their tender on time and in accordance with these conditions of tender is entirely their responsibility; and
 - (b) AusAID will not be liable for any loss, damage, costs or expenses incurred by tenderers or any other person if, for any reason, a tender or any other material or communication relevant to this RFT, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

PART 6 - STANDARD CONTRACT CONDITIONS

Note to Tenderers: Although these Standard Contract Conditions are presented as **Part 6** of this RFT, in the consolidated Contract Conditions they will appear as **Part B**.

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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 the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;
- (d) is personal information under the *Privacy Act 1988*, but does not include this Contract or information which:
- (e) is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation; or
- (f) has been independently developed or acquired by the Contractor, as established by written evidence.

"AusAID Eligibility Criteria" means the criteria organisations wishing to tender for AusAID contracts must satisfy. Details are available at <http://www.ausaid.gov.au/business/eligibility.cfm>.

"Business Day" means a day on which AusAID is open for business.

"Commonwealth" means Commonwealth of Australia or AusAID, as appropriate.

"Commonwealth Procurement Guidelines" means the guidelines issued by the Minister for Finance and Deregulation that governs purchasing by Commonwealth agencies and

departments. Details are available at: <http://www.finance.gov.au/publications/fmg-series/procurement-guidelines/index.html>.

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

"Contract Conditions" means the provisions contained in Part A **"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**, 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** (Program Commencement) 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**.

"Relevant List" means any similar list to the World Bank List maintained by any other donor of development funding.

"Services" means the services described in **Schedule 1** together with any supplies or materials incidental to the services.

"Specified Acts" means classes or types of acts or omissions performed by or on behalf of AusAID which would infringe an author's right of attribution, or integrity, of authorship but does not include those which would infringe an author's right not to have authorship falsely attributed.

"Specified Personnel" means the Contractor Personnel who are identified in **Schedule 1**.

"Standard Contract Conditions" means Contract Conditions in Part B of this Contract.

"Supplies" means 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

In this Contract, including the recitals, unless the context otherwise requires:

- (a) the contractual obligations of the Parties must be interpreted and performed in accordance with the Contract as a whole;
- (b) Contract clause headings are for convenience only and shall not be taken into consideration in the interpretation or construction of the Contract;
- (c) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- (d) a word denoting the singular number includes the plural number and vice versa;
- (e) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;
- (f) a word denoting a gender includes all genders;
- (g) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Contract;
- (h) where used in the Contract the words “including” or “includes” will be read as “including, without limitation” or “includes, without limitation” (as the case may be);
- (i) a reference to any contract or document is to that contract or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (j) “shall” and “must” denote an equivalent positive obligation;
- (k) a reference to any Party to this Contract, or any other document or arrangement, includes that Party's executors, administrators, substitutes, successors and permitted assigns; and
- (l) a reference to "dollars" or "\$" is to an amount in Australian currency.

1.2 Counterparts of the Contract

This Contract may be executed in any number of counterparts and by the different Parties on different counterparts, each of which constitutes an original Contract. In the event of any discrepancy between the Parties' versions of the Contract, the Contract held by AusAID as the original will prevail.

1.3 Contract prevails

If there is any inconsistency (whether expressly referred to or to be implied from the Contract or otherwise) between the Contract Conditions and the provisions in the Schedules, the Schedules are to be read subject to the Contract Conditions and the Contract Conditions prevail to the extent of the inconsistency.

1.4 Inconsistency

If there is any inconsistency (whether expressly or to be implied from the Contract or otherwise) between the 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**.
- 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** 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 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 paragraph (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**.
- 8.2 During the minimum periods specified in **Schedule 1**, the Long Term Advisers included in the Specified Personnel must be exclusively dedicated to the 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 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 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** 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 \$250.00 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 \$2,000 or more, which at a minimum contains the following information: reference identification number (which may be for example, a serial number, engine number or chassis number); description of the asset; date of procurement; cost; location; current status; and disposal or handover details.

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

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

11. SUB-CONTRACTING

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

- (a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;
- (b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;
- (c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:
 - (i) comply with relevant and applicable laws, regulations and development policies, including AusAID's *Child protection policy* (<http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>) and child protection compliance standards (Attachment 1 to the policy), both in Australia and in the Partner Country, and also *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.ausaid.gov.au/keyaid/health.cfm>);
 - (ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;
 - (iii) be bound by the same obligations regarding **Clauses 15** (Accounts and Records), **18** (Audits), **19** (Access to Premises), **26** (Privacy), and **35.4** (Anti-corruption) **below** and as required by 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** (Deed of Novation), contemporaneously with or within 10 Business Days of execution of the sub-contract by the Contractor;
- (e) the sub-contract must include the right of AusAID, in the event of AusAID issuing a notice of substitution under the Deed of Novation at **Schedule 4** (Deed of Novation), to further novate the sub-contract to another contractor;
- (f) the Contractor must maintain up-to-date records of the names of all sub-contractors engaged by the Contractor to perform part of the Services. If requested by AusAID, the Contractor must, within five (5) working days, provide to AusAID a copy of the

records of sub-contractors' names, in the format specified by AusAID. The sub-contract must include the right of AusAID to disclose the name of the sub-contractor, in accordance with **Clause 27 (AusAID Use of Contract Information)** below;

- (g) the Contractor must maintain records as to the performance of each of the sub-contractors engaged by the Contractor including details of any defects in such performance and the steps taken to ensure compliance with the Contract and provide to AusAID if requested; and
- (h) if requested by AusAID, the Contractor must provide to AusAID a copy of any proposed or executed sub-contract.

11.2 The obligations of **Clause 11.1 above** apply equally to Associates.

11.3 Despite any consent or approval given by AusAID, the Contractor shall remain at all times responsible for ensuring the suitability of Associates and sub-contractors and for ensuring that the Services are performed in accordance with the Contract.

12. **CONTRACT AMENDMENT**

12.1 The Contractor must not do anything that amounts to a variation of this Contract in whole or in part otherwise than in accordance with this clause.

12.2 Changes to the Contract shall not be legally binding upon either party unless agreed in writing and signed by both Parties in the form of a "Deed of Amendment".

12.3 AusAID or the Contractor may propose an amendment to the manner of providing the Services or changes to the 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 Programed 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 45 Business Days, AusAID may:
- (a) notify the Contractor that the Contract is suspended for a specified period of time; or
 - (b) delete part of the Services; or
 - (c) immediately or thereafter terminate the Contract in whole or in part by providing notice in writing to the Contractor.
- 13.7 A notice of suspension, deletion or termination of the Contract under **Clause 13.6 above** takes effect on the date that the notification is received by the Contractor.

13.8 In the event of suspension, deletion or termination of Services or the Contract under **Clause 13.6 above** the Contractor may claim, Fees for Services performed as payable under **Schedule 2**, prior to the date of suspension, deletion or termination, on a pro rata basis and Costs that are reasonably and properly incurred by the Contractor in connection with the Contract to the extent to which those Costs are unavoidable as a direct consequence of the suspension, deletion or termination of the Contract in accordance with this clause. Any Cost must be substantiated to AusAID and must not include loss of profits or any other form of expectation loss.

14. **HANDOVER**

14.1 The Contractor must within 12 months of the 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 **Schedule 1**. The Contractor must provide a copy of the Draft Handover Plan to AusAID within 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 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 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**, provide the information required and conform with the quality and format requirements specified.

16.2 The Contractor is responsible for any extra costs occasioned by any clarifications, discrepancies, errors or omissions in reports provided to AusAID or other information supplied in writing by the Contractor, provided such discrepancies, errors or omissions are not due to inaccurate information supplied in writing to the Contractor by AusAID.

16.3 AusAID may reject and withhold payment of Fees for any report which does not conform to the requirements of the Contract until the Contractor rectifies the report.

17. REVIEWS

17.1 For the purpose of ensuring that this Contract is being properly performed, AusAID may itself, or may appoint an independent person or persons to assist in the performance of, or to perform, a review of this Contract at the frequency and in relation to any matter specified by AusAID.

- 17.2 The Contractor must participate cooperatively in any reviews conducted by AusAID or its nominees. In addition the Contractor must respond in writing to any draft review report within 28 days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.
- 17.3 Reviews may be conducted of:
- (a) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services, including procurement and risk management procedures;
 - (b) the accuracy and reliability of the Contractor's financial management systems;
 - (c) the Contractor's compliance with their obligations under the Contract in relation to foreign exchange transactions;
 - (d) the accuracy of the Contractor's reports in relation to the provision of the Services;
 - (e) the Contractor's compliance with AusAID's *Child protection policy* and child protection compliance standards (Attachment 1 to the policy);
 - (f) the Contractor's compliance with its Contractor Personnel, confidentiality and privacy obligations; or
 - (g) any other matters relevant to the performance of any Services including user satisfaction.
- 17.4 Each Party must bear its own costs of any such reviews conducted by or on behalf of AusAID.
- 17.5 The requirement for, and participation in, reviews does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.
18. **AUDITS**
- 18.1 Where AusAID has reasonable concerns regarding the Contractor's financial management systems AusAID must provide the Contractor with written notification of those concerns and what action is required of the Contractor. This may include:
- (a) that the Company Director must provide a Statutory Declaration confirming that they have sighted the necessary supporting documentation and confirm the veracity of the claim for payment;
 - (b) providing AusAID with additional documentation to support the claim for payment;
or
 - (c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including invoicing procedures and practices.
- 18.2 The Contractor must respond to any notice received under **Clause 18.1 above** within 14 days.
- 18.3 Where the Contractor does not respond within 14 days, or the response does not alleviate AusAID's concern, AusAID reserves the right, if it has not already done so, to direct the

Contractor to provide AusAID with certification from an independent auditor as described in **Clause 18.1(c) above**.

18.4 If AusAID directs the Contractor to undertake an independent audit under this clause:

- (a) the terms of reference must be agreed in writing by AusAID;
- (b) the audit must be undertaken according to the standards of the professional body relevant to the particular audit and those standards must be detailed in the terms of reference;
- (c) the Contractor will bear the total cost of the audit; and
- (d) AusAID will not make any further payments owed to the Contractor pending certification of the reliability of the Contractor's financial management systems and the veracity of the invoicing procedures and practices.

19. ACCESS TO THE CONTRACTOR'S PREMISES, DATA AND RECORDS

19.1 The Contractor must grant AusAID and/or its nominees (including the Auditor-General or the Privacy Commissioner or their delegates), access to the Contractor's premises, the Data, records, accounts and other financial material or material relevant to the Services, however and wherever stored, in the Contractor's or its sub-contractors' custody, possession or control, for inspection and copying.

19.2 Such access must be available to AusAID and its nominees:

- (a) during the hours of 9 am and 5 pm on a Business Day;
- (b) except in the case of a breach of this Contract, subject to reasonable prior notice; and
- (c) at no additional charge to AusAID.

19.3 In the case of documents or records stored on a medium other than in writing, the Contractor must make available on request such reasonable facilities as may be necessary to enable a legible reproduction to be created at no additional cost to AusAID.

19.4 This clause applies for the term of this Contract and for a period of seven (7) years from the date of its expiration or termination.

20. PAYMENT

20.1 AusAID must make payment of the Fees within 30 days of:

- (a) AusAID's acceptance of the satisfactory completion of the Services or relevant Payment Milestone as specified in **Schedule 2**; and
- (b) receipt of a correctly rendered invoice.

20.2 It is AusAID corporate practice to inform Contractors as soon as reasonably possible, and in any case within 30 days of receipt of notice of the completion of an identified output or provision of a report whether or not that output or report is accepted.

- 20.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.
- 20.4 The Contractor must make all foreign exchange transactions at arms length and at commercially competitive rates. Supporting documentation must be retained in accordance with Standard Contract Conditions **Clause 15.1** (Accounts and Records) and may be audited by AusAID in accordance with Standard Contract Conditions **Clause 17** (Reviews).
- 20.5 Where the Contractor is entitled to reimbursement for expenditure in a currency other than Australian dollars under this Contract, the Contractor must invoice AusAID for the equivalent Australian dollar amount as recorded by the Contractor in their general ledger converted at an exchange rate which is calculated in accordance with appropriate accounting standards.
- 20.6 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.
- 20.7 Subject to the Contract AusAID shall pay Reimbursable Costs within 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**; and
 - (d) a company director of the Contractor, or their delegate has certified that the invoice:
 - (i) has been correctly calculated;
 - (ii) that the Services included in it have been performed in accordance with this Contract; and
 - (iii) in the case of Reimbursable Costs that these costs have been paid.
- 20.9 If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Contractor, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due from AusAID to the Contractor.
- 20.10 A payment by AusAID is not an admission of liability. In the event that AusAID makes a payment for the completion of a Payment Milestone or the procurement of Supplies or inputs that AusAID subsequently learns have not been completed to the quality or performance specifications required or provided as required, the payment shall be deemed an overpayment and recoverable from the Contractor. Without limiting recourse to other available remedies, the overpayment may be offset against any amount subsequently due to the Contractor.

- 20.11 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.
- 20.12 AusAID need not pay any amount due to the Contractor until the Contractor delivers to AusAID a written statement which satisfies the requirements of section 127 of the *Industrial Relations Act 1996* (NSW) or the requirements of similar State or Territory legislation, in relation to the payment of employees or sub-contractors of the Contractor who were engaged in the performance of the Contract.
- 20.13 Except as otherwise specified in this Contract, the Fees are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Contractor in providing the Services.
- 20.14 If the Contractor does not have an Australian Business Number (ABN), AusAID, in accordance with the relevant provisions of the Pay as You Go (PAYG) legislation, shall be required to withhold a prescribed proportion of the amount payable to the Contractor under the Contract, unless the exceptions under Division 12 of the PAYG legislation apply.
- 20.15 AusAID will make all amounts payable to the Contractor under this Contract into a bank account nominated by the Contractor. The Contractor must provide AusAID with the necessary details as soon as possible following execution of this Contract. Requests to change bank account must be provided to AusAID with 45 days notice.

21. GOODS AND SERVICES TAX

- 21.1 Except as provided by this clause, all taxes, duties and charges imposed or levied in Australia in connection with the performance of this Contract shall be borne by the Contractor or its sub-contractor(s), as the case requires.
- 21.2 The amount shown against each item in **Schedule 2** is the 'value' of the 'periodic supplies' to be made under this Contract, as these terms are used in the *A New Tax System Act 1999* (Cth).
- 21.3 The amount payable under the Contract for each supply listed in **Schedule 2** is the value of that supply plus any GST payable by the Contractor under the GST legislation. Payment by AusAID to the Contractor of the GST shall be subject to the Contractor providing AusAID with a valid Tax Invoice issued in accordance with the relevant provisions of the GST legislation and regulations.
- 21.4 The total amount of GST payable by the Contractor, and for which the Contractor seeks payment from AusAID, in respect of any supply shall be shown as a separate item on the Tax Invoice.
- 21.5 AusAID shall not pay to the Contractor any amount referable to GST, except as provided in this clause.

22. INTELLECTUAL PROPERTY RIGHTS

- 22.1 Subject to **Clause 22.2**, the title to all Intellectual Property rights in or in relation to Contract Material shall vest upon its creation in AusAID. If required by AusAID, the Contractor must bring into existence, sign, execute or otherwise deal with any document which may be necessary to enable the vesting of such title or rights in AusAID.

22.2 **Clause 22.1** does not affect the ownership of Intellectual Property in any Prior Material incorporated into the Contract Material, but the Contractor grants to AusAID a permanent, irrevocable, royalty-free worldwide, non-exclusive licence to use, reproduce, adapt and otherwise exploit such Prior Material in conjunction with the Contract Material. The licence granted under this **Clause 22.2** includes the right of AusAID to sub-licence any of its employees, agents or contractors to use, reproduce, adapt and otherwise exploit the Prior Material incorporated into the Contract Material for the purposes of performing functions, responsibilities, activities or services for, or on behalf of, AusAID.

22.3 The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.

22.4 The Contractor must deliver all Contract Material to AusAID or to the Partner Government counterpart agency as may be directed in writing by AusAID.

23. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

23.1 The Contractor must at all times indemnify AusAID, its employees and agents and the Partner Country ("**those indemnified**") from and against any Loss or liability whatsoever incurred by any of those indemnified or arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such Loss or liability arose out of an infringement, or an alleged infringement, of the Intellectual Property rights of any person, which occurred by reason of the performance or use of the Services.

24. MORAL RIGHTS

24.1 The Contractor warrants or undertakes that the author of any Contract Material, other than Prior Material, has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the benefit of AusAID in relation to such material used, reproduced, adapted and exploited in conjunction with the other Contract Material.

25. CONFIDENTIALITY

25.1 Subject to this clause, the Contractor must not, without the prior written approval of AusAID, make public or disclose to any person any AusAID Confidential Information. In giving written approval, AusAID may impose such terms and conditions as in AusAID's opinion are appropriate.

25.2 The Contractor must take all reasonable steps to ensure Contractor Personnel do not make public or disclose the AusAID Confidential Information and must promptly notify AusAID of any unauthorised possession, use or disclosure of AusAID Confidential Information.

25.3 The Contractor must ensure that any Contract Personnel who will have access to AusAID Confidential Information complete a written undertaking in the form set out at **Schedule 3**, relating to the non-disclosure of that information.

25.4 The Contractor may disclose AusAID Confidential Information:

- (a) to its legal advisers in order to obtain advice in relation to its rights under this Contract, but only to the extent necessary for that purpose;

- (b) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the first-mentioned party; or
- (c) if required in connection with legal proceedings,

but in the case of (b) and/or (c) above, subject to the Contractor giving AusAID sufficient notice of any proposed disclosure to enable AusAID to seek a protective order or other remedy to prevent the disclosure.

- 25.5 The Contractor must not transfer AusAID Confidential Information outside Australia, except to the Partner Country, or allow parties outside Australia to have access to it, without the prior approval of AusAID.
- 25.6 The Contractor must use AusAID Confidential Information held, acquired or which the Contractor may have had access to in connection with this Contract only for the purposes of fulfilling its obligations under this Contract. Upon expiry or earlier termination of this Contract the Contractor must either destroy or deliver to AusAID all AusAID Confidential Information, as required by AusAID.
- 25.7 This clause shall survive expiration or termination of this Contract.

26. **PRIVACY**

- 26.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services.
- 26.2 In this clause, the terms ‘agency’, ‘Information Privacy Principles’ (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meaning as they have in section 6 of the *Privacy Act 1988*.
- 26.3 The Contractor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services:
- (a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;
 - (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
 - (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
 - (d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
 - (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to 10) where that section or NPP is applicable to the Contractor, unless:

- (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or
- (ii) in the case of a NPP – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorized by this Contract is inconsistent with the NPP;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with a NPP binding a party to this Contract;
- (g) to immediately notify AusAID if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any sub-contractor;
- (h) not to transfer such information outside Australia, except to the Partner Country, or to allow parties outside Australia or the Partner Country to have access to it, without the prior approval of AusAID; and
- (i) to ensure that any employee of the Contractor who is required to deal with Personal Information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause.

26.4 The Contractor agrees to ensure that any sub-contract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the sub-contractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to sub-contracts.

26.5 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause, or a sub-contractor under the sub-contract provisions referred to in **Clause 26.4 above**.

26.6 This clause shall survive expiration or termination of this Contract.

27. **AusAID USE OF CONTRACT INFORMATION**

27.1 AusAID may disclose matters relating to the Contract, including the Contract and the names of sub-contractors as specified in **Clause 11.1 (f) above**, except where such information may breach the *Privacy Act 1988*, to Commonwealth governmental departments and agencies, Commonwealth Ministers and Parliamentary Secretaries, and to the Commonwealth Parliament, including responding to requests for information from Parliamentary committees or inquiries.

27.2 This clause shall survive termination or expiration of the Contract.

28. **PUBLICITY**

28.1 The Contractor must identify and implement appropriate opportunities for publicising the 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 **[10]** Business Days (or such further time as AusAID may, in its absolute discretion, specify), after receiving a notice from AusAID requiring the Contractor to remedy the breach; or
 - (iii) does not commence to remedy that breach, within a reasonable time (having regard to the nature of the breach) after being given notice by AusAID requiring the Contractor to remedy the breach;
 - (b) becomes, or in AusAID's reasonable opinion is likely to become, bankrupt, insolvent or otherwise financially unable to fulfil its obligations under this Contract;
 - (c) becomes subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act 2001*;
 - (d) is wound up by resolution or an order of the court;
 - (e) ceases to carry on business;

- (f) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;
- (g) suffers any execution against its assets having, or which in AusAID's reasonable opinion is likely to have, an adverse effect on its ability to perform this Contract;
- (h) ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Contract (except to the extent that this is outside the Contractor's reasonable control);
- (i) assigns its rights otherwise than in accordance with the requirements of this Contract;
- (j) suffers a change in Control which in AusAID's reasonable opinion may adversely affect the Contractor's ability to perform the Services under this Contract;
- (k) is in breach of any of the warranties, regarding pre-listing proceedings, temporary suspension from tendering or listing on a World Bank List or Relevant List, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (l) is, during the term of this Contract, listed on a World Bank List or Relevant List;
- (m) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, bribery of a public official, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (n) is in breach of the warranty, regarding unsettled judicial decisions relating to employee entitlements, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (o) is, during the term of this Contract, convicted of an offence of, or relating to, bribery of a public official. In this Clause 31.1(o) the Contractor includes Contractor Personnel;
- (p) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, child abuse, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract; or
- (q) is in breach of the warranty, regarding the good fame and character of Contractor Personnel, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract.

31.2 If this Contract is terminated under this **Clause 31**:

- (a) subject to this Contract, the parties are relieved from future performance of this Contract, without prejudice to any right of action that has accrued at the date of termination;
- (b) subject to this Contract, all licences and authorisations granted to the Contractor by AusAID under this Contract terminate immediately despite anything to the contrary contained in the relevant licence or authorisation;

- (c) the AusAID Confidential Information, Supplies and any other property supplied or given to the Contractor by AusAID pursuant to this Contract must be immediately returned to AusAID;
- (d) AusAID is not obliged to make any further payments (including the payment of Fees) to the Contractor. However, AusAID may, in its absolute discretion, consider making a payment to the Contractor in such amount and upon such terms as AusAID determines is appropriate in the circumstances; and
- (e) the Contractor will indemnify and hold AusAID harmless against any Losses, costs and expenses arising out of or in connection with the termination or any breach of this Contract by the Contractor (including those arising from affected sub-contracts).

32. TERMINATION FOR CONVENIENCE

- 32.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor, terminate or reduce the scope of this Contract from the time specified in the notice (and without the need to give further notice) and, in that event, AusAID may give to the Contractor such directions as it thinks fit in relation to subsequent performance of this Contract.
- 32.2 Where notice is given under **Clause 32.1** the Contractor must:
- (a) comply with all directions given by AusAID;
 - (b) cease or reduce (as applicable) the performance of work under the Contract; and
 - (c) immediately do everything possible to mitigate its Losses, and all other loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination (including those arising from affected sub-contracts) arising in consequence of termination of this Contract under this **Clause 32**.
- 32.3 In the event of termination or reduction in scope under this **Clause 32**, subject to **Clause 32.4**, AusAID will only be liable to the Contractor for:
- (a) Fees, as payable under **Schedule 2**, for Services performed prior to the termination, on a pro rata basis; and
 - (b) Costs that are:
 - (i) directly attributable to the termination or reduction in scope of this Contract; and
 - (ii) in AusAID's opinion, reasonably and properly incurred by the Contractor in connection with the Contract,to the extent that such Costs are substantiated to AusAID.
- 32.4 AusAID is not liable for any loss of profits or any other form of expectation loss arising out of, or in connection with, the termination or reduction in scope of this Contract under this **Clause 32**.

33. INDEMNITY

- 33.1 The Contractor must at all times indemnify AusAID, its employees, agents and contractors (except the Contractor) ("**those indemnified**") from and against any Loss or liability whatsoever suffered by those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such Loss or liability was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the Contractor, or any Contractor Personnel in connection with this Contract.
- 33.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 33.1 above** for the benefit of each of such persons in the name of AusAID or of such persons.
- 33.3 The indemnity in this clause is reduced to the extent that the Loss or liability is directly caused by AusAID, its employees or contractors (except the Contractor), as substantiated by the Contractor.
- 33.4 The Contractor is responsible for all risks associated with the Data, the Supplies and any AusAID property while in the possession or control of the Contractor.
- 33.5 This indemnity shall survive termination or expiration of this Contract.

34. INSURANCE

- 34.1 The Contractor must arrange and maintain for the duration of the Contract unless otherwise specified:
- (a) public liability insurance with a limit of at least \$5 million for each and every claim which covers:
 - (i) loss of, or damage to, or loss of use of any real or personal property; or
 - (ii) personal injury to, illness (including mental illness) or death of any person arising from the performance of the Contract;
 - (b) motor vehicle third party property damage insurance;
 - (c) workers' compensation insurance:
 - (i) which fully insures the Contractor for any amount it becomes liable to pay under any statute relating to workers' or accident compensation or for employer's liability at common law;
 - (ii) to be effected in the Partner Country as well as every state or territory in Australia where the Contractor Personnel normally reside or in which their contract of employment was made; and
 - (iii) which, where possible at law extends to indemnify AusAID as principal for AusAID's liability to persons engaged by the Contractor.

Where there is no workers compensation legislation in force in the Partner Country the Contractor should arrange adequate personal accident and illness insurance

(accidental death and weekly benefits) for any Contractor Personnel not otherwise covered for the duration of the Contract;

- (d) property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value;
- (e) professional indemnity insurance to cover the Contractor's obligations under this Contract. The Contractor's professional indemnity policy must respond to claims arising under the *Trade Practices Act (Cth)* 1974, in regard to this Contract. The Contractor may obtain the insurance on an annual basis if necessary, but must maintain the necessary insurance each year until the expiration of three (3) years after the full Term of the Contract or earlier termination of the Contract;
- (f) adequate medical and dental insurance for Contractor Personnel who are engaged to operate outside their country of permanent residence; and
- (g) adequate insurance for medical evacuation and evacuation resulting from an insured event for all Contractor Personnel.

34.2 The Contractor must, within 14 days after a request by AusAID, provide for any insurance policy: a certificate of currency, a list of exclusions; and the amount of excess payable.

34.3 Neither the effecting of insurance nor any failure to effect such insurance shall in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the other provisions of this Contract or at law.

34.4 In the event of an insurance claim any deductible/excess payable shall be the responsibility of the Contractor.

35. CONFLICT OF INTEREST

Conflict of Interest

35.1 The Contractor warrants that, at the date of signing this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.

35.2 The Contractor must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. The Contractor must not engage in any activity, subject to **Clause 35.3 below**, that may result in a conflict of interest arising or continuing.

35.3 Where a conflict of interest arises in the performance of the Contractor's obligations under this Contract, the Contractor must notify AusAID immediately, and may request permission from AusAID to undertake the work despite that conflict of interest.

Anti-Corruption

35.4 The Contractor warrants that the Contractor shall not make or cause to be made, nor shall the Contractor receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt act, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Contract. In addition, the Contractor shall not bribe public officials and shall ensure that all Contractor Personnel comply with this provision. Any breach of this clause shall be

grounds for immediate termination of this Contract under Standard Contract Conditions **Clause 31** (Termination for Contractor Default) by notice from AusAID.

36. **FRAUD**

- 36.1 For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means.
- 36.2 The Contractor and its sub-contractors must not engage in any fraudulent activity.
- 36.3 The Contractor must prepare a fraud risk assessment and zero tolerance fraud control strategy. These must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures that comply with the *Commonwealth Fraud Control Guidelines*.
- 36.4 The Contractor is responsible for preventing and detecting fraud including fraud within those functions outsourced / performed by a sub-contractor or under any other arrangement established by the Contractor relating to the management or administration of AusAID provided funds. The Contractor is responsible for ensuring that its staff and its subcontractors' staff are responsible and accountable to the Contractor for preventing and reporting any fraud or suspected fraud as part of their routine responsibilities.
- 36.5 The Contractor must report in writing within 5 working days to AusAID any detected, suspected, or attempted fraudulent activity involving AusAID provided funds. Where a matter is reported in writing to AusAID by a Contractor, the advice must provide where known:
- (a) the name of the Program under which AusAID funding is being provided;
 - (b) name of any personnel or subcontractors involved;
 - (c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);
 - (d) the names of the suspected offender(s) (where known);
 - (e) details of witnesses;
 - (f) copies of relevant documents;
 - (g) references to any relevant legislation;
 - (h) a nominated contact officer;
 - (i) any other relevant information (eg, political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and
 - (j) the current status of any inquiries commenced by the Contractor.
- 36.6 The Contractor must, in consultation with AusAID, develop and implement a strategy to investigate the detected, suspected or attempted fraud based on the principles set out in the *Australian Government Investigations Standards* which are available from AusAID when a demonstrated need to distribute them exists. The Contractor will be responsible for the conduct of the investigation. Any investigator appointed by the Contractor should possess the minimum qualifications specified in the *Commonwealth Fraud Control Guidelines*. Before engaging a qualified investigator, the Contractor may consult with AusAID regarding the appointment and may request assistance from AusAID in meeting the actual costs of a qualified investigator. Provided that the Contractor has consulted with AusAID

before engaging an investigator, AusAID may in its absolute discretion agree to meet some or all of those costs.

- 36.7 AusAID reserves the right to appoint its own investigator, conduct the investigation, conduct a concurrent investigation or refer the allegations to the appropriate law enforcement agencies or any other person or entity AusAID deems appropriate in Australia or in the partner countries for investigation. In this instance the Contractor shall provide all assistance that may be required at the Contractor's sole expense.
- 36.8 Following the conclusion of an investigation, where a suspected offender has been identified, the Contractor must report all alleged, suspected or detected cases of fraud to the local police and any other appropriate law enforcement agency in the country where the incident has occurred, unless the Director of the Audit section of AusAID agrees otherwise in writing.
- 36.9 Following the conclusion of an investigation, where the investigation finds the Contractor, an employee of the Contractor or a subcontractor of the Contractor has acted in a fraudulent manner, the Contractor shall:
- (a) where money has been misappropriated, pay to AusAID or the 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 subcontractor of the Contractor, has acted in a fraudulent manner, the Contractor shall at the Contractor's cost make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, taking recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country. Before commencing any recovery action, the Contractor may consult with AusAID regarding the proposed course of action and may request assistance from AusAID in meeting the costs of the recovery action. Provided that the Contractor has consulted with AusAID before commencing recovery action, AusAID may in its absolute discretion agree to meet some or all of those costs.
- 36.11 The Contractor must keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.
- 36.12 If the Contractor considers that after all reasonable action has been taken to recover the funds or funded property and full recovery has not been achieved or recovery has only been achieved in part, the Contractor may seek approval from AusAID that no further recovery action be taken. The Contractor must provide to AusAID all information, records and documents required by AusAID to enable the AusAID delegate to make a decision on whether to approve non-recovery of funds or funded property.
- 36.13 In the event that any investigation finds that the contractor, an employee of the Contractor or a subcontractor of the Contractor has been involved in any fraudulent activity, or in the event that AusAID discovers that a suspected, attempted or detected fraud has not been reported to AusAID, AusAID, at AusAID's sole discretion, reserves the right to:

- (a) Terminate the Contract with the Contractor, in which event, AusAID shall not be liable to the Contractor for any claim, demand, proceeding suit or action by the Contractor, and the Contractor shall indemnify, defend and hold harmless AusAID from any claim, demand, proceeding suit or action from any party or individual resulting from such termination; and / or.
- (b) Not enter into any further agreement with the Contractor until such time as AusAID is satisfied that any recommended changes to the Contractor's management and procedures have been made in order to prevent any further fraudulent activity from occurring and to ensure timely reporting of suspected, attempted or detected fraud to AusAID.

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

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

37. **COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES**

37.1 The Contractor must at all times have regard to and comply with, and as far as practicable must ensure that all Contractor Personnel comply with, the laws in Australia, the Partner Country and applicable laws of other countries.

37.2 A list, as amended from time to time, of Australian laws that may apply to the delivery of developmental aid to foreign countries can be found on the AusAID website: <http://www.ausaid.gov.au/business/contracting.cfm>.

This list is not exhaustive and is provided for information only. The provision of this list does not relieve the Contractor from complying with the obligations contained in **Clause 37.1**.

37.3 The Contractor and all Contractor Personnel must at all times have regard to and operate in accordance with relevant guidelines, as amended from time to time, and listed on the AusAID website: <http://www.ausaid.gov.au/business/contracting.cfm>.

37.4 Notwithstanding paragraph 4.3 on page 4 of the Fair Work Principles User Guide, the Contractor must comply with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at www.deewr.gov.au/fairworkprinciples), including by:

- (a) complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;
- (b) informing AusAID of any adverse court of tribunal decision for a breach of workplace relations law, occupational health and safety laws, or workers'

compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;

- (c) providing AusAID any information AusAID reasonably requires to confirm that the Contractor (and any subcontractor) is complying with the Fair Work Principles;
- (d) participate in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.

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

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

37.7 As far as practicable, the Contractor must:

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

37.8 In addition to any other rights or remedies it has at law or in equity, or under this Contract, AusAID may, by notice in writing to the Contractor, terminate this Contract, with effect from the date in the notice, if the Contractor is in breach of Clause 37.4 above in this **Part B** of this Contract.

37.9 The Contractor must notify AusAID of any material breach by the Contractor or Contractor Personnel of a law or guideline referred to in this **Clause 37**.

37.10 On becoming aware of a material breach by the Contractor or Contractor Personnel of a law or guideline, whether or not such a breach is notified to AusAID by the Contractor, AusAID may, in addition to any other rights available to AusAID, terminate this Contract under **Clause 31**.

37.11 The Contractor must in carrying out its obligations under this Contract comply with those laws in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the *Criminal Code Act 1995 (Cth)* and listed in regulations made under that Act and regulations made under the *Charter of the UN Act 1945 (Cth)*. The Contractor must ensure that funds provided under this Contract do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform AusAID immediately.

- 37.12 The Contractor and all Contractor Personnel must when providing any Services and procuring the Supplies have regard to and operate in accordance with Australian policies on developmental aid to foreign countries including:
- (a) the policy Gender Equality in Australia's Aid Program – Why and How (March 2007);
 - (b) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014', and in particular the strategy's six guiding principles, located at http://www.aisaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;
 - (c) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child protection policy*;
 - (d) *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.aisaid.gov.au/keyaid/health.cfm>);
 - (e) Environment. AusAID is bound by the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:
 - 1. ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;
 - 2. comply with AusAID's Environmental Management System outlined in the *Environmental Management Guide for Australia's Aid Program*, including:
 - a. assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;
 - b. report regularly on any such impacts as required by the Scope of Services; and
 - 3. comply with all relevant environmental laws and regulations of the Partner Country.

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

38. INVESTIGATION BY THE OMBUDSMAN

- 38.1 In carrying out the Services, the Contractor, and an employee or subcontractor of the Contractor, may be a "Commonwealth service provider" under section 3BA of the Ombudsman Act 1976.
- 38.2 The Contractor must use its best endeavours, and must ensure that employees and subcontractors of the Contractor use their best endeavours, in undertaking the Services, not to engage in conduct that:
- (a) would, if the Contractor or an employee or subcontractor were an officer of AusAID, amount to a breach of duty or to misconduct; or
 - (b) should be brought to the attention of the principal officer of AusAID.
- 38.3 If the Commonwealth Ombudsman commences an investigation of conduct of the Contractor, as a Commonwealth service provider, the Contractor, at the cost of the Contractor, must cooperate with the investigator including:
- (a) providing all documentation required by the investigator,
 - (b) making Contractor Personnel available to assist the investigator and
 - (c) allowing the investigator, at any reasonable time of the day, to enter a place occupied by the Contractor and carry on the investigation at that place.
- 38.4 If the Ombudsman brings evidence to the notice of AusAID concerning the conduct of the Contractor, or of an employee or subcontractor of the Contractor, the Contractor must, at the cost of the Contractor, take whatever remedial action is required by AusAID or by the Ombudsman to rectify the situation.
- 38.5 The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including this requirement in relation to subcontracts.
- 38.6 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID, due to conduct of the Contractor or of an employee or subcontractor, which arise directly or indirectly, as a result of an investigation carried out by the Ombudsman.
- 38.7 This clause shall survive expiration or termination of this Contract.

39. RESOLUTION OF DISPUTES

- 39.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Contract. Subject to **Clause 20.11** (Payment) and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Contract.
- 39.2 A Party may give the other Party a notice of dispute ("**dispute notice**") in connection with this Contract. Following the giving of a dispute notice, the dispute must be referred to a senior officer of AusAID and a senior officer of the Contractor, who must use reasonable

endeavours to resolve the dispute within 20 Business Days or such other period as is agreed by the Parties.

39.3 If the Parties have not been able to resolve the dispute in accordance with **Clause 39.2 above**, then the Parties may agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation.

39.4 In the event that the dispute, controversy or claim has not been resolved within 50 Business Days (or such other period as agreed between the Parties in writing) after the dispute notice has been received in accordance with clause headed 'Notices' in Part B (Standard Contract Conditions) of this Contract, then either Party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.

39.5 Nothing in this clause prevents either Party from seeking urgent injunctive relief.

40. **NOTICES**

40.1 A notice required or permitted to be given by one Party to another under this Contract must be in writing and is treated as having been duly given and received:

- (a) when delivered (if left at that Party's address);
- (b) on the third Business Day after posting (if sent by pre-paid mail); or
- (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

41. **MISCELLANEOUS**

41.1 **Waiver**

The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon that Party by this Contract does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under this Contract.

41.2 **Liability of Party**

If any Party to this Contract consists of more than one person then the liability of those persons in all respects under this Contract is a joint liability of all those persons and a separate liability of each of those persons.

41.3 **Entire agreement**

This Contract constitutes the sole and entire agreement between the Parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Contract is of no force or effect.

41.4 **Severance**

If any provision of this Contract is invalid and not enforceable in accordance with its terms, other provisions that are self-sustaining and capable of separate enforcement with regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.

41.5 Assignment

No Party may assign or transfer any of its rights or obligations under this Contract without the prior consent in writing of the other Party.

41.6 Governing Law and Jurisdiction

This Contract is governed by, and is to be construed in accordance with, the law of the Australian Capital Territory and the Parties submit to the exclusive jurisdiction of the courts of the Australian Capital Territory and any court hearing appeals from those courts.

41.7 Contra Proferentem

No rule of construction shall apply in the interpretation of this Contract to the disadvantage of one Party on the basis that such Party put forward or drafted this Contract or drafted any provision of this Contract.

41.8 False and Misleading Information

The Contractor acknowledges that it is aware that, in relation to section 137.1 of the *Commonwealth Criminal Code*, giving false or misleading information is a serious offence.

SCHEDULE 3 - DEED OF CONFIDENTIALITY

THIS DEED POLL is made on the _____ day of _____ []

in favour of **COMMONWEALTH OF AUSTRALIA** represented by the Australian Agency for International Development ("**AusAID**").

BY [Insert name and address of Recipient] (the "**Recipient**").

RECITALS

- A. AusAID and **Contractor's Name** (the "**Contractor**") have entered into a Contract for the purpose of a project in **Country**.
- B. The Recipient has been engaged by the Contractor to work on the project.
- C. The Recipient will, in carrying out that work, be given access to Confidential Information.
- D. AusAID requires the Recipient to enter into this Deed in relation to use of Confidential Information.

THE RECIPIENT DECLARES AS FOLLOWS:

1. INTERPRETATION

In this Deed:

"**Confidential Information**" means information that:

- (a) is designated by AusAID as confidential; or
- (b) the Recipient knows or ought to know is confidential,
and includes to the extent that it is confidential:
- (c) information comprised in or relating to any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID;
- (d) information relating to the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;
- (e) the Data; and
- (f) personal information under the *Privacy Act 1988*;
but does not include information which:
- (g) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality; or

Schedule 3

- (h) has been independently developed or acquired by the Recipient as established by written evidence.

"Data" includes any information provided to the Contractor under this Contract from any source, or collected or created by the Contractor in connection with the Services, whether in magnetic, electronic, hardcopy or any other form.

2. **NON DISCLOSURE**

- 2.1 The Recipient must not copy, reproduce or disclose any of the Confidential Information without the prior written consent of AusAID, which consent AusAID may grant or withhold in its absolute discretion.

3. **RESTRICTION ON USE**

- 3.1 The Recipient must use the Confidential Information only for the purpose of the Services.

4. **DELIVERY UP OF DOCUMENTS**

- 4.1 AusAID may, at any time and without notice, demand, either orally or in writing, the delivery to AusAID of all documents in the possession or control of the Recipient which contain the Confidential Information.

5. **SURVIVAL OF OBLIGATIONS**

- 5.1 The obligations in this Deed are perpetual.

EXECUTED as a deed poll.

SIGNED, by the Recipient in the presence)
of:) Signature of

.....
Signature of witness

.....
Name of witness
(Print)

SCHEDULE 4 – DEED OF NOVATION AND SUBSTITUTION

This **DEED OF NOVATION AND SUBSTITUTION** made the day of

BETWEEN:

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

AND:

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

AND:

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

WHEREAS:

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

NOW THIS DEED WITNESSES AS FOLLOWS:

1. **DEFINITIONS**

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

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

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

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

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

“**Party**” means AusAID, the Subcontractor or the Contractor;

“**Subcontract**” means the contract between the Contractor and the Subcontractor for the provision of the Subcontractor Services; and

“**Subcontractor Services**” means the services that the Subcontractor is obliged to provide to the Contractor under the Subcontract.

2. **APPLICATION OF DEED**

- 2.1 The Contractor and the Subcontractor agree that:

- (a) this Deed is entered into for the benefit of AusAID; and
- (b) AusAID may exercise the rights granted to it under this Deed.

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

3. **NOVATION**

3.1 AusAID may issue a notice of substitution to the Subcontractor if AusAID is entitled to exercise its rights under **Clauses 31** or **32** of the Contract.

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

- (a) AusAID is substituted for the Contractor under the Subcontract in respect of the Subcontractor Services as if AusAID was originally the Party to the Subcontract instead of the Contractor, and all references in the Subcontract to the Contractor are to be read and construed as if they were references to AusAID;
- (b) AusAID is to pay any amount due to the Subcontractor under the Subcontract to the Subcontractor and the receipt of the Subcontractor shall be full and sufficient discharge for any such payments;
- (c) subject to paragraph (a), AusAID is bound by, and must fulfil, comply with and observe all the provisions of the Subcontract and enjoys all the rights and benefits of the Contractor under the Subcontract; and
- (d) the performance by the Subcontractor of services under the Subcontract, is instead of, and not in addition to, any performance by the Contractor of its obligations under that Subcontract.

3.3 If AusAID exercises its rights of novation under this deed, AusAID may further novate the Subcontract by substituting a new contractor in place of the Contractor on the terms of this deed with appropriate alterations. In the event of such novation, the rights and obligations of the Subcontractor with respect to the Contractor shall become the rights and obligations of the Subcontractor with respect to the new contractor.

4. **RELEASE**

4.1 Except in relation to payment due from the Contractor to the Subcontractor under the Subcontract but unpaid on the date of issuing of the notice of substitution referred to in **Clause 3** of this Schedule, the Contractor releases and discharges AusAID from any and all claims, actions, proceedings, obligations and liabilities (whether based in negligence or any other form of legal liability) in respect of or in any way arising from the Subcontract prior to the date of the notice of substitution in respect of the Subcontractor Services.

5. **FURTHER ASSURANCES**

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

6. **DISCHARGE**

- 6.1 Neither the Subcontractor nor the Contractor are discharged or released or excused from this Deed by an arrangement made between the Contractor and the Subcontractor prior to the issue of a notice of substitution with, by any change to the Subcontract, or by any forbearance whether as to payment, time or otherwise.
- 6.2 The Contractor undertakes to notify AusAID of any alterations to the Subcontract or other matter referred to in Clause 3 of this Schedule. A failure of the Contractor to notify AusAID under this clause does not alter the Subcontractor's obligations under this Deed.
- 6.3 This Deed by the Subcontractor for AusAID to assume the obligations of the Contractor is discharged in relation to the Subcontract only on completion by the Subcontractor of all its obligations under the Subcontract in respect of the Subcontractor Services, or, in the event of the issue of a notice of substitution, on the due and proper performance of the Subcontract by the Subcontractor.
- 6.4 The obligations of AusAID under this Deed in its application to the Subcontract must not exceed the obligations of the Contractor under the Subcontract.

7. **NOTICES**

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

Address of Party

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

AusAID

To: **Desk Name**
Attention: Country Program Manager
Address: Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601
Facsimile: **Desk Fax**

Contractor

To: **Contractor's Name**
Attention:
Address: **Contractor's Address**

Facsimile: **Contractor's Fax**

Subcontractor

To:

Attention:

Address:

Facsimile:

8. LAWS

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

9. WARRANTY

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

10. GENERAL

Counterparts

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

Attorneys

- 10.2 Where this Deed is executed on behalf of a Party by an attorney, that attorney by executing declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney executes this Deed on behalf of that Party.

Further Assurance

- 10.3 Each Party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and acts

reasonably required of it or them by notice from another Party effectively to carry out and give full effect to this Deed and the rights and obligations of the Party under it.

Assignment

- 10.4 No Party may assign or transfer any of its rights or obligations under this Deed without the prior consent in writing of the other Parties. AusAID may withhold its consent in its absolute discretion.

EXECUTED as a Deed.

SIGNED, for and on behalf of the
COMMONWEALTH OF
AUSTRALIA in the presence of:

)

)

)

.....

Signature

.....

Signature of witness

.....

Name of witness

(Print)

SIGNED for and on behalf of
[Subcontractor] by:

)

)

)

.....

.....

Director

Name of Director

(Print)

Director/Secretary

Name of Director/Secretary

(Print)

SIGNED for and on behalf of
[Contractor] by:

)

)

)

.....

.....

Director

Name of Director

(Print)

Director/Secretary

Name of Director/Secretary

(Print)

SCHEDULE 5 – PERFORMANCE GUARANTEE

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

BETWEEN **COMMONWEALTH OF AUSTRALIA** represented by the Australian Agency for International Development (‘**AusAID**’)

AND [_____] ABN [_____]

(‘**Guarantor**’)

RECITALS

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

AGREEMENT

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

notwithstanding that the Contractor has been dissolved or is subject to external administration procedures under chapter 5 of the *Corporations Law* or any other law.

7. The guarantee in this Deed is a continuing guarantee to AusAID until the obligations and liabilities of the Contractor under the Contract have in all respects been performed, observed and discharged.
8. The following notice arrangements apply:
 - (a) notice or other communication which may be given to or served on the Guarantor under this Deed shall be deemed to have been duly given or served if it is in writing, signed on behalf of AusAID and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Guarantor or its agent at any registered office of the Guarantor or posted to the Guarantor's address set out above or such other address as is notified in writing to AusAID from time to time;
 - (b) a notice or other communication which may be given to or served on AusAID under this Deed shall be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Guarantor and is either delivered by hand, posted or faxed or a copy transmitted electronically to AusAID at the address set out above or such other address as is notified in writing to the Guarantor from time to time;
 - (c) a notice sent by post shall be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent; and
 - (d) a notice sent by facsimile transmission or transmitted electronically shall be deemed to have been given when the machine on which the notice is sent reports that the notice has been transmitted satisfactorily.

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

In the presence of:
..... Name and Position
Signature of witness (Print)

.....
Name of witness (print)

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

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

TENDERER'S SUBMISSION CHECKLIST

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)?	
Does the Past Experience Annex have at least two (2) referees nominated and has it been confirmed that they are: a) not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with the Tenderer or a subsidiary of the Tenderer? b) not included in the Tender as proposed team members? c) not an AusAID employees?	

	Checked
Are both the Technical Proposal and annexes: a) in a type font of no less than 12 point on A4 paper? b) formatted with left and right page margins no less than 2.5cm and top and bottom page margins no less than 3cm, excluding headers, footers and page numbers? c) absent of AusAID's logo or any representation or mark which indicates that the Tenderer is in any way related to or connected with AusAID?	
For electronic lodgement, has one (1) electronic copy containing all parts and annexes been provided?	
For hard copy lodgement, has one (1) printed original containing all parts and annexes been provided?	
Tender Schedule B: Specified Personnel	
Are the CV's within the specified page limit and certified and signed by the nominated personnel?	
Do the CV's include the name and personal contact details of the nominated personnel?	
Do the CV's include the nationality and, if relevant, permanent residency status of the nominated personnel?	
Do the CV's include details of the professional qualifications of nominated personnel (if relevant), including institution and date of award?	
Do the CV's include details of recent relevant professional and development work experience, including the duration and extent of inputs?	

	Checked
Have at least two (2) referees been nominated on each of the CV's and has it been confirmed that they are: a) not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with the Tenderer or a subsidiary of the Tenderer b) not included in the Tender as proposed team members? c) not AusAID employees?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed original been provided?	
Tender Schedule C: Financial Proposal	
Is the financial proposal in the required format?	
Is the financial proposal a fully costed schedule of rates expressed in Australian dollars and based on the inputs as specified in the Scope of Services, including: (a) escalation? (b) necessary insurances required by the Contract Conditions and for the performance of the Services? (c) detailed information on assumptions used in preparing the pricing?	
For electronic lodgement has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement has one (1) printed original been provided in a separate, sealed envelope?	
Tender Schedule D: Financial Proposal (Option 1 or 2 is to be selected by Tenderers in accordance with the terms detailed in the RFT).	
Option 1	

	Checked
Have the names of the tendering entity and its ultimate owners been provided?	
Have the names and financial relationships between the tendering entity, its parent entity (if relevant) and other related entities within the group been provided?	
Have the previous three (3) years annual financial statements for the tendering entity been provided including: (a) a balance sheet? (b) a profit and loss statement? (c) a cashflow statement? (d) contact name and telephone number of the Tenderer's financial accountant? (e) a statement detailing any other tendering opportunities being pursued by the tendering entity or the group and the likely impact of such tendering opportunities on the financial capacity of the Tenderer to discharge its potential contractual obligations to AusAID under this RFT ?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed copy been provided in a separate sealed envelope?	
Option 2	
Has the date of the most recent financial assessment and the name of the Tender for which this assessment was undertaken been provided?	
Has an explanation of why the Tenderer believes a further financial assessment is not necessary been provided?	
Has a statutory declaration declaring that the Tenderer's financial position has not altered materially since the date of the previous assessment been provided?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	

	Checked
For hard copy lodgement, has one (1) printed copy been provided in a separate sealed envelope?	