



**Australian Government**

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**AusAID**

*25 April 2009*

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| <p><b>Request for Tender</b></p> |
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**Local Governance Innovations for Communities in Aceh  
(LOGICA2)**

## REQUEST FOR TENDER

### Local Governance Innovations for Communities in Aceh (LOGICA2)

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

### STRUCTURE OF THE RFT

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

**Section 1** details the:

- Project Specific Tender Conditions (**Part 1**);
- 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 Project.

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

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

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

### AusAID Contracts Charter

AusAID has published a Contracts Charter describing AusAID’s approach to contracting aid activities, expectations of contractors and what contractors may expect from AusAID. Tenderers are encouraged to access and inform themselves of the Charter which is available on URL:

<http://www.ausaid.gov.au/business/pdf/charter.pdf>

## SECTION 1 – PROJECT SPECIFIC TENDER AND CONTRACT CONDITIONS

### PART 1 – PROJECT SPECIFIC TENDER CONDITIONS

#### 1. TENDER PARTICULARS

**Closing Time:**

(Clauses 1.11 and 1.15, Part 5)

2.00pm local time in Canberra, Australian Capital Territory  
Monday 15 June 2009

**Mode of submission:**

(Clause 1.1, Part 5)

**Either:**

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

**or**

- in hard copy, by depositing by hand in the Canberra  
Tender Box before the tender **Closing Time**.

**Electronic Tender Lodgement**

**Address:**

(Clause 1.11, Part 5)

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

**Canberra Tender Box Address:**

(Clause 1.15, Part 5)

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

**Business Hours**

**for hard copy lodgement:**

(Clause 1.15, Part 5)

Monday to Friday, 8.30am to 5.00pm  
local time in Canberra, Australia Territory Capital  
Excluding Public holidays.

**File Format for Electronic Tenders:**

(Clause 4.3, Annex C to Part 5)

PDF (Portable Document Format)

**Number of Copies of Tender:**

(Clause 1.6, Part 5)

**For electronic tender lodgement**

**Technical Proposal:** One (1) electronic copy.

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

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

**For hard copy tender lodgement**

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

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

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

**CD:** Tenderers are to provide one CD which includes the Technical Proposal, Financial Proposal and Financial Assessment material as three (3) separate files in PDF format.

**Endorsement of hard copy Tenders:**

(Clause 1.17, Part 5)

**“Tender for Local Governance Innovations for Communities in Aceh (LOGICA2).”**

**Tender Validity Period:**

(Clause 1.8, Part 5)

180 days

**Contact Person:**

(Clause 2.1, Part 5)

Sari Siahaan

Fax: +62 21 392 4373

Email address: logica2@ausaid.gov.au

**Page limits:**

(Clauses 7.15 and 7.17, Part 5)

**Tender Schedule A - Technical Proposal**

Management Capability statement (five (5) A4 pages)

Statement of Approach (five (5) A4 pages)

Annex 1 – Past Experience Form (three (3) A4 pages)

Annex 2 – Six Month Work Plan (up to two (2) A3 page

Gantt Chart plus two (2) A4 pages)

Annex 3 – Personnel Inputs Bar Chart (up to four (4) A3 pages)

Annex 4 – Letters of Associate (1 page per Association or Sub-Contractor)

Annex 5 – Commonwealth Government Policies Compliance

**Tender Schedule B – Specified Personnel**

Proposed Team Members (Table plus CVs – up to two (2) A4 pages per CV per personnel)

**Tender Schedule C – Financial Proposal**

Tables 1 – 6 plus Attachment A – Insurance Costs

**Tender Schedule D – Financial Assessment**

Option 1 or Option 2

**Tenderer Declaration**

**Information:**

The following document is attached:

**LOGICA2, Program Design Document, Version 7.0,  
19 March 2009**

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

## 2. **PRE-TENDER BRIEFING**

- 2.1 AusAID intends to hold a pre-tender briefing on **Friday 15 May 2009, 9.00am at the Cemara Hotel, Jl. Cemara No. 1 Jakarta, Indonesia.**
- 2.2 Tenderers planning to attend the pre-tender briefing are requested to send advanced notification by email, indicating the name of the organisation and the number of people planning to attend, to **logica2@ausaid.gov.au**, by **COB (Jakarta time) 12 May 2009.**

## 3. **ALTERNATIVE TENDERS**

- 3.1 AusAID reserves the right to accept and consider alternative Tenders providing they:
- (a) are submitted with a conforming Tender;
  - (b) clearly identify the differences and improvements offered in the alternative Tender;
  - (c) are fully costed; and
  - (d) are clearly marked with the name of the Project and the words “Alternative Tender”.
- 3.2 Alternative Tenders will be considered only after completion of the technical assessment of conforming Tenders.
- 3.3 Only the alternative Tender of the preferred tenderer (following TAP assessment of conforming Tenders) will be assessed.
- 3.4 Alternative Tenders will be technically assessed against the selection criteria contained in this RFT.

## 4. **SCORE WEIGHTINGS**

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

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

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

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

- 4.4 Following the final assessment and calculation of the final aggregate scores, confirmation of the Tenderer's financial capacity to meet the contractual obligations referred to in

**Clause 8 of this Part** and consideration of other factors referred to in **Clause 7.8, Part 5**, a recommendation for further action will be made to the appropriate AusAID delegate. Tenderers should be aware that the delegate is not bound to accept the TAP recommendation and may direct that other action be taken in accordance with this RFT.

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

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

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

5.2 **Selection Criteria**

**(A) MANAGEMENT CAPABILITY (Weighting: 25%)**

*A Management Capability Statement* of not more than **five (5) A4 pages** demonstrating the tender’s ability to:

- (a) undertake the following effectively:
  - (i) harmonise with the work of other donors/government/NGOs, and align with Government systems, programs and priorities; and
  - (ii) recruit, retain and effectively manage high-quality staff over the life of a project.
- (b) manage financial arrangements of a project, including imprest accounts;
- (c) implement a community development project with the capacity to undertake it in a post conflict environment, bringing together community development with key governance reforms at a sub-national level.

*(Note that Annex 1 and 4 will assist the TAP in assessing this Selection Criteria (A))*

**(B) APPROACH (Weighting 40%)**

*A Statement of Approach* of not more than **five (5) A4 pages** demonstrating the tenderer’s understanding of the:

- (a) development context in Aceh;
- (b) key stakeholders and linkages for the success of the Project;
- (c) critical constraints that may impede the Project’s success in the form of a critique of the Request for Tender and Design Documents, including identification of key issues and priorities for the project and risks to the success of the project.

- (i) Where bidders are part of a consortium or association with another party, the prime bidder will need to demonstrate robustness in the linkages established as well as a clear management framework detailing the roles and responsibilities of each party.
- (d) practical and strategic approach to fulfilling the objectives within the specified timeframe and resources identified to ensure successful Project implementation.

*(Note that Annex 2, 3 and 4 will assist the TAP in assessing this Selection Criteria (B))*

### **(C) SPECIFIED PERSONNEL**

**(Weighting 35%)**

The key specified personnel for the positions listed in **Table 1 in Tender Schedule B** and listed below demonstrate relevant experience and qualifications to meet or exceed the requirements of the position descriptions as detailed in **Part 3 – draft Scope of Services Annex 1**.

#### **Individual position weightings**

|   | <b>Specified Personnel Positions</b>                      | <b>Weightings<br/>(Total = 35)</b> |
|---|-----------------------------------------------------------|------------------------------------|
| 1 | Team Leader                                               | 10                                 |
| 2 | Deputy Team Leader                                        | 5                                  |
| 3 | Community Engagement Adviser                              | 4                                  |
| 4 | Governance Reform Adviser                                 | 4                                  |
| 5 | Gender Mainstreaming/ Equity Adviser                      | 4                                  |
| 6 | Peace and Conflict Adviser                                | 4                                  |
| 7 | Monitoring and Evaluation and Continuous Learning Adviser | 4                                  |

*(Note that Tender Schedule B will assist the TAP in assessing this Selection Criteria (C))*

## **5.3 Annexes**

### **Annex 1 – Past Experience Form**

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

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

*(Note that this Annex will assist the TAP in assessing Selection Criteria (A))*

## 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 – Six Month Work Plan

A detailed work showing dependencies for the first six (6) months of the Project. 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. This annex must be presented on **A3 paper** of up to **two (2) pages**. In addition, a **two (2) page** narrative description may be provided on **A4 paper**.

*(Note that this Annex will assist the TAP in assessing Selection Criteria (B))*

### Annex 3 – Personnel Inputs (Bar Chart)

One bar chart to show the proposed inputs by all Personnel, as listed in Tender Schedule C Tables 1 and 2, and indicate the total person months or person days **for each component** for the duration of the Project. This chart should clearly indicate inputs of team members in Australia, in-country and in total. This chart must be presented on **A3 paper** of up to **four (4) pages**.

*(Note that this Annex will assist the TAP in assessing Selection Criteria (B))*



## **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 Project in the form of a single page Letter of Association.

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

*(Note that this Annex will assist the TAP in assessing Selection Criteria (B))*

## **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**.

### **6. TENDER SCHEDULE B – SPECIFIED PERSONNEL**

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

- (a) a list of proposed team members in the table (in landscape) format provided and in accordance with the instructions included in **Clauses 6.2 - 6.3** below;
- (b) a curriculum vitae for each proposed team member of no more than **two (2) pages** each, that conforms with the requirements outlined in **Clauses 7.16 and 7.17, Part 5**.

*(Note that Tender Schedule B will assist the TAP in assessing Selection Criteria (C))*

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

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

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

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

- 6.6 Tenderers are reminded of the requirements of **Clause 19.2, Part 5** particularly in relation to providing police clearance certificates for all Project Personnel nominated in the Specified Personnel table for positions specified as working with children.
- (a) Tenderers must request the required criminal record checks in sufficient time to ensure that police clearance certificates can be provided in accordance with **Clause 18.2, Part 5**.
  - (b) Tenderers should note that in Australia, national criminal record checks are available through the Australian Federal Police and take around 20 working days. The type of employment should be specified as 'overseas employment.' Overseas, different checking procedures apply in each country and may take six weeks or longer. Individuals need to give their consent to a criminal record check and should be informed of the purpose for which it will be used, including sighting by AusAID.

**TABLE 1 - SPECIFIED PERSONNEL**

| Position                                         | Name | Total Inputs in person months | Referee Contact Details |    | Commitments |
|--------------------------------------------------|------|-------------------------------|-------------------------|----|-------------|
|                                                  |      |                               | #1                      | #2 |             |
| Team Leader                                      |      |                               |                         |    |             |
| Deputy Team Leader                               |      |                               |                         |    |             |
| Community Engagement Adviser                     |      |                               |                         |    |             |
| Governance Reform Adviser                        |      |                               |                         |    |             |
| Gender Mainstreaming/ Equity Adviser             |      |                               |                         |    |             |
| Peace and Conflict Adviser                       |      |                               |                         |    |             |
| Monitoring and Evaluation and Continuous Adviser |      |                               |                         |    |             |

**Note to Tenderers:** None of these positions have been identified as working directly with children.

## 7. TENDER SCHEDULE C - FINANCIAL PROPOSAL

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

7.2 It must:

- (a) be a fully costed fixed price based on the outputs and/or inputs as specified in the **Part 3 - Scope of Services**, including:
    - (i) escalation and any allowance for foreign exchange rate variations;
    - (ii) necessary insurances required by the Contract Conditions and for the performance of the Services;
  - (b) be expressed in **Australian dollars**; and
  - (c) include detailed information on assumptions used in preparing the pricing.
- 7.3 Any escalators, foreign exchange rate variations, or other price risks, must be built into the fixed price proposal but separately disclosed as a single escalator factor. AusAID will not consider any “across the board” escalators subsequently applied to any rates or Project costs.
- 7.4 Information provided in the tables will be used for any financial assessment and for the like-for-like price assessment.

### **Financial Proposal Tables**

- 7.5 The Financial Proposal is to include the following components:

#### **1. Reimbursable Costs**

- (a) Long Term Personnel Costs – Table 1
- (b) Short Term Personnel Costs – Table 2
- (c) Long Term Personnel Costs (Option Period) – Table 3

#### **2. Fees**

- (a) Profit and Management Fee – Table 4
- (b) Escalation to Profit and Management Fee – Table 5

#### **3. Attachment A – Insurance Costs**

#### **4. Tenderer’s Bid Price – Table 6**

## REIMBURSABLE COSTS

**Table 1: LONG TERM PERSONNEL COSTS**

| Position Title                                                                                                            | Name of Personnel | Year 1       |                    | Year 2       |                    | Year 3       |                    | Maximum Amount Payable (AUD) |
|---------------------------------------------------------------------------------------------------------------------------|-------------------|--------------|--------------------|--------------|--------------------|--------------|--------------------|------------------------------|
|                                                                                                                           |                   | Input Months | Monthly Rate (AUD) | Input Months | Monthly Rate (AUD) | Input Months | Monthly Rate (AUD) |                              |
| Key Specified Personnel                                                                                                   |                   |              |                    |              |                    |              |                    |                              |
| Team Leader                                                                                                               |                   |              |                    |              |                    |              |                    |                              |
| Deputy Team Leader                                                                                                        |                   |              |                    |              |                    |              |                    |                              |
| Community Engagement Adviser                                                                                              |                   |              |                    |              |                    |              |                    |                              |
| Governance Reform Adviser                                                                                                 |                   |              |                    |              |                    |              |                    |                              |
| Gender Mainstreaming / Equity Adviser                                                                                     |                   |              |                    |              |                    |              |                    |                              |
| Peace and Conflict Adviser                                                                                                |                   |              |                    |              |                    |              |                    |                              |
| Monitoring and Evaluation and Continuous Learning Adviser                                                                 |                   |              |                    |              |                    |              |                    |                              |
| Other Personnel [Tenderer to include details of any additional personnel required to fulfil Tenderer’s proposed approach] |                   |              |                    |              |                    |              |                    |                              |
| [add delete rows as required]                                                                                             |                   |              |                    |              |                    |              |                    |                              |
| TOTAL                                                                                                                     |                   |              |                    |              |                    |              |                    | [VALUE A]                    |

**Table 2: SHORT TERM PERSONNEL COSTS**

| Position Title                                                                                                                  | Personnel Name | Daily Inputs | Fees As Daily Rate<br>(AUD) | Travel and associated costs |                     | Maximum Amount Payable (AUD) |
|---------------------------------------------------------------------------------------------------------------------------------|----------------|--------------|-----------------------------|-----------------------------|---------------------|------------------------------|
|                                                                                                                                 |                |              |                             | No of Trips                 | Cost per trip (AUD) |                              |
| <i>[Tenderer to include details of personnel required to fulfil Tenderer's proposed approach - add/delete rows as required]</i> |                |              |                             |                             |                     |                              |
|                                                                                                                                 |                |              |                             |                             |                     |                              |
| <b>TOTAL</b>                                                                                                                    |                |              |                             |                             |                     | <b><i>[VALUE B]</i></b>      |

Note for Tenderers: These costs should reflect years 1 to 3 only for Short-term personnel. Should the option to extend be taken up by AusAID, the short-term inputs for years 4 and 5 will be negotiated with the Contractor.

## 7.6 Notes and Instructions to Financial Proposal **Tables 1 and 2:**

- (a) Tenderers must detail all relevant costs associated with Long Term and Short Term Personnel including those specified in the tables above.
- (b) Tenderers have the option to add personnel to **Tables 1 and 2**. Tenderers must include all positions they consider will be required to deliver the Project.
- (c) For those Long Term Personnel engaged for more than 6 months consecutively, the monthly fee rate is fixed and includes: salary and allowances (with all escalators, clearly incorporated into the salary structure, and any requirements under Indonesian labour laws in relation to employment and termination), mobilisation and demobilisation costs, superannuation levy; if any, annual leave allowances of up to four (4) weeks per annum, up to thirteen (13) public holidays per annum as designated by the Australian Embassy in Jakarta, housing and utilities costs, and all personnel-related taxes, levies and insurance incurred in Australia and Indonesia with the exception of GST for services performed in Australia.
- (d) For those Short Term Personnel engaged for less than 6 months consecutively, the daily fee rate is a fixed rate and includes: superannuation, all personnel and related taxes, daily per diems and accommodation rates, and all escalators for the full period of the Contract.
- (e) The Tenderer must not include any profit, management, overhead, administrative or other mark up fees or costs in respect of payments made in relation to Long Term or Short Term Personnel.

### Long Term Personnel Costs (Option Period)

**Table 3 - Long Term Personnel Costs (Option Period only)**

| Position Title                        | Name of Personnel | Year 4       |                    | Year 5                       |                              | Maximum Amount Payable (AUD) |
|---------------------------------------|-------------------|--------------|--------------------|------------------------------|------------------------------|------------------------------|
|                                       |                   | Input Months | Monthly Rate (AUD) | Maximum Amount Payable (AUD) | Maximum Amount Payable (AUD) |                              |
| Key Specified Personnel               |                   |              |                    |                              |                              |                              |
| Team Leader                           |                   |              |                    |                              |                              |                              |
| Deputy Team Leader                    |                   |              |                    |                              |                              |                              |
| Community Engagement Adviser          |                   |              |                    |                              |                              |                              |
| Governance Reform Adviser             |                   |              |                    |                              |                              |                              |
| Gender Mainstreaming / Equity Adviser |                   |              |                    |                              |                              |                              |
| Peace and Conflict Adviser            |                   |              |                    |                              |                              |                              |

|                                                                                                                                  |  |  |  |  |  |                  |
|----------------------------------------------------------------------------------------------------------------------------------|--|--|--|--|--|------------------|
| Monitoring and Evaluation and Continuous Learning Adviser                                                                        |  |  |  |  |  |                  |
| <b>Other Personnel [Tenderer to include details of any additional personnel required to fulfil Tenderer's proposed approach]</b> |  |  |  |  |  |                  |
| <i>[add delete rows as required]</i>                                                                                             |  |  |  |  |  |                  |
| <b>TOTAL</b>                                                                                                                     |  |  |  |  |  | <b>[VALUE C]</b> |

7.7 If AusAID exercises the option to extend the Term of the Contract under **Clause 2 of Part 2**, the Long Term Personnel Costs as detailed in **Table 3** will apply on the first day of the extension period.

### **Profit and Management Fee**

**Table 4 – Profit and Management Fee**

|                                  |                     |
|----------------------------------|---------------------|
| <b>Profit and Management Fee</b> | <b>AUD[VALUE D]</b> |
|----------------------------------|---------------------|

7.8 Notes and Instructions to Financial Proposal **Table 4:**

- (a) The Profit and Management Fee is fixed for the term of the Contract and is payable on satisfactory completion of milestones in accordance with **Part 4 – Basis of Payment, Table 5**.
- (b) The Profit and Management Fee must include: all aspects of profit, including commercial margins for all Personnel, contribution to head office overheads including head office communication costs, engagement and management of Long and Short Term Personnel, all management support costs for all Contractor Personnel and all Contractor head/support office management and administrative staff, financial management and financing costs, insurance costs (including but not limited to, professional indemnity, health, medivac, workers compensation, public liability, indemnity and any other insurances as required under the Contract or deemed necessary by the Contractor), security costs for all personnel, taxation as applicable, costs of complying with the Contractor's reporting and liaison obligations under the Contract, costs associated with all personnel briefings in Australia or Indonesia, costs associated with establishing and managing the LOGICA2 Imprest Account, all other costs not specifically identified as Reimbursable Costs or costs payable from the Imprest Account, costs of managing procurement, including the tendering and subcontracting of any services, and risk and contingencies including any escalators.

## Escalation of Profit and Management Fee

**Table 5 - Escalation of Profit and Management Fee (Option Period only)**

|                                 | Escalation Percentage (%) | Profit and Management Fee Total | TOTAL            |
|---------------------------------|---------------------------|---------------------------------|------------------|
| <b>Once off Escalation Rate</b> |                           |                                 | <i>[VALUE E]</i> |

### 7.9 Notes and Instructions to Financial Proposal **Table 5:**

- (a) If AusAID exercises the option to extend the Term of the Contract under **Part 3 – Scope of Services Clause 5**, a once off escalation will be applicable to the Option Period as follows:
- (i) will apply on the first day of the extension period; and
  - (ii) AusAID, shall in consultation with the Contractor, apportion the Contractor's Profit and Management Fee across new milestones.

### 7.10 Financial Proposal Summary

- 7.11 Tenderers must complete the Summary table below inserting Value A, B, C, D and E from the Tables (1 – 5) above.

**Table 6 – Tenderer's Bid Price**

| Item                                                         | Maximum Amount Payable (AUD) |
|--------------------------------------------------------------|------------------------------|
| Long Term Personnel Costs                                    | [VALUE A]                    |
| Short Term Personnel Costs                                   | [VALUE B]                    |
| Long Term Personnel Costs (Option Period only)               | [VALUE C]                    |
| Profit and Management Fee                                    | [VALUE D]                    |
| Escalation of Profit and Management Fee (Option Period only) | [VALUE E]                    |
| TOTAL                                                        | [VALUES A+B+C+D+E]           |

### 7.12 Insurances

- 7.13 The Tenderer is also required to separately disclose (**as Attachment A to Tender Schedule C**) the type and cost of the required Project and personnel related insurances (which are to be included in the Reimbursable Personnel Costs).
- 7.14 AusAID acknowledges that Tenderers may encounter difficulties in obtaining insurance to cover 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 (Property Insurance).



AusAID expects Tenderers to use their best endeavours to obtain appropriate cover. In the event that a Tenderer is unable to obtain appropriate Property Insurance it must:

- (a) Submit evidence of its attempts to obtain appropriate Property Insurance; and
- (b) Submit a risk management strategy which addresses how the Tenderer will mitigate the potential risks to the Program property detailed above, where insurance is not available.

7.15 Tenderers who are able to obtain Property Insurance must include the costs of this cover as a separate line item in the Insurance attachment to **Tender Schedule C**.

7.16 In the event that the preferred Tenderer is unable to obtain the appropriate Property Insurance, an additional clause will be included in the final contract.

## 8. **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.

## **PART 2 - PROJECT SPECIFIC CONTRACT CONDITIONS**

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

**CONTENTS**

|                                                      |           |
|------------------------------------------------------|-----------|
| <b>PART A – PROJECT SPECIFIC CONTRACT CONDITIONS</b> | <b>21</b> |
| 1. INTERPRETATION                                    | 21        |
| 2. TERM OF CONTRACT                                  | 22        |
| 3. ACCOUNTS AND RECORDS                              | 22        |
| 4. NOTICES                                           | 22        |
| 5. MANAGEMENT SERVICES                               | 23        |
| 6. MONITORING REVIEW GROUP                           | 23        |
| 7. SUB-CONTRACTING                                   | 24        |
| 8. RIGHT OF AusAID TO RECOVER MONEY                  | 25        |
| 9. GOVERNMENT TAXES, DUTIES AND CHARGES              | 25        |
| 10. INSURANCES                                       | 27        |
| 11. COMPLIANCE WITH AusAID POLICIES                  | 28        |
| 12. IMPREST ACCOUNT                                  | 28        |

## **PART A – PROJECT SPECIFIC CONTRACT CONDITIONS**

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

### **1. INTERPRETATION**

#### **1.1 Definitions**

In this Contract, unless the context otherwise requires:

**"Changed Tax"** means a new tax imposed or a change in an existing Commonwealth, State or Territory Government or Partner Country tax after the commencement of this Contract described in **Clause** Error! Reference source not found. (Project Commencement) **below**.

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

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

**"Partner Country"** means the country/countries in which the services are to be delivered in, in this case Indonesia.

**"Payment Milestone"** means a milestone identified in **Table 5 to Schedule 2** and for which the Contractor is entitled to receive a payment in accordance with the Contract.

**"Project Design Document"** or **"PDD"** means the project design document prepared by the Contractor in the Design Phase.

**"Related Corporation"** has the meaning set out in section 50 of the *Corporations Act 2001* and any entity nominated in accordance with the Request for Tender through a Letter of Association.

**"Schedule of Rates"** means the tables in **Schedule 2**.

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

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

**"Team Leader"** means the specified person nominated in **Table 2 to Schedule 2**

**"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 no later than **1 September 2009** which will be referred to as the Services Start Date and must complete the Services by **31 August 2012**, the Services End Date, unless the option in **sub-clause 2.3** below of this **Part A** of this Contract is exercised by the Commonwealth.
- 2.3 The Contractor grants to the Commonwealth an option to extend, at the Commonwealth's sole discretion, the Services for a period of **two (2) years**. The option must be exercised by notice in writing to the Contractor no later than 90 days prior to the date of completion of the Services as specified in **sub-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 **sub-clause 2.3** shall no longer apply.

**3. ACCOUNTS AND RECORDS**

- 3.1 The statement of Project expenditure referred to in Standard Conditions **Clause 15.1(e)** (Accounts and Records) must be provided on a **3 monthly** basis and must indicate:
- (a) total expenditure of the Project to date;
  - (b) disaggregated expenditure for the Project to date identifying all categories of expenditure including the Fees component and Reimbursable items;
  - (c) total expenditure for the period of **3 months**; and
  - (d) forward expenditure and expenses by category for the period of **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: Activity Manager – LOGICA2

Postal Address: Australian Agency for International Development  
Jl. H.R. Rasuna Said Kav C15-16  
JAKARTA 12940 INDONESIA

Street Address: same as above

Facsimile: +62 21 392 7274

**Contractor:**

To: Contractor's Name

Attention: Contact Person

Postal Address: Contractor's Postal Address

Street Address: Contractor's Head Office Street Address

Facsimile: Contractor's Fax

**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 which include for example security, medical/health situation, cultural environment, detail on project objectives, and relevant contract obligations.
- (b) decision-making within the Contractor's organisation and advising AusAID of decisions required by AusAID;
- (c) pro-actively identifying and rectifying problems or recommending strategies to AusAID on how to rectify problems, which may arise in, or during the performance of, the Services;
- (d) managing those risks which are the Contractor's responsibility under the Contract in accordance with the Risk Management Plan including in relation to Supplies after delivery and before their incorporation into the Project; and
- (e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID.

**6. MONITORING REVIEW GROUP**

6.1 AusAID may establish a Monitoring Review Group (the "MRG") whose purpose is to provide AusAID with independent technical and other advice on any aspects of the Project and to assist AusAID to assess the performance of the Services.

6.2 The Contractor must:

- (a) attend and participate in those MRG meetings which AusAID directs it in writing to attend;
- (b) when required by AusAID, consult with the MRG on matters related to the Project including:
  - (i) progress and performance of the Services;



- (ii) any matters, circumstances or events which may be affecting or impacting upon the Contractor's relationship with the Partner Country, Stakeholders, AusAID or the MRG and suggest actions to avoid or counteract any adverse effects on the relationships;
  - (iii) any matters, circumstances or events which may affect the Project and if there are anticipated or contingent problems or difficulties, suggestions to avoid or counteract those problems or difficulties; and
  - (iv) any issues or concerns which the Contractor may want to raise with AusAID.
- (c) co-operate with and assist in any way requested by the MRG in the performance of its monitoring and review;
- (d) co-operate with and assist the MRG by providing all necessary information and Contractor Personnel and ensuring its Contractor Personnel are available and willing to assist in answering inquiries or requests for information in respect of the performance of the Services; and
- (e) provide to the MRG copies of all reports, notices, information or other Project material which the MRG reasonably requires to fully and efficiently perform its monitoring and review as soon as practicable after such material is produced or received by the Contractor.

## **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 **AUD50,000 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 **AUD50,000 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. RIGHT OF AusAID TO RECOVER MONEY**

- 8.1 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.
- 8.2 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 8.2 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.
- 8.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 8.2**, 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.
- 8.4 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.

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

- 9.1 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.

9.2 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.

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

- (a) the Contract, the Project, and any sub-contracts entered into for the performance of the Services;
- (b) the sale, purchase, lease, assignment, licence or transfer of any property under the Contract;
- (c) the obtaining of any approvals, consents or authorisations in respect of the Project; and
- (d) any instrument or transaction contemplated by or necessary to give effect to the Contract.

9.4 Subject to **Clause 9.8 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.

9.5 An increase in the Fees under **Clause 9.4 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.

- 9.6 A decrease in Fees under **Clause 9.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.
- 9.7 The Contractor may claim a Changed Tax adjustment only once in respect of any change.
- 9.8 **Clause 9.4 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.

## 10. INSURANCES

- 10.1 In addition to the Contractor's obligations regarding insurance detailed in Standard Conditions **Clause 34** (Insurance) the Contractor must ensure that:
  - (a) AusAID is notified immediately the Contractor becomes aware of any actual, threatened or likely claims under all of the insurances required by this Contract or any act or omission by the Contractor which could materially reduce the available limit of indemnity;
  - (b) AusAID is notified in writing whenever the insurer gives the Contractor a notice of cancellation of project-related insurances;
  - (c) in respect of public liability insurance and property insurance that:
    - (i) all insurance agreements and endorsements (with the exception of limits of liability) name, and operate as if there was a separate policy of insurance covering, AusAID, the Contractor and sub-contractors; and
    - (ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;
  - (d) where AusAID is a joint insured under an insurance policy, the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against AusAID; and
  - (e) all premiums are promptly paid.
- 10.2 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.
- 10.3 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.

**11. COMPLIANCE WITH AusAID POLICIES**

- 11.1 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**.

**12. IMPREST ACCOUNT**

- 12.1 The Contractor shall establish an Imprest Account in accordance with this **Clause 12**.
- 12.2 The Contractor must undertake a selection process in order to recommend an authorised deposit taking institution which represents value for money for AusAID approval, with which to establish the separate Imprest Account.
- 12.3 The Imprest Account will be titled **LOGICA2 Imprest Account**. In correspondence with AusAID the Imprest Account will be referred to by title.
- 12.4 Money in the Imprest Account is the money of the Contractor and is not held by the Contractor on trust for AusAID or as agent for AusAID.
- 12.5 The Contractor agrees that the money in the Imprest Account is to be used for the purpose of funding approved Project activities. No money paid into the Imprest Account, or paid to the Contractor for the purposes of the Imprest Account shall be intermingled with the Contractor's other money.
- 12.6 The Contractor is responsible for the management of (including scheduling, acquittal and disbursement) and reporting on the Imprest Account.
- 12.7 The Contractor must produce and submit to AusAID for approval within **one (1) month** of the Project Start Date a Manual of Operations which details the management arrangements and operational procedures for the Imprest Account. Where appropriate the Manual of Operations must be developed in consultation with counterparts using counterpart systems, forms and processes as much as possible.
- 12.8 The Contractor in consultation with the Partner Government, where appropriate, will appoint two personnel from one or both of their respective organisations as principal signatories to the Imprest Account. In the case of the Contractor, the personnel shall be Specified Personnel. Both are to sign withdrawals. In circumstances where one of the principal signatories is absent from the Project, a third approved nominee may act as an alternative signatory to the Imprest Account. All principal and alternative signatories will be named in the Manual of Operations for the Imprest Account and approved by AusAID.
- 12.9 The funds held in the Imprest Account shall be used solely for the purpose of funding:
- (a) the Community Infrastructure and Innovations Grant Scheme (CIIGS) detailed in **Schedule 1 Clause 16.6(c)**;
  - (b) the Local Government Grants Scheme (LOGGS) as detailed in **Schedule 1 Clause 16.12(e)**;

**LOGICA2 RFT**  
**Part 2 – Project Specific Contract Conditions**

- (c) **technical assistance** to support local and village governments and communities, including village facilitators. The engagement of technical assistance is subject to approval from the PCC through the 6-monthly workplan process. Payment for advisers, such as a gender adviser, engaged to assist in the development of a strategy specifically for the Project and/or assist in the development of deliverables by the Contractor (such as the Gender and Socialisation Strategy defined in Schedule 1 Clause 19.1(b)(vi)) will be accommodated through the Profit and Management Fee if these positions are not already included in Schedule 2, Table 2 and 3.
  - (d) Project supplies, such as vehicles, to support the operations of technical assistance in the field (i.e. working with local and village governments or communities);
  - (e) Project related travel costs for Contractor nominated personnel (defined in **Schedule 2 – Table 2 and 3**) travelling in the field (i.e. outside Banda Aceh); and
  - (f) Project activities that will be implemented via a sub-contracting arrangement, that have been approved in the six (6) monthly work plan and/or by the PCC;
  - (g) support required at the government, civil society and gampong community levels to actively participate in monitoring and evaluation of the Project; and
  - (h) the recruitment, mobilisation and management of short term technical assistance as directed by AusAID.
- 12.10 Bank charges relating to the Imprest Account shall be paid with monies from the Imprest Account and acquitted in the same way other expenditure is acquitted.
- 12.11 Interest earned on the Imprest Account shall remain in the Imprest Account and shall be used for Project purposes and acquitted to AusAID as such.
- 12.12 Subject to **Clause 12.14** and **12.15** below, monies for the Imprest Account will be paid by AusAID to the Contractor on a three (3) monthly basis.
- 12.13 The first payment is payable following AusAID approval of the Manual of Operations and each subsequent payment is payable following AusAID approval of the Contractor's:
- (a) acquittal of the previous payment; and
  - (b) cashflow projection of funds required for each subsequent payment, over the next twelve month period.
- 12.14 Amounts payable in accordance with **Clause 12.13** above, will be paid within 10 days of notification received by AusAID's Finance Section.
- 12.15 The balance of the Imprest Account must be reported as at 30 March, 30 June, 30 September and 31 December each year, within 10 days of the end of each period, to the AusAID officer specified for the purposes of Standard Conditions **Clause 40** (Notices), with a copy of the balance provided to AusAID's Chief Finance

Officer by:

**Email (Preferably):** [accountsprocessing@ausaid.gov.au](mailto:accountsprocessing@ausaid.gov.au)

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

- 12.16 On every anniversary of the Commencement Date, an audit of the Imprest Account and all documentation relating to the Imprest Account for the previous twelve months must be conducted by an independent external auditor. The audit must be completed within 28 days of each anniversary of the Commencement Date and three copies of each audit report sent to AusAID within 7 days of the Contractor's receipt of the audit report. One copy must be sent to the relevant AusAID officer specified for the purposes of Standard Conditions **Clause 40** (Notices), one copy must be sent to the Director, Audit and the third copy sent to the Chief Finance Officer at the following address:
- AusAID  
Attention: Director, Audit / Chief Finance Officer (delete as appropriate)  
GPO Box 887  
Canberra ACT 2601  
Australia
- 12.17 A final independent audit of the Imprest Account and all documentation relating to the Imprest Account must be provided with the **Project Completion Report** for the period since the last independent audit provided in accordance with **Clause 12.16** above.
- 12.18 The cost of an audit conducted in accordance with **Clauses 12.16 and 12.17** is included in the fees payable to the Contractor, and the cost of any corrections or remedial work required to the Imprest Account pursuant to audit findings is to be borne by the Contractor.
- 12.19 The Imprest Account and all documentation relating to the Imprest Account, including documentation related to the use of the Imprest Account funds may be subject to audit by or on behalf of AusAID at any time and from time to time.
- 12.20 If, upon the premature termination of the Contract or at the end of the Contract, money remains in the Imprest Account, the Contractor shall pay to AusAID an amount equal to the total amount of money (including any accrued interest) remaining in the Imprest Account.
- 12.21 In the event that AusAID becomes aware that any money cannot be accounted for by the Contractor in the Imprest Account including upon premature termination of the Contract, AusAID has the right to recover the amount in question (plus interest equal to the interest that would have been earned on the funds had they remained in the Imprest Account) from monies due and owing to the Contractor under this Contract or as a debt due to the Commonwealth whichever AusAID in its absolute discretion considers appropriate.

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



**PART 3 – SCOPE OF SERVICES**

**LOCAL GOVERNANCE INNOVATIONS FOR COMMUNITIES IN ACEH  
(LOGICA2)**

**Note to Tenderers:**

This Scope of Services is presented as **Part 3** of this RFT, and will appear as Schedule 1 in the consolidated Contract.

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.

**PART 3 – SCOPE OF SERVICES**

**LOCAL GOVERNANCE INNOVATIONS FOR COMMUNITIES IN ACEH  
(LOGICA2)**

1. The following abbreviations and acronyms are used in this Scope of Services and Basis of Payment:

|              |                                                                                                                                                                                                                                    |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AusAID       | Australian Agency for International Development                                                                                                                                                                                    |
| AB           | Advisory Board                                                                                                                                                                                                                     |
| ARP          | Aceh Rehabilitation Project                                                                                                                                                                                                        |
| APF          | Aceh Project Framework                                                                                                                                                                                                             |
| AIP          | Australia Indonesia Partnership                                                                                                                                                                                                    |
| AIPRD        | Australia Indonesia Partnership for Reconstruction and Development                                                                                                                                                                 |
| BAPPENAS     | The Indonesian National Planning Office                                                                                                                                                                                            |
| BAPPEDA      | The Aceh Provincial Planning Office                                                                                                                                                                                                |
| BRR          | Badan Pelaksana Badan Rehabilitasi dan Rekonstruksi Wilayah dan Kehidupan Masyarakat Provinsi Nanggroe Aceh Darussalam dan Kepulauan Nias, Provinsi Sumatera Utara (Agency for Rehabilitation and Reconstruction of Aceh and Nias) |
| CEPA         | Community and Education for Peace in Aceh project                                                                                                                                                                                  |
| CIDA         | Canadian International Development Agency                                                                                                                                                                                          |
| CIIGS        | Community Innovations and Infrastructure Grants                                                                                                                                                                                    |
| CSO          | Civil Society Organisation                                                                                                                                                                                                         |
| DTL          | Deputy Team Leader                                                                                                                                                                                                                 |
| DWG          | District Working Group                                                                                                                                                                                                             |
| EU           | European Union                                                                                                                                                                                                                     |
| GAM          | Free Aceh Movement (Gerakan Aceh Merdeka)                                                                                                                                                                                          |
| GOI          | Government of Indonesia                                                                                                                                                                                                            |
| GTZ          | German Agency for International Development Cooperation                                                                                                                                                                            |
| ICG          | International Crisis Group                                                                                                                                                                                                         |
| IOM          | International Organisation for Migration                                                                                                                                                                                           |
| JICA         | Japan International Cooperation Agency                                                                                                                                                                                             |
| KDP          | Kecamatan Development Project                                                                                                                                                                                                      |
| LOGA         | Law on Governing Aceh                                                                                                                                                                                                              |
| LOGGS        | Local Government Grant Scheme                                                                                                                                                                                                      |
| LOGICA       | Local Governance and Infrastructure for Communities in Aceh                                                                                                                                                                        |
| LOGICA2      | Local Governance Innovations for Communities in Aceh ('the Project')                                                                                                                                                               |
| MIS          | Management Information System                                                                                                                                                                                                      |
| NGO          | Non-Government Organisation                                                                                                                                                                                                        |
| PCC          | Project Coordinating Committee                                                                                                                                                                                                     |
| PNPM Mandiri | PNPM Mandiri Daerah Tertinggal is part of the GOI's National Project for Community Empowerment                                                                                                                                     |
| TL           | Team Leader                                                                                                                                                                                                                        |
| TOR          | Terms of Reference                                                                                                                                                                                                                 |
| UNDP         | United Nations Development Project                                                                                                                                                                                                 |
| USAID        | United States Agency for International Development                                                                                                                                                                                 |
| WB           | World Bank                                                                                                                                                                                                                         |

## **2. BACKGROUND**

- 2.1. Political, social and economic stability in Aceh remains fragile despite advances in post-tsunami reconstruction and a cessation of hostilities since the negotiation of a peace deal two years ago. Large fiscal increases to the province have not translated into living standard improvements for the majority of Acehnese. Regional disparities remain between post-tsunami reconstruction and non-tsunami post-conflict areas.
- 2.2. As the roles, responsibilities and funding levels of local governments in Aceh have increased, they have struggled to deliver transparent and effective services to address priority community needs. An increase in ad hoc violent crime highlights growing tensions among groups of former combatants, particularly the rank-and-file who have had not found livelihoods.
- 2.3. Politics across Aceh remains factionalised, not just within local parties, but also involving Jakarta-aligned parties. Rifts may widen in the lead-up to the 2009 general elections.
- 2.4. Stability and growth in Aceh will safeguard the enormous post-tsunami reconstruction and sustain regional peace in the long term. Continued peace and stability in Aceh is equally important for the rest of Indonesia because it demonstrates that engaging citizens on their grievances through dialogue and democracy results in lasting political compromise without need for violence or repression. Reconciliation in Aceh is potentially an example for the rest of Indonesia.
- 2.5. Continued donor involvement in Aceh can contribute to the reconciliation process and assist governments and communities to work together to achieve equitable growth for all Acehnese, including the most marginalised. Donor interventions should stimulate an environment conducive for all parties to continue seeking durable compromise and in which public resources are utilised equitably for wholesale economic and social growth.

## **3. AUSTRALIAN DEVELOPMENT COOPERATION IN ACEH**

- 3.1. Australia's post-tsunami reconstruction effort was wound down in 2008 but Australia remains committed to Aceh's recovery and long-term stability. Reconstruction gains under the ARP will be consolidated alongside a practical focus on supporting peace and development through good governance which translates into living standard improvements for all Acehnese.
- 3.2. A major activity under the Aceh Rehabilitation Project was the Local Governance and Infrastructure for Communities in Aceh (LOGICA) Project, which supported communities and governments to facilitate sustainable infrastructure and governance outcomes for tsunami-affected and post-conflict villages. LOGICA is currently contracted to run until September 2009.

#### **4. THE ACEH PROJECT FRAMEWORK**

- 4.1. Recognising Aceh's particular stability and development pressures, the Australia Indonesia Partnership (AIP) Country Strategy 2008-2013 identifies Aceh as one of five priority provinces for comprehensive cross-sectoral Australian Government engagement to support better public expenditure management and service delivery.
- 4.2. Under the new Aceh Project Framework, programming will transition from post-tsunami assistance towards a post-conflict program focused on local level improvements in government processes, basic services, community participation and creating an enabling environment for economic growth. The Local Governance Innovations for Communities in Aceh (LOGICA2) Project will form a key component of this work. The Aceh Program Framework incorporates four pillars that address the needs of the Province and link directly with the Country Strategy:
  - (a) Sustainable economic opportunities for the people of Aceh;
  - (b) Investing in the people of Aceh;
  - (c) Demand for and supply of better governance in Aceh; and,
  - (d) A safe and peaceful Aceh.
- 4.3. The Aceh Program Framework is flexible and focuses on priorities identified by the Aceh Government. All initiatives within the Aceh Program will be designed to support the government in improving livelihoods and development needs across the Province, and will encourage a common and sustainable approach to engagement appropriate for Aceh's post-conflict environment.
- 4.4. The Aceh Program Framework identifies eight key principles for engagement that will act as a guide to ensuring that all assistance to Aceh directly contributes to stability. The principles, which are aligned with international best practice for engagement in fragile environments, are:
  - (a) Rebuild the relationship of trust between citizens and government;
  - (b) Focus on achieving immediate visible results;
  - (c) Avoid socially and politically controversial reforms;
  - (d) Ensure that reforms are affordable and not overly ambitious;
  - (e) Even if not perfect, use existing systems;
  - (f) Build government legitimacy;
  - (g) Promote gender equality; and
  - (h) Harmonise efforts with other donors.

**5. DURATION AND PHASING**

- 5.1. The Contractor shall perform the services outlined in this Scope of Services, for a period of **three (3) years**, with an option to extend for up to a further two (2) year period dependent on AusAID's sole discretion in accordance with **Clause 2 of the Project Specific Contract Conditions**.
- 5.2. The Long Term Personnel, as shown in **Schedule 2 Table 2**, must be mobilised in-country no later than **1 October 2009**.
- 5.3. The Contractor is to reflect the possible extended contract period in planning but should not commit funds beyond the Service End Date without AusAID prior written approval.
- 5.4. If the option in Clause 2.3 of Part A is exercised, the Scope of Services and Basis of Payment may need to be amended but the Management Fee and the Personnel rates for the Option period will be calculated as specified in **Schedule 2 – Basis of Payment**.

**6. INCEPTION PERIOD**

- 6.1. The Project will commence with an Inception Period starting from the Services Start Date for up to **three (3) month**, whereby the Contractor will work alongside the Senior Management Team of LOGICA, for a period yet determined, to develop a strong understanding of the context, activities, methodologies and counterparts
- 6.2. During this Inception Period, the Contractor will be responsible for the following preparatory outputs:
  - (a) Briefings and mobilisation for all Long Term Personnel;
  - (b) Establishment of a Project office in Banda Aceh with sufficient communications, logistics and security equipment for efficient Project management in accordance with this Scope of Services;
  - (c) Developing and finalising the Inception Report as outlined in **Clause 19.1(b)**;
  - (d) Engaging local personnel to undertake identified activities and establishing appropriate payroll and management systems; and
  - (e) Establishing a system for supporting reimbursable procurement and other expenditure including copies of all receipts, tender documents and quotations (where appropriate), approval from the PCC (where appropriate), and other documentation demonstrating consistency with the Commonwealth Procurement Guidelines and adherence to relevant requirements under the Contract.
- 6.3. AusAID will host a handover workshop with the LOGICA Senior Management Team shortly after arrival in Aceh to familiarise the Contractor

personnel with the work of the LOGICA Interim Phase (previous program) and consider the work completed in the LOGICA Interim Phase.

- 6.4. The Contractor will subsequently host a planning workshop with a broader range of stakeholders (including AusAID and partner government representatives) to develop the first workplan and associated budget. The planning workshop will consider the activities and lessons learnt from LOGICA and work through Project issues to ensure a common appreciation of Project objectives and a consistent approach to implementation.

## **7. PROJECT OVERVIEW**

### **7.1. Project Goal**

The goal of Local Governance Innovations for Communities in Aceh (LOGICA 2) ('the Project') is: *'to contribute to a stable and peaceful Aceh by supporting effective governance that addresses priority village needs.'*

### **7.2. Project Objective and Components**

The Project objective is: *'In response to community-wide advocacy, Governments deliver services to improve living standards.'*

LOGICA 2 will deliver activities under this objective by applying the 'Active communities – Responsive governments' approach through two Project components:

- (a) **Component 1 - Active Communities** - *"Citizens, particularly the marginalised, effectively advocate priority needs to government resulting in services that improve living standards."* Key outcomes of the Component are:
  - (i) **Outcome 1(a):** Communities identify, analyse and prioritise their needs.
  - (ii) **Outcome 1(b):** Communities represent their priorities to government and advocate for improved services.
  - (iii) **Outcome 1(c):** Communities measure the performance of services and contribute to service delivery reform and replication.
- (b) **Component 2 - Responsive Government** - *"Governments respond to citizen priorities, including those of the marginalised, by effectively allocating resources and delivering services to improve living standards."* Key outcomes of the Component are:
  - (i) **Outcome 2(a):** Governments understand community priorities and the needs of the marginalised

- (ii) **Outcome 2(b):** Governments deliver services and allocate resources to address the priority needs of communities
- (iii) **Outcome 2(c):** Governments improve and replicate services in response to community feedback

**7.3. Project Guiding Principles:**

- (a) Nine non-negotiable guiding principles specific to the LOGICA Project have been defined to ensure the Project remains focused and gains long term sustainability. The principles must be integrated into all Project activities and processes.
- (b) The nine guiding principles are:
  - (i) Partnership and Building Local Capacity;
  - (ii) Sustainability and Replication;
  - (iii) Progressive Engagement;
  - (iv) Flexibility and Responsiveness;
  - (v) Gender and Social Inclusion;
  - (vi) Community Empowerment;
  - (vii) Commitment to Reform;
  - (viii) Innovation and Continuous Learning; and
  - (ix) Peace-building and Social Cohesion.

**7.4. Implementation and geographic coverage:**

- (a) The Project will extend the ‘*Active Communities – Responsive Governments*’ model by deploying facilitators into target villages and local government offices (District in all cases, and Sub-district depending on initial assessments) responsible for service delivery.
- (b) Both components of the Project will facilitate a suite of parallel activities and processes within the target communities and government counterparts responsible for service provision to these communities.
- (c) Geographic roll-out will occur in four phases over the proposed five (5) year life of LOGICA2 and cover a minimum of twelve districts, 35 to 91 Sub-districts and from 900 to 2,200 villages. For the three years of this Contract, a minimum of 6 districts, 17- 72 sub-districts and 393 - 1852 villages will be covered.

**LOGICA2 RFT**  
**Part 3 – Scope of Services**

- (d) As outlined in the LOGICA2 Project Design Document, the Contractor will implement the Project in each target village in 5 stages. The five stages of implementation are:
- (i) Stage 1: Preparation and Research (3 months);
  - (ii) Stage 2: Stakeholder Engagement (3 months);
  - (iii) Stage 3: Participative Needs Assessment and Action Planning (6 months);
  - (iv) Stage 4: Advocacy, Service Reforms and Performance Monitoring (12 months); and
  - (v) Stage 5: Consolidation and replication (ongoing).
- (For further information on these stages please refer to the LOGICA2 Program Design Document dated 19 March 2009, Version 7.)
- (e) It is anticipated that Stage 5 will not be required if sustainability can be achieved however the PCC is willing to consider entering this Stage on an “as need” basis over the life of the Project, where there is strong potential for substantial Project outcomes in return for relatively small inputs.
- (f) The Project will work with each target community and government partners for up to two (2) years, in line with the phasing of geographic coverage. Target communities will be supported to prioritise needs and advocate for service delivery that directly impact on living standards in areas including, but not limited to, health, education, housing and infrastructure. Government counterparts will be supported to adopt more effective planning, consultative, budgeting and service delivery approaches that respond to community need, and which make a measurable impact on living standards.
- (g) Unless agreed in writing by AusAID, the Project will work in up to six Districts at any one time. Project flexibility allows the Contractor to determine and vary the most effective and efficient number of target communities and government counterparts, based on assessments of local conditions, emerging issues and logistical considerations at the time of implementation.
- (h) Within **three (3) months of the Services Start Date**, the Contractor will propose to AusAID a detailed and comprehensive plan, Geographical Coverage Plan, of target Districts and communities. This should be based on available conflict, poverty and demographic indicators, and take into account the following considerations:
- (i) Immediate continuation of work currently being undertaken by LOGICA in high needs districts (Aceh Jaya and Pidie) and



offering upfront access to established LOGICA networks in these districts during the initial phases of implementation;

- (ii) New high-need post-conflict Districts that are under-resourced based on a preliminary assessment of World Bank and PNPM Mandiri poverty, damage and conflict data;
  - (iii) Districts which have received limited donor support to date;
  - (iv) A mix of population densities across Districts to avoid work overload of the Project in any one phase; and
  - (v) A thorough geographical spread of Districts across Aceh over the life of the Project, taking into account logistical deployment issues based on the experience of LOGICA. The current LOGICA team will provide a comprehensive handover to LOGICA2 on mobilisation.
- (i) The proposed geographic coverage should take into account and document advice from the Project Coordinating Committee, other donor partners (particularly PNPM Mandiri) and government counterparts.

#### **7.5. Modes of Assistance**

- (a) The Project will use a range of assistance modes to address individual, institutional, and systemic approaches to capacity building and the implementation of Project activities. These include, but are not limited to:
- (i) facilitators deployed in target villages, on a ratio of no less than 1 facilitator per 5 villages;
  - (ii) individual specialists deployed in counterpart District government agencies in non-line management functions (coaching, advising, mentoring, supporting, liaison, and training);
  - (iii) technical assistance to undertake specific tasks with and on behalf of counterpart agencies (policy advice, administrative reform, research, development of pilot Projects);
  - (iv) tailored training Projects for village representatives, government officials and CSOs;
  - (v) Design and delivery of Projects conducted jointly by counterparts and sub-contractors and/or advisors;
  - (vi) support and mentoring for village representatives (via training and mentoring) to undertake action plans addressing priority needs related to living standard improvements; and/or

- (vii) A small flexible grants Project targeted to village, Sub-district or District governance reform activities, filling resource gaps in building the capabilities of CSOs and networks, small infrastructure Projects delivered through a community-based contracting methodology or support for small business and livelihoods initiatives, including micro-finance schemes.

**7.6. Flexibility in delivery**

- (a) The operating environment in Aceh is uncertain and unpredictable. As a result, the Project will respond flexibly to challenges on the ground.
- (b) The Six-monthly Workplan ('the Workplan') will be the key planning instrument for the Project. Changes in the sequencing and implementation of the Project services will be specified in the Workplan to allow flexibility in delivery, enhance value-for-money outcomes, and promote operational efficiencies.
- (c) In the event of a discrepancy between this Scope of Services and the agreed Workplan, the Workplan will take precedence.

**8. COORDINATION AND CONSULTATION**

- 8.1. The Contractor will, at a minimum, need to consult and coordinate with the following stakeholder groups:

**Government of Indonesia**

**(a) National and Provincial Government Agencies:**

- (i) **BAPPENAS:** the National Planning Office, and its Provincial equivalent in Aceh, BAPPEDA;
- (ii) **DEPDAGRI** (Departemen Dalam Negeri): the Ministry of Home Affairs (MOHA);
- (iii) The office of the Governor of Aceh;
- (iv) **BPM:** the People's Empowerment Agency, with responsibility for disbursement of large amount of provincial government funding to villages; and
- (v) **BRR** (and/or its successor agency/department following demobilisation in 2009): BRR is expected to demobilise in early 2009, and arrangements are underway for delegation of its current roles and responsibilities to an existing national agency or new entity. The Contractor should continue coordination with this new agency once these arrangements are confirmed.

**(b) Local Government Officials;**

- (c) **Heads of District** government in all target geographical areas;

- (d) **Sub-District Heads** responsible for service delivery to the Project's target villages; and
- (e) **PNPM Mandiri** - a community-driven development Project that is part of the GOI's National Project for Community Empowerment (PNPM), and integrates Projects such as Support for Poor and Disadvantaged Areas Project (SPADA) and the Kecamatan Development Project (KDP). LOGICA 2 will draw on the community facilitator and training networks of PNPM Mandiri and contribute knowledge to PNPM Mandiri about its impact on village governments, the engagement of women and other vulnerable groups, and verification of community priorities.

#### **Other Donor Projects**

- (f) There are a variety of governance Projects under implementation in Aceh. The EU, GTZ, IOM, UNDP, USAID, CIDA, JICA and the Asia Foundation are all implementing governance Projects. It is essential that LOGICA2 coordinate and align with other governance Projects in Aceh as a key operating principle.

#### **Civil Society**

- (g) Civil society in Aceh has flourished since the cessation of conflict, and also partially as a result of engagement with the international donor community during the post-tsunami reconstruction phase. Civil society groups currently operating in Aceh focus on wide range of governance and community related issues and in many cases have become capable service providers in training, technical assistance, monitoring and evaluation, and support of community representatives.
- (h) Some examples of potential civil society partners who have been effective service delivery partners during the previous phase of LOGICA include:
  - (i) The Institute for Development and Economic Analysis (IDEA);
  - (ii) Mataradja, Aceh Jaya;
  - (iii) Flower Aceh;
  - (iv) The Acehnese Women's Village Council Forum;
  - (v) Solidaritas Untuk Anti Korupsi (SUAK);
  - (vi) Solidaritas Anti Korupsi (SORAK);
  - (vii) Forum Bangun Aceh (FBA);
  - (viii) The Aceh Institute;
  - (ix) Lembaga Pembinaan dan Pengembangan Masyarakat (LPPM);

- (x) Institute for Research and Empowerment (IRE);
- (xi) Lembaga Studi dan Pengembangan Sumber Daya (LUGAS);
- (xii) Consortium for Village Strengthening in Aceh (Convis);
- (xiii) Institut Pemerintahan Desa (IPD);
- (xiv) Bina Swagiri, East Java;
- (xv) The Aceh Indigenous Network (JKMA); and
- (xvi) University of Syiah Kuala, Banda Aceh.

**Other AusAID Projects and advisers**

- (i) LOGICA2 is one activity implemented within the parameters of the Aceh Project Framework which places emphasis on a broad, strategic framework of objectives and principles, including working across the whole of government and its service oriented institutions and apparatus.
- (j) LOGICA2 should collaborate closely with other initiatives to complement Australia's ongoing contribution to promoting peace and development in Aceh. These include:
  - (i) The Community and Education for Peace in Aceh Project (CEPA) and AIPRD Livelihoods Projects;
  - (ii) Indonesia Strengthening Public Procurement Program (ISP3);
  - (iii) AIPRD funded Advisers working in BRR (and/or its successor agency/department) and other Indonesian and Provincial government agencies; and
  - (iv) Other Projects and initiatives that may be established under the Aceh Project Framework.

**9. PROJECT MANAGEMENT**

- 9.1. The Contractor shall establish management and coordination mechanisms with local partners (government and CSOs) to develop, monitor and evaluate the Project. This will ensure the Project is being implemented in accordance with local needs based on the nine guiding principles at **Clause 7.3(b)**. These coordination mechanisms will play an important role in building local ownership and responsibility and therefore increase the potential for post-Project replicability. These mechanisms shall include the following:
- 9.2. **Project Coordinating Committee (PCC):** a multi-stakeholder forum in which AusAID, the provincial and participating district governments are active decision members and to which the Contractor shall provide Secretariat support. The PCC, convened every six months, will:

- (a) Endorse strategic directions in the 6-monthly work plans;
- (b) Review Project progress against the Monitoring and Evaluation Framework;
- (c) Ensure that proposed activities are consistent with the Nine Guiding Principles, the Aceh Project Framework, and the current policies objective of the Provincial Government of Aceh;
- (d) Review the Inception Report and any other plans or reporting documents produced during the Project; and
- (e) Canvas support for contributions from government agencies to Project activities. Government progress (opportunities and constraints) towards longer term replication of reform processes should be a standing item at the PCC.

9.3. **District Working Groups (DWGs):** The PCC will request DWGs are established by the Contractor for participating Districts comprising representatives from local partners and organisations involved in the Project and community representatives. The DWGs will meet as required to provide feedback and/or key recommendations to the PCC in considering 6-monthly workplans. The objectives of the DWGs are: to discuss progress of activities; obtain feedback from partners on implementation progress, achievement, obstacles; and, advise on required technical support and capacity building assistance. This information will be presented at the PCC meetings. Gender balance in representation will be emphasised for each partner meeting. Attendance at PCC meetings will be reimbursed by the Contractor.

## **10. MONITORING AND REVIEW**

- 10.1. **A Monitoring and Review Group (MRG),** in addition to **Part A Clause 6,** is responsible for undertaking a secondary analysis of monitoring information available from the GOI, other development partners and Project documentation.
- 10.2. AusAID will contract the MRG separately, and it will be responsible for reporting to AusAID and the PCC. The PCC, like AusAID, may request the MRG to review specific aspects of Project implementation (focusing on their area of specialisation) and to advise on potential improvements as required.
- 10.3. As directed by AusAID, the Contractor shall ensure access to necessary information and personnel to assist the MRG complete their tasks.
- 10.4. Key responsibilities of the MRG include, but are not limited to:
- (a) assessing the impact of the Project through an analysis of available primary monitoring information, including a review of contextual information, published literature and documentation of other donors, GOI performance information and consultation with key stakeholders;

- (i) The MRG may be tasked by AusAID to undertake in-country reviews annually. The methodology for MRG review missions will be developed for PCC consideration by the nominated MRG team leader.
- (b) assessing the efficiency, effectiveness and quality of the Project in delivering assistance (inputs, outputs and immediate achievements) through verification of Project prepared documentation (such as six-monthly reports);
  - (i) The methodology for the MRG's verification of LOGICA2 Project performance will be developed by the MRG, in consultation with the Contractor, and will be designed to be compatible with the Contractor's approach to performance measurement as outlined in **Clause 17**.
- (c) assisting AusAID with the annual assessment of LOGICA2 performance in terms of achieving Project outcomes, through a combination of effectiveness and quality project performance measures; and
  - (i) While the MRG will provide information regarding Contractor performance to AusAID, AusAID will be responsible for finalizing the annual Contractor Performance Assessments.
- (d) conducting the Mid Term Review and Project Completion Review as directed by AusAID.
  - (i) AusAID will commission a Mid-Term Review (MTR) of the progress of the LOGICA2 after approximately one and a half years of operation. A successful MTR will be one of the considerations for AusAID in deciding whether to extend LOGICA2.

## **11. ANNUAL CONTRACTOR PERFORMANCE ASSESSMENT**

- 11.1. AusAID and the Contractor shall undertake an Annual Contractor Performance Assessment. The first Annual Contractor Performance Assessment will be in line with the form at **Annex 3 Schedule 1**. The criteria at **Annex 3** will be confirmed by both the Contractor and AusAID within one month of the Services Start Date.
- 11.2. As part of the annual Contractor Performance Assessment process, the Contractor and AusAID will agree on criteria against which the Contractor will be assessed in the following year. Copies of the completed CPA will be placed on the Activity file, a copy sent to Canberra to be placed on the Contractor's performance file, for use in future tender assessments, and a copy given to the Contractor.
- 11.3. Broad criteria which should be considered in developing the annual performance criteria may include but not be limited to:

- (a) Quality of documents submitted as output reports, including their completeness, presentation, ease of understanding, analysis and identification of options, and appropriateness of recommendations;
- (b) Performance of technical advisors, including level of technical expertise, understanding of the Indonesian context, ability to build and maintain relationships, and contribution to capacity building;
- (c) Quality of performance monitoring systems and reporting established, including appropriateness of indicators and targets, measurement of performance against targets, and analysis of results and identification of factors contributing or constraining performance;
- (d) Quality of communication systems and processes established, including the distribution and dissemination of information from the Partnership Project to partners, local governments, AusAID and other donors; and the receipt and responsiveness to information and requests from Partners and stakeholders; and/or
- (e) Performance in developing effective partnerships and working collaboratively with stakeholders; management of stakeholder coordination, consultation, communication and participation, and commitment to donor coordination.

## **12. PROJECT OFFICE(S)**

- 12.1. The head office of the Project will be based in Banda Aceh with possible satellite offices in each of the target districts as required and endorsed by the PCC.
- 12.2. To ensure day-to-day communication and collaboration, all Project offices, should be located within the counterpart Government offices (at the District and/or Sub-District Level). District Coordinators will play a key role in coordinating local partner engagement, monitoring and evaluation, ensuring implementation is based on guiding principles, and continually promoting local stakeholder discussion around longer term replication.

## **13. IMPREST ACCOUNT**

- 13.1. An Imprest Account of up to **AUD[amount to be inserted by AusAID]**, will enable the Contractor to rapidly respond to the identified needs of target communities and to deliver Project activities with the flexibility needed to maximise stakeholder involvement and ownership.
- 13.2. Funds in the Imprest Account may only be used for the implementation of activities approved in the relevant 6-monthly workplan and/or by the Project Coordination Committee (PCC). Activities to be funded through the Imprest Account, in general terms, include:
  - (a) the Community Innovations and Infrastructure Grant Scheme (CIIGS) detailed in **Clause 16.6(c)**;

- (b) the Local Government Grants Scheme (LOGGS) as detailed in **Clause 16.12(e)**;
  - (c) **technical assistance** to support local and village governments and communities, including village facilitators. The engagement of technical assistance is subject to approval from the PCC through the 6-monthly workplan process. Payment for advisers, such as a gender adviser, engaged to assist in the development of a strategy specifically for the Project and/or assist in the development of deliverables by the Contractor (such as the Gender and Socialisation Strategy defined in Schedule 1 Clause 19.1(b)(vi)) will be accommodated through the Profit and Management Fee if these positions are not already included in Schedule 2, Table 2 and 3.
  - (d) Project supplies, such as vehicles, to support the operations of technical assistance in the field (i.e. working with local and village governments or communities);
  - (e) Project related travel costs for Contractor nominated personnel (defined in **Schedule 2 – Table 2 and 3**) travelling in the field (i.e. outside Banda Aceh); and
  - (f) Project activities that will be implemented via a sub-contracting arrangement, that have been approved in the six (6) monthly workplan and/or by the PCC;
  - (g) support required at the government, civil society and village community levels to actively participate in monitoring and evaluation of the Project; and
  - (h) the recruitment, mobilisation and management of short term technical assistance as directed by AusAID.
- 13.3. Activities to be financed under the Imprest Account will be detailed in approved PCC six-monthly workplans and/ or as directed by AusAID in accordance with **Clause 13.4** below.
- 13.4. In addition, AusAID may request the contractor to recruit, mobilise and manage short-term technical assistance related to the goal of this Project. For example, this technical assistance may be used to facilitate greater coordination in the sector; develop policy related to the sector; or be used to support other levels of government services or agencies that directly or indirectly relate to the Project. If AusAID requests any such positions, they will be funded from the Imprest Account.

#### **14. SCOPE OF THE CONTRACTOR'S SERVICES**

- 14.1. The Contractor shall manage the Project, including the provision of all personnel, refer to **Schedule 2, Table 2 and 3**, and resources to undertake relevant planning, coordination, liaison, consultation, administration and



overall responsible for operational management necessary for the effective implementation of the Project.

- 14.2. The Contractor shall undertake the Project in accordance with the intent of the LOGICA2 Project Design Document and this Scope of Services. This Scope of Services takes precedence.

## **15. MANAGEMENT SERVICES**

- 15.1. The Contractor shall support the team and operations of the Project by means of the administrative and financial staff and facilities of the Contractor and by means of professional support that will ensure the quality of Project outcomes. The Contractor shall provide those administrative, logistical and other support staff necessary for the effective and efficient management of the Project, as approved by AusAID and included in **Schedule 2, Table 2 and 3**.

- 15.2. In providing the Project Services the Contractor shall:

- (a) Ensure that outputs meet time, budget and quality criteria;
- (b) As appropriate, employ and sub-contract local personnel required for the Project in accordance with the Commonwealth Procurement Guidelines, and manage staff employed by the Project, ensuring performance meets standards outlined in TOR;
- (c) Establish and maintain quality systems for financial management, human resource management, contract management, procurement, quality assurance, Project planning and review, Project monitoring and evaluation and resource allocation, through the development of a Project Operations Manual (in accordance with **Clause 19.1(a)** of this **Schedule 1**);
- (d) Demonstrate at all times adherence to the Project Guiding Principles outlined in **Clause 7.3** above.
- (e) Maximise the benefits of the Project through effective consultation and coordination with key stakeholders, including:
  - (i) Coordinating with AusAID and GOI on Project direction and implementation;
  - (ii) Maintaining strong working relationships with key local organisations involved in Project delivery;
  - (iii) Establishing and maintaining strong relationships with bilateral donors, multilateral agencies and NGOs;
  - (iv) Ensuring ongoing consultation and cooperation with other AusAID Contractors in Aceh, in particular CEPA;

- (v) Liaising and negotiating, as required, with the PNPM Mandiri to ensure the timely and effective delivery of activities under **Component 1**;
- (vi) Providing advice on Project strategic directions and the context in relation to local governance and community rebuilding in Aceh; and
- (vii) Representing the Project in discussions with government, donor and community representatives.

#### **15.3. Conflict Sensitivity**

- (a) As per **Clause 7.3**, the Contractor should be aware of and adhere to the nine Aceh Project principles to ensure that it contributes to stability, gains maximum ownership from community and government stakeholders, and does not harm the complex process of building social cohesion and peace in Aceh.

#### **15.4. Gender**

- (a) The Contractor shall at all times ensure that women and men have the same entitlements to development; to respect for their human dignity; to acknowledgement of their equal human capacities, including the capacity to make choices; to the same opportunities to act on those choices; and to the same level of power to shape the outcome of their actions.
- (b) The Contractor shall ensure that at all times that Contractor Personnel have an understanding of gender differences, as well as of inequalities in women's and men's roles and workloads, access to and control of resources, decision-making power and opportunities for skills development. The Contractor shall ensure that Contractor Personnel are encouraged to suggest changes to the Project where this would increase gender equality or would achieve fairness between women and men and ensuring equality of outcome.

### **16. ACTIVITY SERVICES**

#### **COMPONENT 1: ACTIVE COMMUNITIES**

- 16.1. The outcome of this component is: *"Citizens, particularly the marginalised, effectively advocate priority needs to government resulting in services that improve living standards."*
- 16.2. This component will be delivered in parallel to the Responsive Governments Component within the five stages of implementation referred to in **Clause 7.4(d)**.
- 16.3. Activities delivered by the Contractor under this component will equip communities and their representatives with a suite of skills: community

profiling, needs assessment and analysis; participative consultation; conflict mapping and resolution; an understanding of government processes and resourcing; identifying and engaging marginalised groups; community organising; action planning; and representation and advocacy.

- 16.4. These skills, put to use through the development of action plans targeting priority village needs, will build the capability of communities to demand more effective and transparent use of public funds to address priority needs.
- 16.5. **Outcome 1(a): Communities identify, analyse and prioritise their needs.**
- (a) Following the identification of and engagement with target communities, the Contractor will over a six month period support stakeholders to use existing mechanisms and establish new ones to complete detailed assessments of village needs and priorities. This will emphasis inclusive processes that maximise the involvement of women and other marginalised groups.
  - (b) Tools such as: community profiling, needs assessment through participative fora, and action planning will be used by the Contractor to support communities in prioritising unmet or under-serviced needs.
  - (c) The Contractor, through its network of village facilitators, will support community representatives to identify several priority issues (eg health, education, infrastructure, agriculture and small business development) on which they will engage government in advocating for improved service delivery. This will be supplemented by training in advocacy, representation, conflict resolution, action planning and proposal writing.
  - (d) The Contractor is required, through Project resources channeled via the network of village facilitators mobilised within target villages, to support village communities:
    - (i) Establish new or link with existing village forums and decision making mechanisms (inc PNPM Mandiri);
    - (ii) Undertake preliminary training and mentoring Projects in: participative consultation, meeting facilitation, advocacy and conflict resolution, and understanding government processes and budget allocations;
    - (iii) Complete a short community profile, for each target village, detailing village demographics, vulnerable and marginalised groups, local leadership structures, issues of common concern (possibly already identified through previous needs assessment or planning exercises) existing institutions that support women's decision-making and leadership aspirations, existing government services, local livelihood opportunities, and existing community resources (including village budgets);

**LOGICA2 RFT**  
**Part 3 – Scope of Services**

- (iv) Undertake participative needs assessments, involving a cross section of community representatives (including women and the marginalised), to identify and prioritise unmet needs, and service deficits by sector.
- (v) Wherever possible, the process should build, supplement or update existing village plans and needs assessments undertaken by other donors, government agencies or community leaders;
- (vi) Document other existing government services currently operating in the village by sector, and other donor Projects;
- (vii) Begin the development of community action plans – by individuals, clusters of individuals or through local CSOs – to target one specific priority need (eg no village health clinic, poor sanitation, unsafe housing, low school attendance rates, damaged farm land, an absence of child care or other family support services etc). The plans should detail:
  - (A) The nature and extent of the need being addressed through the plan, including examples of the impact of the need, why it is a priority, and the desired minimum standards for service reform;
  - (B) the resources needed to implement the plan (eg training in proposal writing or advanced advocacy, establishment of local working groups, travel and meeting expenses etc)
  - (C) the corresponding government institutions (eg DINAS) best positioned to respond to the need, desired minimum standards and benchmarks (eg a visiting health service once a week, an additional 3 teachers, a water treatment plant, surfacing of the main village road, technical assistance and seed funding for local fish farms, a new market place etc); and
  - (D) proposed action by village representatives to pursue outcomes against the plan (advocacy to government officials, media strategies, engaging other donors and CSOs, and proposal writing).
- (viii) Identify village representatives, including women and marginalised people, to act as agents and contact points for Project activities and the coordination of village action plans. Based on LOGICA's experience, representatives are most likely to be identified or will self-select through the village needs assessment and profiling activities;

- (ix) Identify targeted strategies for engaging and mentoring women leaders, vulnerable and marginalised groups, and processes to support their participation in forums; and
- (x) Establish a process for disseminating and publicising village profiles, needs assessments and action plans to Provincial, District and Sub-district governments.

**16.6. Outcome 1(b): Communities represent their priorities to government and advocate for improved services**

- (a) Over a twelve month period, the Project will support target villages and their representatives to further develop and implement action plans on the priority issue/s identified under **Outcome 1(a)**, engage with government to advocate priorities, and undertake a suite of initiatives to build social cohesion and strengthen local institutions.
- (b) The Contractor is required, through Project resources channeled via the network of village facilitators mobilised within target villages, to support village communities and their representatives to:
  - (i) Refine action plans to include clear expectations and minimum standards for service delivery reform to improve living standards, and to propose possible options based on available government and community resources;
  - (ii) Implement action plans targeted at a specific priority need and associated service delivery reform;
  - (iii) Participate in existing GOI consultative and planning fora, including PNPM Mandiri and musrembang;
  - (iv) Link with District/ Sub-district government fora and established planning processes;
  - (v) Undertake targeted and supplementary training in: understanding government budgets and allocations, advocacy; proposal writing; media and communications strategies; monitoring and evaluation; transparency; and gender awareness;
  - (vi) Engage with elected leaders and local government officials in the implementation of action plans through village meetings and fora;
  - (vii) Link with local and regional CSOs to support the implementation of action plans by village representatives;
  - (viii) Establish networks across the District with other target communities responding to similar service delivery priorities;

- (ix) Track and document outcomes from the implementation of action plans, highlighting those that have resulted in new services, pilot activities or improved relationships with local government.
- (c) The Contractor, through consultation between the village facilitators and community fora, will identify small pilot projects for seed funding under the Project's **Community Innovations and Infrastructure Grant Scheme (CIIGS)**. These could include:
  - (i) small infrastructure projects to address an unmet village priority and to strengthen village-level capabilities in project management, coordination and transparency;
  - (ii) initiatives to build the capacity of village governments and apparatus;
  - (iii) small livelihoods oriented projects such as the establishment of revolving micro-credit schemes to support new small business initiatives, particularly for women and former combatants; and
  - (iv) initiatives that support dialogue and networking between villages on issues of common concern, or related to priority needs being addressed within action plans.
- (d) The Contractor shall develop an operational framework, guidelines and disbursement parameters for the administration of the **Community Innovations and Infrastructure Grant Scheme** within **six(6) months** of the Services Start Date or prior to any seed funding being approved through the Scheme which ever is earlier. These should include objectives, guidelines, application and assessment procedures, selection criteria, payment disbursement schedules, and monitoring and evaluation mechanisms.
- (e) All work undertaken by the Contractor in developing **CIIGS**, as described in **Clause 16.6(b and c) above**, shall be undertaken in consultation with regional coordinators of PNPM Mandiri to prevent overlap and support the objectives of both Projects.

**16.7. Outcome 1(c): Communities measure the performance of services and contribute to service delivery reform and replication**

- (a) Over a twelve month period of community engagement, the Project through its network of facilitators will support village representatives to further develop and implement action plans on priority issue/s and to engage with government to advocate for new and/or improved resources and services.
- (b) This will be supported by a suite of initiatives, delivered in parallel, to build social cohesion and strengthen local institutions, and to

strengthen the advocacy and representational skills of village governments and local representatives.

- (c) The Contractor is required, through Project resources channeled via the network of village facilitators mobilised within target villages, to support village communities and their representatives to:
  - (i) Implement advocacy and representational activities proposed in village action plans, including through the provision and/or resourcing of training, technical assistance and mentoring focused on engaging with government in consultation, planning, budgeting and policy development processes.
  - (ii) Engage with relevant government officials to provide input into the development of services that address priority problems identified in action plans.
  - (iii) Participate in government consultative and planning fora on performance reviews of existing services and the development of new ones;
  - (iv) Contribute to customer satisfaction surveys and contribute to the development of citizens charters by local government;
  - (v) Participate in any budget awareness exercises undertaken by local government within target communities;
  - (vi) Network with other community representatives and/or regional CSOs across geographic areas and/or on priority service delivery issues, for the purposes of information exchange, coordinating effort in implementing action plans, resource sharing and building a broad base of regional community support for service delivery reforms;
  - (vii) Disseminate information within communities that enable them to understand government processes, access services and provide feedback, including through complaints mechanisms;
  - (viii) Document and measure ease of access to government services by villagers, particularly women and the marginalised, and to present this information to government to assist in iterative service delivery refinement;
  - (ix) Document case studies and examples that highlight where government services have positively impacted on living standards, and conversely where improvements could be made, including specific details of desired minimum standards;
  - (x) Publicise beyond the target community any gains arising from village action plans, including new services and examples of community-government collaboration; and

- (xi) Support community representatives to develop new action plans targeting other priorities not covered in the first tranche of plans, and to commence advocacy and representation of government to address these needs.
- (d) In tracking outcomes from village action plans, the Contractor will also work with Project facilitators and village representatives to document examples of innovative service delivery that could be replicated in other target areas. Information recorded should include:
  - (i) the processes used to establish these services (both by governments and communities);
  - (ii) key players in the development and delivery of the service;
  - (iii) monitoring, evaluation, performance measurement and complaints handling systems;
  - (iv) avenues through which communities are able to influence the nature of the service; and,
  - (v) impact assessments, particularly for the marginalised.
- (e) Track the disbursement and outcomes from available funding sources - including the Project's small grants scheme – and highlight stories of significant change and innovation particularly in the areas of village government capacity building, social cohesion and livelihoods development.

## **COMPONENT 2: RESPONSIVE GOVERNMENTS**

- 16.8. The Outcome of this component is: *“Governments respond to citizen priorities, including those of the marginalised, by effectively allocating resources and delivering services to improve living standards.”*
- 16.9. Activities in this component are delivered in parallel to those of the Active Communities Component.
- 16.10. As demand from communities for improved governance increases, the Project will in parallel support government counterparts to effectively respond to these demands by supplying effective government services that improve living standards. This will involve governments understanding the nature of citizen demands and modifying policies and services based on this input, or from a robust assessment and analysis of the strengths and weaknesses of existing policies and services.
- 16.11. **Outcome 2(a): Governments understand community priorities and the needs of the marginalised**
  - (a) Following deployment within target government District and Sub-district offices, Project facilitators will over the following six months



implement strategies and approaches to support government in analysing community needs and identifying policy and service delivery responses achievable within available resources.

- (b) Project facilitators will support government leaders and officials to identify existing administrative, planning and budgetary systems that could be improved, and to highlight opportunities for staff development and training.
- (c) Initial phases of transparency and gender awareness training for key government officials will occur under this outcome.
- (d) Soon after mobilisation, Project facilitators will work with government counterparts to:
  - (i) document existing or proposed mechanisms for consultation, dialogue and planning between local government and their constituent communities, including the outcomes of any recent fora or consultative processes;
  - (ii) map existing services on a sector-by-sector basis, detailing: objectives; target groups; uptake rates; allocated budgets; any links between the development of the services and community input through consultations; complaints mechanisms; staffing profiles; and the outcomes of any existing evaluations or benchmarking; and
  - (iii) Profile other existing donor support and activities working with the government counterpart, including the objectives, methodologies, resource levels and any achievements to date.
- (e) The Contractor is required, through Project resources channeled via facilitators, who may be based in counterpart government offices, support local governments to:
  - (i) Develop a profile of priority community needs across the District, drawn from existing documentation, data from government agencies and donors, supplementary consultations and inputs from Project target communities facilitated by the Active Communities Component;
  - (ii) Work with government counterparts to assess the extent to which current services align with community priority needs;
  - (iii) Identify resource allocations in District budgets that correspond to identified community need, and the services through which these resources are being delivered;
  - (iv) Seek community input on the effectiveness of existing services and their impact on living standards – through user satisfaction studies, other qualitative or market research, participative

consultation, and analysis of uptake rates, particularly by women and other marginalised groups;

- (v) Develop and trial preliminary complaints handling mechanisms and other avenues for seeking community input on the effectiveness of government service delivery;
- (vi) Identify administrative systems and procedures that could be reformed to enhance efficiency, effectiveness and transparency. This should provide preliminary assessments of: incentives and benefits arising from the reform; the resources needed to undertake reform (TA, training, research, equipment etc); the key players responsible for driving the reforms; benchmarks and minimum performance standards; and resources required to undertake reforms, including from the Project, governments and other donors.
- (vii) Develop a preliminary Human Resource Development strategy, through staff consultations and based on the professional development needs of public officials and including proposed training modules, training methodologies, potential service providers and resourcing (including government contributions). Areas could include training against core work-based competency areas, participative planning and consultation.
- (viii) Undertake initial phases of gender awareness and transparency training, including a strategy to engage senior management and ensure gender equity across all Project activities.
- (ix) Begin the development of an inventory of possible minimum performance standards, benchmarks and performance measures for local government services, highlighting any existing performance assessment processes, client feedback mechanisms and the views of key public officials.

**16.12. Outcome 2(b): Governments deliver services and allocate resources to address the priority needs of communities**

- (a) The Project will support local government to identify, develop and pilot new service delivery modalities aimed at improving service delivery perceived as problematic or deficient by target communities;
- (b) The Contractor will emphasise the sustainability of new reforms, including the allocation of public GOI funding for continuance and replication and legislative review and revisions to enabling instruments.
- (c) Specific administrative systems will undergo reform, including through technical assistance, and staff training needs will continue to be addressed. Gender awareness and transparency will be continuing education and training themes throughout this stage.

- (d) The Contractor is required, through Project resources channeled via facilitators, who may be based in counterpart government offices, support local governments to:
  - (i) Design, develop and pilot small service delivery reforms targeting a specific priority needs identified under **Outcome 2(a)**. Pilot Projects could be directed at new administrative procedures, legislative and resourcing requirements, marginalised groups, official roles and responsibilities, rules and guidelines (including fees and access protocols), minimum performance standards and benchmarks, public information strategies and feedback mechanisms.
  - (ii) Develop and publicise Citizen Charters, based on participative public consultation and affirming the government's commitment to improved and transparent service delivery.
  - (iii) Deliver District Budget transparency awareness for communities, delivered by government officials including through community meetings, media and publications.
  - (iv) Continue a Project of professional development for public officials, and targeted at areas that will enhance implementation of service delivery reforms. The professional development Project must include modules on gender equity and transparency principles.
  - (v) Consolidate complaints handling and community feedback mechanisms, including documentation, training, publicity and a review of the effectiveness of confidentiality protections. The Project should support government counterparts to establish systems to track links between complaints received, actions taken in response to them, and any subsequent impact on service delivery reforms.
  - (vi) Document and publicise reformed administrative procedures, including any new government regulations or budgetary allocations.
  - (vii) Measure performance and report, on selected government service delivery areas.
  - (viii) Provide small seeding/ transitional grants to support the initial establishment of pilot service delivery Projects, with a view to transitioning to full government funding by Stage 5 of Project implementation as detailed below in **Clause 16.12(e) and (f)**.
- (e) The Contractor will supplement any activities described in **Clauses 16.9 to 16.13** with small seeding/ transitional grants through the **Local Government Grants Scheme (LOGGS)** for the purposes of:

- (i) enabling faster implementation and showcasing of service delivery pilots and innovations than would be possible via GOI budget allocations (which can take up to 18 months to realize);
  - (ii) establishing projects that highlight community-government partnerships and collaboration;
  - (iii) establishing complaints handling mechanisms and citizens charters that may not be able to be funded under existing government budget allocations; and
  - (iv) facilitating livelihoods and the emergence of small businesses.
- (f) The Contractor shall develop an operational framework, guidelines and disbursement parameters for the administration of the **LOGGS** within **six (6) months** of the Services Start Date or prior to any seed funding being approved through the Scheme which ever is earlier.. These should include objectives, guidelines, application and assessment procedures, selection criteria, ‘white’ and ‘black’ lists for project types, payment disbursement schedules, and monitoring and evaluation mechanisms.

**16.13. Outcome 2(c): Governments improve and replicate services in response to community feedback**

- (a) The Project will support government counterparts to assess the effectiveness and impact of any administrative, budgetary or service delivery reforms against agreed performance criteria, highlighting input and feedback from **Component 1** target communities;
- (b) Government counterparts will be assisted to document reforms to enable them to be replicated in other geographic or service delivery areas. Critical to this process is the documentation of examples of most significant change and the identification of exemplars of reform within both target communities and government counterparts. This will provide a pool of mentors and expertise that can be drawn on in subsequent roll-out phases in other target areas.
- (c) Processes will be established to review and update Citizen Charters to reflect current community expectations and government capabilities to deliver on priority needs.
- (d) The Contractor is required to support local governments to:
  - (i) Establish processes to replicate innovative service delivery reforms and innovations in other areas of government service delivery, Districts or Sub-districts, including documentation of procedures, target groups, roles and responsibilities, enabling legislative mechanisms, resource requirements for self-funding under District budgets (APBD), and rules and guidelines.

- (ii) Consolidate documentation of reformed administrative procedures, consultative mechanisms, budget allocations for new service based on community needs, citizens' charters and complaints mechanisms.
- (iii) Publish and disseminate evidence of performance monitoring and reporting, including strategies to iteratively enhance services on the basis of feedback and knowledge gained.
- (iv) Prepare case studies to showcase the impact of new reforms, based on objective performance criteria and community feedback.
- (v) Build links and exchange information and expertise with other local government counterparts wishing to replicate reforms.

## **17. MONITORING AND EVALUATION FRAMEWORK**

- 17.1. The LOGICA2 Monitoring and Evaluation Framework (M&EF) will measure the quality and impact of the Project's assistance and support to village communities in advocating for responses to priority needs, and impacts on living standards resulting from improved government services.
- 17.2. Monitoring and evaluation indicators and tools, as well as roles and responsibilities in relation to M&EF, should be developed by the Contractor collaboratively with counterparts partners during the Inception Period.
- 17.3. The M&EF will also measure the extent to which these services are able to be replicated by other local partners. The sustainability of impact is not solely in terms of the adoption and replication of service delivery reforms per se, but also in relation to the role of community engagement in policy development by government, needs assessment and participative planning within village (gampong) communities, and the application of gender awareness and transparency principles.
- 17.4. The Contractor shall develop a detailed M&EF and indicators for LOGICA2, utilising tools proposed in the Janssen CICPI (2008) methodology outlined in **Annex 4** to this **Schedule 1**. The approach proposes five tools – contributinal analysis, impact assessment, citizens surveys, player analysis, and institutional analysis – which will be developed by the Contractor in collaboration with development partners and Project stakeholders to measure and improve performance against LOGICA2 objectives through the life of the Project. The PCC will endorse the Monitoring and Evaluation Framework.
- 17.5. M&EF results will form the basis of a continuing learning strategy within LOGICA2. A practical and user-friendly Management Information System (MIS) should be developed by the Contractor to capture M&E results and to disseminate key lessons learned for AusAID, different levels of GOI, CSOs, village communities and the broader development community. It should also promote the uptake of those Project approaches and tools that have been demonstrated to significantly impact on gains against Project objectives.

- 17.6. The roles of different partners in relation to LOGICA2 should be detailed in the M&EF, around the following considerations:
- (a) The government will be supported at appropriate levels as identified during implementation to develop an affordable but robust MIS and M&EF to ensure that the government has reliable data about the quality of service delivery, based on input from the public. This data can be used for planning and target setting for service quality reforms. This data will also be available for political leaders to publicise their achievements or to reward performance of the public officials.
  - (b) Civil Society organisations will be provided with support to improve their capacity to independently measure service quality and to enable them to speak with an independent voice based on objective information. They will also be supported to enhance skills in analysing data from Government M&EF and performance measurement systems, better enabling them to hold dialogue with Government around issues and obstacles, and to lobby for reforms as required.
  - (c) Village communities will be provided with necessary support to strengthen their capacity in monitoring and evaluating the impact of Project activities. This will also encourage the documentation of lessons learned for future community engagement and advocacy activities. The LOGICA2 M&EF will support village communities in the initial development of progress indicators for their action plans, tools for monitoring achievements, gaps and obstacles (including those related to gender and social inclusion), and to use this information to amend their strategies accordingly.
- 17.7. Project progress against indicators identified in the M&EF will be measured by the Contractor and independently verified by AusAID on an annual basis. This process should be harmonised with any other whole-of-Project performance assessment measures initiated by the provincial government through the AusAID Aceh Project Framework. Indicators should cover quality of governance improvements based on qualitative and quantitative indicators, and wherever possible disaggregate data to report against gender equity outcomes.
- 17.8. The Contractor shall be responsible for ensuring that performance assessment and review mechanisms are developed and established for both primary data collection and analysis of direct and indirect outcomes of the Project, in order for secondary analysis to be undertaken by the Contractor's Monitoring and Evaluation Adviser. Where possible, these mechanisms should be endorsed and utilised by the relevant Acehese government agencies.
- 17.9. The Contractor is responsible for identifying the support required at the government, civil society and village community levels to actively participate in monitoring and evaluation. This support should be included as part of the six monthly workplans to be endorsed by the PCC for payment through the Imprest Account.

**18. PROCUREMENT**

- 18.1. The Contractor shall undertake all procurement under the Project in accordance with Clause 10 of Part B of the Contract.
- 18.2. In addition, all equipment must be purchased with due consideration to appropriate technology, Australian, in-country and regional service support, warranties, spare parts availability and maintenance contracts.
- 18.3. The Contractor shall report procurement expenditure in Six Monthly Reports and maintain an assets register of all goods purchased in accordance with **Part B Standard Contract Conditions Clause 10**.

**19. REPORTING REQUIREMENTS**

- 19.1. In addition to any reporting requirements set out in **Parts A and B** of the Contract, the Contractor must provide the following:
  - (a) **An Imprest Account Manual of Operations (IAMO):** The Contractor shall submit one electronic copy of the IAMO, to the AusAID Activity Manager within **one (1) month** of the Services Start Date. The IAMO will detail the management and disbursement of funds from the Project Imprest Account, including purchasing and procurement and will be detailed in accordance with **Part A Project Specific Contract Conditions Clause 12**.
  - (b) **Inception Report:** The Contractor shall submit one electronic copy of the Inception Report to the AusAID Activity Manager within **three (3) months** of the Services Start Date, which includes the following:
    - (i) **Initial six-month workplan:** An updated Workplan of the indicative six-month workplan provided in the Contractor's tender documentation. The Contractor shall prepare a revised version of this workplan for PCC approval. The budget included in the workplan to cover the initial six months of the Project must have prior AusAID approval.
    - (ii) **Geographic Coverage Plan:** A detailed and comprehensive plan of target Districts and communities, as detailed in **Clause 7.4(h)**.
    - (iii) **Risk Management Plan:** An updated Risk Management Plan. An indicative Risk Management Plan was provided in the Contractors tender documentation.
    - (iv) **Monitoring and Evaluation Framework:** A Monitoring and Evaluation Framework for approval by AusAID, including specific gender outcome indicators and gender disaggregated data.
    - (v) **A Development Partner Harmonization Plan**, which will propose collaborations and complementarities with government

and donors and highlight processes to avoid duplication. It will be based on consultations with major donor and government Projects operating in the Project's target areas, including PNPM Mandiri and LGSP.

- (vi) **A Gender and Social Inclusion strategy**, detailing the Project's strategies for ensuring engagement of women and other marginalised groups in all Project activities, and for supporting women and other marginalised groups to actively contribute to reforms of government service delivery.
  - (vii) **Operational Guidelines** for the two (2) small grants schemes, including among other things operational framework, guidelines, parameters and timing for the administration of the small grants scheme - objectives, operating procedures, selection criteria, payment disbursement schedules and monitoring and evaluation mechanisms.
- (c) **Project Operations Manual ('the Manual')**: The Contractor shall submit one electronic copy of the Manual, to the AusAID Activity Manager within **six (6) months** of the Services Start Date. The Manual shall include the following:
- (i) **Operating procedures** in relation to Human Resource Management within the Project, including recruitment, dismissal, recording of staff attendance, complaints handling, performance assessment and management, staff development and the administration of annual and other leave entitlements;
  - (ii) **Operating procedures** for the maintenance and registry of Project assets and facilities, including premises, equipment, motor vehicles and sundry equipment; and a
  - (iii) **Handover Plan**, detailing arrangements for the wind-up of the Project, handover of activities and assets to counterparts, and sustainability strategies as outlined in **Part B Standard Contract Conditions Clause 14**.
- (d) **Six-monthly Workplan**; a 'rolling workplan' covering the upcoming six-month period and including a report on the achievements of the previous six-months. Minor changes to current workplans are to be approved by AusAID and reported upon in the next six monthly workplan to the PCC. Major changes will require PCC approval.

Each six monthly workplan should detail:

- (i) Activities and outcomes achieved during the previous six months plus a statement of Imprest Account expenditure for the previous six months and to date;



- (ii) Activities and outcomes planned across components for the coming six-month period; plus a forward estimate of Imprest Account expenditure for the coming 6-month period. Proposed expenditure must reflect the activities and resourcing requirements.
- (iii) Any anticipated changes to the Field Personnel or other resource requirements, proposed procurement and construction activities, and other relevant information.
- (iv) Updates to: Geographic Coverage Plan, Risk Management Plan; Monitoring and Evaluation Framework; Development Partner Harmonization Plan; Gender and Social Inclusion Strategy; and Operational Guidelines for the two (2) small grants schemes. Any proposed changes are subject to AusAID prior endorsement.

The final six monthly workplan will be replaced by the Project Completion Report referred to in **Clause 19.1(f)** below.

- (e) **Brief Exception Reports:** Immediately upon identification of any unforeseen problems arising in the Project that may have a detrimental effect on achieving Project Objectives. One electronic copy of the Exception Report should be sent to the AusAID Activity Manager. Where possible, these Exception Reports should concisely identify the issue, impact on the program in terms of progress and budget and include a proposed solution or strategy.
- (f) **Project Completion Report:** One hard copy and one electronic copy to the AusAID Activity Manager **two (2) months** prior to the Contract Completion Date. The Project Completion Report should include:
  - (i) Summary of Project achievements against outcomes identified in the Objective Tree attached as **Annex 2** to this **Scope of Services**;
  - (ii) Summary of lessons learnt that may be relevant to future Projects in Aceh or other aid Projects;
  - (iii) A full reconciliation of Project expenditure, including total Expenditure over the life of the Project identifying all categories of expenditure including the Fees component, Reimbursable items, and Imprest Account expenditure;
  - (iv) A completed Register of Assets detailing Project Supplies; and
  - (v) Other issues as identified by AusAID in completion reporting guidance.
- (g) **Other reporting** as reasonably requested by AusAID.

19.2. All reports must:

- (a) be accurate and not misleading in any respect;
- (b) allow AusAID to properly assess progress under the Contract;
- (c) be provided in the format and on the media approved or requested by AusAID;
- (d) not incorporate either the AusAID or the Contractor's logo;
- (e) be provided at the time specified in this Schedule; and
- (f) incorporate sufficient information which allows AusAID to monitor and assess the success of the Services in achieving the objectives of AusAID's Gender and Development Policy.

**20. ASSET HANDOVER**

- 20.1. The Contractor will ensure proper procedures are in place, and that all Project assets and relevant information are either handed over to Government counterparts or a subsequent AusAID Project of assistance to Aceh.

## **ANNEX 1 - POSITION DESCRIPTIONS**

### **Generic Criteria – Applicable for all positions**

#### **Mandatory attributes**

##### **Analytical Skills**

- Demonstrated ability to undertake research, identify and solve problems related to the proposed Adviser's individual area of specialty

##### **Communication skills**

- Demonstrated ability to produce clear and succinct reports
- Effective (English language) oral communication skills

##### **Demonstrated ethical behaviour**

- Demonstrated understanding of ethics and a capacity to act as a role model for ethical behaviour

##### **Negotiation skills**

- Demonstrated ability to achieve targeted outcomes by working collaboratively with other people

##### **Cultural and gender sensitivity**

- Demonstrated understanding of cultural diversity and a proven capacity to engage meaningfully with culturally, socially and ethnically diverse groups
- Demonstrated gender sensitivity and an ability to identify and remove obstacles to gender equity

##### **Information technology skills**

- Basic ability to use a personal computer with working knowledge of MS Word, Excel and PowerPoint.

##### **Interpersonal skills**

- Demonstrated ability to engage effectively with people at all levels
- Demonstrated ability to operate in a multi-disciplinary team environment

##### **Performance management experience**

- Demonstrated ability to deliver scheduled tasks on-time and to agreed performance targets

##### **Mentoring skills**

- Demonstrated ability to develop staff through one-on-one mentoring
- Demonstrated ability to provide advice and on-the-job training to staff in the proposed Adviser's area of responsibility

##### **Technical skills**

- Meets the requirements of the position-specific technical skills (following pages)
- Demonstrated ability to conduct formal and informal training

#### **Desirable attributes**

##### **Language skills**

- Ability to speak Bahasa Indonesia and/or Acehnese – or – prior experience working with and through an interpreter

##### **Qualifications**

- Post-secondary or tertiary qualifications in a relevant discipline

**LOGICA2 RFT**  
**Part 3 – Scope of Services**

**Position  
Responsibilities  
/Duties**

**Team Leader (TL)**

- The TL is responsible for the day-to-day leadership, guidance and strategic management of the Project to ensure effective implementation of the Project. This includes the management, coordination, and quality control of the Project and the submission of all milestone reports, monitoring and evaluation reports and other relevant documents. The TL will establish and maintain a wide range of professional relationships with stakeholders including local government officials, community groups, AusAID, GOI, NGOs and CSOs, other donors, other AIPRD and AusAID Projects.
- Working closely with the Deputy Team Leader and other advisers, the TL will:
  - Directly manage the activities of the Deputy Team Leader, Community Engagement Advisor; Quality and M&E Advisor; Gender and Equity Mainstreaming Advisor and Peace and Conflict Advisor
  - Establish strong networks, relationships and linkages with key stakeholders, ensuring the effective engagement and management of all stakeholders at all levels.
  - Provide active and strategic leadership in managing the implementation of the Project, including coordinating Project communications to facilitate effective decision making and information dissemination among Project stakeholders.
  - Provide active and strategic leadership to the advisory team in the coordinated preparation and implementation of Project workplans to ensure timely, flexible and responsive delivery of Project activities, outputs and outcomes.
  - Provide overall supervision and guidance to technical personnel, including facilitation and troubleshooting, monitoring and quality control of Project outputs.
  - Monitor policy and implementation issues of relevance to the Project, and ensure that proposed activities and Projects are within any guidelines for the Project and all AusAID and GoI policies.
  - Oversee management of the Project Office (PO), ensuring that office systems and resources provide an efficient and effective base to support the desired activities and outcomes of the Project.
  - Oversee secretariat functions associated with the functioning of the Project Coordination Committee (PCC), ensuring timely preparation of materials and reports for meetings, minutes and action plans from the meetings; attend PCC meetings and update PCC members on the progress of the Project.
  - Maintain and ensure the effective implementation of key Project policy documents and guidelines, including communications, risk, gender and dissemination strategies, funding guidelines, and the Monitoring and Evaluation Framework and Quality Assurance processes.
  - Monitor and provide analytical reporting on Project issues, progress and achievements to the PCC and in milestone reports,

**LOGICA2 RFT**  
**Part 3 – Scope of Services**

and to and other stakeholders as required.

- Manage Project finances efficiently and transparently.

**Position- specific  
technical skills**

- Proven ability to lead and manage a multi-disciplinary team operating under challenging circumstances
  - Proven experience in the management of performance, including monitoring and evaluation
  - Proven experience in the management of agency-wide strategic planning processes
  - Proven track record in the oversight or conduct of annual planning and budgeting processes
  - Proven public relation skills and capacity to generate positive publicity in the media and with key stakeholders
  - Strong liaison and relationship building skills
- Extensive conceptual and practical experience in governance and civil society, strengthening local governance

**Position  
Reports to  
Responsibilities  
/Duties**

**Deputy Team Leader**  
Team Leader

- Support the Team Leader and work closely with advisers, including ensuring timely achievement of Project milestones and quality of inputs by Project personnel
  - Manage the Imprest Account in a professional manner according to the Imprest Account Manual
  - Oversee the planning, management and coordination of day-to-day field operations
  - Monitor, support and coordinate field operations of advisers and field personnel across all components.
  - Lead the District Monitoring Teams
  - Oversee a the Project Support Unit within the Project Office
- Position- specific  
technical skills**
- Proven experience in the day-to-day management of development Projects that are geographically dispersed
  - Proven experience managing diverse personnel
  - Proven experience in financial and resource management, including management of an imprest account

**Position  
Reports to  
Position-**

**Community Engagement Adviser**

Team Leader

- Experience with community engagement, participative needs assessment, community profiling techniques, social mapping, poverty reduction and social inclusion strategies including demonstrated experience in and understanding of contemporary approaches to community engagement
- Experience with enhancing rural community based organisations.
- Experience with the development of a fast-growing and self-sufficient organisations.
- Experience with developing, structuring and delivering training methods and coaching techniques.
- Experience with training of trainers.
- Experience with leadership training for local government officials and citizens.
- Experience with rural needs assessments, with demonstrated capacity to undertake participatory processes including gender and poverty inclusion
- Excellent understanding of gender issues in Aceh
- Understanding of local government functions and the challenges under decentralization in Indonesia for the delivery of services to citizens.
- Excellent monitoring and evaluation skills.

**Position  
Reports to  
Position-  
specific  
technical skills**

**Governance Reform Adviser**

Team Leader

- Experience working with local governments in Indonesia.
- Excellent communication and motivational skills.
- Experience with developing large needs driven training structures including training of trainers
- Experience with local governance assessment, reform and training, including experience with leadership training for local officials
- Demonstrated ability to influence key decision makers at all levels of government with regards to implementing and driving key governance reforms, and actively supporting reforms driven by government
- Experience with the development of management information systems.
- Good understanding of decentralization issues and issues related to the effective implementation of decentralization in Indonesia
- Experience with leadership development
- Experience with low tech data base development
- Preferably experience with community mobilization.

**Position  
Reports to  
Responsibilities  
/Duties**

**Gender Mainstreaming/ Equity Adviser**

**Team Leader**

- Develop a gender-responsiveness strategy and supplementary rolling six-month work plan to ensure that all Project activities are responsive to the cultural contexts, broader economic and social aspirations, and the reconstruction needs of women in Aceh
- Develop mechanisms for the Project to track and liaise with other donor Projects and activities that may have relevance to the economic, social and political development needs of women in Aceh.
- Review and advise on Project Human Resource Development and employment policies and procedures to ensure that all staff have maximum opportunity for professional and personal development and that the work-place environment remains free of harassment or discrimination on the grounds of gender, age, religious or political affiliation, disability or sexual preference.
- Develop training Projects for Project staff on gender awareness, the role of women in the social, economic and cultural dimensions of reconstruction and their transitions in a post-conflict society, and encouraging participation of women in needs assessment and planning activities
- Provide technical and professional leadership and advice to all counterparts in their contributions to the Project, including addressing cross cutting issues (gender, access and equity) in all related Project activities;
- Assist in development of gender-specific performance indicators
- Work experience in culturally sensitive areas where the roles of the woman are influenced by religious beliefs and values.
- Knowledge of international human rights instruments and issues, both broadly and with reference to gender and protection;
- Proven ability to develop research methodologies, data collection tools with the aim of gender mainstreaming;
- Demonstrated competency in conceptualizing, designing, implementing gender strategies as a cross cutting issue in a Project, and evaluating outcomes;
- Demonstrated work experience in the development cooperation context on issues related to gender equity, social inclusion and anti-discrimination
- Proven experience in developing, implementing and evaluating Projects related to women's empowerment and participation, the establishment of CSOs and women's networks, and peace building in conflict sensitive areas

**Position-  
specific  
technical skills**

**LOGICA2 RFT**  
**Part 3 – Scope of Services**

**Position  
Reports to  
Responsibilities  
/Duties**

**Peace and Conflict Adviser**

Team Leader

- Manage the design and implementation of conflict sensitive approaches and strategies for addressing the conflict reduction objectives of the Project.
- Manage the implementation and regular review of Do-No-Harm analysis in a culturally sensitive, post-conflict context, and test the potential impact and results of Project activities in the field
- Develop conflict sensitive strategies to increase levels of community participation in and ownership of the Project and ensure that all groups within the community, including women, the poor and other marginalized or vulnerable groups, participate in community decision making processes, that information is shared and that their views are taken into account in the design and implementation of Project activities.
- This includes designing, implementing and monitoring Project and activity grievance procedures.
- Proven experience in community development, capacity building and/or education Projects in conflict-affected environments
- Proven experience in conflict resolution and conflict analysis, concepts, tools and approaches and demonstrated ability to design and implement community level activities and develop strategies for conflict reduction.
- Demonstrated experience in community consultation, participatory planning, capacity building, and social assessment

**Position-specific  
technical skills**

**Position  
Reports to  
Responsibilities  
/Duties**

**Monitoring and Evaluation and Continuous Learning Adviser**

Team Leader

- In the first stage of Project implementation, conduct an Evaluability Assessment to assist clear articulation of Project outcomes.
- Using a participatory approach, develop, implement and regularly review a monitoring and evaluation plan and that meets the expectation of AusAID and international standards of practice in M&E.
- Supervise the quality of implementation of M&E systems and provide technical support for the analysis and interpretation of data.
- Identify what capacity is required by the implementation team to implement the M&E Framework (Plan), and develop and implement a simple capacity building plan to develop relevant skills, and to ensure that there is an enabling environment in place to implement the M&E
- enhance quality, equity, sustainability and scaling up of LOGICA 2 M&E activities through strategic advice and guidance to LOGICA 2 management, stakeholders, and development partners.
- Undertake regular M&E reporting to AusAID, including analysis of lessons learned and how these will be incorporated into future activities, and how inputs and outputs are supporting progress to Project goal, objective and component objective.



**LOGICA2 RFT**  
**Part 3 – Scope of Services**

- Prepare relevant outcome and output data in advance of any review team missions.
- Develop and regularly review guidelines and processes for key Project activities, including community engagement, capacity building and environmental compliance
- Incorporate lessons learned from implementation into Project plans and reports
- dissemination of lessons learnt, and advocacy to the broader Acehnese development community.

**Position-specific technical skills**

- Proven experience in designing and implementing effective monitoring and evaluation frameworks for large-scale development Projects, including the ability to link input and output reporting to higher order outcomes
- Proven experience in social and participatory research methodologies
- Proven experience in developing, structuring and delivering training methods and coaching techniques

ANNEX 2: OBJECTIVE TREE

LOGICA 2 (LOCAL GOVERNANCE INNOVATIONS FOR COMMUNITIES IN ACEH)

PROJECT GOAL

*To contribute to a stable and peaceful Aceh by supporting effective governance that addresses priority village needs*

PROJECT OBJECTIVE

*In response to community-wide advocacy, governments deliver services to improve living standards*

COMPONENT 1:

**ACTIVE COMMUNITIES**

**Intermediate Outcome:** Citizens, particularly the marginalised, effectively advocate priority needs to government resulting in services that improve living standards.

COMPONENT 1:

**RESPONSIVE GOVERNMENTS**

**Intermediate Outcome:** Governments respond to citizen priorities, including those of the marginalised, by effectively allocating resources and delivering services to improve living standards.

OUTCOME 1(a):

*Communities identify, analyse and prioritise their needs.*

OUTCOME 2(a):

*Governments understand community priorities and the needs of the marginalised*

OUTCOME 1(b):

*Communities represent their priorities to government and advocate for improved services*

OUTCOME 2(b):

*Governments deliver services and allocate resources to address the priority needs of communities*

OUTCOME 1(c):

*Communities measure the performance of services and contribute to service delivery reform*

OUTCOME 2(c):

*Outcome 2(c): Governments improve and replicate services in response to community feedback*

|                                                       |                          |
|-------------------------------------------------------|--------------------------|
| Name:                                                 |                          |
| Activity:                                             | Agreement No:            |
| Country:                                              | Activity Manager (AM):   |
| Date of this Performance Review Discussion:    /    / | File Number:.....        |
| Date of Next Discussion        /    /                 | Related Documents: ..... |
| Assessment Period:                                    |                          |
| From        /    /                                    | To        /    /         |

The contractor performance assessment matrix affixed is a guide to assess and record contractor performance discussion outcomes. The matrix outlines AusAID’s generic critical performance factors during contract management and provides indicators as a tool to a fair and transparent assessment of contractor performance against these factors.

It is essential that performance factors and indicators are discussed and agreed with the contractor at the commencement of the assessment period.

| Performance Scoring |                         |
|---------------------|-------------------------|
| 1                   | Weak                    |
| 2                   | Marginally Satisfactory |
| 3                   | Satisfactory            |
| 4                   | Highly Satisfactory     |
| 5                   | Best Practice           |

74

**LOGICA2 RFT**  
**Part 3 – Scope of Services**

**OF THE DISCUSSION MUST BE SENT TO THE RELEVANT CONTRACTOR AND TO THE DIRECTOR \*\*\***

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

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

**LOGICA2 RFT**  
**Part 3 – Scope of Services**

|                                                                                             |                                                                                                                                                                                                                                                           |  |  |
|---------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
|                                                                                             | the issues                                                                                                                                                                                                                                                |  |  |
| Quality of communication and relationship with activity stakeholders                        | <ul style="list-style-type: none"> <li>▪ Feedback received from partner government on satisfaction with consultation</li> <li>▪ Time and effort invested in developing a partnership with counterparts and other stakeholders</li> </ul>                  |  |  |
| Efforts to engage in continuous improvement                                                 | <ul style="list-style-type: none"> <li>▪ Proactively identifies areas for improvements and acts on them</li> </ul>                                                                                                                                        |  |  |
| Quality of key planning documentation<br>eg. Six Monthly Workplans                          | <ul style="list-style-type: none"> <li>▪ Timely submission of documentation which meets AusAID's and counterparts requirements</li> <li>▪ Documentation contains required information and does not require multiple re-writes</li> </ul>                  |  |  |
| Attention to AusAID's policies eg. gender and development, environment and child protection | <ul style="list-style-type: none"> <li>▪ Evidence of plans, monitoring and results which show progress towards these aid policy commitments</li> </ul>                                                                                                    |  |  |
| <b>Personnel</b>                                                                            |                                                                                                                                                                                                                                                           |  |  |
| Performance of Team Leader                                                                  | <ul style="list-style-type: none"> <li>▪ Achieves results against TOR/Duty Statement</li> <li>▪ Effective communication and leadership</li> <li>▪ Relationship with stakeholders</li> <li>▪ Management of team</li> </ul>                                 |  |  |
| Performance of other key project personnel                                                  | <ul style="list-style-type: none"> <li>▪ Achieve results against TOR/Duty Statement</li> <li>▪ Relationships with stakeholders</li> </ul>                                                                                                                 |  |  |
| Ability to maintain quality project personnel                                               | <ul style="list-style-type: none"> <li>▪ Suitability of staff</li> <li>▪ Staff turnover levels</li> </ul>                                                                                                                                                 |  |  |
| Timeliness in replacing project personnel                                                   | <ul style="list-style-type: none"> <li>▪ Minimal disruption</li> <li>▪ Proactively informing AusAID of project personnel changes</li> <li>▪ Satisfactory recruitment process</li> <li>▪ Quality of replacement project personnel</li> </ul>               |  |  |
| Management of unsatisfactory personnel performance, where appropriate                       | <ul style="list-style-type: none"> <li>▪ Management control of personnel performance</li> <li>▪ Timely identification of issues with personnel and proactively proposing solutions</li> <li>▪ Willingness to replace personnel where necessary</li> </ul> |  |  |

**LOGICA2 RFT**  
**Part 3 – Scope of Services**

|                                                                                                                              |                                                                                                                                                                                                                                                                                                                           |  |  |
|------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
|                                                                                                                              |                                                                                                                                                                                                                                                                                                                           |  |  |
| <b>Project Management</b>                                                                                                    |                                                                                                                                                                                                                                                                                                                           |  |  |
| Quality and timeliness of activity milestones and deliverables                                                               | <ul style="list-style-type: none"> <li>▪ Ability to achieve milestones and deliverables within the set timeframe</li> <li>▪ Strategies for management of delays and letting AusAID know early</li> <li>▪ Milestones and deliverables do not require substantial reworking by AusAID and meet quality standards</li> </ul> |  |  |
| Effective measurement of activity progress, including quality of monitoring information                                      | <ul style="list-style-type: none"> <li>▪ M&amp;E framework has clearly defined and measurable objectives</li> <li>▪ M&amp;E framework has effective quantitative and qualitative indicators</li> <li>▪ Where appropriate, demonstrated strengthening of partner government systems</li> </ul>                             |  |  |
| Use of partner government systems                                                                                            | <ul style="list-style-type: none"> <li>▪ Where appropriate, demonstrated use of partner government systems</li> </ul>                                                                                                                                                                                                     |  |  |
| Appropriately addressing sustainability, with due account of partner government systems, stakeholder ownership and phase out | <ul style="list-style-type: none"> <li>▪ Understanding of key factors promoting or inhibiting sustainability and strategy to promote sustainability</li> <li>▪ Appropriately preparing for transition following the completion of the activity</li> </ul>                                                                 |  |  |
| Responsiveness to AusAID requests and instructions                                                                           | <ul style="list-style-type: none"> <li>▪ Timely response to AusAID requests and ability to respond to unexpected requests</li> <li>▪ Acceptance of AusAID decisions</li> </ul>                                                                                                                                            |  |  |

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

**1. Factors Affecting Performance**

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

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

**3. AusAID Comments against Critical Performance Factors**

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

Contractor Signature .....

Activity Manager Signature .....

**Contractor Comments against Critical Performance Factors:**

| Attachments                                                                                                                                                                                                                                                                    | Yes/No |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| <p><b>*** A RECORD OF THE DISCUSSION MUST BE SENT TO THE RELEVANT CONTRACTOR AND TO THE DIRECTOR PROCUREMENT POLICY GROUP. A COPY WILL BE PLACED ON THE CONTRACTOR’S PERFORMANCE FILE AND MAY BE USED BY AUSAID AS PART OF ANY FUTURE CONTRACTOR SELECTION PROCESS ***</b></p> |        |



#### **ANNEX 4 - M&E FRAMEWORK**

The following is a broad conceptual overview of the M&E Framework (M&EF) proposed for LOGICA2. It essentially provides a simple framework of tools to enable supervision of the Project by AusAID and to facilitate a shift of M&E knowledge and skills from the Contractor to Acehnese community and government counterparts.

Integral to the LOGICA2 M&EF is the capacity of Project counterparts – communities, CSO's and governments – to monitor and assess the benefits they believe they have derived from participation in LOGICA2 activities. This will provide a 'learn-by-doing' opportunity to build the capacity of partner organisations to apply M&E and performance assessment skills to measuring the effectiveness of their own Projects and services.

LOGICA2 staff, under guidance of the M&E advisor and M&E team, will oversee the development of M&E capacity within Project counterparts, conducting periodic and targeted evaluations of counterpart capacity and processes, the results of which will feedback into Project activities. This evaluative process will serve as a tangible and immediately relevant (training) example of M&E methodology and practice for counterpart agencies to readily assess and apply to their own Programmatic needs. The development of sustainable M&E capacity within Project counterparts being both an outcome and integral process of LOGICA2's M&E framework.

Within one (1) month of mobilisation, the Managing Contractor will provide AusAID with a detailed M&EF that:

- (i) further develops and refines the framework provided as part of the tender documentation, proposing modifications where appropriate;
- (ii) describes M&E methodology (including the development of specific tools);
- (iii) establishes indicators and specific measures that correspond to all stages of Project implementation and geographical roll-out;
- (iv) establishes firm targets for measurement and reporting on M&E outcomes;
- (v) defines the roles and responsibilities for managing the M&E framework;
- (vi) defines the resources required (including a budget);
- (vii) provides a clear articulation of how lessons learned will be captured and integrated into ongoing Project design;
- (viii) outlines coordination mechanisms with community and government stakeholders;
- (ix) demonstrates how the M&E framework will harmonise with any other whole-of-Project performance assessment measures initiated by the provincial government through the AusAID Aceh Project Framework; and
- (x) demonstrates how the LOGICA2 M&E framework will synchronise with and contribute to any existing government M&E systems.

The LOGICA2 design has five stages of implementing the ‘*Active Communities – Responsive Governments*’ model, each of which is linked to specific outcomes consistent with the two Project objectives. These will be measured through a series of specific indicators, to be developed by the Contractor. During the life of the Project, several phases of geographic roll-out will be running concurrently. The staggered phasing will ensure that the flexible design of LOGICA2 results in SMART<sup>1</sup> outcomes. The M&E Framework includes five tools to collect data against indicators and to facilitate standardised reporting through all phases of implementation.

**Janssen’s CICPI: Five Standard Tools**

LOGICA2 will use five main M&E tools to assess the effectiveness of activities in achieving outcomes against the two Project objectives, across all five stages of Project implementation and at all phases of geographical roll-out. The Janssen CICPI (*read ‘chickpea’*) framework includes five major M&E tools:

- (i) Contributonal Analysis;
- (ii) Impact Assessment;
- (iii) Citizens’ Surveys;
- (iv) Player Analysis; and
- (v) Institutional Analysis.

Each tool is described in more detail below:

***Contributonal Analysis:***

In the initial implementation stages of LOGICA2, the Contribution Analysis tool will document the contribution each stakeholder makes to reforming services aimed at community priority needs, from the perspective of the counterpart. Each stakeholder will maintain their own records, in an agreed format common to all Project stakeholders, and these will be shared in regular coordination meeting forums, initially facilitated by LOGICA2 Contractor Personnel. This information will be used to iteratively optimise the service-delivery reform process and to ensure that all stakeholders have a documented basis for contributing to discussions about Project strengths and weaknesses and subsequent Project enhancements.

Reforms and improvements to the government’s implementation system – as well as the consultative process that has led to service delivery reform outcomes – will be documented and advertised by each partner organisation and communicated within and beyond the target geographical area (eg Districts). This process will be overseen by LOGICA2 Contractor Personnel.

---

<sup>1</sup> Specific; Measurable; Attainable; Relevant; Timely

***Impact Assessment:***

During Stages 1 & 2 of Project implementation, LOGICA2 will invest considerable effort in supporting communities and the marginalised to analyse their needs and to plan action to advocate that governments deliver effective services to address priority needs. The effectiveness of governance improvements and reforms that result from this process should be tested during Stages 3 and 4 of Project implementation.

Once useful types of service delivery reform have been identified and their impact on improving living standards has been assessed, the emphasis of the Impact Analysis will shift *from effectiveness to efficiency*. All stakeholders should be given the opportunity to assess the impact of their specific contribution to the service delivery reform process (either as ‘advocates’, ‘facilitators’ or ‘implementers’) and estimate the real and perceived costs of their involvement. Improvements to maximising the efficiency of their inputs and contributions can be discussed regularly in coordination meetings.

Stakeholders will need to jointly review the impact of the accountability systems (eg citizen charters, complaint mechanisms, etc). When accountability mechanisms are in place but have not resulted in effective corrective action, additional channels of recourse should be proposed and later assessed in a similar manner.

***Citizens Survey:***

The Citizens Survey seeks the opinions of a representative sample of citizens from LOGICA2 target villages, including the marginalised. Survey questions should cover a wide range of process-related issues such as: access to information about services; the quality of consultations undertaken and citizen perceptions about the extent that their views were acknowledged and acted upon; the level of ownership citizens have over reforms underway; and, the perceived relevance of service delivery reforms. Surveys should be repeated regularly and compared over time and between target areas to inform longitudinal assessments.

Surveys could either be administered by independent entities at the request of Government, CSO’s or community stakeholders, or stakeholders could undertake their own surveys and compare results. LOGICA2 M&E Contractor Personnel should assist in the development of the surveys and the maintenance of documentation and databases. This will help ensure consistent standards in survey methodology and build the capacity of partner organisations in using survey methodologies. In the longer term, it will also facilitate access to better quality data to inform service delivery reforms, and the organisational capacity of government counterparts, CSO’s and communities.

***Player Analysis:***

LOGICA2 is a governance Project that aims to contribute to stability in Aceh and reduce community tensions arising from poor living standards and ineffective service government delivery. To maximise the reach of Project outcomes across as much of Aceh as possible, it is essential that service delivery reforms are able to be replicated widely with minimal or no assistance from LOGICA2. To ensure that replication occurs, it is necessary to gauge the willingness of key actors to replicate reforms and the processes

involved in implementing them. The Player Analysis will measure both community tension levels along with the willingness of key actors to engage in service delivery reform.

The Player Analysis will record the needs, interests, and concerns of key stakeholders through interview and observation. It will build on the ‘village dynamics’ tool developed for CEPA and will use the same methodology to identify and/or measure:

- (i) The extent to which groups are marginalised;
- (ii) The mechanisms, institutions or processes that maintain their exclusion and marginalisation;
- (iii) Interactional dynamics between marginalised groups and the broader community within which they live;
- (iv) Community-level tensions;
- (v) Adherence of LOGICA2 interventions to the ‘Do-No-Harm’ principle;
- (vi) Support for government service delivery reforms at the village, sub-district and district levels – and both within government and with other power brokers; and
- (vii) How LOGICA2 Project interventions (for example community representative advocacy, or citizens charters) will change community support for or against reform.

The responsibility for administering the majority of LOGICA2 M&E tools will over time be delegated to community and government stakeholders. LOGICA2 Contractor Personnel will however continue to administer the Player Analysis throughout the life of LOGICA2 to ensure a continuing and comprehensive understanding of the dynamics of target areas.

### ***Institutional Development Analysis***

Before LOGICA 2 is able to support stakeholders in replicating reforms across other sectors or geographical areas, it should undertake an Institutional Development Analysis in collaboration with all key stakeholders (communities, CSO’s, government counterparts, and service providers) to highlight areas where institutional strengthening may be required. It is important that such capacity building be targeted to the specific needs of each counterpart to maximise their capability to participate in the service delivery reform process. It should not become an objective in itself.

The Institutional Development Analysis will review capacity across the following areas:

- (i) Organisational governance (for CSO’s);
- (ii) Financial management, planning and budgeting;
- (iii) Human resource management (including training and recruitment);
- (iv) M&E;

- (v) Research;
- (vi) Strategic planning;
- (vii) Budgeting and resource mobilization; and
- (viii) Communication, inclusiveness, complaints handling, and accountability.

The analysis will result in an Institutional Strengthening Plan for each stakeholder group with clear milestones against which development can be measured. LOGICA2 will assist communities and government to implement the plan but *will not* drive the process of institutional strengthening. LOGICA2 will, however, regularly measure progress against institutional development indicators agreed to in the Plan. LOGICA2 will also undertake regular quality checks on administrative and management systems, such as accounting, transparency, HRM, and M&E.

### **Supporting Monitoring & Evaluation Tools**

#### **Three Registers**

In addition to the application of the five M&E tools above, LOGICA2 will maintain a database system that documents:

- (i) all government service delivery reforms that occur in all targeted sectors and geographical areas through the life of the Project;
- (ii) community needs assessments, action planning and advocacy or representation to government;
- (iii) collaborations between partner organisations; and
- (iv) significant engagements between communities and governments, for example in the development of citizen charters, or the development of District government budget allocations that target specific unmet community priorities.

The database system should maintain three distinct registers:

**Reform Inventory:** LOGICA2 will use its stakeholder networks to identify and document all reforms to governance and service delivery across Aceh. ‘Reform’ should be viewed as being broader than improvements in service delivery and should cover all governance issues related to community aspirations, particularly those of the marginalised. LOGICA2 should specifically highlight those reforms that were initiated by community advocacy.

**Meeting schedules:** Rebuilding social fabric, particularly at the village level, is an essential factor in sustaining peace in a post-conflict environment. An assessment of the contribution of LOGICA2 to this process can be in part assessed at any point in time by examining communication and interactions between different stakeholders (citizens, CSO’s and Government) that have been facilitated by the Project. LOGICA2 will

maintain a schedule of all meetings that occur between any of these three groups in relation to the overall ‘active community – responsive government’ reform process.

**CSO Register:** LOGICA2 will maintain an inventory of all community representatives and CSO’s (ad hoc and long term) that are involved in governance reforms within Project target areas. For this purpose, CSO’s should be understood to include: ad-hoc citizen alliances, NGOs, faith-based organisations, professional organisations, village interest-group clusters, indigenous networks and parastatal organisations.

***Ownership of LOGICA2 M&E processes are transferred to organic organisations over time:***

Following mobilisation of LOGICA2 by the Contractor, implementation of the M&E Framework should include the following:

- (i) Refining the purpose of all tools within the M&E framework and developing associated minimum performance criteria, for example exact percentages of positive answers in the citizen surveys or quantification of expected impacts of a reform;
- (ii) Assigning responsibility across stakeholders and agreeing on timelines for the development of the tools;
- (iii) Determining the frequency and intervals of measurement by each of the tools;
- (iv) Calculating the resources necessary for the execution of the M&E system and identifying the sources for these funds; and
- (v) Defining a precise process for the analysis of data by relevant stakeholders and for the integration of lessons learned into the ongoing Project.

Agreeing with all stakeholders on how M&E results will be reported and published by and between stakeholders.

## **PART 4 - BASIS OF PAYMENT**

### **LOCAL GOVERNANCE INNOVATIONS FOR COMMUNITIES IN ACEH 2 (LOGICA2)**

***Note to Tenderers:***

This Basis of Payment is presented as **Part 4** of this RFT, and will appear as Schedule 2 in the consolidated Contract.

This Part forms a key Schedule of the Contract Conditions. It reflects the most current version of the payment regime 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.

## PART 4 - BASIS OF PAYMENT

### LOCAL GOVERNANCE INNOVATIONS FOR COMMUNITIES IN ACEH 2 (LOGICA2)

#### 1. TOTAL AMOUNT

- 1.1 The total amount payable by AusAID to the Contractor shall not exceed the sum **AUD[to be inserted by AusAID]** plus GST, if any to a maximum of **AUD[to be inserted by AusAID – if required]**.
- 1.2 AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.
- 1.3 AusAID will pay the Contractor the following costs and fees (summarised in **Table 1**):
- (a) Reimbursable Costs comprising:
    - (i) Long Term Personnel Costs- **Table 2**.
    - (ii) Short Term Personnel Costs – **Table 3**;
    - (iii) Reimbursable Costs – **Table 4**;
  - (b) Fixed Costs comprising:
    - (i) Profit and Management Fee, payable on completion of payment milestones - **Table 5**; and
  - (c) Imprest Account payments **Clause 9**.

#### 2. LONG TERM PERSONNEL COSTS

- 2.1 The total amount payable in Long Term Personnel costs by AusAID to the Contractor shall not exceed **AUD[to be inserted by AusAID]** plus GST , if any to a maximum of **AUD[to be inserted by AusAID]**.
- 2.2 For each Long Term Personnel, AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears, an all inclusive monthly cost detailed in **Table 2**. Actual costs paid by the Contractor to or on behalf of Long Term Personnel shall be reimbursed by AusAID up to the limit specified and paid within thirty (30) days of AusAID's receipt of a correctly rendered invoice.
- 2.3 Long Term Personnel Costs are:

#### **FULLY INCLUSIVE OF**

- (a) salary and allowances (with all escalators, clearly incorporated into the salary structure, and any requirements under Indonesian labour laws in relation to employment and termination) ,mobilisation and demobilisation costs;
- (b) superannuation levy, if any;



- (c) annual leave allowances of up to four (4) weeks per annum (see **Clause 10**), to accrue on a pro rata basis per twelve months' continuous engagement on LOGICA2;
- (d) If a long term personnel member is absent for any period, aside for periods of leave, permitted in **Clause 2.3(c)** above, the Monthly Rate payable will be adjusted in accordance with the following formula:

$$\text{Adjustable Monthly Rate} = \frac{(\text{Number of Days Worked} + \text{Australian Embassy Public Holidays}) \times \text{Monthly Rate}}{\text{Total workable days (weekdays and Australian Embassy Public Holidays) in Month}}$$

- (e) up to thirteen (13) public holidays per annum as designated by the Australian Embassy in Jakarta, which includes a mix of Indonesian and Australian holidays;
- (f) housing and utilities costs; and
- (g) all personnel-related taxes, levies and insurance incurred in Australia and Indonesia with the exception of GST for services performed in Australia;

***BUT EXCLUSIVE OF***

- (h) any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor.

- 2.4 The total cost for each position defined in **Table 2** is a contractual upper limit that must not be exceeded. The Contractor will not be entitled to claim payment of any Long Term Personnel Costs in excess of the upper limit for any position.
- 2.5 In circumstances where the Contractor is obliged to replace an individual who has left the Project with an individual of at least equivalent or better qualifications and experience, the limit identified in **Table 2** continues to apply to the Contractor's entitlement to payment of Personnel costs (unless AusAID agrees to vary the relevant limit OR unless the replacement individual is quoted at a lower rate wherein AusAID will pay only the lower rate).

**3. SHORT TERM PERSONNEL COSTS**

- 3.1 The total amount payable for Short Term Personnel costs by AusAID to the Contractor shall not exceed **AUD[to be inserted by AusAID]** plus GST, if any to a maximum of **AUD[to be inserted by AusAID – if required]**
- 3.2 For each Short Term Personnel nominated by the Contractor and approved by AusAID, AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears, an all inclusive Daily Fee Rate in accordance with the relevant rate(s) detailed in **Table 3** to this Schedule 2.
- 3.3 The Daily Fee Rate for Short Term Personnel is based on actual days worked and is

***FULLY INCLUSIVE OF***

- (a) be inclusive of superannuation, all personnel and related taxes, escalators and daily per diems and accommodation rates;

- (b) contain all escalators for the full period of the Contract;

***BUT EXCLUSIVE OF***

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

- 3.4 The total cost for each position defined in **Table 3** is a contractual upper limit that must not be exceeded. The Contractor will not be entitled to claim payment of any Short Term Personnel Costs in excess of the upper limit for any position.
- 3.5 In circumstances where the Contractor is obliged to replace an individual who has left the Program with an individual of at least equivalent or better qualifications and experience, the limit identified in **Table 3** continues to apply to the Contractor's entitlement to payment of Personnel costs (unless AusAID agrees to vary the relevant limit OR unless the replacement individual is quoted at a lower rate wherein AusAID will pay only the lower rate).

**4. ESCALATION OF PERSONNEL COSTS**

- 4.1 All Long Term and Short Term Personnel Costs defined in **Clauses 2 and 3** are inclusive of escalation for the Term of the Contract.

**5. REIMBURSABLE COSTS**

- 5.1 The Contractor is entitled to claim, in arrears, all reasonable costs actually incurred for Project Administration and Equipment and operating costs as defined in **Table 4**, up to a maximum amount of **AUD960,500 plus GST**, *if any to a maximum of AUD96,050 – if required*.
- 5.2 The Contractor will be reimbursed on the basis of the actual costs incurred for items identified as reimbursable, up to the maximum costs listed in **Table 4** within thirty (30) days of AusAID's receipt of a correctly rendered invoice. Reimbursement is subject to:
  - (a) details of the items purchased or expenses incurred contained in a monthly payment invoice prepared in accordance with **Clause 20 (Payment)** of **Part B - Standard Contract Conditions**; and
  - (b) original *receipts* and invoices maintained to substantiate any claim.
- 5.3 The actual cost for each reimbursable item will be exclusive of any procurement costs, profit margin, overheads, administration or management fee, or any other commercial margins/mark-up on the part of the Contractor, as these costs are assumed to be covered by the Profit and Management Fees Fee detailed in **Clause 6** below.
- 5.4 When expenditure reaches **80%** of the category limits specified in **Table 4** the Contractor must advise AusAID of the remaining commitments and whether the upper limits are likely to be exceeded, and, if so, provide justification.
- 5.5 The Contractor may vary the sums assigned against individual line items within a Category in **Table 4**, subject to AusAID approval and subject to **Clause 5.4** above. Such changes will not require a contract variation.

**6. PROFIT AND MANAGEMENT FEE**

6.1 AusAID will not be obliged to pay the Contractor a Profit and Management Fee in excess of **AUD[to be inserted by AusAID]** plus GST, if any to a maximum of **AUD[to be inserted by AusAID]**

6.2 The Profit and Management Fee is

***FULLY INCLUSIVE OF***

- (a) All aspects of profit, including commercial margins for all Personnel;
- (b) Contribution to head office overheads including head office communication costs;
- (c) Engagement and management of Long and Short Term Personnel;
- (d) All management support costs for all Contractor Personnel and all Contractor head/support office management and administrative staff;
- (e) Financial management and financing costs;
- (f) Insurance costs (including but not limited to, professional indemnity, health, medivac, workers compensation, public liability, indemnity and any other insurances as required under the Contract or deemed necessary by the Contractor);
- (g) Security costs for all personnel;
- (h) Taxation as applicable;
- (i) Costs of complying with the Contractor's reporting and liaison obligations under the Contract;
- (j) Costs associated with all personnel briefings in Australia or Indonesia;
- (k) Costs associated with establishing and managing the LOGICA2 Imprest Account;
- (l) All other costs not specifically identified as Reimbursable Costs or costs payable from the Imprest Account;
- (m) Costs of managing procurement, including the tendering and subcontracting of any services;
- (n) Risk and contingencies including any escalators;

***BUT EXCLUSIVE OF***

- (o) any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor.

6.3 The Profit and Management Fee is fixed for the Term of the Contract and is payable as Milestone Payments.

- 6.4 AusAID shall pay the Contractor Milestone Payments for the **first three (3) years** of the LOGICA2 as specified in **Table 5** of this Schedule.
- 6.5 AusAID anticipates that the timing of some Milestones may require change following AusAID's endorsement of subsequent six-monthly work plans. For such change to take effect AusAID must specifically approve the change in writing in advance but it will not be necessary to execute a Variation Order in accordance with **Clause 12 of the Standard Contract Conditions**.
- 6.6 Means of Verification, as outlined in **Table 5**, indicates the evidence required from the Contractor for verification of Milestone achievement. Notwithstanding anything above, AusAID reserves the right to monitor achievement of Program outputs itself or through the PCC, Monitoring and Review Group, or its delegated representative(s), which may report on a regular basis to AusAID.
- 6.7 The Milestone Payment for each Milestone will not be payable to the Contractor until AusAID's receipt of a properly rendered invoice in accordance with **Clause 20 (Payment) of the Standard Contract Conditions**, detailing all Milestones for which the Contractor is claiming payment.
7. **ESCALATION OF TOTAL PROFIT AND MANAGEMENT FEE**
- 7.1 The Total Profit and Management Fee as specified in **Clause 6** of this Schedule, is inclusive of any escalators for the full Term of the Contract.
- 7.2 If AusAID exercises the option to extend the Term of the Contract under **Clause 5 of Schedule 1**, then a once-off escalation rate of *[X% to be inserted by AusAID]* will apply on the first day of the extension period.
8. **CHANGES TO MILESTONE PAYMENTS**
- 8.1 The Contractor must advise the Commonwealth in writing if and when the Contractor determines or becomes aware a Milestone will not be, or cannot be reasonably expected to be, completed in accordance with **Table 5** on time within the relevant period.
- 8.2 At any time prior to the end of the period in which a Milestone Payment (the "relevant Milestone Payment") is due to be completed, AusAID may, whether or not the Contractor has issued a notice under **Clause 8.1** and in its absolute discretion, issue a written notice to the Contractor stating that:
- (a) AusAID will pay the Contractor the proportion of the amount allocated to the relevant Milestone Payment which is reasonable having regard to:
  - (b) the amount and quality of work carried out by the Contractor in pursuance of the relevant Milestone Payment up to the issue of the notice by AusAID;
  - (c) the amount and nature of the work which remains outstanding in relation to the Milestone Payment at the time of the issue of the notice by AusAID; and
  - (d) if, prior to the issue of the notice by AusAID, the relevant Milestone could not reasonably have been expected to be completed on time within the relevant quarter:

- (i) the length of time between when the Contractor should reasonably have become aware of this fact and when the Contractor issued a notice to AusAID under Clause 8.1; and
  - (ii) the extent to which, if the Contractor had exercised reasonable care and diligence, the Milestone could have been reasonably expected to be completed on time within the relevant quarter,
- (e) the part of the Profit and Management Fee allocated to the Milestone Payment is, to the extent it remains unpaid, partly or entirely reallocated, either:
  - (i) to an existing Milestone Payment for the relevant quarter; or
  - (ii) to a new Milestone Payment which reasonably represents an obligation of the Contractor under the Contract for the relevant quarter.
- 8.3 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.
- 8.4 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.
- 9. **IMPREST ACCOUNT**
- 9.1 The total amount payable for Imprest Account payments by AusAID to the Contractor shall not exceed the sum of **AUD[to be inserted by AusAID, indicatively AUD11 million]**, plus GST, to a maximum of **AUD[to be inserted by AusAID – if required]**.
- 9.2 AusAID is not liable for any costs in excess of this amount.
- 9.3 The funds deposited into the Imprest Account by AusAID shall be used solely for the purpose of funding activities approved by the PCC in the relevant six monthly plan in accordance with **Clause 12 of Part A – Project Specific Contract Conditions** or for activities as approved by AusAID.
- 9.4 The Contractor must, as part of each Quarterly Report, report on the previous three (3) months expenditure and provide a projection of Imprest Account expenditure for the coming three (3) months, for AusAID approval. This should be clearly disaggregated by type as outlined in **Clause 9.3** above. Imprest Account expenditure and estimates must reflect the approved six-monthly work plans.
- 9.5 AusAID will make quarterly payments into the Imprest Account as outlined in **Clause 12 Part A – Project Specific Contract Conditions**.
- 10. **LEAVE**
- 10.1 Leave accrued during the assignment for Long Term Personnel, as defined in **Table 2**, shall be deemed to be taken in the year it falls due and cannot be accumulated or paid out. Long Term Personnel are eligible to take up to 4 weeks paid annual leave.

**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](mailto:accountsprocessing@ausaid.gov.au)
- 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 1: TOTAL CONTRACT SUMMARY**

| <b>Costs and Fees</b>        | <b>AUD</b> |
|------------------------------|------------|
| <b>Reimbursable Costs</b>    |            |
| Long Term Personnel Costs    |            |
| Short Term Personnel Costs   |            |
| Reimbursable Costs           |            |
| <b>Fees</b>                  |            |
| Profit and Management Fee    |            |
| <b>Imprest Account Funds</b> |            |
| Imprest Account              |            |
| <b>CONTRACT TOTAL</b>        |            |

**Table 2: LONG TERM PERSONNEL COSTS**

| Position Title                                                                                       | Name of Personnel | Year 1       |                    | Year 2       |                    | Year 3       |                    | Maximum Amount Payable (AUD) |
|------------------------------------------------------------------------------------------------------|-------------------|--------------|--------------------|--------------|--------------------|--------------|--------------------|------------------------------|
|                                                                                                      |                   | Input Months | Monthly Rate (AUD) | Input Months | Monthly Rate (AUD) | Input Months | Monthly Rate (AUD) |                              |
| Key Personnel                                                                                        |                   |              |                    |              |                    |              |                    |                              |
| Team Leader                                                                                          |                   |              |                    |              |                    |              |                    |                              |
| Deputy Team Leader                                                                                   |                   |              |                    |              |                    |              |                    |                              |
| Community Engagement Adviser                                                                         |                   |              |                    |              |                    |              |                    |                              |
| Governance Reform Adviser                                                                            |                   |              |                    |              |                    |              |                    |                              |
| Gender Mainstreaming / Equity Adviser                                                                |                   |              |                    |              |                    |              |                    |                              |
| Peace and Conflict Adviser                                                                           |                   |              |                    |              |                    |              |                    |                              |
| Monitoring and Evaluation and Continuous Learning Adviser                                            |                   |              |                    |              |                    |              |                    |                              |
| Other Personnel [AusAID will add/delete rows as required based on the preferred tenderer’s proposal] |                   |              |                    |              |                    |              |                    |                              |
|                                                                                                      |                   |              |                    |              |                    |              |                    |                              |
| TOTAL                                                                                                |                   |              |                    |              |                    |              |                    |                              |



**Table 3: SHORT TERM PERSONNEL COSTS**

| Position Title                                                                              | Personnel Name | Daily Inputs | Fees As Daily Rate |  | Travel and associated costs |               | Maximum Amount Payable |
|---------------------------------------------------------------------------------------------|----------------|--------------|--------------------|--|-----------------------------|---------------|------------------------|
|                                                                                             |                |              |                    |  | No of Trips                 | Cost per trip |                        |
| <i>[AusAID will add/delete rows as required based on the preferred tenderer's proposal]</i> |                |              |                    |  |                             |               |                        |

**Table 4: REIMBURSABLE COSTS**

| <b>Description</b>                                                           | <b>Total Cost (AUD)<br/>Maximum up to</b> |
|------------------------------------------------------------------------------|-------------------------------------------|
| Office Rental : Main and Regional (including renovations/refit, maintenance) | 168,280                                   |
| Office furniture                                                             | 13,000                                    |
| Computers and office equipment                                               | 75,240                                    |
| Gensets for main and regional office                                         | 29,840                                    |
| Utilities                                                                    | 52,150                                    |
| Communications including telephone and internet                              | 201,900                                   |
| Consumables                                                                  | 26,280                                    |
| Vehicle Costs                                                                | 393,810                                   |
| <b>TOTAL COST</b>                                                            | <b>960,500</b>                            |

**Table 5: MILESTONE PAYMENTS**

| <b>Milestone</b>                      | <b>Indicator</b>                                                    | <b>Means of Verification</b>  | <b>Due Date</b>                                  | <b>Percentage</b> | <b>Payment</b> |
|---------------------------------------|---------------------------------------------------------------------|-------------------------------|--------------------------------------------------|-------------------|----------------|
| 1. Inception Report                   | Containing all reports as detailed in <b>Schedule 1 Clause 19.1</b> | Accepted in writing by AusAID | Within three months of Services Start Date       | 18%               |                |
| 2. 2 <sup>nd</sup> Six Monthly Report | In accordance with <b>Schedule 1 Clause 19.1(d)</b>                 | Accepted in writing by AusAID | End of Month 12                                  | 18%               |                |
| 3. 3 <sup>rd</sup> Six Monthly Report | In accordance with <b>Schedule 1 Clause 19.1(d)</b>                 | Accepted in writing by AusAID | End of Month 18                                  | 18%               |                |
| 4. 4 <sup>th</sup> Six Monthly Report | In accordance with <b>Schedule 1 Clause 19.1(d)</b>                 | Accepted by AusAID in writing | End of Month 24                                  | 18%               |                |
| 5. 5 <sup>th</sup> Six Monthly Report | In accordance with <b>Schedule 1 Clause 19.1(d)</b>                 | Accepted by AusAID in writing | End of Month 30                                  | 18%               |                |
| 6. Project Completion Report          | In accordance with <b>Schedule 1 Clause 19.1(f)</b>                 | Accepted by AusAID in writing | Two (2) months prior to Contract Completion Date | 10%               |                |
| <b>TOTAL FOR THREE YEARS</b>          |                                                                     |                               |                                                  | <b>100%</b>       |                |

## **SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS**

### **CONTENTS**

|                                                                                                  |            |
|--------------------------------------------------------------------------------------------------|------------|
| <b>PART 5 – STANDARD TENDER CONDITIONS</b>                                                       | <b>100</b> |
| 1. DOCUMENTS THAT MUST BE LODGED                                                                 | 100        |
| 2. TENDERER ENQUIRIES                                                                            | 101        |
| 3. LATE TENDERS                                                                                  | 102        |
| 4. NON-CONFORMING TENDERS                                                                        | 102        |
| 5. CLARIFICATION OF TENDERS                                                                      | 103        |
| 6. AMENDMENT OF THE RFT                                                                          | 103        |
| 7. ASSESSMENT OF TENDERS                                                                         | 103        |
| 8. JOINT VENTURES AND CONSORTIUMS                                                                | 107        |
| 9. ASSOCIATES AND OTHER SUB-CONTRACTORS                                                          | 107        |
| 10. OWNERSHIP OF TENDERS AND RFT                                                                 | 108        |
| 11. CONFLICT OF INTEREST                                                                         | 108        |
| 12. TENDERING CONDUCT                                                                            | 108        |
| 13. INELIGIBILITY TO TENDER                                                                      | 108        |
| 14. AusAID’s RIGHTS                                                                              | 109        |
| 15. TENDERER’S ACKNOWLEDGEMENT                                                                   | 110        |
| 16. DEBRIEFING OF TENDERERS                                                                      | 110        |
| 17. AUSTRALIAN GOVERNMENT AND AUSAID LAWS AND POLICIES                                           | 110        |
| 18. FURTHER REQUIREMENTS                                                                         | 112        |
| 19. CONTRACT NEGOTIATIONS                                                                        | 113        |
| 20. CONTRACT PLANS                                                                               | 114        |
| 21. APPLICABLE LAW                                                                               | 114        |
| <b>ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION</b>                                           | <b>115</b> |
| <b>ANNEX B – TENDERER DECLARATION</b>                                                            | <b>117</b> |
| 1. DEFINITIONS                                                                                   | 117        |
| 2. BASIS OF DECLARATION                                                                          | 117        |
| 3. THE OFFER                                                                                     | 117        |
| 4. ADDENDA TO TENDER DOCUMENTS                                                                   | 119        |
| 5. ADDRESS OF TENDERER                                                                           | 119        |
| <b>ANNEX C – CONDITIONS FOR USE OF AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM</b> | <b>121</b> |
| 1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM                                     | 121        |
| 2. REGISTERED TENDERERS AND NOTICES                                                              | 121        |
| 3. AUSTENDER HELP DESK                                                                           | 121        |
| 4. PREPARING TO LODGE A TENDER ELECTRONICALLY                                                    | 122        |
| 5. ELECTRONIC LODGEMENT PROCESS                                                                  | 123        |
| 6. LATE TENDERS, INCOMPLETE TENDERS AND CORRUPTED FILES                                          | 124        |
| 7. PROOF OF LODGEMENT                                                                            | 124        |
| 8. AUSTENDER SECURITY                                                                            | 124        |
| <b>PART 6 - STANDARD CONTRACT CONDITIONS</b>                                                     | <b>125</b> |

## PART 5 – STANDARD TENDER CONDITIONS

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

### 1. DOCUMENTS THAT MUST BE LODGED

#### 1.1 Tenders must be lodged either:

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

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

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

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

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

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

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

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

- 1.8 It is a condition of this RFT that each Tender must remain valid and available for acceptance by AusAID for the **Tender Validity Period** specified in the Tender Particulars (**Part 1 Clause 1** of this RFT).
- 1.9 A person or persons having authority to lodge the Tender and enter into a contract on behalf of the Tenderer must sign the Tenderer Declaration (**Annex B of this Part**).
- 1.10 AusAID may extend the **Closing Time** at its sole and absolute discretion, and will issue an Addendum notifying any decision to extend.

### Conditions Applying to Electronic Tender Lodgement

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

### Conditions Applying to Hard Copy Tender Lodgement

- 1.15 For hard copy lodgement, the Tenderer is responsible for the delivery of their Tender. The Tender must be placed in AusAID's **Canberra Tender Box**. The Tender must be delivered during **Business Hours** by the **Closing Time**. Failure to submit a Tender in accordance with this clause may render the Tender liable to rejection.
- 1.16 The Original Tender document and any copies requested should be bound using a plastic comb binding, and should contain no plastic page separators.
- 1.17 The Tender should be endorsed with the name of the Project and marked: "Tender Box: Attention **Contact Person**." The Tenderer's postal address and fax number should be provided on the outside of the Tender.

## 2. TENDERER ENQUIRIES

- 2.1 Any enquiries that Tenderers may have must only be directed to the **Contact Person** specified in the Tender Particulars.
- 2.2 If a Tenderer:
- (a) finds any discrepancy, error or omission in the terms and conditions of the RFT, including of the Contract Conditions; or
  - (b) wishes to make any enquiry, including seeking clarification, of the RFT, including of the Contract Conditions,

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

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

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

### 3. **LATE TENDERS**

#### **Conditions Applying to Tenders Lodged Electronically**

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

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

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

#### **Conditions Applying to Tenders Lodged in Hard Copy**

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

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

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

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

### 4. **NON-CONFORMING TENDERS**

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

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

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

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

## 5. **CLARIFICATION OF TENDERS**

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

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

5.2 Clarifications are provided on the terms of the RFT.

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

## 6. **AMENDMENT OF THE RFT**

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

## 7. **ASSESSMENT OF TENDERS**

7.1 Tenders will be assessed on the following basis:

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

- (b) financial

to achieve the best value for money outcome.

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

### **Technical Assessment**

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

7.4 AusAID may invite a Tenderer (shortlisted or otherwise) to give AusAID a short presentation and be interviewed by the TAP. Specified Personnel, such as the proposed in-country team leader and the project director, will be required to attend at the presentation. If Specified Personnel are unable to attend, a teleconference presentation may be arranged. Specified Personnel will be required to answer any questions asked by the TAP. The TAP



will be convened in Canberra and the costs of the Tenderer's (and its personnel's) attendance must be borne by the Tenderer.

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

These other factors have not been allocated any specific weightings.

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

### **Goods and Services Tax**

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

### **Insurances**

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

## **Project Vehicles**

- 7.12 For the purposes of this clause, “Project Vehicles” are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Project and that are provided primarily for Contractor Personnel use for Project activities. Vehicles purchased by the Project, but handed over to the Partner Country immediately (where maintenance and insurance are Partner Country responsibilities and Contractor Personnel do not use the vehicles or only use them on an exceptional basis) are not considered Project Vehicles for the purposes of requiring a financial contribution by the Contractor.
- 7.13 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute \$250.00 for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor’s invoices.
- 7.14 The Contractor must abide by the following requirements with regards to Project Vehicles:
- (a) Project demands must always take precedence over private use;
  - (b) the Contractor must ensure that any persons driving the Project Vehicle must have a current valid international or Partner Country drivers license for the class of Project Vehicle;
  - (c) the Contractor is responsible for ensuring Project Vehicles are appropriately insured;
  - (d) the Contractor is responsible for ensuring that seat belts are fitted and must make every effort to ensure that they are worn at all times by drivers and all passengers;
  - (e) the Contractor is responsible for any costs incurred in the event of an accident while the Project Vehicle is being privately used; and
  - (f) the Contractor must ensure that Project Vehicles are serviced in accordance with manufacturer’s requirements.

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

## **Technical proposal format**

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

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

## **Curricula vitae**

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

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

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

“I, *[insert name]*, declare that:

- (a) the information provided in this CV is accurate and hereby authorise the Commonwealth to make whatsoever inquiries it may consider reasonable and necessary to undertake in the course of the Tender assessment in relation to the information I have provided in this CV or any other matter which may relate to my suitability for the position for which I have been nominated; and
- (b) I am available to participate in the Project in the role in which I have been nominated in the Tender for the period or periods indicated in the Tender”.
- (c) I have not been convicted of an offence of, or relating to, bribery of a public official, nor am I subject to any proceedings which could lead to such a conviction.

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

## **Referees**

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

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

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

- 7.20 Tenderers must further ensure that nominated referees:
- (a) are available to be contacted in the 3 week period after the **Closing Time**; and
  - (b) are able to provide comments in English.
- 7.21 AusAID reserves the right to check with nominated referees and with other persons as AusAID chooses, the accuracy of the information and quality of work performed.

## 8. **JOINT VENTURES AND CONSORTIUMS**

- 8.1 AusAID intends to contract with a single legal entity.
- 8.2 In the case of a joint venture or consortium that does not constitute a single legal entity, AusAID will contract with the lead joint venture or consortium member that is required to be nominated by the tenderer.
- 8.3 Tenders by a joint venture or consortium must be submitted on the basis that details on the activities to be performed and responsibility assumed by each party of the joint venture or consortium must be clearly specified in the body of the text in **Tender Schedule A**.
- 8.4 AusAID may require parent company guarantees from the parent companies of parties to a joint venture or consortium.

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

- 9.1 Tenders involving two or more parties who have not formed a single legal entity will only be accepted if the Tender is submitted on the basis that one party, the Tenderer, is intended to act as the prime contractor and any other party becomes a sub-contractor known as an “Associate”.
- 9.2 Tenders involving Associates will be assessed on the basis of that arrangement. Tenders must include:
- (a) details on the activities to be performed and responsibilities assumed by each party where Associates are involved must be described in the body of the text of **Tender Schedule A**; and
  - (b) assurance to AusAID from an authorised representative of the Associate of their corporate commitment to and involvement in the Project in the form of a single page Letter of Association in a separate annex to **Tender Schedule A**.

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

- 9.3 In addition to Associates, Tenderers are required to include detailed information on other work to be sub-contracted (excluding Specified Personnel) and proposed sub-contractors, where these are reasonably known at the time of the Tender and have expressed their willingness to be involved in the Project. These details must also be included in a separate annex to **Tender Schedule A** in the form described in **Clause 9.4 below**.
- 9.4 Letters in which organisation’s express their willingness to be involved with the Tenderer in the Project as a sub-contractor must be limited to a single page per organisation and include details on the broad skills or areas in which the organisation may add value.

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

## 10. **OWNERSHIP OF TENDERS AND RFT**

10.1 All Tenders become the property of AusAID on lodgement.

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

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

10.4 Copyright in the RFT is reserved to AusAID.

## 11. **CONFLICT OF INTEREST**

11.1 Tenderers must:

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

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

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

- (a) enter into discussions to seek to resolve such conflict of interest; or
- (b) disregard the Tender submitted by such a Tenderer; or
- (c) take any other action that AusAID considers appropriate.

## 12. **TENDERING CONDUCT**

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

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

## 13. **INELIGIBILITY TO TENDER**

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

- 13.2 Tenderers warrant by submitting a tender that the Tenderer, and any subcontractor of the Tenderer, are not listed on a World Bank List. Tenderers must also state in their tender whether the Tenderer or any subcontractor of the Tenderer is listed on any similar list maintained by any other donor of development funding (“**Relevant List**”) or are subject to any proceedings which could lead to listing on a World Bank List or listing on any Relevant List. Tenderers must also immediately notify AusAID where the Tenderer or any of their subcontractors becomes listed on a World Bank List or Relevant List, or subject to proceedings which may lead to such a listing, after the tender is submitted to AusAID.
- 13.3 AusAID will exclude any tender where the Tenderer is in breach of the warranty, or does not disclose any circumstance required under **Clause 13.2**. AusAID also reserves the right to exclude any tender, where the Tenderer or a subcontractor of the Tenderer becomes listed on a World Bank List or Relevant List, or is subject to proceedings which could lead to such a listing.
- 13.4 Tenderers should note that if they tender in breach of this **Clause 13**, or are subsequently listed on a World Bank List or Relevant List, AusAID may terminate any contract subsequently entered into with that Tenderer.
- 13.5 For the purpose of this **Clause 13**, a reference to a Tenderer or a subcontractor of a Tenderer, includes any company in the same group as the Tenderer or the subcontractor (including but not limited to, related bodies corporate of the Tenderer or subcontractor within the meaning of the *Corporations Act 2001*) and parties with whom the Tenderer or subcontractor is associated in respect of this Tender.
14. **AusAID’s RIGHTS**
- 14.1 As a Commonwealth Government agency, all AusAID procurement is subject to the Commonwealth Procurement Guidelines. The core principle of Commonwealth procurement is to achieve value for money. AusAID is also bound to conduct its procurement in an ethical, accountable, transparent, efficient and effective manner.
- 14.2 AusAID reserves the right to:
- (a) seek Tenders from any organisation;
  - (b) accept or reject any Tender;
  - (c) terminate, extend or vary its procurement process for the Services;
  - (d) request clarification in relation to a Tender;
  - (e) seek information or negotiate with any organisation that has not been invited to submit a Tender;
  - (f) terminate negotiations with the preferred Tenderer and commence negotiations with any other Tenderer;
  - (g) evaluate Tenders as AusAID sees appropriate; and
  - (h) negotiate with any one or more Tenderers.

## 15. **TENDERER'S ACKNOWLEDGEMENT**

### 15.1 A Tender is submitted on the following basis:

- (a) no legal obligation or agreement whatsoever is intended to be or is created between AusAID and any Tenderer by virtue of the tender process (including but not limited to statements contained in this RFT) unless and until contract negotiations are completed and a formal written agreement acceptable to AusAID is entered into and executed by an authorised officer of AusAID and by the successful Tenderer, if any;
- (b) the Tenderer acknowledges and agrees that AusAID, its employees, agents and advisers are not, and will not be responsible, or liable for the accuracy or completeness of any information contained in this RFT; and
- (c) the Tenderer is responsible for all costs of and incidental to the preparation and delivery of the Tender, including obtaining this RFT, or any subsequent stage of the procurement process, including answering any queries and providing any further information sought by AusAID.

## 16. **DEBRIEFING OF TENDERERS**

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

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

## 17. **AUSTRALIAN GOVERNMENT AND AUSAID LAWS AND POLICIES**

### 17.1 Freedom of Information

- (a) The *Freedom of Information Act 1982* gives members of the public rights of access to official documents of the Australian Government and its agencies. The *Freedom of Information Act 1982* extends, as far as possible, the right of the Australian community to access information (generally documents) in the possession of the Australian Government, limited only by considerations of the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.
- (b) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Freedom of Information Act 1982* on their participation in this RFT process and any subsequent contract.

### 17.2 Privacy

- (a) The *Privacy Act 1988* establishes a national scheme providing, through codes of practice adopted by private sector organisations and the National Privacy Principles, for the appropriate collection, holding, use, correction, disclosure and transfer of personal information by private sector organisations.
- (b) The Draft Contract provides that the Contractor will comply with the *Privacy Act 1988*, including the Information Privacy Principles and the National Privacy

Principles whether or not the Contractor is an organisation subject to the *Privacy Act 1988*.

- (c) The Contractor acknowledges that the Privacy Act 1988 reflects the principles of the International Covenant on Civil and Political Rights and OECD Guidelines, in particular, the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.
- (d) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Privacy Act 1988* on their participation in this RFT process and any subsequent contract.

#### 17.3 Access by Australian National Audit Office

- (a) Attention of Tenderers is drawn to the *Auditor-General Act 1997* which provides the Auditor-General, or an authorised person, with a right to have, at all reasonable times, access to information, documents and records.
- (b) In addition to the Auditor-General's powers under the *Auditor-General Act 1997*, the Draft Contract provides that the Contractor will provide the Auditor-General, or an authorised person, access to information, documents, records and agency assets, including those on the Contractor's premises. Such access will apply for the term of the contract and for a period of seven years from the date of expiration or termination.
- (c) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997* on their participation in the RFT process and any subsequent contract.

#### 17.4 Access by Ombudsman

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

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

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



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

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

- (a) AusAID will exclude from consideration any Tender from a Tenderer who is listed:
- (b) by the Minister for Foreign Affairs under the *Charter of the United Nations Act 1945* and/or listed in regulations made under Division 102 of the *Criminal Code Act 1995* (Cth). Further information about listed persons and entities is available from the Department of Foreign Affairs and Trade website at [www.dfat.gov.au/icat/UNSC\\_financial\\_sanctions.html](http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html) and from <http://www.nationalsecurity.gov.au/>
- (c) by the World Bank on its “Listing of Ineligible Firms” or “Listings of Firms, Letters of Reprimand” posted at [www.worldbank.org](http://www.worldbank.org) (the “World Bank List”) and/or any similar list maintained by any other donor of development funding.

#### 17.7 Other Australian Government and AusAID Policies

- (a) Tenderers should familiarise themselves with AusAID policies including:
  - (i) the policy *Gender Equality in Australia’s Aid Program – Why and How* (March 2007). This document is available on AusAID’s website at <http://www.ausaid.gov.au/publications/default.cfm>;
  - (ii) AusAID’s policy on the environment as set out in the *Environmental Management Guide for Australia’s Aid Program*. This document is available on AusAID’s website at <http://www.ausaid.gov.au/keyaid/envt.cfm>.
  - (iii) AusAID’s *Child protection policy*, in particular the child protection compliance standards at Attachment 1 to the policy. This document is available on AusAID’s website at <http://www.ausaid.gov.au/publications/default.cfm>.
  - (iv) any other policies published from time to time on <http://www.ausaid.gov.au> or as otherwise notified to Tenderers.

### 18. FURTHER REQUIREMENTS

- 18.1 Tenderers should be aware that current employees of AusAID cannot be included in Tenders for AusAID projects. Former AusAID employees may be included in Tenders if doing so does not represent a breach of conflict of interest. See AusAID’s Frequently Asked Questions website for further information: [www.ausaid.gov.au/business/frequent.cfm](http://www.ausaid.gov.au/business/frequent.cfm).
- 18.2 Tenderers should note that the Commonwealth Procurement Guidelines require that Commonwealth agencies must not enter into agreements with suppliers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not paid the claim. AusAID will reject submissions from tenderers in this position.

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

20. **CONTRACT PLANS**

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

21. **APPLICABLE LAW**

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

## ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION

1. AusAID reserves the right to take into account in the assessment of this Tender the past performance, in previous AusAID and non-AusAID activities, or activities of:
  - (a) any Tenderer; and
  - (b) any member of the proposed personnel,in its capacity as:
  - (c) contractor, consultant or sub-contractor;
  - (d) an associate or employee of a contractor, consultant or sub-contractor; or
  - (e) a joint venture partner.
2. AusAID may:
  - (a) include in the assessment any contractor performance information contained in any internal AusAID contractor performance reporting systems in relation to performance of the Tenderer or proposed management, administrative and Project personnel on previous AusAID activities, providing the contractor has seen the report and has had reasonable opportunity to comment; and
  - (b) take into account relevant performance information provided by external referees in relation to a Tenderer or proposed personnel member obtained by AusAID as a result of inquiries made within the previous 12 months.
3. AusAID reserves the right to use any relevant information obtained in relation to a Tenderer or proposed personnel member obtained either during the Tender period or within the previous 12 month period by providing it to the Technical Assessment Panel (TAP) or to any other relevant person for the purposes of Tender assessment, and such information may be taken into account in the course of assessment of the Tender by the TAP and AusAID. Where information has been received in accordance with paragraph 2 (a) above, this may also be introduced into the TAP process.
4. AusAID may, at any time, make independent inquiries of:
  - (a) any person or entity which it reasonably believes to have actual knowledge of the performance of the Tenderer or proposed personnel member/s on a previous project or activity, whether or not that person or entity is nominated in the Tender as a referee for the Tenderer or proposed personnel member; and
  - (b) any Commonwealth Government department, agency or other government entity in Australia whether Commonwealth or State, or any other country, including law enforcement agencies in relation to a person who is proposed for inclusion in a Tender or a Tenderer.
5. AusAID may request a Tenderer to provide additional or clarifying information in relation to information obtained during the assessment process following the **Closing Time** for the purpose of assessment of the Tender.

6. Information obtained as a result of inquiries made by AusAID in relation to performance on previous activities will be sought on a confidential basis and AusAID shall not be obliged to disclose the content or source of prior performance information about a Tenderer or individual to any person.
7. AusAID shall not be liable upon any claim, demand, proceeding suit or action by any Tenderer or any proposed personnel member in relation to any matter, thing or issue arising out of or in any way in relation to the collection of information from any source or the use of any information collected pursuant to this Annex in the Tender assessment process.

## ANNEX B – TENDERER DECLARATION

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

### 1. DEFINITIONS

#### 1.1 In this declaration:

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

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

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

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

### 2. BASIS OF DECLARATION

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

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

### 3. THE OFFER

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

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

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

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

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

- 3.6 I agree:
- (a) that the Tenderer will be bound by this Tender for the Tender Validity Period of 180 days after the **Closing Time**; and
  - (b) that this Tender may be accepted by AusAID at any time before the expiration of that period or any additional period to which we may agree.
- 3.7 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.
- 3.8 I understand that AusAID is not bound to accept the lowest priced or any Tender.
- 3.9 I warrant that in preparing the Tender for the Services the Tenderer did not act in any way which did or could have had the effect of reducing the competitiveness of the tender process for the Services. In particular I warrant that the Tenderer did not engage in:
- (a) any discussion or correspondence with other tenderers concerning the amount of the Tender;
  - (b) any collusive tendering or other anti-competitive practices with any of the other Tenderers or any other person; or
  - (c) any conduct or have any arrangement or arrive at any understanding with any of the other Tenderers.
- 3.10 **[This clause applies to government owned Tenderers only.]** I warrant that in preparing the Tender, the Tenderer has complied with the principles of competitive neutrality.
- 3.11 I warrant that the Tenderer, and any subcontractor of the Tenderer are not:
- (a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of this RFT;
  - (b) listed on any similar list maintained by any donor of development funding (Relevant List), or;
  - (c) subject to any proceedings which could lead to listing on a World Bank List or listing on a Relevant List.
- 3.12 Neither the Tenderer nor any of its employees, agents or contractors have been convicted of an offence of, or relating to bribery of a public official, nor are they subject to any proceedings which could lead to such a conviction.
- 3.13 I undertake that the Tenderer will not permit any of its employees, agents or contractors, to work with children if they pose an unacceptable risk to children's safety or well being.
- 3.14 No employees of the Tenderer, or its agents or contractors, who have been nominated in Project positions that involve working with children, have been convicted of a criminal offence relating to child abuse, nor are they subject to any proceedings which could lead to such a conviction.
- 3.15 Neither the Tenderer nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.







## **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](mailto:tenders@finance.gov.au)

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

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

##### **Virus Checking**

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

##### **Tender File Formats, Naming Conventions and Sizes**

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

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

#### **Scanned or Imaged Material, including Statutory Declarations**

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

### **5. ELECTRONIC LODGEMENT PROCESS**

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

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

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

## 7. **PROOF OF LODGEMENT**

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

## 8. **AUSTENDER SECURITY**

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

## **PART 6 - STANDARD CONTRACT CONDITIONS**

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

## **PART B – STANDARD CONTRACT CONDITIONS**

### **CONTENTS**

|                                                           |            |
|-----------------------------------------------------------|------------|
| <b>PART B – STANDARD CONTRACT CONDITIONS</b>              | <b>127</b> |
| 1. INTERPRETATION                                         | 127        |
| 2. SCOPE OF CONTRACT                                      | 132        |
| 3. AUSAID’S OBLIGATIONS                                   | 132        |
| 4. NON-EXCLUSIVITY                                        | 132        |
| 5. PROVISION OF SERVICES                                  | 132        |
| 6. EARLY NOTIFICATION                                     | 133        |
| 7. CONTRACTOR PERSONNEL                                   | 134        |
| 8. SPECIFIED PERSONNEL                                    | 134        |
| 9. PROJECT VEHICLE CONTRIBUTION                           | 136        |
| 10. PROCUREMENT SERVICES                                  | 136        |
| 11. SUB-CONTRACTING                                       | 137        |
| 12. CONTRACT AMENDMENTS AND VARIATION                     | 138        |
| 13. EXTENSION OF TIME                                     | 141        |
| 14. HANDOVER                                              | 142        |
| 15. ACCOUNTS AND RECORDS                                  | 143        |
| 16. REPORTS                                               | 143        |
| 17. REVIEWS                                               | 144        |
| 18. AUDITS                                                | 144        |
| 19. ACCESS TO THE CONTRACTOR’S PREMISES, DATA AND RECORDS | 145        |
| 20. PAYMENT                                               | 145        |
| 21. GOODS AND SERVICES TAX                                | 147        |
| 22. INTELLECTUAL PROPERTY RIGHTS                          | 148        |
| 23. INTELLECTUAL PROPERTY RIGHTS INDEMNITY                | 148        |
| 24. MORAL RIGHTS                                          | 148        |
| 25. CONFIDENTIALITY                                       | 148        |
| 26. PRIVACY                                               | 149        |
| 27. AusAID USE OF CONTRACT INFORMATION                    | 150        |
| 28. PUBLICITY                                             | 150        |
| 29. WARRANTIES                                            | 151        |
| 30. PERSONNEL SECURITY                                    | 151        |
| 31. TERMINATION FOR CONTRACTOR DEFAULT                    | 152        |
| 32. TERMINATION FOR CONVENIENCE                           | 154        |
| 33. INDEMNITY                                             | 154        |
| 34. INSURANCE                                             | 155        |
| 35. CONFLICT OF INTEREST                                  | 156        |
| 36. FRAUD                                                 | 156        |
| 37. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES         | 159        |
| 38. INVESTIGATION BY THE OMBUDSMAN                        | 160        |
| 39. RESOLUTION OF DISPUTES                                | 161        |
| 40. NOTICES                                               | 161        |
| 41. MISCELLANEOUS                                         | 162        |

## 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](http://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](http://www.apsc.gov.au)).

**"Associates"** means an organisation or organisations whom the Contractor identified in its tender for the Project as an associate or joint venturer or consortium member to provide the Services.

**"Auditor-General"** has the meaning set out in the *Auditor-General Act 1997*.

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

- (a) is designated by AusAID as confidential; or
- (b) the Contractor knows or ought to know is confidential;
- (c) is comprised in or relating to the Contract Material, the Data, any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID, or the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;
- (d) is personal information under the *Privacy Act 1988*, but does not include this Contract or information which:
- (e) is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation; or
- (f) has been independently developed or acquired by the Contractor, as established by written evidence.

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

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

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

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



departments. Details are available at:

[http://www.finance.gov.au/procurement/procurement\\_guidelines.html](http://www.finance.gov.au/procurement/procurement_guidelines.html).

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

**"Contract Conditions"** means the provisions contained in Part A **"Project Specific Conditions"** and Part B **"Standard Conditions"** of the Contract excluding the Schedules and any annexes.

**"Contract Material"** means all material created or required to be developed or created as part of, or for the purpose of performing, the Services, including documents, equipment, information and data stored by any means.

**"Contractor Personnel"** means personnel either employed by the Contractor or Associates, engaged by the Contractor or Associates on a sub-contract basis, including the Specified Personnel, or agents of the Contractor or Associates engaged in the provision of the Services.

**"Control"** has the meaning given to that term in the *Corporations Act 2001*.

**"Cost"** or **"Costs"** means any actual costs or expenses.

**"Criminal Record Check"** means a check of an individual's criminal history record, conducted by the police or other authority responsible for conducting such checks.

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

**"Director of Equal Opportunity for Women in the Workplace"** means the person so named in section 9 of the *Equal Opportunity for Women in the Workplace Act 1999*.

**"Dispute Notice"** means a notice of dispute given by one Party to the other Party under this Contract.

**"Document"** includes:

- (a) any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) a disc, tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device.

**"Encumbrance"** means any lien, mortgage, charge or third party right or interest.

**"Fees"** means the fees for the Services set out in **Schedule 2**, including Reimbursable Costs.

**"Force Majeure Event"** means any of the following where they are beyond the reasonable control of the Contractor or AusAID and where they make it impossible to perform the Contract obligation:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;

- (b) acts of war (whether declared or not), invasion, acts of foreign enemies, mobilisation, requisition, or embargo;
- (c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution, or military usurped power, or civil war; and
- (d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosion, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly.

"**GST**" means the goods and services tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"**Intellectual Property**" means business names, copyrights, patents, trade marks, service marks, trade names, designs, and similar industrial, commercial and intellectual property.

"**Loss**" or "**Losses**" means any loss, losses, damage, liability, cost or expense including legal expenses on a solicitor and own client basis.

"**MOU**" or "**Treaty**" (if any) means the Memorandum of Understanding or treaty in relation to development cooperation, including any related "**Subsidiary Arrangement**" entered into between AusAID and the government of the Partner Country which deals with a number of governmental arrangements relevant to this Contract.

"**NAA**" means National Archives of Australia.

"**Partner Government**" means the Government of the Partner Country.

"**Party**" means AusAID or the Contractor.

"**Personal Information**" means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, as set out in section 6 of the *Privacy Act 1988* (Cth).

"**Police Clearance Certificate**" means the certificate showing the results of a "**Criminal Record Check**", issued by the police or other authority responsible for conducting such checks.

"**Privacy Commissioner**" means the person so named in section 19 of the *Privacy Act 1988* (Cth).

"**Prior Material**" means all material developed by the Contractor or a third party independently from the Services whether before or after commencement of any Services.

"**Project Administration and Equipment**" means goods and services, such as office furniture, computers, vehicles, communications, utilities and office rent required by the Contractor for the day-to-day administration of the Project.

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

**"Project Start Date"** means the date specified in the Project Specific Conditions **Clause 2** (Project Commencement) as the date by which the Contractor must commence the Services.

**"Project Supplies"** means goods provided to the Partner Country by the Contractor during the course of the Project as required by this Contract.

**"Reimbursable Costs"** means any costs incurred by the Contractor for which AusAID shall reimburse the Contractor as specified in **Schedule 2**.

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

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

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

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

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

**"Supplies"** means Project Supplies and Project Administration and Equipment purchased by the Contractor for use in this Project.

**"Tax"** means any income tax, capital gains tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, withholding tax, goods and services tax, consumption tax, value added tax, municipal rates, stamp duties and other fees, levies and impositions, assessed or charged, or assessable or chargeable by or payable to any governmental taxation or excise authority and includes any additional tax, interest, penalty, charge, fee or other amount imposed or made on or in relation to a failure to file a relevant return or to pay the relevant tax.

**"Working With Children"** means working in a position that involves regular contact with children, either under the position description or due to the nature of the work environment.

**"World Bank List"** means a list of organisations maintained by the World Bank in its "Listing of Ineligible Firms" or "Listings of Firms, Letters of Reprimand" posted at: <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>

## **General**

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

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

- (g) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- (h) a word denoting the singular number includes the plural number and vice versa;
- (i) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;
- (j) a word denoting a gender includes all genders;
- (k) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Contract;
- (l) where used in the Contract the words “including” or “includes” will be read as “including, without limitation” or “includes, without limitation” (as the case may be);
- (m) a reference to any contract or document is to that contract or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (n) “shall” and “must” denote an equivalent positive obligation;
- (o) a reference to any Party to this Contract, or any other document or arrangement, includes that Party's executors, administrators, substitutes, successors and permitted assigns; and
- (p) a reference to "dollars" or "\$" is to an amount in Australian currency.

## **1.2 Counterparts of the Contract**

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

## **1.3 Contract prevails**

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

## **1.4 Inconsistency**

If there is any inconsistency (whether expressly or to be implied from the Contract or otherwise) between the Project Specific Conditions and the Standard Conditions, the Project Specific Conditions are to be read subject to the Standard Conditions and the Standard Conditions prevail to the extent of the inconsistency, unless explicitly amended in the Project Specific Conditions.

## 2. **SCOPE OF CONTRACT**

- 2.1 The Contract sets out the terms and conditions on which the Contractor agrees to secure the aims and objectives of the Project supplying, or procuring the supply of, the provision of the Services.
- 2.2 The activities to be performed and responsibilities assumed by the Contractor are detailed in **Schedule 1**.
- 2.3 Neither the Contractor, nor Contractor Personnel or Associates, shall by virtue of this Contract be, or for any purpose be deemed to be, and must not represent themselves as being, an employee, partner or agent of AusAID.

## 3. **AUSAID'S OBLIGATIONS**

- 3.1 AusAID must:
  - (a) make payments to the Contractor in accordance with the Contract; and
  - (b) perform, fulfill, comply with, submit to and observe the terms and conditions of the Contract, which are to be performed, fulfilled, complied with, submitted to or observed by AusAID.

## 4. **NON-EXCLUSIVITY**

- 4.1 The Contractor may not be the exclusive provider of services to AusAID similar to those provided under this Contract.
- 4.2 The Contractor must cooperate with any other service provider appointed by AusAID to ensure the integrated and efficient carrying on of the Project and must provide such reasonable assistance to other service providers as AusAID may reasonably request.

## 5. **PROVISION OF SERVICES**

- 5.1 In providing the Services, the Contractor must:
  - (a) perform the Services as described in **Schedule 1** for the term of the Contract, unless the Contract is terminated earlier;
  - (b) accept and implement AusAID's reasonable directions in relation to the management of the Project;
  - (c) use its best endeavours to ensure the spirit and intent of the Project are fully met by the Services, including acting within the spirit and intent of the Treaty, MOU or Subsidiary Arrangement;
  - (d) liaise and cooperate with AusAID, with the stakeholders, and the Australian Diplomatic Mission in or having responsibility for the Partner Country especially in relation to security, personal safety and welfare matters;
  - (e) subject to any flexibility permitted in the Contract, ensure all timing obligations included in the Contract are fully met;
  - (f) within the term of the Contract assist AusAID in the maintenance and ongoing implementation of the Services, including monitoring and evaluating the Services to

ensure results accord with the aims of the Project, and provide necessary handover assistance to any subsequent service provider and to the Partner Country;

- (g) ensure that the Services are provided to a standard which shall promote Australia's international reputation and standing as a source of skill and expertise in the provision of international assistance;
- (h) perform the Services in a manner which, as far as possible, establishes and maintains a harmonious, cooperative and effective working relationship with stakeholders and any personnel from the Partner Country involved in the Project;
- (i) if a Risk Management Plan for the Project has not been prepared prior to the Project Start Date, the Contractor must prepare a Risk Management Plan within 30 days after the Project Start Date. If requested by AusAID, the Contractor will make the Risk Management Plan available to AusAID;
- (j) whether a Risk Management Plan is prepared under paragraph (i) above, or was prepared prior to the Project Start Date (for example, as part of the Contractor's tender for the Project or as part of the Project Design Document or similar document), the Contractor must maintain and update the Risk Management Plan, as necessary, to ensure that at all times it adequately reflects Project risks and includes risk-minimisation strategies. The Contractor must promptly advise AusAID of any significant risks in accordance with **Clause 6 below**. The Contractor must also ensure the Risk Management Plan contains provisions for advance notification of AusAID of risks that may lead to disruption or delay of the Project;
- (k) liaise with, and obtain all necessary consents, approvals and authorisations from any public and other authorities in the Partner Country;
- (l) provide adequate support resources to secure the aims and objectives of the Project;
- (m) be responsive to the changing needs and environment of the Partner Country; and
- (n) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity.

5.2 Without limiting its other obligations and liabilities under this Contract, the Contractor must remedy at its cost any failure to comply with its obligations to perform the Services in accordance with this Contract as soon as practicable after becoming aware of the failure.

5.3 The Parties recognise that the performance of the Services may be affected by changes to relevant policy in the Partner Country, and that some flexibility in the performance of the Services shall be required.

## 6. **EARLY NOTIFICATION**

6.1 The Contractor must report immediately, and in any event within seven (7) days, to AusAID on any actual, perceived or anticipated problems or risks that may have a significant effect on the achievement of the aims and objectives of the Project, on the cost to AusAID or on the delivery or operation of the Services. If the report is first given orally, the Contractor must promptly confirm the report in writing to AusAID. The Contractor must recommend to AusAID options to prevent or mitigate the impact of problems on the Project.

## **7. CONTRACTOR PERSONNEL**

- 7.1 The Contractor must ensure that Contractor Personnel are aware of, and must use its best endeavours to ensure Contractor Personnel comply with, the requirements of the Contract.
- 7.2 The Contractor must use its best endeavours to ensure that all Contractor Personnel conduct themselves in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct*.
- 7.3 The Contractor must use its best endeavours to ensure that no Contractor Personnel or their accompanying family members:
- (a) become involved in the political affairs of the Partner Country (unless citizens of the Partner Country);
  - (b) interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country); or
  - (c) share information known as a result of their work on, or relationship to, the Project, in a way that a reasonable person could foresee may be detrimental to the relationship between the Australian and Partner Governments.
- 7.4 The Contractor must not employ a currently serving Commonwealth employee in any capacity in connection with the Services without the prior written approval of AusAID.
- 7.5 The Contractor must ensure that media advertisements placed by the Contractor for personnel to fill a Project position acknowledge that the Project is funded by AusAID as part of the Australian Government's official overseas aid program.
- 7.6 AusAID may give notice to the Contractor requiring the Contractor to remove any Contractor Personnel from work in respect of the Services. The Contractor must promptly arrange for the removal of such Contractor Personnel from work in respect of the Services and their replacement (if required) with Contractor Personnel acceptable to AusAID.
- 7.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Contractor Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.
- 7.8 The Contractor must advise AusAID immediately in writing if any Contractor Personnel is arrested for, or convicted of, criminal offences relating to child abuse, or for accessing or possessing child pornography. AusAID may require Contractor Personnel under formal investigation in relation to such criminal offences to be suspended from duty or transferred to other duties during the investigation.
- 7.9 AusAID may give notice to the Contractor requiring the Contractor to temporarily suspend from duty, or transfer to other duties, any Contractor Personnel who are under criminal or internal investigation in relation to child abuse or accessing or possessing child pornography. The Contractor must comply promptly with any such notice.

## **8. SPECIFIED PERSONNEL**

- 8.1 The Contractor must provide all Specified Personnel for the Project and for the minimum periods specified in **Schedule 1**.

- 8.2 During the minimum periods specified in **Schedule 1**, the Long Term Advisers included in the Specified Personnel must be exclusively dedicated to the Project and only perform the duties required under this Contract unless otherwise agreed in writing by AusAID.
- 8.3 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:
- (a) are of good fame and character;
  - (b) are properly qualified for the tasks they are to perform;
  - (c) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner;
  - (d) are adequately briefed and understand the environment and culture of the Partner Country; and
  - (e) act in a fit and proper manner while they are carrying out work or performing duties under the Contract.
- 8.4 The Contractor must use its best endeavours to secure the availability of Specified Personnel for the term of the Contract. If a change to Specified Personnel is required the Contractor must provide AusAID with not less than 3 months prior written notice of such change except where circumstances beyond the reasonable control of the Contractor make the giving of such notice impracticable. Any proposed change to the Specified Personnel must only be made after written consent from AusAID and in accordance with the procedure set out in **Clause 8.8 below**.
- 8.5 Subject to **Clause 8.4 above**, Specified Personnel may be temporarily absent from the Project. Where Specified Personnel are unavailable for work in respect of the Contract, for any period in excess of 2 weeks, the Contractor must notify AusAID in writing immediately and, if requested, must provide replacement personnel acceptable to AusAID and the Partner Government at no additional charge and at the earliest opportunity and for the duration of the absence.
- 8.6 The costs incurred by the Contractors in providing temporary substitute personnel due to the absence of Specified Personnel are the responsibility of the Contractor.
- 8.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Specified Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.
- 8.8 Before appointing Specified Personnel to the Project, the Contractor must obtain AusAID's written approval. In seeking approval of proposed Specified Personnel the Contractor must provide to AusAID:
- (a) the full names, dates of birth, and nationalities of proposed personnel and their accompanying dependants;
  - (b) a statement demonstrating that the proposed personnel has the demonstrated skills and capacity to undertake the job specification of the position and duration of the proposed appointment;



- (c) a copy of the proposed person's curriculum vitae certified as accurate by the person and showing recent and relevant experience and formal qualifications including dates of award; and
- (d) assurances that the nominated personnel has no existing commitments (defined in relation to the commitments of the position and not the individual's commitment to a particular organisation), to other AusAID projects that will suffer detriment if accepted on this Project. If this is not the case AusAID may require further information before assessing the individual's suitability.

8.9 If the Contractor is unable to provide acceptable replacement Specified Personnel with equivalent qualifications and experience AusAID may seek a reduction in fees.

8.10 This clause is a fundamental term of the Contract, such that breach shall entitle AusAID to terminate the Contract in accordance with **Clause 31** and sue for damages.

## 9. **PROJECT VEHICLE CONTRIBUTION**

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

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

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

- (a) Project demands must always take precedence over private use;
- (b) the Contractor must ensure that any persons driving the Project Vehicle must have a current valid international or Partner Country drivers license for the class of Project Vehicle;
- (c) the Contractor is responsible for ensuring Project Vehicles are appropriately insured;
- (d) the Contractor is responsible for ensuring that seat belts are fitted and must make every effort to ensure that they are worn at all times by drivers and all passengers;
- (e) the Contractor is responsible for any costs incurred in the event of an accident while the Project Vehicle is being privately used; and
- (f) the Contractor must ensure that Project Vehicles are serviced in accordance with manufacturer's requirements.

## 10. **PROCUREMENT SERVICES**

10.1 In procuring all Supplies, the Contractor must:

- (a) determine what Supplies are required for proper implementation of the Services and advise AusAID;
  - (b) keep AusAID informed of ongoing requirements for Supplies in connection with the Project;
  - (c) implement procedures so that procurement is undertaken in a manner that is consistent with the Commonwealth Procurement Guidelines, in particular, observing the Core Principle of achieving value for money and the supporting principles;
  - (d) maintain complete and accurate records documenting the procedures followed in procuring, and the particulars of Supplies; and
  - (e) use its best endeavours to ensure Supplies are maintained including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed.
- 10.2 The Contractor shall bear the loss or damage in respect of Supplies until handover of Supplies to the Partner Government.
- 10.3 The Contractor must use its best endeavours to ensure all Supplies are free from defects in design, material, manufacture or workmanship. The Contractor must replace defective Supplies under warranty provisions or at its own cost.
- 10.4 The Contractor shall establish and maintain a Register of Assets which shall record any non-consumable Supplies valued at \$2,000 or more, which at a minimum contains the following information: reference identification number (which may be for example, a serial number, engine number or chassis number); description of the asset; date of procurement; cost; location; current status; and disposal or handover details.
- 10.5 The Register of Assets and associated documentation such as import documents, invoices and warranties shall be subject to audit by or on behalf of AusAID at any time and from time to time.
- 10.6 The Contractor must use the Supplies for purposes permitted under this Contract only and must ensure that the Supplies at all times remain free from any Encumbrance.

## 11. **SUB-CONTRACTING**

- 11.1 The Contractor may not sub-contract the whole of the Services. The sub-contracting of parts or elements of the performance of the Services is subject to compliance with the following requirements:
- (a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;
  - (b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;
  - (c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:

- (i) comply with relevant and applicable laws, regulations and development policies, including AusAID's *Child protection policy* (<http://www.aisaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>) and child protection compliance standards (Attachment 1 to the policy), both in Australia and in the Partner Country;
  - (ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;
  - (iii) be bound by the same obligations regarding **Clauses 15** (Accounts and Records), **18** (Audits), **19** (Access to Premises), **26** (Privacy), and **35.4** (Anti-corruption) **below** and as required by Project Specific Conditions **Clause 3** (Accounts and Records) as the Contractor; and
  - (iv) be bound by appropriate obligations in relation to ongoing software licensing, computer maintenance requirements and handover arrangements to the Partner Country;
- (d) if requested by AusAID, the Contractor must provide to AusAID an executed Deed of Novation and Substitution in the form at **Schedule 5** (Deed of Novation), contemporaneously with or within 10 Business Days of execution of the sub-contract by the Contractor;
  - (e) the sub-contract must include the right of AusAID, in the event of AusAID issuing a notice of substitution under the Deed of Novation at **Schedule 5** (Deed of Novation), to further novate the sub-contract to another contractor;
  - (f) the Contractor must maintain up-to-date records of the names of all sub-contractors engaged by the Contractor to perform part of the Services. If requested by AusAID, the Contractor must, within five (5) working days, provide to AusAID a copy of the records of sub-contractors' names, in the format specified by AusAID. The sub-contract must include the right of AusAID to disclose the name of the sub-contractor, in accordance with **Clause 27 (AusAID Use of Contract Information) below**;
  - (g) the Contractor must maintain records as to the performance of each of the sub-contractors engaged by the Contractor including details of any defects in such performance and the steps taken to ensure compliance with the Contract and provide to AusAID if requested; and
  - (h) if requested by AusAID, the Contractor must provide to AusAID a copy of any proposed or executed sub-contract.

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

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

## 12. **CONTRACT AMENDMENTS AND VARIATION**

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

## **Contract Amendment**

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

## **Contract Variation**

- 12.3 AusAID or the Contractor may propose variations to the manner of providing the Services or changes to the Project, at any time for the purpose of improving the delivery of the Services or, the efficiency, cost-effectiveness and development impact of the Services. These changes shall be subject to a “Variation Order” as described below.
- 12.4 The Contractor must prepare a “Variation Proposal” for any variation sought by AusAID, or the Contractor, at no extra cost to AusAID and this must be submitted to AusAID in a timely manner.
- 12.5 The Variation Proposal must include specific identification of the proposed change, associated cost implications, a cost/benefit and risk analysis, including of developmental impact improvements, a general plan for implementation of the change and a projected time schedule.
- 12.6 No proposed variation must take effect unless it is in writing, titled a “Variation Order” and signed by AusAID. A summary of changes effected by Variation Orders will be maintained in the form set out in **Schedule 4B** (Variation Summary Schedule).

## **Costing Variations**

- 12.7 If AusAID approves the Contractor’s Variation Proposal including any increase or decrease in the amount payable, implementation shall be effected by issuing a Variation Order in the form of **Schedule 4A** and the Contractor must promptly perform the variation.
- 12.8 If AusAID does not approve the Contractor’s cost estimate in the Variation Proposal and appropriate rates on which to cost the variation are not included in **Schedule 2**, the Parties undertake to negotiate a fair and reasonable amount within 20 Business Days.
- 12.9 In the event that the Parties cannot resolve a reasonable amount within 20 Business Days, either Party may seek to have an independent third party appointed pursuant to **Clause 39** (Resolution of Disputes), to determine a reasonable amount and the Parties agree that they shall be bound by that determination.
- 12.10 If AusAID does not approve the Contractor’s cost estimate in the Variation Proposal and there are appropriate rates included in **Schedule 2**, AusAID may nevertheless issue a Variation Order requiring the Contractor to carry out the variation in the form of **Schedule 4A** and subject to the appropriate rates and fees detailed **Schedule 2**.
- 12.11 Where no agreement can be reached, AusAID reserves the right to perform itself, or engage another service provider to perform, the services which were the subject of the Variation Proposal.

## **Omission of Services**

- 12.12 AusAID may issue a Variation Order omitting any part, though not the whole, of the Services. AusAID shall notify the Contractor in writing of its determination in respect of

the valuation of the omitted services. The value of the omitted Services will be determined in accordance with **Schedule 2** having regard to:

- (a) the Services omitted from the Contract;
- (b) any particular Payment Milestone affected by the omission;
- (c) other relevant payments; and
- (d) the extent of the work and/or inputs already performed or provided by the Contractor in respect of any such Payment Milestones.

12.13 AusAID will not be liable upon any claim by the Contractor as a result of any part of the Services being omitted, whether or not AusAID performs the omitted Services itself, or engages another service provider to carrying out the omitted Services.

12.14 If the Contractor disagrees with AusAID's determination of the value of the omitted Services, based on the rates included in **Schedule 2**, the Parties undertake to negotiate fair and reasonable amount within 20 Business Days.

12.15 In the event that the Parties cannot resolve a reasonable amount within 20 Business Days, either Party may seek to have an independent third party appointed pursuant to **Clause 39** (Resolution of Disputes), to determine a reasonable amount and the Parties agree that they shall be bound by that determination.

### **Suspension and rescheduling of Services**

12.16 AusAID may issue a Variation Order directing the Contractor to:

- (a) suspend for such time as AusAID thinks fit, the progress of the whole or any part of the Services; or
- (b) reschedule the performance of Services to a time determined by AusAID.

AusAID does not have a duty to exercise this right for the benefit of the Contractor.

12.17 If the suspension or rescheduling is due to:

- (a) an act, default or omission of the Contractor or Contractor Personnel, the Contractor will not be entitled to any Costs or Losses arising from the suspension; or
- (b) any other cause:
  - (i) the Contractor will be entitled to be paid any extra reasonable Costs incurred by it as a result of the suspension subject to the Contractor taking reasonable steps to mitigate the extra Costs incurred;
  - (ii) AusAID's liability under the payments provisions of **Schedule 2** shall, in the absence of an agreement to the contrary, abate proportionately to the reduction in the Services.

12.18 Upon receipt of a Variation Order suspending part or all of the Services, the Contractor must:

- (a) stop work as specified;

- (b) take all reasonable steps to minimise any Loss resulting from the suspension and to protect Supplies and Contract Material; and
- (c) continue work on any part of the Services not affected by the suspension.

12.19 The Contractor must promptly recommence the performance of the Services when so directed by AusAID.

### 13. EXTENSION OF TIME

13.1 Subject to **Clause 13.6 below** neither AusAID nor the Contractor shall be in breach of the Contract to the extent that performance of their Contract obligations is prevented by any of the following causes (“**Relevant Causes**”) that arise during the term of the Contract:

- (a) a Force Majeure Event;
- (b) a significant change in circumstances beyond the control of the Contractor;
- (c) an Australia-wide or Partner Country-wide industrial dispute; or
- (d) a change in the laws of Australia or the Partner Country that directly impacts on the provision of the Services.

13.2 Where in the Contractor’s reasonable opinion there is likely to be a delay in the Contractor’s discharging an obligation under the Contract because of a Relevant Cause the Contractor must:

- (a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;
- (b) give details of the likely effect on the Project and any Contractual implications;
- (c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;
- (d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances in the form of a Variation Proposal in accordance with **Clause 12.5 above**; and
- (e) use its best endeavours to continue to perform its obligations under the Contract.

13.3 AusAID must give consideration to the Contractor’s recommendations and request for an extension of time and as soon as practicable after receiving the request notify the Contractor in writing whether it has determined that a Relevant Cause has occurred and whether all or part of the request has been granted. AusAID’s approval of a request may be granted subject to conditions.

13.4 If AusAID approves in writing a request, the approval should be titled a “Variation Order” and recorded in the Variation Schedule, **Schedule 4B** (Variation Summary Schedule). The Contract shall be deemed to have been varied accordingly.

13.5 Even if the Contractor has not given notice under **Clause 13.2 above**, where AusAID considers that a delay has arisen, in whole or in part, because of an act or omission on the

part of AusAID, its employees or agents, AusAID may, by notice in writing to the Contractor, extend the time for performance of the relevant obligation of the Contractor.

- 13.6 Where AusAID has determined that a Relevant Cause has occurred, and the Contractor's inability to perform its obligations due to a Relevant Cause exceeds 45 Business Days, AusAID may:
- (a) notify the Contractor that the Contract is suspended for a specified period of time; or
  - (b) delete part of the Services; or
  - (c) immediately or thereafter terminate the Contract in whole or in part by providing notice in writing to the Contractor.
- 13.7 A notice of suspension, deletion or termination of the Contract under **Clause 13.6 above** takes effect on the date that the notification is received by the Contractor.
- 13.8 In the event of suspension, deletion or termination of Services or the Contract under **Clause 13.6 above** the Contractor may claim, Fees for Services performed as payable under **Schedule 2**, prior to the date of suspension, deletion or termination, on a pro rata basis and Costs that are reasonably and properly incurred by the Contractor in connection with the Contract to the extent to which those Costs are unavoidable as a direct consequence of the suspension, deletion or termination of the Contract in accordance with this clause. Any Cost must be substantiated to AusAID and must not include loss of profits or any other form of expectation loss.
14. **HANDOVER**
- 14.1 The Contractor must within 12 months of the Project Start Date draft a Handover Plan which includes all the functions to be performed to hand over the Project to the Partner Country in a manner which ensures the Partner Country is able to continue the Project and in particular to manage ongoing maintenance requirements as well as any other matters specified in **Schedule 1** and provide a copy to AusAID.
- 14.2 The Contractor must make changes to the Handover Plan as reasonably requested by AusAID and update the Handover Plan as necessary during the Project but at least annually and 6 months before the end of the Contract.
- 14.3 The Contractor must ensure that a finalised Handover Plan is provided to AusAID within seven (7) days of any early termination of the Project, or one month prior to the expected completion of the Project.
- 14.4 The Contractor must provide all reasonable assistance and cooperation necessary to, on expiration or termination of the Contract, facilitate the provision of the Services by AusAID or an alternative service provider. In particular the Contractor must:
- (a) deliver to AusAID or its nominee complete copies of all the Data, in a form and on a media approved by AusAID, and any other AusAID property including the Supplies held or used by the Contractor;
  - (b) either destroy or deliver to AusAID all copies of AusAID Confidential Information as required by AusAID;

- (c) if requested by the Partner Country, facilitate the assignment to the Partner Country of sub-contracts relating to Supplies, including for licensing and support of information technology and any construction work maintenance;
- (d) vacate the Project Office where this has been supplied by AusAID or the Partner Country;
- (e) co-operate with AusAID and, if requested, AusAID's nominee, and provide reasonable assistance relating to the transfer of any contracts to AusAID, its nominee or the Partner Country;
- (f) provide all information necessary for an alternative service provider to assume provision of the Services;
- (g) continue the provision of the Services for as long as reasonably requested by AusAID on the terms and conditions of the Contract;
- (h) cooperate with AusAID and any other service provider in the ongoing provision of services similar to the Services; and
- (i) allow AusAID to audit compliance with this clause.

## 15. **ACCOUNTS AND RECORDS**

15.1 The Contractor must at all times maintain full, true, separate and up-to-date accounts and records in relation to the Fees, Supplies and the Services. Such accounts and records must:

- (a) record all receipts and expenses in relation to the Supplies and Services, including those involving foreign exchange transactions;
- (b) be kept in a manner that permits them to be conveniently and properly audited;
- (c) enable the extraction of all information relevant to this Contract;
- (d) contain details of the disposition of Supplies as agreed to by AusAID such as replacement, write-off or transfer to the Partner Country; and
- (e) the Contractor shall provide to AusAID a statement of Project expenditure on a regular basis for the duration of the Project. The details of the timing and content of the statement of expenditure are defined in Part A Project Specific Contract Conditions.

15.2 Accounts and records must be provided for inspection by AusAID immediately upon the request of AusAID.

15.3 The accounts and records must be held for the term of this Contract and for a period of seven (7) years from the date of expiry or termination of this Contract.

## 16. **REPORTS**

16.1 The Contractor must ensure that all reports required in accordance with **Schedule 1**, provide the information required and conform with the quality and format requirements specified.

16.2 The Contractor is responsible for any extra costs occasioned by any clarifications, discrepancies, errors or omissions in reports provided to AusAID or other information



supplied in writing by the Contractor, provided such discrepancies, errors or omissions are not due to inaccurate information supplied in writing to the Contractor by AusAID.

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

## 17. **REVIEWS**

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

- 17.2 The Contractor must participate cooperatively in any reviews conducted by AusAID or its nominees. In addition the Contractor must respond in writing to any draft review report within 28 days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.

- 17.3 Reviews may be conducted of:

- (a) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services, including procurement and risk management procedures;
- (b) the accuracy and reliability of the Contractor's financial management systems;
- (c) the Contractor's compliance with their obligations under the Contract in relation to foreign exchange transactions;
- (d) the accuracy of the Contractor's reports in relation to the provision of the Services;
- (e) the Contractor's compliance with AusAID's *Child protection policy* and child protection compliance standards (Attachment 1 to the policy);
- (f) the Contractor's compliance with its Contractor Personnel, confidentiality and privacy obligations; or
- (g) any other matters relevant to the performance of any Services including user satisfaction.

- 17.4 Each Party must bear its own costs of any such reviews conducted by or on behalf of AusAID.

- 17.5 The requirement for, and participation in, reviews does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

## 18. **AUDITS**

- 18.1 Where AusAID has reasonable concerns regarding the Contractor's financial management systems AusAID must provide the Contractor with written notification of those concerns and what action is required of the Contractor. This may include:

- (a) that the Company Director must provide a Statutory Declaration confirming that they have sighted the necessary supporting documentation and confirm the veracity of the claim for payment;

- (b) providing AusAID with additional documentation to support the claim for payment; or
- (c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including invoicing procedures and practices.

18.2 The Contractor must respond to any notice received under **Clause 18.1 above** within 14 days.

18.3 Where the Contractor does not respond within 14 days, or the response does not alleviate AusAID's concern, AusAID reserves the right, if it has not already done so, to direct the Contractor to provide AusAID with certification from an independent auditor as described in **Clause 18.1(c) above**.

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

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

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

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

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

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

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

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

## 20. **PAYMENT**

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

- (a) AusAID's acceptance of the satisfactory completion of the Services or relevant Payment Milestone as specified in **Schedule 2**; and
  - (b) receipt of a correctly rendered invoice.
- 20.2 It is AusAID corporate practice to inform Contractors as soon as reasonably possible, and in any case within 30 days of receipt of notice of the completion of an identified output or provision of a report whether or not that output or report is accepted.
- 20.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.
- 20.4 The Contractor must make all foreign exchange transactions at arms length and at commercially competitive rates. Supporting documentation must be retained in accordance with Standard Conditions **Clause 15.1** (Accounts and Records) and may be audited by AusAID in accordance with Standard Conditions **Clause 17** (Reviews).
- 20.5 Where the Contractor is entitled to reimbursement for expenditure in a currency other than Australian dollars under this Contract, the Contractor must invoice AusAID for the equivalent Australian dollar amount as recorded by the Contractor in their general ledger converted at an exchange rate which is calculated in accordance with appropriate accounting standards.
- 20.6 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.
- 20.7 Subject to the Contract AusAID shall pay Reimbursable Costs within 30 days of receipt of a correctly-rendered invoice.
- 20.8 An invoice is correctly rendered if:
  - (a) the invoice details all Services provided against the Fees and records the amount payable in respect of each category of Services described in the Contract;
  - (b) the invoice details the Contractor's monthly contribution toward Project Vehicles in accordance with **Clause 9.2**;
  - (c) the invoice is based upon the calculation of Fees referred to in **Schedule 2**; and
  - (d) a company director of the Contractor, or their delegate has certified that the invoice:
    - (i) has been correctly calculated;
    - (ii) that the Services included in it have been performed in accordance with this Contract; and
    - (iii) in the case of Reimbursable Costs that these costs have been paid.
- 20.9 If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Contractor, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due from AusAID to the Contractor.
- 20.10 A payment by AusAID is not an admission of liability. In the event that AusAID makes a payment for the completion of a Payment Milestone or the procurement of Supplies or

inputs that AusAID subsequently learns have not been completed to the quality or performance specifications required or provided as required, the payment shall be deemed an overpayment and recoverable from the Contractor. Without limiting recourse to other available remedies, the overpayment may be offset against any amount subsequently due to the Contractor.

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

## 21. **GOODS AND SERVICES TAX**

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

## 22. **INTELLECTUAL PROPERTY RIGHTS**

- 22.1 Subject to **Clause 22.2**, the title to all Intellectual Property rights in or in relation to Contract Material shall vest upon its creation in AusAID. If required by AusAID, the Contractor must bring into existence, sign, execute or otherwise deal with any document which may be necessary to enable the vesting of such title or rights in AusAID.
- 22.2 **Clause 22.1** does not affect the ownership of Intellectual Property in any Prior Material incorporated into the Contract Material, but the Contractor grants to AusAID a permanent, irrevocable, royalty-free worldwide, non-exclusive licence to use, reproduce, adapt and otherwise exploit such Prior Material in conjunction with the Contract Material. The licence granted under this **Clause 22.2** includes the right of AusAID to sub-licence any of its employees, agents or contractors to use, reproduce, adapt and otherwise exploit the Prior Material incorporated into the Contract Material for the purposes of performing functions, responsibilities, activities or services for, or on behalf of, AusAID.
- 22.3 The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.
- 22.4 The Contractor must deliver all Contract Material to AusAID or to the Partner Government counterpart agency as may be directed in writing by AusAID.

## 23. **INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

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

## 24. **MORAL RIGHTS**

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

## 25. **CONFIDENTIALITY**

- 25.1 Subject to this clause, the Contractor must not, without the prior written approval of AusAID, make public or disclose to any person any AusAID Confidential Information. In giving written approval, AusAID may impose such terms and conditions as in AusAID's opinion are appropriate.
- 25.2 The Contractor must take all reasonable steps to ensure Contractor Personnel do not make public or disclose the AusAID Confidential Information and must promptly notify AusAID of any unauthorised possession, use or disclosure of AusAID Confidential Information.
- 25.3 The Contractor must ensure that any Contract Personnel who will have access to AusAID Confidential Information complete a written undertaking in the form set out at **Schedule 3**, relating to the non-disclosure of that information.

- 25.4 The Contractor may disclose AusAID Confidential Information:
- (a) to its legal advisers in order to obtain advice in relation to its rights under this Contract, but only to the extent necessary for that purpose;
  - (b) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the first-mentioned party; or
  - (c) if required in connection with legal proceedings,
- but in the case of (b) and/or (c) above, subject to the Contractor giving AusAID sufficient notice of any proposed disclosure to enable AusAID to seek a protective order or other remedy to prevent the disclosure.
- 25.5 The Contractor must not transfer AusAID Confidential Information outside Australia, except to the Partner Country, or allow parties outside Australia to have access to it, without the prior approval of AusAID.
- 25.6 The Contractor must use AusAID Confidential Information held, acquired or which the Contractor may have had access to in connection with this Contract only for the purposes of fulfilling its obligations under this Contract. Upon expiry or earlier termination of this Contract the Contractor must either destroy or deliver to AusAID all AusAID Confidential Information, as required by AusAID.
- 25.7 This clause shall survive expiration or termination of this Contract.
26. **PRIVACY**
- 26.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services.
- 26.2 In this clause, the terms ‘agency’, ‘Information Privacy Principles’ (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meaning as they have in section 6 of the *Privacy Act 1988*.
- 26.3 The Contractor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services:
- (a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;
  - (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
  - (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
  - (d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;

- (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to 10) where that section or NPP is applicable to the Contractor, unless:
  - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or
  - (ii) in the case of a NPP – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorized by this Contract is inconsistent with the NPP;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with a NPP binding a party to this Contract;
- (g) to immediately notify AusAID if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any sub-contractor;
- (h) not to transfer such information outside Australia, except to the Partner Country, or to allow parties outside Australia or the Partner Country to have access to it, without the prior approval of AusAID; and
- (i) to ensure that any employee of the Contractor who is required to deal with Personal Information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause.

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

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

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

## 27. **AusAID USE OF CONTRACT INFORMATION**

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

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

## 28. **PUBLICITY**

28.1 The Contractor must identify and implement appropriate opportunities for publicising the Project.

- 28.2 The Contractor must not make any press, media or other announcements or releases relating to this Contract and the Services without the prior approval of AusAID Public Affairs Group as to the form, content and manner of the announcement or release.
- 28.3 The Contractor must only use the Australian Government/AusAID logo (in-line version) to denote association with Australia, the Australian Government or AusAID in any publicity or other project related materials. The Contractor must comply with the “AusAID Logo Guidelines for Managing Contractors” at all times, including when advertising for sub-contractors or personnel. The Guidelines are available from the AusAID Business website.
- 28.4 The Contractor shall, if appropriate, erect a sign at each Project site that acknowledges the contributions of the Australian and Partner Governments. Such signs shall in all cases be discussed and agreed between AusAID and the Partner Government. Signs should use the Australian Government/AusAID logo (in-line version). No independent project or program logos or emblems are to be used. Contractor signs may also be displayed, but not in greater number or prominence than acknowledgments to either the Australian or Partner Governments.

## 29. **WARRANTIES**

- 29.1 The Contractor represents and warrants that it has made its own assessment of all information made available to the Contractor in respect of the Services and sought appropriate professional advice concerning:
- (a) any information, statements or representations;
  - (b) the regulatory regime applicable to the delivery of the Services both in Australia and in the Partner Country;
  - (c) the assumptions, uncertainties and contingencies which may affect the future business of the Services; and
  - (d) the impact that a variation in future outcomes may have on any Services.
- 29.2 Subject to any law to the contrary, and to the maximum extent permitted by law, AusAID, its employees, agents and advisers each disclaim all liability for any Losses (whether foreseeable or not) suffered by any other person acting on any part of the information made available to the Contractor in respect of the Service, whether or not the loss arises in connection with any negligence, default or lack of care on the part of AusAID, its employees, agents or advisers or any other person or any misrepresentation or any other cause.
- 29.3 The Contractor warrants that it shall have full corporate power and authority to enter into, perform and observe its obligations under this Contract and that the execution, delivery and performance of this Contract shall be duly and validly authorised by all necessary corporate action.

## 30. **PERSONNEL SECURITY**

- 30.1 The Contractor is responsible for the security of Contractor Personnel and for taking out and maintaining appropriate insurances in respect of Contractor Personnel.
- 30.2 The Contractor is responsible for the immediate development and implementation of a Security Plan to ensure the safety and security of Contractor Personnel. The Security Plan



should incorporate prevention strategies and response plans, including evacuation plans where appropriate. The Contractor shall submit a copy of the Security Plan to AusAID prior to mobilisation in the Partner Country. The Contractor shall review and update the Security Plan whenever considered necessary by the Contractor and shall submit the revised document to AusAID.

- 30.3 The Contractor must keep abreast of the security situation in the Partner Country including where relevant having regard to travel advisories and notices including those issued by the Australian Department of Foreign Affairs and Trade. The Australian advisories and notices are available at: [www.dfat.gov.au](http://www.dfat.gov.au)
- 30.4 The Contractor acknowledges and confirms that, notwithstanding any other provisions of the Contract:
- (a) it is not the function or responsibility of AusAID or any person acting or purporting to act on behalf of AusAID, to comment on or approve the Contractor's Security Plans; and
  - (b) the Contractor has not entered the Contract based on any representation, statement or assurance by AusAID or any person acting or purporting to act on behalf of AusAID, in respect of the safety or security of the Contractor, Contractor Personnel or any person acting on behalf of the Contractor, in the Partner Country or in any other location.

## 31. **TERMINATION FOR CONTRACTOR DEFAULT**

- 31.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor terminate this Contract, with effect from the date in the notice, if the Contractor:
- (a) commits a breach of this Contract and:
    - (i) that breach is not capable of remedy;
    - (ii) fails to remedy that breach within **[10]** Business Days (or such further time as AusAID may, in its absolute discretion, specify), after receiving a notice from AusAID requiring the Contractor to remedy the breach; or
    - (iii) does not commence to remedy that breach, within a reasonable time (having regard to the nature of the breach) after being given notice by AusAID requiring the Contractor to remedy the breach;
  - (b) becomes, or in AusAID's reasonable opinion is likely to become, bankrupt, insolvent or otherwise financially unable to fulfil its obligations under this Contract;
  - (c) becomes subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act 2001*;
  - (d) is wound up by resolution or an order of the court;
  - (e) ceases to carry on business;

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

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

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

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

## 32. TERMINATION FOR CONVENIENCE

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

## 33. INDEMNITY

- 33.1 The Contractor must at all times indemnify AusAID, its employees, agents and contractors (except the Contractor) ("**those indemnified**") from and against any Loss or liability whatsoever suffered by those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such Loss or liability was

caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the Contractor, or any Contractor Personnel in connection with this Contract.

- 33.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 33.1 above** for the benefit of each of such persons in the name of AusAID or of such persons.
- 33.3 The indemnity in this clause is reduced to the extent that the Loss or liability is directly caused by AusAID, its employees or contractors (except the Contractor), as substantiated by the Contractor.
- 33.4 The Contractor is responsible for all risks associated with the Data, the Supplies and any AusAID property while in the possession or control of the Contractor.
- 33.5 This indemnity shall survive termination or expiration of this Contract.

#### 34. **INSURANCE**

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

Where there is no workers compensation legislation in force in the Partner Country the Contractor should arrange adequate personal accident and illness insurance (accidental death and weekly benefits) for any Contractor Personnel not otherwise covered for the duration of the Contract;

- (d) property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value;
- (e) professional indemnity insurance to cover the Contractor's obligations under this Contract. The Contractor's professional indemnity policy must respond to claims

arising under the *Trade Practices Act (Cth)* 1974, in regard to this Contract. The Contractor may obtain the insurance on an annual basis if necessary, but must maintain the necessary insurance each year until the expiration of three (3) years after the full Term of the Contract or earlier termination of the Contract;

- (f) adequate medical and dental insurance for Contractor Personnel who are engaged to operate outside their country of permanent residence; and
- (g) adequate insurance for medical evacuation and evacuation resulting from an insured event for all Contractor Personnel.

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

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

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

## 35. **CONFLICT OF INTEREST**

### **Conflict of Interest**

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

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

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

### **Anti-Corruption**

35.4 The Contractor warrants that the Contractor shall not make or cause to be made, nor shall the Contractor receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt act, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Contract. In addition, the Contractor shall not bribe public officials and shall ensure that all Contractor Personnel comply with this provision. Any breach of this clause shall be grounds for immediate termination of this Contract under Standard Conditions **Clause 31** (Termination for Contractor Default) by notice from AusAID.

## 36. **FRAUD**

36.1 For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means.

36.2 The Contractor and its sub-contractors must not engage in any fraudulent activity.

- 36.3 The Contractor must prepare a fraud risk assessment and zero tolerance fraud control strategy. These must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures that comply with the *Commonwealth Fraud Control Guidelines*.
- 36.4 The Contractor is responsible for preventing and detecting fraud including fraud within those functions outsourced / performed by a sub-contractor or under any other arrangement established by the Contractor relating to the management or administration of AusAID provided funds. The Contractor is responsible for ensuring that its staff and its subcontractors' staff are responsible and accountable to the Contractor for preventing and reporting any fraud or suspected fraud as part of their routine responsibilities.
- 36.5 The Contractor must report in writing within 5 working days to AusAID any detected, suspected, or attempted fraudulent activity involving AusAID provided funds. Where a matter is reported in writing to AusAID by a Contractor, the advice must provide where known:
- (a) the name of the Project under which AusAID funding is being provided;
  - (b) name of any personnel or subcontractors involved;
  - (c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);
  - (d) the names of the suspected offender(s) (where known);
  - (e) details of witnesses;
  - (f) copies of relevant documents;
  - (g) references to any relevant legislation;
  - (h) a nominated contact officer;
  - (i) any other relevant information (eg, political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and
  - (j) the current status of any inquiries commenced by the Contractor.
- 36.6 The Contractor must, in consultation with AusAID, develop and implement a strategy to investigate the detected, suspected or attempted fraud based on the principles set out in the *Australian Government Investigations Standards* which are available from AusAID when a demonstrated need to distribute them exists. The Contractor will be responsible for the conduct of the investigation. Any investigator appointed by the Contractor should possess the minimum qualifications specified in the *Commonwealth Fraud Control Guidelines*. Before engaging a qualified investigator, the Contractor may consult with AusAID regarding the appointment and may request assistance from AusAID in meeting the actual costs of a qualified investigator. Provided that the Contractor has consulted with AusAID before engaging an investigator, AusAID may in its absolute discretion agree to meet some or all of those costs.
- 36.7 AusAID reserves the right to appoint its own investigator, conduct the investigation, conduct a concurrent investigation or refer the allegations to the appropriate law enforcement agencies or any other person or entity AusAID deems appropriate in Australia or in the partner countries for investigation. In this instance the Contractor shall provide all assistance that may be required at the Contractor's sole expense.
- 36.8 Following the conclusion of an investigation, where the investigation finds the Contractor, an employee of the Contractor or a subcontractor of the Contractor has acted in a fraudulent manner, the Contractor shall:

- (a) where money has been misappropriated, pay to AusAID or the project the full value of the AusAID funds that have been misappropriated; or
  - (b) where an item of property has been misappropriated, either return the item to AusAID or the project or if the item cannot be recovered or has been damaged so that it is no longer usable, replace the item with one of equal quality.
- 36.9 Following the conclusion of an investigation, where the investigation finds that a party other than the Contractor, an employee of the Contractor or a subcontractor of the Contractor, has acted in a fraudulent manner, the Contractor shall at the Contractor's cost:
- (a) make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, one or both of the following:
    - (i) taking recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country. Before commencing any recovery action, the Contractor may consult with AusAID regarding the proposed course of action and may request assistance from AusAID in meeting the costs of the recovery action. Provided that the Contractor has consulted with AusAID before commencing recovery action, AusAID may in its absolute discretion agree to meet some or all of those costs.
    - (ii) referring the matter to the relevant Partner Country police or other authorities responsible for prosecution of fraudulent activity.
  - (b) keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.
- 36.10 If the Contractor considers that after all reasonable action has been taken to recover the funds or funded property and full recovery has not been achieved or recovery has only been achieved in part, the Contractor may seek approval from AusAID that no further recovery action be taken. The Contractor must provide to AusAID all information, records and documents required by AusAID to enable the AusAID delegate to make a decision on whether to approve non-recovery of funds or funded property.
- 36.11 In the event that any investigation finds that the contractor, an employee of the Contractor or a subcontractor of the Contractor has been involved in any fraudulent activity, or in the event that AusAID discovers that a suspected, attempted or detected fraud has not been reported to AusAID, AusAID, at AusAID's sole discretion, reserves the right to:
- (a) Terminate the Contract with the Contractor, in which event, AusAID shall not be liable to the Contractor for any claim, demand, proceeding suit or action by the Contractor, and the Contractor shall indemnify, defend and hold harmless AusAID from any claim, demand, proceeding suit or action from any party or individual resulting from such termination; and / or.
  - (b) Not enter into any further agreement with the Contractor until such time as AusAID is satisfied that any recommended changes to the Contractor's management and procedures have been made in order to prevent any further fraudulent activity from occurring and to ensure timely reporting of suspected, attempted or detected fraud to AusAID.

## 37. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

- 37.1 The Contractor must at all times have regard to and comply with, and use its best endeavours to ensure that all Contractor Personnel comply with, the laws in Australia, the Partner Country and applicable laws of other countries.
- 37.2 A list, as amended from time to time, of Australian laws that may apply to the delivery of developmental aid to foreign countries can be found on the AusAID website: <http://www.ausaid.gov.au/business/contracting.cfm>.
- This list is not exhaustive and is provided for information only. The provision of this list does not relieve the Contractor from complying with the obligations contained in **Clause 37.1**.
- 37.3 The Contractor and all Contractor Personnel must at all times have regard to and operate in accordance with relevant guidelines, as amended from time to time, and listed on the AusAID website: <http://www.ausaid.gov.au/business/contracting.cfm>.
- 37.4 The Contractor must notify AusAID of any material breach by the Contractor or Contractor Personnel of a law or guideline referred to in this **Clause 37**.
- 37.5 On becoming aware of a material breach by the Contractor or Contractor Personnel of a law or guideline, whether or not such a breach is notified to AusAID by the Contractor, AusAID may, in addition to any other rights available to AusAID, terminate this Contract under **Clause 31**.
- 37.6 The Contractor must in carrying out its obligations under this Contract comply with those laws in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the *Criminal Code Act 1995 (Cth)* and listed in regulations made under that Act and regulations made under the *Charter of the UN Act 1945 (Cth)*. The Contractor must ensure that funds provided under this Contract do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform AusAID immediately.
- 37.7 The Contractor must when providing any Services and procuring the Supplies have regard to and operate in accordance with Australian policies on developmental aid to foreign countries including:
- (a) the policy Gender Equality in Australia's Aid Program – Why and How (March 2007);
  - (b) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child protection policy*;
  - (c) Environment. AusAID is bound by the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:
    - 1. ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;



2. comply with AusAID's Environmental Management System outlined in the *Environmental Management Guide for Australia's Aid Program*, including:
  - a. assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;
  - b. report regularly on any such impacts as required by the Scope of Services; and
3. comply with all relevant environmental laws and regulations of the Partner Country.

The *Environmental Management Guide for Australia's Aid Program* can be found at: <http://www.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 Parties have attempted to agree on a process, or the appointment of the mediator or conciliator, then either Party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.
- 39.5 Nothing in this clause prevents either Party from seeking urgent injunctive relief.

#### 40. **NOTICES**

- 40.1 A notice required or permitted to be given by one Party to another under this Contract must be in writing and is treated as having been duly given and received:
- (a) when delivered (if left at that Party's address);
  - (b) on the third Business Day after posting (if sent by pre-paid mail); or
  - (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice

had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

#### **41. MISCELLANEOUS**

##### **41.1 Waiver**

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

##### **41.2 Liability of Party**

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

##### **41.3 Entire agreement**

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

##### **41.4 Severance**

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

##### **41.5 Assignment**

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

##### **41.6 Governing Law and Jurisdiction**

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

##### **41.7 Contra Proferentem**

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

##### **41.8 False and Misleading Information**

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

### SCHEDULE 3 - DEED OF CONFIDENTIALITY

**THIS DEED POLL** is made on the \_\_\_\_\_ day of \_\_\_\_\_ [    ]

in favour of **COMMONWEALTH OF AUSTRALIA** represented by the Australian Agency for International Development ("**AusAID**") which is part of the Department of Foreign Affairs and Trade.

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

#### RECITALS

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

#### THE RECIPIENT DECLARES AS FOLLOWS:

##### 1. INTERPRETATION

In this Deed:

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

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

**Schedule 3**

- (g) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality; or
- (h) has been independently developed or acquired by the Recipient as established by written evidence.

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

**2. NON DISCLOSURE**

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

**3. RESTRICTION ON USE**

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

**4. DELIVERY UP OF DOCUMENTS**

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

**5. SURVIVAL OF OBLIGATIONS**

- 5.1 The obligations in this Deed are perpetual.

**EXECUTED** as a deed poll.

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

.....  
Signature of witness

.....  
Name of witness  
**(Print)**

**SCHEDULE 4A – VARIATION ORDER PRO FORMA**

**VARIATION ORDER NO. #  
FOR CONTRACT #**

**between**

**COMMONWEALTH OF AUSTRALIA  
represented by  
The Australian Agency for International Development  
(AusAID)**

**and**

**CONTRACTOR'S NAME  
ABN #**

**in relation to**

**CONTRACT TITLE**

VARIATION ORDER No. # UNDER CLAUSE # OF CONTRACT #

TO: CONTRACTOR – *insert Name*

FROM: AusAID

1. This Variation Order is given pursuant to Standard Condition clause headed **Amendments and Variation** in the Contract.
2. The Contract *Schedule 1 and/or Schedule 2* is varied as follows:

**EITHER detail here under the headings of:**

3. **SERVICES**
4. **COMMENCEMENT AND COMPLETION OF SERVICES**
5. **REPORTING REQUIREMENTS**

**OR where variation requires a reissue of Schedules 1 and/or 2. Use paragraphs 6 and/or 7 as appropriate.**

6. Delete Schedule 1, Scope of Services and replace with the attached Scope of Services.
7. Delete Schedule 2, Basis of Payment and replace with the attached Basis of Payment.
8. There will be an **increase/decrease/no change** of \$x,xxx.xx in the financial limit of this Contract for the performance of these Services.
9. In all other regards you are required to carry out the Services as described in the Contract.

Yours sincerely

FMA Section 44 Delegate  
*Insert date*

**NOTE TO USER:**

*It is not necessary for the Contractor to sign the Variation Order. However, you must act in good faith by ensuring that the Contractor agrees to the changes before issuing the Variation Order. As with Amendments, Variation Orders must be cleared by Procurement Management Group (PMG) and AusAID's Senior Legal Adviser or AusAID's Legal Officer before being issued. See 'MINUTE Clearance (Variation Order)' on the Contract Templates Sharepoint.*

*The delegate must sign two originals of the Variation Order. One original is sent to the Contractor. One copy needs to be made. The copy must be retained by the Activity Manager (Canberra or Post). The AusAID original copy is sent to RMC for inclusion on the original Contract File. (DELETE this note before issuing the Variation Order).*

**SCHEDULE 4B - VARIATION SUMMARY SCHEDULE**

The Contract has been varied in accordance with Standard Condition clause headed **Amendments and Variation** of the Contract on the following dates relating to:

| <b>Variation Order #</b> | <b>Date signed by AusAID</b> | <b>Very Brief Summary of variation</b> | <b>Increase/Decrease in financial limit</b> | <b>Adjusted Financial Limit</b> |
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**SCHEDULE 5 – DEED OF NOVATION AND SUBSTITUTION**

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

BETWEEN:

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

AND:

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

AND:

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

**WHEREAS:**

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

**NOW THIS DEED WITNESSES AS FOLLOWS:**

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**

The Contractor and the Subcontractor agree that:

    this Deed is entered into for the benefit of AusAID; and

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

This Deed commences on the Commencement Date of the Subcontract.

3. **NOVATION**

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

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

    AusAID is substituted for the Contractor under the Subcontract in respect of the Subcontractor Services as if AusAID was originally the Party to the Subcontract instead of the Contractor, and all references in the Subcontract to the Contractor are to be read and construed as if they were references to AusAID;

    AusAID is to pay any amount due to the Subcontractor under the Subcontract to the Subcontractor and the receipt of the Subcontractor shall be full and sufficient discharge for any such payments;

    subject to paragraph (a), AusAID is bound by, and must fulfil, comply with and observe all the provisions of the Subcontract and enjoys all the rights and benefits of the Contractor under the Subcontract; and

    the performance by the Subcontractor of services under the Subcontract, is instead of, and not in addition to, any performance by the Contractor of its obligations under that Subcontract.

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

4. **RELEASE**

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

5. **FURTHER ASSURANCES**

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

6. **DISCHARGE**

Neither the Subcontractor nor the Contractor are discharged or released or excused from this Deed by an arrangement made between the Contractor and the Subcontractor prior to the

**Schedule 5**

issue of a notice of substitution with, by any change to the Subcontract, or by any forbearance whether as to payment, time or otherwise.

The Contractor undertakes to notify AusAID of any alterations to the Subcontract or other matter referred to in **Clause 3** of this Schedule. A failure of the Contractor to notify AusAID under this clause does not alter the Subcontractor's obligations under this Deed.

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

The obligations of AusAID under this Deed in its application to the Subcontract must not exceed the obligations of the Contractor under the Subcontract.

**7. NOTICES**

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

when delivered (if left at that Party's address);

on the third Business Day after posting (if sent by pre-paid mail); or

on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and the facsimile machine provides an affirmation of a successful transmission).

**Address of Party**

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

**AusAID**

To: **Desk Name**

Attention: Country Program Manager

Address: Australian Agency for International Development  
GPO Box 887  
CANBERRA ACT 2601

Facsimile: **Desk Fax**

**Contractor**

To: **Contractor's Name**

Attention:

Address: **Contractor's Address**

Facsimile: **Contractor's Fax**

**Subcontractor**

To:

Attention:

Address:

Facsimile:

8. **LAWS**

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

9. **WARRANTY**

The Subcontractor and the Contractor each warrant and represent to AusAID that at all times:

the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the Subcontractor and the Contractor respectively;

the Subcontractor and the Contractor respectively each has full corporate power and lawful authority to execute and deliver this Deed and to consummate and perform or caused to be performed its obligations under this Deed;

this Deed constitutes a legal, valid and binding obligation of the Subcontractor and the Contractor respectively, enforceable in accordance with its terms by appropriate legal remedy; and

to the best of each of the Subcontractor's or the Contractor's knowledge, there are no actions, claims, proceedings or investigations pending or threatened against or by the Subcontractor or the Contractor respectively that may have a material effect on the ability of the Subcontractor or the Contractor respectively to perform its obligations under this Deed.

10. **GENERAL**

**Counterparts**

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

**Attorneys**

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

**Further Assurance**

Each Party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and acts reasonably required of it or them by notice from another Party effectively to carry out and give full effect to this Deed and the rights and obligations of the Party under it.

**Assignment**

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

**EXECUTED** as a Deed.

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

)

)

)

Signature

.....

Signature of witness

.....

Name of witness  
**(Print)**

**SIGNED** for and on behalf of  
**[Subcontractor]** by:

)

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.....

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Director  
Name of Director  
**(Print)**

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

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

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Director  
Name of Director  
**(Print)**

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