



Australian Government

AusAID

18 September 2010

Request for Tender

Philippines Muslim and Indigenous Peoples' Education Program

REQUEST FOR TENDER

Muslim and Indigenous Peoples' Program

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

STRUCTURE OF THE RFT

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

Section 1 details the Project Specific Tender Conditions (**Part 1**) and the Project Specific Contract Conditions (**Part 2**), the Scope of Services (**Part 3**), and the Basis of Payments (**Part 4**).

Section 2 details the Standard Tender Conditions (**Part 5**) and the Standard Contract Conditions (**Part 6**).

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

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

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

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

AusAID Contracts Charter

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

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

SECTION 1 – PROJECT SPECIFIC TENDER AND CONTRACT CONDITIONS

PART 1 – PROJECT SPECIFIC TENDER CONDITIONS

1. TENDER PARTICULARS

Closing Time:

(Clauses 1.11 and 1.15, Part 5)

2.00 pm local time in Canberra

Australian Capital Territory, **Wednesday 3 November 2010.**

Mode of submission:

(Clause 1.1, Part 5)

Either:

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

or

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

Electronic Tender Lodgement

Address:

(Clause 1.11, Part 5)

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

Canberra Tender Box Address:

(Clause 1.15, Part 5)

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

Business Hours

for hard copy lodgement:

(Clause 1.15, Part 5)

Monday to Friday, 8.30 am to 5.00 pm

local time in Canberra, Australian Capital Territory

Excluding Public holidays.

File Format for Electronic Tenders:

(Clause 2.3, Annex D to Part 5)

PDF (Portable Document Format)

Number of Copies of Tender:

(Clause 1.6, Part 5)

For electronic tender lodgement

Technical Proposal (Schedules A and B and Tenderer Declaration): One (1) electronic copy.

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

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

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

For hard copy tender lodgement

Tenderer Declaration: One (1) signed original, to be included with Tender Schedule C Financial Proposal.

Tender Schedule A -Technical Proposal: One (1) printed Original containing all parts and annexes.

Tender Schedule B – Specified Personnel: One (1) printed Original.

Tender Schedule C -Financial Proposal: One (1) printed Original, in a separate, sealed envelope.
Tender Schedule D - Financial Assessment material: One (1) printed Original copy in a separate sealed envelope.
Tenderer's Submission Checklist: One (1) printed Original.
One CD, containing all the files specified as for electronic lodgement.

Endorsement of hard copy Tenders:

(Clause 1.17, Part 5) "Tender for the Muslim and Indigenous Peoples' Education Program."

Tender Validity Period:

(Clause 1.8, Part 5) 180 days

Contact Person:

(Clause 2.1, Part 5) Contact Person: Catherine Ross
Fax: +61 02 6206 4885
Email address: MIPE@ausaid.gov.au

Last date for tenderer enquiries:

(Clause 2.2, Part 5) Wednesday 20 October 2010
Responses to tenderer enquiries will be issued no later than Wednesday 27 October 2010 (ie. 7 days prior to the **Closing Date** (Clause 2.3, Part 5)

Page limits:

(Clauses 7.15 and 7.17, Part 5) Tender Schedule A: Technical proposal 12 pages plus annexes.
Tender Schedule B: Curriculum Vitae 5 pages each, including declaration and signature.

Information:

The following documents are attached:
1. Muslim and Indigenous Peoples' Education Program Design Document;
2. Tenderer Declaration (in Word format)
3. Tables for Financial Proposal (in Word format).

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 briefing for interested tenderers on **Wednesday 6 October 2010** at the New World Hotel, Esperanza Street, corner Makati Avenue, Makati City, Metro Manila, Philippines.
- 2.2 Tenderers planning to attend the pre-tender briefing are requested to send advanced notification to the Contact Officer by email: MIPE@ausaid.gov.au or facsimile (+61 2 6206 4885), indicating the name of the organisation and the names of people planning to attend, by COB on **Friday 1 October 2010**.

Note to Tenderers: The Australian Embassy is a "secure building". This means that all visitors must be signed in and out of the building and escorted while inside the building at all times.

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. **TENDER ASSESSMENT**

- 4.1 Following an initial consideration of the technical merit of Tenders, the Technical Assessment Panel (TAP) may shortlist and invite selected tenderers’ key personnel to interview. If invited to interview, the following personnel will be required to attend: Contractor Representative, the tenderer’s nominated Program Director and Monitoring and Evaluation Adviser in accordance with Clause 7.4 of Part 5 of the RFT. Participation of the team at interview will be taken into account. Tenderers to be invited to interview will be given up to 10 days notice in writing by AusAID regarding time and location (Canberra or Manila) of any interview.
- 4.2 Tenderers not invited to interview will be notified that their bid will not be further considered.
- 4.3 The technical assessment of the proposal will account for **80%** of the overall score using the following formula:

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

- 4.4 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 as technically suitable and recommended.
- 4.5 The like-for-like price assessment will represent **20%** of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

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

- 4.6 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 Philippines Muslim and Indigenous Peoples’ Education Program
- Part 1 – Project Specific Tender Conditions

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. Organisational Capacity and Response to Design Document (weighting 50%)

- Strong, positive track record and capacity to manage and deliver a development assistance program;
- Demonstrated understanding of the Program and ability to develop and implement strategic approaches to achieve the Program objectives and sustain outcomes, including management capability and appropriate systems and processes to support diverse activities and management of funds;
- Broad knowledge of the Philippine education system and suitable and relevant years of experience working with Department of Education (DepED) and/or other education-related institutions in developing countries;
- Knowledge of Muslim and Indigenous Peoples’ issues including past and present interventions to address them;
- Demonstrated understanding of the risks associated with the use of government systems in program implementation and proven ability to mitigate them;
- Proven ability to develop a Monitoring and Evaluation (M & E) framework that would effectively document program outcomes and make informed recommendations to improve activities;
- Demonstrated understanding of issues affecting sustainability; and
- Demonstrated flexibility in responding to changing political situations and organisational priorities.

B. Program Director (weighting 25%)

- Demonstrated capability, skills and experience in project planning and management, particularly of a development assistance program;
- Demonstrated knowledge of the Philippines basic education sector and its reform agenda, including issues associated with Indigenous Peoples’ and Muslim education;

- Excellent analytical and communications skills, including report writing; Demonstrated problem-solving skills;
- Excellent inter-personal skills, including the ability to effectively support senior managers and policy makers within government;
- Knowledge and skills in capacity building methodologies, team building, mentoring and coaching;
- Proven ability and experience working in cross-cultural environments; and
- Demonstrated ability to work effectively with government, preferably with knowledge of AusAID policies and procedures.

C. Other Specified Personnel (weighting 25%)

- Demonstrated appropriate skills and experience for each position:
 - (i) Monitoring and Evaluation Adviser; and
 - (ii) Accounts Manager.

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 four (4) examples and details of each activity must not exceed one (1) A4 page.

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

PAST EXPERIENCE FORM

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

Annex 2 – Mobilisation Plan

A detailed Mobilisation Plan for the first three (3) months from Contract Start Date. The Mobilisation Plan must include provision for:

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

Annex 2 must be presented on A4 paper.

Annex 3 – Team Member Inputs (Bar Charts)

One bar chart will show the proposed inputs per team member for this project and indicate total person months or person days for the duration of the project (denoting a person as “part-time” is not acceptable). This chart must be presented on A3 paper.

The second bar chart will show the proposed inputs by each team member and indicate the total person months or person days **for each component** for the duration of the Project. Both charts should clearly indicate inputs of team members in Australia, in-country and in total. This chart must be presented on A3 paper.

Annex 4 – Risk Management Plan

A critique/response to the detailed Risk Management Plan contained in the Design Document of no more than 5 pages in tabular form that must identify:

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

Annex 5 – 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.

Annex 6 – Commonwealth Government Policies Compliance

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

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

6. TENDER SCHEDULE B – SPECIFIED PERSONNEL

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

- (a) a list of proposed team members in the table (in landscape) format provided and in accordance with the instructions included in **Clauses 6.2-6.3** below;

- (b) a skills matrix providing a summary illustration of the skills of the proposed Project team as a whole (broken down by individual team members) in the key skill areas required for the Project's implementation; and
 - (c) a curriculum vitae for each proposed team member that conforms with the requirements outlined in **Clauses 7.16 and 7.17, Part 5.**
- 6.2 Tenderers must provide the information in the Referees column of the Specified Personnel table in accordance with **Clauses 7.18 - 7.21, Part 5.**
- 6.3 The Commitments column in the Specified Personnel table must include details of proposed team members' commitments to other projects (both AusAID and others) for the period of the Project. In addition to existing commitments, tenderers must detail potential commitments. Potential commitments include nominations in any contemporaneous AusAID or other tenders. Where a proposed team member has an existing commitment to another AusAID project, Tenderers must also detail the duration of the position in the other AusAID project as reflected in the AusAID contract for that project.
- 6.4 Tenderers are reminded of the requirements of **Clause 8, Part 6** particularly in relation to the availability of specified personnel. AusAID will consider as materially inaccurate, and will therefore reject, any Tender which does not disclose the fact that a proposed team member has an existing and continuing commitment to another AusAID project.
- 6.5 AusAID's strong preference is that individuals with conflicting commitments are not included in Tenders. Where team members with conflicting commitments are nominated, AusAID will assess on a case-by-case basis the impacts of the personnel changes and may require further information from the Tenderer in relation to managing the transition.
- 6.6 Tenderers are reminded of the requirements of **Clause 19.2, Part 5** particularly in relation to providing police clearance certificates for all Project Personnel nominated in the Specified Personnel table for positions specified as working with children.
- (a) Tenderers must request the required criminal record checks in sufficient time to ensure that police clearance certificates can be provided in accordance with **Clause 19.2, Part 5.**
 - (b) Tenderers should note that in Australia, national criminal record checks are available through the Australian Federal Police and take around 20 working days. The type of employment should be specified as 'overseas employment.' Overseas, different checking procedures apply in each country and may take six weeks or longer. Individuals need to give their consent to a criminal record check and should be informed of the purpose for which it will be used, including sighting by AusAID.

SPECIFIED PERSONNEL

None of these positions has been identified as working with children.

Position	Name	Total Inputs in person months		Referee Contact Details		Commitments
		Home Base	O/s	#1	#2	
Program Manager						
Monitoring and Evaluation Adviser						
Accounts Manager						

7. TENDER SCHEDULE C - FINANCIAL PROPOSAL

- 7.1 **Tender Schedule C** - the financial proposal must contain the information required and in the format detailed in this clause.
- 7.2 It must:
- (a) be a fully costed fixed price based on the outputs and/or inputs as specified in the Scope of Services, 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.
- 7.5 The Contractor will be paid according to the following categories of payments as detailed in Part 4 of the RFT:
- (a) A Fixed Management Fee (FMF). Thirty per cent (30%) of the FMF will be paid on AusAID acceptance of milestones, and the remaining 70% will be paid monthly within 30 days of AusAID receipt of a correctly rendered invoice;

- (b) Reimbursable Payments (grants and implementation activities) to a maximum of A\$5,915,500;
- (c) Personnel costs, including Specified Personnel, Additional Personnel and Short-Term Advisers, paid on a reimbursable basis monthly in arrears. Mobilisation and demobilisation costs will be reimbursed at cost;
- (d) Operational costs, paid on a reimbursable basis to a maximum of A\$2,600,000 and;
- (e) Contractor administration, and equipment costs, paid on a reimbursable basis.

Fixed Management Fee

7.6 These costs are defined in **Part 4 – Draft Basis of Payment** and must be included in the Fixed Management Fee (FMF) detailed in **Table 2** of the Financial Proposal.

Operational Costs

7.7 These costs will be paid on a reimbursable basis as set out in **Part 4** Draft Basis of Payment and will not be taken into account in the financial assessment.

Reimbursable Contractor Administration and equipment costs

7.8 These costs will be paid on a reimbursable basis as set out in **Part 4** Draft Basis of Payment, and must be detailed in **Table 3** of the Financial Proposal .

Long Term Personnel Costs (Nominated and Additional)

- 7.9 Tenderers must complete **Tables 4A, 4B, 4C, 4D** and **4E** and must detail in the Financial Proposal in **Tables 4A to 4D** the leave entitlements of nominated Specified Personnel and Additional Personnel. Where annual recreation leave entitlements include any trips and/or exceed a total of 4 weeks per 12 month period, a justification must also be provided along with a narrative description of how the Tenderer will ensure, during Specified Personnel absences, the continued quality of Services. Tenderers should note that leave entitlements and the management strategy may be assessed by the TAP or AusAID as part of the technical assessment process.
- 7.10 Tenderers must detail in the Financial Proposal in **Tables 4A to 4D** the Local Cost of Living allowances and additional personnel costs such as insurance, compensation, mobilisation and demobilisation for Specified Personnel and Additional Personnel.

Reimbursable Unallocated Short Term Personnel Costs

7.11 These costs will be paid on a reimbursable basis as detailed in Clause 7 of Schedule 2 – Basis of Payment and will not be taken into account in the price assessment for this tender.

Summary Table

7.12 Tenderers are to complete **Tables 1, 2, 3, 4A, 4B, 4C, 4D** and **4E** in the Financial Proposal

TABLE 1 – SUMMARY

	1 March 2011 to 30 June 2014
Totals from Table 2 – Fixed Management Fee	

Totals from Table 3-Reimbursable Contractor administration and equipment costs	
Totals from Table 4E – Long Term Specified Personnel	
Total for Like-for-Like Assessment (Tables 2, 3, and 4E)	

TABLE 2 – FIXED MANAGEMENT FEE

	1 March 2011 to 30 June 2014
Item	A\$
All aspects of profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor including commercial margins/mark-up for all personnel	
All high level management and management support costs for all Program personnel	
The cost of any Contractor office support, such as administrative, financial and management support.	
Costs, including domestic and international travel, accommodation, per diems, and local transport costs where required for all Contractor office personnel (other than those listed as Specified Personnel at Tables 4A-4D of this Schedule).	
All domestic and international communication costs incurred within Australia and in the Philippines.	
Costs associated with all personnel briefings in Australia or the Philippines.	
Recruitment costs	
Costs associated with any subcontracting and procurement of goods or services	
All management and administrative support costs for Specified Personnel and Short-Term Advisers	
Financial management costs and financing costs, if any	
Costs of complying with the Contractor's monitoring and evaluation, reporting and liaison obligations under the Contract.	
External audit and internal auditing and assurance costs.	
All allowances for risk and contingencies, including escalators, for the term of the Contract.	
Security costs for all Program personnel.	
Insurance costs (including but not limited to, professional indemnity, health, medivac, worker's compensation, public liability, indemnity and any other insurances as required under the Contract or deemed necessary by the Contractor) in accordance with Clauses 33 (Indemnity) and 34 (Insurance) of Part B (Standard Contract Conditions) of the Contract	
Taxation, (other than personnel-related taxes and GST) as applicable.	
All other costs not specifically identified as Reimbursable Personnel Costs and Reimbursable Program Administration and Equipment Costs	

Tenderer's Assumptions:

TABLE 3 – REIMBURSABLE ADMINISTRATION, EQUIPMENT AND OPERATIONAL COSTS

	1 March 2011 to 30 June 2014 A\$
Item	
Office equipment (including furniture, computers, printer, photocopier)	
7 4WD vehicles	
Vehicle running costs	
Office materials and supplies (including telephone, email, printing	
Administrative costs associated with planning and review workshops – venue hire, staff, materials	
<i>Other -Tenderer to specify</i>	
TOTAL	

Tenderer's Assumptions:

Table 4A Specified Personnel for 1 March 2011 – 31 December 2011

Position	Name	Salary	Taxes	Superannuation (A\$)	Leave Allowance (A\$)	Mobilisation (A\$)	Accommodation (A\$)	Other	Total Monthly Fee Rate (A\$)
Program Director									
Monitoring and Evaluation Adviser									
Accounts Manager									
Field-based Program Officers (6)	N/A								
Administrative Support Staff	N/A								
TOTAL (1 March 2011 – 31 December 2011)									

Tenderer's Assumptions and Notes:

Table 4B Specified Personnel for 1 January 2012 – 31 December 2012

Position	Name	Salary	Taxes	Superannuation (A\$)	Leave Allowance (A\$)	Accommodation (A\$)	Other	Total Monthly Fee Rate (A\$)
Program Director								
Monitoring and Evaluation Adviser								
Accounts Manager								
Field-based Program Officers (6)	N/A							
Administrative Support Staff	N/A							
TOTAL (1 January 2012 – 31 December 2012)								

Tenderer's Assumptions and Notes:

Table 4C: Specified Personnel for 1 January 2013 - 31 December 2013

Position	Name	Salary	Taxes	Superannuation (A\$)	Leave Allowance (A\$)	Accommodation (A\$)	Other	Total Monthly Fee Rate (A\$)
Program Director								
Monitoring and Evaluation Adviser								
Accounts Manager								
Field-based Program Officers (6)	N/A							
Administrative Support Staff	N/A							
TOTAL (1 January 2013 – 31 December 2013)								

Tenderer's Assumptions and Notes:

Table 4D: Specified Personnel for 1 January 2014 – 30 June 2014

Position	Name	Salary	Taxes	Superannuation (A\$)	Leave Allowance (A\$)	Demobilisation (A\$)	Accommodation (A\$)	Other	Total Monthly Fee Rate (A\$)
Program Director									
Monitoring and Evaluation Adviser									
Accounts Manager									
Field-based Program Officers (6)	N/A								
Administrative Support Staff	N/A								
TOTAL (1 January 2014 – 30 June 2014)									

Tenderer's Assumptions and Notes:

Table 4E - Total Specified Personnel Costs

Table	Description	Amount (A\$)
Total from Table 4A	Specified Personnel Fees for 1 March 2011-31 December 2011	
Total from Table 4B	Specified Personnel Fees for 1 January 2012 – 31 December 2012	
Total from Table 4C	Specified Personnel Fees for 1 January 2013 – 31 December 2013	
Total from Table 4D	Specified Personnel Fees for 1 January 2014 – 30 June 2014	
TOTAL		

8. TENDER SCHEDULE D – FINANCIAL ASSESSMENT

- 8.1 No Contract will be entered into unless AusAID has satisfied itself of the financial capacity of the Tenderer to undertake the contractual obligations. 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.

- 8.2 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.
- 8.3 A Tenderer must respond to either Option 1 or Option 2 to satisfy the requirements of this Tender.
- 8.4 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.
- 8.5 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.
- 8.6 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**.

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

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

"Changed Tax" means a new tax imposed or a change in an existing Commonwealth, State or Territory Government or Partner Country tax after the commencement of this Contract described in **Clause 2** (Term of Contract) below.

"Implementation Phase" means the parts of the Services described in the final PDD, and included in the Implementation Scope of Services including any construction work.

"Implementation Scope of Services" means the Scope of Services setting out the Services to be completed in the Implementation Phase of the Project.

"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 Adviser" or **"LTA"** means an adviser working continuously for **six** months or longer on the Project.

"Mobilisation" means the date the Contractor commences the Services in-country.

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

"Payment Milestone" means a milestone identified in **Annex 1 to Schedule 2** (Milestone Payments Table) 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.

"Program Director" means the specified person nominated in **Annex 2 to Schedule 1** (Specified Personnel).

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

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

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

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

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

2. **TERM OF CONTRACT**

- 2.1 The term of this Contract commences upon execution by both parties, being the date indicated at the front of this Contract, and continues until all obligations under this Contract have been fulfilled or earlier notice of termination under this Contract.
- 2.2 The Contractor must commence the Services in the Partner Country no later than (date to be agreed with preferred tenderer) and must complete the Services by 30 June 2014.

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 previous three month period; and
 - (d) forward expenditure 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: AusAID Philippines
Attention: Agreement Manager Name

Postal Address: PO Box 1071 MCPO
1250 Makati City
Metro Manila, Philippines

Street Address: Australian Embassy
Level 22-24, Tower 2, RCBC Plaza
6819 Ayala Avenue (Makati City)
Metro Manila, Philippines

Facsimile: +63 2 7578 265

Contractor

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

Postal Address: Postal Address

Street Address: Street Address

Facsimile: Fax number

5. MANAGEMENT SERVICES

- 5.1 The Contractor must provide all Management Services necessary for the provision of the Services. In addition to the other requirements specified by the Contract, at a minimum the Contractor must provide the following Management Services:
- (a) provide pre-mobilisation briefings to Contractor Personnel including but not limited to security, medical/health situation, cultural environment, detail on project objectives, relevant contract
 - (b) decision-making within the Contractor's organisation and the advising of AusAID of decisions required by AusAID;
 - (c) pro-actively identifying and rectifying problems or recommending strategies to AusAID on how to rectify problems, which may arise in, or during the performance of, the Services;
 - (d) managing those risks which are the Contractor's responsibility under the Contract in accordance with the Risk Management Plan including in relation to Supplies after delivery and before their incorporation into the Project; and
 - (e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID.

6. MOBILISATION OF SERVICES

- 6.1 The Contractor must supply a detailed **Mobilisation** Plan for the first 3 months of the Project within 28 days of the Program Start Date, in a form agreed with AusAID and for written approval by AusAID.
- 6.2 The Mobilisation Plan is subject to AusAID approval. It must include provision for:
- (a) the establishment of communication channels with AusAID, the Australian Diplomatic Mission and Stakeholders;
 - (b) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including without limitation:
 - (i) the supply and deployment of Long and Short Term Advisers and overall approach to their assignments;
 - (ii) the establishment of procedures relevant to the Procurement Services;
 - (iii) a planned approach to coordination of all aspects of implementation of the Services including identification of Suppliers, mobilisation of personnel and obtaining necessary approvals; and
 - (iv) a planned approach to coordination of all aspects of implementation and management of sub-contracts;
 - (c) the establishment of report preparation and delivery mechanisms;
 - (d) the establishment of financial control procedures;
 - (e) the establishment of all other management and administration requirements; and
 - (f) any other matters specified in **Schedule 1**.
- 6.3 The Contractor must make changes to the Mobilisation Plan as requested by AusAID. Both Parties shall give fair and reasonable consideration to changes in costs necessarily incurred by either Party as a consequence of such changes to the Mobilisation Plan.
- 6.4 Once approved in writing by AusAID the Mobilisation Plan will be deemed to be annexed to this Contract. Changes to the Mobilisation Plan will be subject to a Deed of Amendment as described in Standard Conditions **Clause 12** (Contract Amendment).

7. MONITORING AND REVIEW TEAM

- 7.1 AusAID may establish a Monitoring and Review Team (the “MRT”) whose purpose is to provide AusAID with independent technical and other advice on any aspects of the Project and to assist AusAID to assess the performance of the Services.
- 7.2 The Contractor must:
- (a) attend and participate in those MRT meetings which AusAID directs it in writing to attend;

- (b) when required by AusAID, consult with the MRT 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 MRT 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 MRT in the performance of its monitoring and review;
- (d) co-operate with and assist the MRT 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 MRT copies of all reports, notices, information or other Project material which the MRT reasonably requires to fully and efficiently perform its monitoring and review as soon as practicable after such material is produced or received by the Contractor.

8. INCEPTION PLAN AND ANNUAL PLAN

- 8.1 The Contractor must provide to AusAID with an Inception Plan within two (2) months of mobilisation or by 31 May 2011 whichever is earlier (to cover the period March 2011-December 2011) and by 31 August 2011 and **30 October** in each following year of the Program, an Annual Plan which, before it is implemented, must be approved by the Philippines Department of Education.
- 8.2 The Annual Plan should be prepared in accordance with directions provided in writing by AusAID, must be consistent with this Contract and must include the following matters:
 - (a) the Contractor's plan for performance of the Services required for the period of the Annual Plan;
 - (b) the Contractor's proposed strategy for coordinating any Third Party Issues and for providing the Services in a flexible manner as is appropriate;
 - (c) a detailed budget for the period of the Annual Plan including reimbursable grant activities;
- 8.3 The Contractor must make amendments to the Annual Plan as reasonably requested by AusAID.
- 8.4 Within 30 days of receipt of the Annual Plan in accordance with **Clause 8.1 above** AusAID shall notify the Contractor in writing when a decision is likely to be made to reject or accept the Annual Plan. If such Annual Plan has not been approved or rejected within the stated period of 30 days AusAID shall give fair and reasonable consideration to granting an extension of time to the Contractor in respect of the performance of the Services.

- 8.5 Acceptance by AusAID of an Annual Plan does not represent a change to the Contract. The Contract may only be varied in accordance with the Standard Conditions **Clause 12** (Contract Amendments and Variation).

9. SUB-CONTRACTING

- 9.1 In addition to the Standard Conditions **Clause 11** (Sub-Contracting) the following conditions apply to sub-contracts entered into by the Contractor:
- (a) the Contractor must obtain the prior written approval of AusAID to sub-contracts with any party, except Specified Personnel, to the value of AUD100,000 or more. In granting its approval AusAID may impose such conditions, in AusAID's opinion are appropriate, in relation to a proposed sub-contract; and
 - (b) if AusAID objects to the Contractor's recommended sub-contractor, or AusAID nominates a particular sub-contractor, the Contractor must enter into an agreement with such other sub-contractor as directed by AusAID on the basis of remuneration approved by AusAID and provide AusAID with a copy of the executed sub-contract.
- 9.2 Standard Conditions **Clauses 11.1** (Sub-contracting) **(d)** and **(e)** will only apply to sub-contracts valued at **AUD100,000** or more.
- 9.3 The Contractor must not enter into any contract for the procurement of any Supplies or services from any Related Corporation without AusAID's prior approval.
- 9.4 The Contractor must keep a record of the performance of each subcontractor including details of non-compliance with Contract provisions or any other inappropriate action.

10. GRANT ADMINISTRATION

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

11. MEETINGS

- 11.1 The Program Director must attend meetings in Canberra or at Manila Post **at times determined by AusAID**, to review or discuss the Contract including the following matters:
- (a) the general progress of the Program;
 - (b) matters arising from the Contractor's reports to AusAID;
 - (c) any issues arising as a result of communication by either Party with Stakeholders;
 - (d) any other Third Party Issues and the Contractor's proposal for resolution of any issue referred to in (c) above;

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

11.2 AusAID may require an implementation briefing in Canberra prior to mobilisation. The Program Director and the Monitoring and Evaluation Adviser who are included in the Specified Personnel must attend this meeting. AusAID may also require the Program Director and other Specified Personnel to attend a meeting at the Australian Diplomatic Mission in or having responsibility for the Partner Country before commencement of implementation.

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

12. RIGHT OF AusAID TO RECOVER MONEY

12.1 Without limiting AusAID's rights under any provision of the Contract, any payment or debt owed by the Contractor to AusAID in relation to the Contract may be deducted by AusAID from the amount of payment of any claim for Fees, including Reimbursable Costs or from any other moneys payable or due to the Contractor or may be recovered in any court of competent jurisdiction.

12.2 AusAID may review any payments made to the Contractor at any time and:

- (a) if the total of the amount paid to the Contractor is greater than AusAID determines by review to be payable under the Contract, then AusAID must notify the Contractor in writing of the amount of refund it has determined to be repayable;
- (b) the Contractor must within 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 12.2(b)(ii) above** will, in the absence of payment in full of the refund claimed, be deemed to be evidence of the Contractor's acceptance that the amount of refund is correct and payable to AusAID on demand or deductible from subsequent payments due under the Contract; and
- (d) AusAID must, within 28 days of receipt after the Contractor's evidence supporting its opinion concerning the amount of the refund, consider the Contractor's evidence and give the Contractor written notice either:
 - (i) calling for payment within 28 days of the refund determined by AusAID's review; or
 - (ii) calling for payment within 28 days of the refund as re-determined following its consideration of the Contractor's evidence; or

(iii) of AusAID's agreement that there is no refund payable.

12.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 12.2**, 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.

12.4 Where AusAID deducts the amount of a debt or payment in accordance with this clause, it must advise the Contractor in writing that it has done so.

13. GOVERNMENT TAXES, DUTIES AND CHARGES

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

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

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

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

must be paid by the Contractor.

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

(a) the Contract, the Project, and any sub-contracts entered into for the performance of the Services;

(b) the sale, purchase, lease, assignment, licence or transfer of any property under the Contract;

(c) the obtaining of any approvals, consents or authorisations in respect of the Project; and

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

13.4 Subject to **Clause 13.8 below** if any new or existing government tax, duty or charge ("Changed Tax") levied in Australia or the Partner Country in connection with the performance of the Services under this Contract is introduced, increases, decreases or is removed in its entirety and this affects the cost to the Contractor of providing the Services, the Contractor must give AusAID:

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

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

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

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

- 13.5 An increase in the Fees under **Clause 13.4 above** shall not be approved and AusAID is not obliged to pay the amount claimed to be attributable to the change in the Changed Tax unless and until the Contractor provides AusAID with evidence of the net effect of the change in the Changed Tax on the cost of supplying the Services and AusAID is satisfied that:
- (a) the claimed increase is actually attributable to that Changed Tax and takes into account reductions in any other Changed Tax; and
 - (b) the net change in the Changed Tax has affected the Fees for supplying the Services,
- and the increase shall take effect from the date on which the Changed Tax became effective.
- 13.6 A decrease in Fees under **Clause 13.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.
- 13.7 The Contractor may claim a Changed Tax adjustment only once in respect of any change.
- 13.8 **Clause 13.4 above** does not apply to income tax, taxes on turnover or revenue or similar taxes imposed on or in respect of income, turnover or revenue.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 In addition to the Standard Conditions **Clause 22** (Intellectual Property Rights) AusAID grants to the Contractor a revocable, royalty-free worldwide, non-exclusive licence to use, reproduce, adapt and otherwise exploit Contract Material for the academic and research purposes of the Contractor. The licence granted under this clause includes the right of the Contractor to sub-licence any of its employees, agents or contractors to use, reproduce, adapt and otherwise exploit the Contract Material for the purposes of research.

15. INSURANCES

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

- 15.2 The Contractor undertakes that it shall use its best endeavours to ensure that it commits no act or omission which renders any of the insurances required by this Contract to be effected by it, null and void or of less value.
- 15.3 In respect of the public liability insurance, Standard Conditions **Clause 34.1(a)** is amended as follows: the Contractor must ensure that the limit for each and every claim is \$20 million.

16. REDUCTION IN FEES FOR NON-PERFORMANCE

- 16.1 If the Contractor fails to supply the Services in accordance with the Contract, the Fees shall be reduced to cover the reduced level of Services rendered to AusAID or loss or damage suffered by AusAID (as appropriate) because of that failure in accordance with the formula set out in **Schedule 2 (Clause 10 (Contractor Performance Assessment) in Part 4 of the Draft Basis of Payment)**.

17. PERFORMANCE GUARANTEE

Note to Tenderers: This Clause may be negotiated with the preferred tenderer.

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

18. USE OF APPROPRIATE BUILDING MATERIALS

- 18.1 Contractor must ensure that:

- (a) any timber or other building materials used in any way for the Project has been sustainably harvested, or sourced from recycled building materials, and
- (b) any building materials used in any way for the Project do not contain any asbestos.

- 18.2 This requirement is binding upon the Contractor and any sub-contracts let as part of this Program.

- 18.3 The Contractor must include in each Monthly Report certification that:

- (a) Supplies, or materials provided or used by Subcontractors, are not made of or contain asbestos,
- (b) any timber used in any way for the Project has been sustainably harvested; or otherwise
- (c) is sourced from recycled building materials

- 18.4 In the event that Supplies, or materials provided or used by a Subcontractor, do not comply with the requirements of this **Clause 18** the Contractor must:

- (a) immediately upon becoming aware of the non-compliance, or
- (b) immediately upon receipt of a notice from AusAID,

at the Contractor's expense, replace the relevant Supplies or material

PART 3: SCOPE OF SERVICES

Philippines Muslim and Indigenous Peoples' Education Program

Note to Tenderers: This Part 3 of the Request for Tender will appear as Schedule 1 in the consolidated contract. It reflects the most current version of the Services required of the Contractor and may be amended by AusAID in accordance with offers included in the Tenderer's response to the RFT.

1. BACKGROUND

- 1.1 The Muslim and Indigenous People's Education Program (the Program) seeks to improve equitable access to and quality of education for girls and boys in disadvantaged Muslim and indigenous communities in the Philippines. It will build upon and scale up nationwide the specific support activities for Muslims and Indigenous peoples (IPs) developed under the Basic Education Assistance for Mindanao (BEAM) which concluded in November 2009.
- 1.2 Muslims and IPs make up a quarter of the Philippine population. These communities are marginalised and their vulnerability is exacerbated by poverty and lack of basic social services. They face significant challenges in accessing education that provides culturally relevant curriculum and teaching materials, is taught by well-trained teachers and is informed by a policy framework that meets their specific needs. These communities are the most affected as education investment falls resulting in decreased literacy rates compared with the national average.
- 1.3 The Philippines Department of Education (DepED) is implementing a package of key transformation initiatives contained in its Basic Education Sector Reform Agenda (BESRA) for improved service delivery. However, the DepED's human and financial resource constraints would make the specific focus needed to address Muslim and IPs challenges difficult to meet.
- 1.4 The Program is a flexible response to the education challenges faced by Muslims and IPs. It will address poverty reduction and gender inequity by improving equitable access to quality education among girls and boys in Muslim and IP communities. It will support activities to stimulate demand for a quality education, establish a baseline data system, provide grants to schools and fund livelihood projects that will provide income generating opportunities for families to offset associated costs of education. It will support the supply side responses of the DepED via provision of learning materials, curriculum adjustment, teacher development and construction of learning facilities. It will provide grants to regions and remote communities to respond to the needs of out-of-school youth through alternative learning schemes.
- 1.5 The Program is aligned with relevant Government of the Philippines (GoP) basic education policies and priorities. Program implementation will follow Government procedures and use standard monitoring and evaluation systems to track program progress. It complements and builds on current experience and is harmonised with other donor partner inputs.

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- 1.6 Findings of the initial survey commissioned by AusAID will be discussed with DepED to identify the Muslim and IP schools and communities for further detailed analysis and baseline setting. This will support geographical target setting and further baseline data profiling that will be part of the initial activity during the first six months of Program operation.

2. PROGRAM DESCRIPTION

Goal

- 2.1 The goal of the Muslim and Indigenous Peoples' Education Program is to improve equitable access to and quality of basic education for girls and boys in disadvantaged IPs and Muslim communities.

Objective

- 2.2 The objective of the Program is to allow GoP/DepED to provide better access to an appropriate, policy driven, sustainable and quality education for girls and boys in Muslim and IPs communities. It will stimulate demand for education services at the community level.
- 2.3 To achieve this objective, the Program will have three elements:
1. Indigenous Peoples' Education;
 2. Madrasah Education; and
 3. Management of and monitoring of capacity building for the DepED.
- 2.4 Sustainability of the Program will be enhanced via the use of Government of Philippines (GoP) systems and structures.

Component Descriptions

- 2.5 The three elements of the Program will be supported with demand and supply side components:
- (a) **Component 1: Supporting the Demand Side.** The objective is to attract IPs and Muslim children to school and keep them in school.
 - (b) **Component 2: Supporting the Supply Side.** The objective is to enable DepED to address access and quality issues in basic education in disadvantaged IPs and Muslim communities.
 - (c) **Component 3: GoP Management and Monitoring Capacity Building Support.** The objective is to support DepED at all levels to enable it to efficiently and effectively manage the Program and other initiatives that seek

to improve the delivery of basic education services to disadvantaged IPs and Muslim groups.

Phases

2.6 The Program has the following phases:

- (a) **Inception Phase** – first 9 months from March 2011 to 31 December 2011; and
- (b) **Implementation Phase** – from December 2011-30 June 2014.

3. GOVERNANCE STRUCTURE FUNDING AND IMPLEMENTATION ARRANGEMENTS

Governance Structure

- 3.1 The governance structure of the Program will comprise key Philippines DepED executive, bureau, regional and divisional officials, the Contractor and the **Muslim and IPs Technical Working Group (TWG)** and the school heads.
- 3.2 DepED's **Office of the Undersecretary for Muslim Affairs** and the **Bureau of Elementary and Secondary Education** and the **Bureau of Alternative Learning Systems** will be responsible for managing the design and implementation of Program initiatives at the national level.
- 3.3 DepED's **Office of Planning Services (OPS)** will be responsible for the overall coordination of program implementation and will lead the conduct of periodic progress reviews. OPS will be supported by the Education Development Project Implementing Task Force (EDPITAF) in coordinating the Program at the national level, including the day-to-day financial management. The provision of office space to house the Program Management Office (PMO) and a dedicated Program staff is vested in the EDPITAF.

Grants and Funding Arrangements

- 3.4 Funding of specific Program activities will be decided by the DepED in consultation with the Contractor.
- 3.5 In order to guide the funding of Program activities, AusAID will annually advise the total amount of grant funds available for Program activities.
- 3.6 AusAID will provide grant funds for the Program for the Contractor to release to the DepEd for activities outlined in the Annual Plan. The grant funds must be utilised primarily for schools grants, production of Muslim and IPs training materials, training and other learning activities, minor items of procurement, awareness raising initiatives, information collection/studies, access programs and setting up of IPs centres (i.e. community learning centres).
- 3.7 AusAID will make Reimbursable monthly payments to the Contractor (Grants and implementation activities) to fund the Program activities as outlined in the Annual Plan.

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- 3.8 The Contractor must submit monthly invoices to AusAID which identify the Program activities being funded and the amount of funding. AusAID will release funds to pay for actual costs of identified activities within 30 days of receipt of a correctly rendered invoice from the Contractor.
- 3.9 When supporting the Government of Philippines in procurement and accounting matters, the Contractor must use Government of Philippines procedures.

Implementation of the Program

- 3.10 Implementation of the Program at the regional and divisional levels is the responsibility of the regional and division offices in the target provinces.
- 3.11 At the community level, the schools are responsible for implementing the School Improvement Plans in consultation with their respective communities.
- 3.12 The TWG on Muslim and IPs Education will advise and strategically guide the DepED on Muslim and IPs Education issues. It will perform a quality assurance role to ensure that work plans are consistent with existing policies and can effectively contribute to achieving program objectives.
- 3.13 The Muslim and IPs communities are represented at the strategic level through the TWG.
- 3.14 The Contractor has day-to-day operational and management responsibility for the Program and is accountable to **AusAID** for its obligations outlined in this Contract, including ensuring that Australian funds are effectively used and activities reflect value for money.
- 3.15 The Contractor's management team will be housed in the Educational Development Projects Implementing Task Force (EDPITAF) of the DepED Central Office with the exception of the Field-based Program Officers who will be based in target regions.
- 3.16 There will be no administration staff at the regional or division level.
- 3.17 There will be no separate 'Coordinating' or 'Steering' Committee established for the Program. Instead, AusAID and DepED will periodically hold meetings or as when necessary to discuss implementation and policy-related issues. Representatives from the National Commission on Indigenous Peoples (NCIP), National Commission on Muslim Filipinos (NCMF), National Economic and Development Authority (NEDA), along with other key stakeholders, will be invited to these meetings as deemed necessary.
- 3.18 AusAID (Manila) is responsible for managing the Contract, monitoring the Contractor's implementation of the Program and certifying payments to the Contractor.
- 3.19 The AusAID Desk (Canberra) is responsible for the Program at the policy level.
- 3.20 The Contractor must report to AusAID (Manila). For day to day issues, the Contractor will report to the Activity Manager and must advise the Activity Manager separately in writing of all major issues.

4. SERVICES

4.1 The Contractor shall perform the following Services in accordance with the terms and conditions of this Contract:

- (a) implement each of the Components of the Program identified in Clause 2.5 and in Clause 5 below;
- (b) ensure the achievement of the Program objective and components by working with DepED to
 - (i) provide multi-year school grants to assist the schools to implement their School Improvement Plans;
 - (ii) build the capacity of the community, the school and other partners to identify key responsibilities and activities that will improve access to basic education, reduce drop out rate and develop quality relevant curriculum;
 - (iii) build the capacity of DepED staff to manage and monitor and evaluate the Program interventions; and
 - (iv) ensure that DepED is fully supported in Program planning, implementing targeted activities and monitoring and evaluating the impact of these activities;
- (c) provide the AusAID Activity Manager with timely advice on actual and projected expenditures reporting achievements, issues, constraints and problems in a timely manner;
- (d) manage the performance of any subcontractors by ensuring that the subcontractors:
 - (i) comply with relevant and applicable laws, regulations and development policies including AusAID's Child Protection Policy;
 - (ii) are 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 their services;
 - (iii) are bound by the same obligations as the Contractor regarding Accounts and Records, Audits, Privacy, Access to Premises and Anti-Corruption; and
 - (iv) are bound by relevant obligations related to software licensing, computer maintenance requirements and handover arrangements with the Partner government;
- (e) provide and manage the services of the Specified Personnel: in accordance with Clause 9 of this Schedule 1.

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- (f) recruit and manage and provide the services of an Administrative Support Officer, and six field-based Program Officers;
 - (g) provide the necessary administration and financial management systems acceptable to AusAID and the necessary support personnel for the efficient management and implementation of the Program;
 - (h) manage the Specified Personnel, operate the administrative systems for the Program, formulate strategies for problem solving and address any performance deficiencies identified through monitoring or other means;
 - (i) develop a Monitoring and Evaluation Strategy and review and update the draft Monitoring and Evaluation Framework in the Program Design Document;
 - (j) develop and implement a comprehensive Program Quality Assurance system that implements, and further develops as appropriate the Monitoring and Evaluation Strategy as a central component. Broad monitoring of the progress of the Program will occur through the DepED and AusAID; .
 - (k) develop a Gender and Poverty Inclusive and Disability Awareness Strategy that complies with AusAID's gender policy requirements and is consistent with the Philippine Government's Harmonized Gender and Disability Guidelines and with the Policies and Guidelines for Special Education;
 - (l) undertake the following activities as part of the Program:
 - (i) establish Muslim and Indigenous Peoples' education advocacy programs in conjunction with DepEd;
 - (ii) provide technical assistance to schools to develop their School Improvement Plans and financial assistance for implementation;
 - (iii) build the capacity of DepEd staff in the region, division and schools to be able to identify the needs of their communities and how to address those needs;
 - (iv) implement holistic access Muslim and IPs programs for remote communities;
 - (v) develop and implement IPs education policies, strategies and plans;
 - (vi) develop, produce and distribute teacher guides and learning materials in IPs education and Arabic Language and Islamic Values Education (ALIVE);
 - (vii) deliver pre-service and in-service teacher training for IPs education and ALIVE;

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- (viii) design and deliver alternative learning programs for out-of-school Muslim and IPs youth and other disadvantaged groups;
 - (ix) establish IPs centres in the regions and community centre networks;
 - (x) assist the Madaris to obtain DepED recognition and accreditation; and
 - (xi) establish reliable baseline information on IP and Muslim communities in the target areas;
- (m) attend Program management meetings with AusAID and DepED as necessary;
 - (n) draft an Inception Plan for the first nine months of the Program;
 - (o) update the Risk Management Plan;
 - (p) draft the Annual Plan and Budget;
 - (q) contribute to Work Plans developed by the DepED for Program implementation in the regions and divisions;
 - (r) draft Six-Monthly Progress reports;
 - (s) draft and regularly update and implement a Security Management Plan;
 - (t) draft a Program Completion Report; and
 - (u) acknowledge and effectively promote the Australian Government's contribution and ensure strict compliance with Australian Government aid branding guidelines.

5. PROGRAM COMPONENTS

5.1 In implementing **Component 1- Supporting the Demand Side** the Contractor must:

- (a) implement advocacy programs to disseminate to and educate communities, schools, divisions and regions on government policies concerning the rights of parents and children to basic education and the roles and responsibilities of different actors and stakeholders in implementing them;
- (b) provide technical assistance to support schools and communities to develop their school improvement plans, identifying priority areas for investment and improvement and setting targets. Schools and communities will also be assisted in budget planning and preparation and in monitoring the execution and progress of their plans;
- (c) develop skills enhancement and knowledge enrichment activities for staff at the regional, divisional and school level so they can identify, assess and further develop their own capacity to better understand the demands from the communities;

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- (d) provide technical assistance on language policy, incorporating language in the curriculum and providing relevant materials;
 - (e) provide grants to participating schools to implement school improvement plans to support innovations in school planning and development activities; and
 - (f) take a holistic view of service delivery to difficult to reach communities, encourage the demand for associated activities in health and sanitation going beyond the school environment to encompass the community as a whole.

5.2 In implementing **Component 2 – Supporting the Supply Side** the Contractor must with regard to:

A. Indigenous Peoples' Education

- (a) develop and implement IPs education policies, strategies and plans;
- (b) develop and support implementation of School Improvement Plans by IPs schools;
- (c) develop, produce and distribute teacher guides and learning materials;
- (d) design and deliver alternative learning programs for disadvantaged groups including out-of-school youth; and
- (e) establish regional IP education centres and community centre networks.

B. Madrasah Education

- (a) develop, produce and distribute learning materials for the Arabic Language and Islamic Values Education (ALIVE);
- (b) design and deliver pre-service and in-service capacity building program for ALIVE teachers;
- (c) assist Madaris to obtain DepED recognition and accreditation by improving their professional capacity and upgrading of asatidz qualifications; and
- (d) design and deliver learning programs or out-of-school Muslim youth based on their identified needs.

5.3 In implementing **Component 3 – GoP Management and Capacity Building Support** the Contractor must:

- (a) establish reliable baseline information on IPs and the Muslim sector in the target areas;
- (b) establish a program management structure;
- (c) support DepED management capacity development initiatives for Muslim and IPs education programs;

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- (d) contribute to annual Work Plans for the regions and divisions covered by the Program and other reporting systems;
 - (e) establish a monitoring and evaluation (M&E) system.

6. PROGRAM MANAGEMENT

Inception Plan, Annual Plans and Budget and Program issues

- 6.1 Upon mobilisation, the Contractor must develop an **Inception Plan**, to be submitted to AusAID for approval at the end of month two (2) of the Program.
- 6.2 For the first 9 months of the Program from the mobilisation date (the Inception Phase) the Contractor must implement the Program's initial activities as set out in the Inception Plan.
- 6.3 The Contractor together with DepED must, no later than six months after mobilisation, develop and submit a draft **Annual Plan and Budget** for Program-wide activities to cover the period 1 January to 31 December 2012, to synchronise with the Philippines 2012 financial year.
- 6.4 The Contractor must develop Annual Plans and Budgets for the periods 1 January 2013 to 31 December 2013 and 1 January to 30 June 2014, including an update to the Risk Management Plan.
- 6.5 Annual Plans and Budgets must meet agreed funding guidelines and be in a format consistent with AusGUIDELines (or other format agreed by AusAID in writing) and to a standard determined by the Program in its key performance measures;
- 6.6 The DepED and AusAID (Manila) will meet periodically, primarily to consider and approve Annual Plans and Budgets and to discuss major Program issues.
- 6.7 The Contractor must observe the following procedures in relation to major Program issues:
 - (a) The Contractor should first discuss any major Program issues that arise with the AusAID Activity Manager to determine the appropriateness of bringing the issue before a formal meeting of DepED and AusAID
 - (b) If agreement to proceed to formal meeting is reached, the Program Director and DepED's Planning and Coordination Manager in conjunction with the DepED Program Director must develop a formal Issues Paper. The Issues Paper should contain a full analysis of the issue and include recommendations for appropriate action. Issues Papers must be circulated to all members of Program Management, key DepED senior officials and AusAID for consideration two weeks in advance of their meetings.

Procedures Manual

- 6.8 Within the first month of mobilisation the Contractor must develop a **Procedures Manual** in conjunction with the Post and the DepED Program Director (PD) that includes invoice certification procedures, milestone quality assurance and documentary evidence required for certification of invoices.
- 6.9 The Procedures Manual must include the Contractor's business processes for the provision of funding grants to the DepEd.
- 6.10 The Contractor must include a copy of the approved milestone certification form verifying that the outputs have been assessed and are considered to be of the necessary quality standards when submitting invoices for payment. AusAID Manila will, arrange payment upon receipt of this documentation.

Six Monthly Progress Reports (SMPRs)

- 6.11 The Contractor must prepare Six Monthly Progress Reports (SMPR). The SMPR must report on progress of the Program against the Program Objective and Components identified in Clause 2.5 and Clause 5 above, with particular focus on the implementation of the M&E Framework. The SMPR must also address issues that have arisen since the previous SMPR and remedial action taken or proposed to be taken. The first SMPR is due December 2011 and other reports six months thereafter.
- 6.12 For SMPRs prepared immediately prior to a scheduled DepED-AusAID Program meeting, the Contractor should prepare an Issues Paper in accordance with the procedures in Clause 6.7.
- 6.13 In developing the SMPRs, the Contractor must consult with all directly relevant stakeholders, including the partner government, the implementing agency and direct beneficiaries.
- 6.14 The SMPR must be submitted by the Contractor (through the Program Director) to AusAID (Manila), which will use the SMPR as the primary monitoring tool for validating and verifying the Program's progress.
- 6.15 Between Annual Plans and SMPRs, the Contractor will use exception reporting, where necessary, to raise issues with AusAID Manila on urgent Program-related matters.

Program Management Meetings

- 6.16 DepED and AusAID Manila will meet periodically as and when deemed necessary by both parties. AusAID and DepED will jointly frame the Agenda for these meetings, and may invite a range of Program stakeholders to attend these meetings, as deemed appropriate. The meetings may consider but not limited to the following matters:

- (a) Annual Plans;

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- (b) Six monthly Progress Reports;
 - (c) Issues Papers;
 - (d) Monitoring and Evaluation;
 - (e) Risk Management;
 - (f) Independent Program Review;
 - (g) Program Completion Report; and
 - (h) Security Plan.

6.17 The Contractor will provide support for secretariat services at Program Management Meetings.

Program Completion Report

6.18 Upon completion of the Program the Contractor must provide AusAID with five copies of a Program Completion Report (PCR). The PCR must be prepared in accordance with relevant AusAID guidelines extant at the time.

7. MONITORING AND EVALUATION

7.1 The Contractor must, within six (6) months of mobilisation, review and update the draft Monitoring and Evaluation Framework (MEF) and submit to AusAID for approval. The MEF should include, among others:

- (a) baseline data requirements, including disaggregation of data by gender and data on vulnerable groups;
- (b) indicators on which the Program will be monitored and assessed, including outcomes (expected within the period of implementation March 2011-30 June 2014) and longer-term impacts, including gender indicators and indicators for vulnerable groups;
- (c) indicators on which the quality of the Program's management and coordination can be assessed, including gender indicators and indicators for vulnerable groups;
- (d) for each of the above, who will collect the required information, when the information will be collected, and from where, and who will use the information; and
- (e) the reporting.

7.2 The Contractor must review and adjust performance indicators for the MEF in conjunction with the preparation of each Annual Plan.

7.3 Field-based Program Officers and their counterparts must develop Monitoring and Evaluation plans and formats, identify and articulate a developmental, consultative

approach to monitoring and evaluation, and prescribe key performance measures for each of their assigned activities. They must undertake on-going monitoring and evaluation of the implementation of their respective activities and establish how well the implementation has achieved the Program outputs and outcomes against the indicators set out in the MEF.

- 7.4 The Contractor must feed the monitoring and evaluation conducted by Field-Based Program Officers into the Six Monthly Progress Reports.

8. INDEPENDENT PROGRAM REVIEW AND AUSAID QUALITY ASSESSMENT

- 8.1 AusAID reserves the right to commission an Independent Program Review of Program implementation at the end of year two (2) of the Program or as required.
- 8.2 AusAID will contract the services of specialists who will undertake an Independent Program Review of the Contractor's performance in meeting its quality obligations. This may involve assessment of Contractor compliance with Program milestone certification procedures. This review may involve Program site visits at various stages in the life of the Program.

9. PERSONNEL INCLUDING SPECIFIED PERSONNEL

- 9.1 The Contractor will provide the following Specified Personnel. Terms of Reference are at Annex 1 to this Schedule 1.

Table 1 –Specified Personnel

Position	Duration-Months	Notes
Long Term – Specified Personnel		
Program Director -Name	40	Based in DepED Central Office, Manila
M & E - Name	40	Based within EDPITAF, Manila.
Accounts Manager - Name	40	Based within EDPITAF, Manila
Field-based Program Officers (6)	228	Based in target regions/divisions
Administrative Support Officer	40	Based within EDPITAF, Manila
Short-term Advisers		
Unallocated pool e.g. for baseline studies, design support, M&E and gender analysis)	tba	Short- tem Advisers Program to respond to emerging demands

- 9.2 Additional inputs based on emerging issues will be agreed between the DepED, Contractor and AusAID during the development and approval of the Annual Plans. Any additional inputs must be consistent with the Program Design and the Monitoring and Evaluation Framework.
- 9.3 The Terms of Reference for Specified Personnel are detailed in Annex 1.

10. SHORT-TERM ADVISERS

- 10.1 When the Contractor does not have the resources within its Specified Personnel to provide necessary technical inputs, or the Program needs to respond to new and emerging demands the Contractor may propose to utilise the unspecified short-term Advisers pool. .
- 10.2 The Contractor is to submit proposals to utilise the unspecified short-term Advisers pool for approval by AusAID. The proposal is to include:
- (a) A clear, succinct rationale for why the short-term input is required;
 - (b) A description of the skills and experience required;
 - (c) The outputs and milestones;
 - (d) A terms of reference for the Short-term Advisers;
 - (e) The duration of the task;
 - (f) The supervisor that the will report to;
 - (g) Relevant logistic and administrative arrangements;
 - (h) A detailed analysis of costs including fees at cost and management fee to be applied by the Contractor; and
 - (i) The proposed payment events for the task if it planned to have other than one payment in arrears.
- 10.3 Short-term personnel will report to the Program Director and also to the Philippines Government Department of Education. Specific reporting relationships will be specified in individual position descriptions or terms of reference.
- 10.4 The Contractor's services in the management of short-term personnel include the following:
- (a) Performance management of short-term personnel;
 - (b) Ensuring there are workplans for short-term personnel; and
 - (c) Providing ongoing logistical and other support for short-term personnel.

11 REPORTING REQUIREMENTS

- 11.1 The Contractor must provide the following reports by the date indicated in Table below:

Table 2 – Reports Plans and Manuals

Report	Reference	Due Date (to be agreed during contract negotiation)
Procedures Manual	Clause 6.7 – Schedule 1	Within 1st month of mobilisation
Inception Plan	Clause 6.1 – Schedule 1	End of month 2
Updated Monitoring and Evaluation Framework	Clause 7.1 – Schedule 1	Six months of mobilisation
Annual Plan	Clause 6.3 – Schedule 1	Within 6 months after mobilisation and every year for 2012, 2013 and 2014
Six Monthly Progress Report	Clause 6.8 - Schedule 1	December 2011 and every six months thereafter
Independent Program Review	Clause 8.1 – Schedule 1	End of year 2 of implementation
Program Completion Report	Clause 6.15 – Schedule 1	Upon completion of Program
Security Plan	Clause 30 (Personnel Security) – Part B Standard Contract Conditions.	Updated every 6 months

12. CONTRACTOR PERFORMANCE

- 12.1 AusAID will conduct a Contractor Performance Assessment which will be used as the basis for the Contractor Quality Assurance Payment. In the last month of each six months, AusAID will undertake an assessment of contractor performance against the criteria set out in Annex 1 to Schedule 2 – Basis of Payment. AusAID will use reports from Independent Program Reviews in addition to its insights from participating in the program activities, written reports and financial statements and feedback from stakeholders in evaluating the Contractor’s performance.
- 12.2 This Quality Assurance Payment uses an “exception approach” as a means to highlight performance issues and give the Contractor an opportunity to respond and take action. The Quality Assurance Payment will be payable upon a rating of ‘satisfactory’ or better for each and every criteria. For any criteria where an ‘unsatisfactory’ rating is made, AusAID will reduce the Quality Assurance Payment in direct proportion to the total number of satisfactory ratings provided (e.g. if 1 out of 5 criteria are rating unsatisfactory, the Payment will be reduced by 20% for that period).
- 12.3 If the lowest rating is ‘needs attention’, the Quality Assurance Payment will still be made and the Contractor will have the opportunity to rectify performance or provide a response to the rating.
- 12.4 Where the Contractor receives a ‘needs attention’ rating for the same criteria for three consecutive assessments, this will be regarded as unsatisfactory and AusAID will reduce the Quality Assurance Payment on the third assessment in direct proportion to the total number of satisfactory ratings provided as indicated in Clause 11.2.

13. OUTPUTS AND MILESTONES

13.1 The Contractor must deliver the following outputs and milestones by the dates indicated in the Table below:

Table of Outputs and Milestones

No.	Deliverable Output/Milestone	Verifiable Indicator	Completion Date (indicative, subject to contract negotiation)	AUD
1	First Annual Plan (Year 2011 - 2012)	Accepted by AusAID and DepED in writing	Within 6 months after mobilisation - August 2011	
2	1st Six Monthly Six Monthly Progress Report (SMPR)	Accepted by AusAID in writing	15 September 2011	
3	1st Contractor Performance Assessment	Rating of "Satisfactory" or better	September 2011	
4	2nd SMPR	Accepted by AusAID in writing	15 February 2012	
5	2nd Contractor Performance Assessment	Rating of "Satisfactory" or better	March 2012	
6	3rd Contractor Performance Assessment	Rating of "Satisfactory" or better	September 2012	
7	Second Annual Plan (Year 2013)	Accepted by AusAID and DepED in writing	30 November 2012	
8	3rd SMPR	Accepted by AusAID in writing	15 August 2012	
9	4th Contractor Performance Assessment	Rating of "Satisfactory" or better	March 2013	
10	5th Contractor Performance Assessment	Rating of "Satisfactory" or better	September 2013	
11	Third Annual Plan	Accepted by AusAID and	30 November 2013	

	(Year 2014-2015)	DepED in writing		
12	4th SMPR	Accepted by AusAID in writing	15 February 2013	
13	6th Contractor Performance Assessment	Rating of “Satisfactory” or better	March 2014	
14	5th SMPR	Accepted by AusAID in writing	August 2013	
15	6th SMPR	Accepted by AusAID in writing	February 2014	
16	Activity Completion Report (ACR)	Accepted by AusAID in writing	30 May 2014	

Annex 1 to Schedule 1 - Scope of Services
Terms of Reference for Muslim and Indigenous Peoples' Education Program
Specified Personnel

A. PROGRAM DIRECTOR
Position Description Reports to relevant DepED Undersecretary Primary counterpart: Senior Manager within EDPITAF Other counterpart staff: Senior managers in BEE, BSE & BALS Other key stakeholders: TWG on IP & Muslim Education, National Commission on Indigenous Peoples , Office of Muslim Affairs, Regional & Divisional DepED Offices and Local Government Units in targeted provinces, other service providers (e.g. Non-Government Organizations and universities) Duration: 40 months Location: EDPITAF Office, DepED, Manila Languages: High level proficiency in written and spoken English essential Overall purpose of the position The Program Director will have overall responsibility for ensuring the resources from the Government of Australia (GoA) are efficiently and effectively used to improve equitable access to quality basic education for targeted IP and Muslim communities. He/she will do so in line with the scope of the Program design document and subsequent Annual Plans and Budgets as approved by the DepED and AusAID. Roles and Responsibilities 1. Ensure that DepED is appropriately supported in taking on its lead role in developing work plans for Program funding, implementing them on the ground, and then monitoring and reporting on progress, results achieved and lessons learned 2. Develop and document clear operational guidelines for Program management. 3. Ensure all key stakeholders are kept fully informed of the scope and operations of the Program, including through ongoing informal communication, workshops, a Program newsletter and other appropriate media. 4. Ensure the Program's Gender and Poverty Inclusive (GPI) and Disability approach is understood by key stakeholders and is implemented on the ground. 5. Ensure the Program DepED and AusAID parties are effectively serviced and their decisions are acted upon. 6. Facilitate and coordinate the preparation of the Program's Annual Plans and budgets, ensure these are of good quality through an appropriate appraisal process, and submit these to the DepED and AusAID for approval.

A. PROGRAM DIRECTOR

7. Ensure the timely release of Program funds to implement approved work plans.
8. Keep clear and up to date financial records of Program expenditure and commitments, outstanding acquittals, etc and ensure annual audits are carried out on all accounts.
9. Monitor progress in implementing Program work plans, output delivery and the Program's contribution to improving basic education service delivery for targeted groups.
10. Prepare and submit physical progress and financial reports as required by the DepED and AusAID, with a clear focus on results and lessons learned.
11. Support the identification of successful initiatives, the implementation of sustainable financing strategies, and the replication of successful initiatives by DepED.
12. Effectively monitor and manage risks to effective Program implementation, and keep DepED and AusAID informed of what these risks are and what risk management strategies are required.
13. Mobilise short-term Advisors as required (in-line with Program budget allocations for TA), in-particular to support effective monitoring and evaluation of the Program.
14. Promote a culture of team work, learning and results-based management among colleagues and counterparts.
15. Ensure Program recruited staff are appropriately supported in undertaking their work, that their performance is regularly appraised, and that appropriate disciplinary action is taken if required.
16. Ensure the field-based Program Officers are fully briefed regarding the scope and operations of the Program and support them in the effective communication of the scope and operations of the Program to regional/divisional stakeholders, particularly the target IP and Muslim communities.
17. Support the field-based Program Officers in the preparation of contracts/agreements with identified service providers (such as universities / NGOs involved in designing and delivering access programs).
18. Help ensure annual audits are carried out on all special accounts.
19. Report cases of fraud to the AusAID Activity Manager in a judicious and timely manner.

Knowledge and Skills Required

1. Demonstrated experience in project/ program planning and management, particularly of development assistance projects/ programs.
2. Demonstrated knowledge of the Philippines basic education sector and its reform agenda, including issues associated with IP and Muslim education.
3. Demonstrated knowledge of AusAID policies and procedures, particularly with respect to the Philippines country program and the education sector.
4. Demonstrated knowledge of how to effectively promote gender and poverty inclusive and disability approaches.
5. Excellent analytical and communication skills, including report writing.

A. PROGRAM DIRECTOR

6. Excellent inter-personal skills, including the ability to effectively support senior managers and policy makers within government.
7. Demonstrated problem solving skills.
8. Knowledge and skills in capacity building methodologies, team building, mentoring and coaching.
9. High level computing skills (word processing, spreadsheets, powerpoint presentations, etc.).

Personal attributes

- The job-holder must be able to demonstrate the following personal attributes:
- A clear commitment to promoting social justice for disadvantaged groups
- Respect for cultural and religious diversity
- Flexibility, responsiveness, discipline and patience
- Honesty and integrity
- Excellent leadership qualities

B. MONITORING AND EVALUATION

Reports to Program Director

Primary counterparts: Senior DepED Officer responsible for M&E of basic education (in policy and planning division)

Other counterpart staff: National, Regional and Divisional managers in BEE, BSE & BALS

Other key stakeholders: IP and Muslim schools and community members, LGUs and other service providers (e.g. NGOs and universities)

Duration: 40 months

Location: EDPITAF Office, DepED, Manila

Languages: High level proficiency in written and spoken English essential

Purpose of the position

The M&E Support Officer will support the development of M&E capacity within DepED, with a particular focus on collecting and using information relevant to the improvement of access to quality basic education for Muslim and IP communities. He/she will specifically support the collection, recording, analysis and use of baseline information in Program targeted regions/districts, and then monitoring and evaluating progress towards achieving improved access to quality education in these areas.

Roles and responsibilities

Support DepED and the Program Director to:

1. Clarify baseline information requirement in the selected target areas, based on the objectives and indicators contained in the Program's results and monitoring framework and ensuring consistency with DepED's M&E framework for basic education.
2. Establish a cost effective approach to collecting and recording the required baseline information.
3. Prepare a baseline information collection work plan and budget and have this approved by DepED and the Program Director.
4. Coordinate and supervise the collection, recording, storage and analysis of baseline information in line with the approved plan.
5. Ensure baseline information is presented in a clear and accessible format for use by DepED and other stakeholders.
6. Clarify, and as required help design and establish, the procedures, methods and formats to be used for ongoing monitoring and reporting on progress in delivering improved basic education services for Muslim and IP communities.
7. Support the documentation of monitoring operational guidelines.
8. Design and support the delivery of a capacity building program for DepED's regional/divisional M&E teams in targeted areas, including through design and delivery of appropriate training activities.
9. Support the analysis of monitoring data collected and reported by DepED in targeted areas including monitoring and analysis of achievement of gender equality.
10. Identify the need for additional studies/research to help answer questions/concerns arising from the analysis of monitoring data.
11. Support the preparation of summary reports on the results being achieved, lessons learned and implications for forward planning, in targeted areas supported with Program resources.
12. Support the identification of successful initiatives, the implementation of sustainable financing strategies, and the replication of successful initiatives by DepED.
13. Support the monitoring of risks to effective Program implementation, and keep the Program Director and DepED counterparts informed of what these risks are and what risk management strategies might be required.
14. Mobilise short-term Advisors as required (in-line with Program budget allocations for TA), to support effective monitoring and evaluation of the Program.

Knowledge and skills required

1. Substantial demonstrated experience in design and implementation of M&E systems.
2. Ability to design and implement quantitative and qualitative surveys / data collection activities.
3. Knowledge of M&E information requirements and systems in the education sector.
4. Ability to design and implement skill development/training activities in M&E.

5. Excellent inter-personal and facilitation skills, including the ability to effectively work with and support a wide range of stakeholders (including education managers, local government staff and community members).
6. Excellent analytical and communication skills, including report writing.
7. Demonstrated problem solving skills
8. Knowledge and skills in capacity building methodologies, team building, mentoring and coaching.
9. Knowledge and skills in gender and development strategy implementation and/or monitoring.
10. High level computing skills (word processing, spreadsheets, databases, etc) .

Personal attributes

The job-holder must be able to demonstrate the following personal attributes:

- A clear commitment to promoting social justice for disadvantaged groups
- Ability to travel to, and work in, remote rural locations with few amenities
- Respect for cultural, gender and religious diversity
- Flexibility, responsiveness, discipline and patience
- Honesty and integrity

C. ACCOUNTS MANAGER

Reports to Planning and Coordination Manager

Duration: 40 months

Based in EDPITAF, DepED, Manila

Roles and Responsibilities

1. Control of financial systems
2. Audit of financial systems in use
3. Maintenance of appropriate insurances
4. Cost monitoring and transfer of funds and salaries
5. Ensure that Australian funds are effectively used and activities reflect value for money.
6. Review requests for funds and ensure that they are spent on activities which they are requested for.
7. Review acquittals and ensure that these are up to required standard
8. Keep clear and up to date financial records of Program expenditure and commitments, outstanding acquittals, etc and ensure annual audits are carried out on all accounts.
9. Report cases of fraud to the Project Director in a timely and judicious manner.

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10. Assist the Project Director in investigating fraud cases.

Personal attributes

The job-holder must be able to demonstrate the following personal attributes:

- A clear commitment to promoting social justice for disadvantaged groups
- Respect for cultural, gender and religious diversity
- Flexibility, responsiveness, discipline and patience
- Honesty and integrity
- Ability to work under pressure
- Attention to detail

D. FIELD-BASED PROGRAM OFFICERS (6)

Position Description

Reports to Planning and Coordination Manager

Primary counterparts: Regional/ Divisional DepED Senior Managers

Other key stakeholders: IP and Muslim schools and community members, LGUs and other service providers (e.g. NGOs and universities)

Duration: 38 months (each)

Location: DepED Regional / Divisional Offices

Languages: High level proficiency in written and spoken English essential

Overall purpose of the position

- The field-based Program Officers will consult and work with regional and divisional DepED senior managers, IP and Muslim communities, and schools in the Program target areas to identify priority needs consistent with the requirements of BESRA. They will play a major role in ensuring that DepED staff and other service providers in the targeted provinces are clear about the purpose and scope of the Program, that they have timely access to Program resources in line with approved work plans and budgets, and that implementation is effectively monitored and evaluated.

Roles and responsibilities

1. Ensure all key regional/divisional stakeholders are kept fully informed of the scope and operations of the Program, including through ongoing informal communication, workshops, community meetings and other appropriate media.
2. Ensure the Program's Gender and Poverty Inclusive (GPI) and Disability approach is understood by key stakeholders and is implemented on the ground.
3. Support the development and implementation of activities for local community engagement and participation.
4. Facilitate the preparation of regional/divisional Annual Plans and budgets in target

areas, and help ensure these are of good quality.

5. Support the preparation of contracts/agreements with identified service providers (such as universities / NGOs involved in designing and delivering access programs).
6. Support the timely release of Program funds to implement approved work plans.
7. Help ensure annual audits are carried out on all special accounts.
8. Monitor progress in implementing Program work plans, output delivery and the Program's contribution to improving basic education service delivery for targeted groups.
9. Prepare and submit physical progress and financial reports as required by the Program Director, with a clear focus on results and lessons learned.
10. Support the identification of successful initiatives, the implementation of sustainable financing strategies, and the replication of successful initiatives by DepED.
11. Effectively monitor and manage risks to effective Program implementation, and keep the Program Director and DepED counterparts informed of what these risks are and what risk management strategies are required.
12. Mobilise short-term Advisors as required (in-line with Program budget allocations for TA), in-particular to support effective monitoring and evaluation of the Program.
13. Promote a culture of team work, learning and results-based management among colleagues and counterparts.

Knowledge and Skills required

1. Demonstrated experience in project planning and management (including monitoring and evaluation), particularly of development assistance projects
2. Demonstrated knowledge of the Philippines basic education sector and its reform agenda, including issues associated with IP and Muslim education
3. Demonstrated knowledge of how to effectively promote gender and poverty inclusive and disability approaches
4. Excellent inter-personal and facilitation skills, including the ability to effectively work with and support a wide range of stakeholders (including education managers, local government staff and community members)
5. Excellent analytical and communication skills, including report writing
6. Demonstrated problem solving skills
7. Knowledge and skills in capacity building methodologies, team building, mentoring and coaching
8. High level computing skills (word processing, spreadsheets, power-point presentations, etc.)

Personal attributes

The job holder must be able to demonstrate the following personal attributes:

• A clear commitment to promoting social justice for disadvantaged groups • Ability to travel to, and work in, remote rural locations with few amenities • Respect for cultural, gender and religious diversity • Flexibility, responsiveness, discipline and patience • Excellent leadership qualities • Honesty and integrity
E. ADMINISTRATIVE SUPPORT OFFICER Reports to Planning and Coordination Manager Duration: 40 months Based in EDPITAF, DepED, Manila Roles and Responsibilities 1. Mobilisation and Demobilization 2. Evacuation and insurance matters, housing and education 3. Documentation control and report production 4. Administrative support to Program Director and Planning and Coordination Manager 5. Provide support to the Accounts Manager in reviewing fund request and acquittals Personal attributes The job holder must be able to demonstrate the following personal attributes: • A clear commitment to promoting social justice for disadvantaged groups • Ability to travel to, and work in, remote rural locations with few amenities • Respect for cultural, gender and religious diversity • Flexibility, responsiveness, discipline and patience • Honesty and integrity • An ability to juggle multiple and often competing tasks with professionalism and courtesy • Attention to detail

PART 4: DRAFT BASIS OF PAYMENT
Philippines Muslim and Indigenous Peoples' Education Program

1. TOTAL AMOUNT

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

(a)	AUDXXX – Fixed Management Fee
(b)	AUD5,915,500 – Reimbursable Payments (grants and implementation activities)
(c)	AUDXXX – Reimbursable Specified Personnel Costs
(d)	AUD662,000 – Reimbursable Short Term Personnel Costs
(e)	AUD2,600,000 - Reimbursable Operational Costs
(f)	AUDXXX - Reimbursable Contractor Administration and Equipment Costs

- 1.2 AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.

2. PAYMENT STREAMS

- 2.1 For the performance of the Services described in the Contract, AusAID shall pay the Contractor, as follows to a maximum amount specified in Clause 1.1 above:

- (a) **Fixed Management Fee (FMF)** in accordance with Clause 3 of this Schedule up to a maximum amount of **AUDXXX**. FMF will be paid as:
 - (i) Regular payments in accordance with Clause 4 of this Schedule 2, up to a maximum total amount of **AUDXXX** (approximately 70% of FMF); and
 - (ii) Milestone Payments in accordance with Clause 5 of this Schedule 2, up to a maximum total amount of **AUDXXX** (approximately 30% of FMF).
- (b) **Reimbursable Payments (Grants and Implementation Activities)**
 - (i) Reimbursable Grant Payments in accordance with Clause 6 of this Schedule 2, up to a maximum total amount of **AUD5,915,500**.

(c) **Reimbursable Specified Personnel Costs**

- (i) The maximum amount payable for Reimbursable Personnel Costs is **AUDXXX**, payable as monthly Payments in accordance with Clause 7 of this Schedule 2 and Annex 2 of this Schedule 2 (Table 1A to 1E).

(d) **Reimbursable Short Term Personnel Costs**

- (i) The maximum amount payable for unspecified short-term advisers is **AUD662,000** in accordance with Clause 7 of this Schedule 2.

(e) **Reimbursable Operational Costs**

- (i) The maximum amount payable for reimbursable operational costs is **AUD2,600,000** in accordance with Clause 8 of this Schedule 2.

(f) **Reimbursable Contractor Administration and Equipment Costs**

- (i) The maximum amount payable for Reimbursable Contractor Administration and Equipment Costs is **AUDXXX** in accordance with Clause 9 of this Schedule 2.

3. FIXED MANAGEMENT FEE (FMF)

3.1 The FMF will comprise (but will not be limited to):

- (a) All aspects of profit, overheads, administration or management fee , or any other mark-up/margins on the part of the Contractor including commercial margins for all personnel;
- (b) All high level management and management support costs for all Program personnel;
- (c) The cost of any Contractor office support, such as administrative, financial and management support;
- (d) Costs, including domestic and international travel, accommodation, per diems, and local transport costs where required for all Contractor office personnel (other than those listed as Specified Personnel at **Tables 1A-1D** of this Schedule); ,
- (e) All domestic and international communication costs incurred within Australia and in the Philippines;
- (f) Costs associated with all personnel briefings in Australia or the Philippines;

- (g) Recruitment costs;
- (h) Costs associated with any subcontracting and procurement of goods or services;.
- (i) All management and administrative support costs for Specified Personnel and Short-Term Advisers;
- (j) Financial management costs and financing costs, if any;
- (k) Cost of complying with the Contractor's monitoring and evaluation, reporting and liaison obligations under the Contract;
- (l) External audit and internal auditing and assurance costs;
- (m) All Allowances for risk and contingencies, including escalators, for the term of the Contract;
- (n) Security costs for all Program personnel;
- (o) Insurance Costs (including but not limited to, professional indemnity, worker's compensation, public liability, and any other insurances as required under the Contract or deemed necessary by the Contractor) in accordance with **Clause 33** (Indemnity) and **Clause 34** (Insurance) of **Part B** (Standard Contract Conditions) of the Contract; and
- (p) Taxation (other than personnel-related taxes and GST), as applicable; and
- (q) all other costs not specifically identified in **Clauses 2 to 5** of this Schedule..

4. REGULAR PAYMENTS

- 4.1 The total amount for Regular Payments shall not exceed **AUDXXX**. This amount reflects seventy per cent (70%) of total Fixed Management Fees.
- 4.2 Regular Payments payable to the Contractor will be paid progressively in equal instalments on a monthly basis within thirty (30) days of AusAID's receipt of a correctly rendered invoice as required by the contract.

5. MILESTONE PAYMENTS

- 5.1 AusAID shall pay the Contractor the FMF in instalments known as Milestone Payments. Thirty percent (30%) of the FMF will be paid as Milestone Payments to the Contractor which shall not exceed the sum of **AUDXXX** plus GST, if any, to a maximum of **AUDXXX**.
- 5.2 The Milestone Payments will be payable to the Contractor progressively, within thirty (30) days of AusAID's acceptance of the satisfactory achievement of the Milestones

specified in Annex 1 of this Schedule 2 and subject to provisions of a correctly rendered invoice **Clause 20.1** of Part B – Standard Contract Conditions. The exception to this is where the milestone is a Contractor Performance Assessment when Clause 10 will apply.

- 5.3 The Contractor will certify that milestones have been achieved to the required standard and to the satisfaction of DepED. AusAID’s assessment of the Contractor’s achievement of selected Milestones may be informed by any Independent Program Review conducted in accordance with **Clause 8 of Schedule 1 – Scope of Services**.
- 5.4 AusAID will contract the services of specialists to undertake an Independent Program Review of the Contractor’s performance in meeting its quality obligations. This may involve assessment of Contractor compliance with Program milestone certification procedures.

6. REIMBURSABLE PAYMENTS (Grants and Implementation Activities)

- 6.1 AusAID will pay the Contractor on a monthly basis in arrears the reimbursable grant amount released to DepED to implement program activities. This amount, to be determined in accordance with the approved Annual Plan, shall not exceed **AUD5,915,500** plus GST, if any, to a maximum of **AUD591,500** over 4 years (March 2011-30 June 2014). These Reimbursable Payments will be made by AusAID within 30 days of receipt of a correctly rendered invoice.

7. MONTHLY PERSONNEL PAYMENT

- 7.1 AusAID shall reimburse the Contractor up to a maximum total amount of **AUDXXX** for all Specified Personnel, Short-Term Advisers and administrative support staff.
- 7.2 For each Specified Personnel, AusAID shall pay the Contractor on a monthly basis in arrears, an all-inclusive Monthly Professional Fee as detailed in **Tables 1A – 1D** of this Schedule.
- 7.3 The Contractor will provide monthly billing rates to AusAID for all Personnel at cost for the following, but excluding profit and management fees.
- (a) Salary, at actual cost as paid to personnel, based on a five (5) day working week;
 - (b) All personnel-related taxes, levies and insurance costs incurred in Australia and the Philippines,(including but not limited to insurance for health, medical and medical evacuation, worker’s compensation, liability and indemnity), with the exception of GST for Services performed in Australia [as per **Clause 21** (Goods and Services Tax) of **Part B** Standard Contract Conditions].
 - (c) Any relevant Philippines employment conditions;
 - (d) Superannuation levy, if any, as appropriate;

- (e) Paid annual leave allowances of up to four (4) weeks per annum to accrue on a pro-rata basis per twelve months' continuous engagement on the Program, including all applicable leave costs such as airfares to and from the Philippines;
 - (f) Public holidays per annum as agreed by AusAID Manila;
 - (g) Mobilisation and demobilisation costs (including airfares) at cost (subject to reasonableness) on a one-off basis, if applicable;
 - (h) Housing accommodation, utilities and private transport costs;
 - (i) Any language training costs for international personnel;
 - (j) All other costs not listed as reimbursable items; and
 - (k) Any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor.
- 7.4 Leave accrued during the Program for Specified Personnel shall be deemed to be taken in the year it falls due and cannot be accumulated or paid out.
- 7.5 AusAID will not reimburse leave costs in excess of those specified in **Clauses 7.3 (e) and 7.4** above
- 7.6 If a Specified Personnel member is absent for any period, aside from the periods of leave permitted in Clauses 7.3(e) and 7.4 above, the Monthly Rate Payable will be adjusted in accordance with the following formula:
- $$\text{Adjustable Monthly Rate} = \frac{(\text{Number of Days Worked} + \text{AusAID Manila Public Holidays}) \times \text{Monthly Rate}}{\text{Total workable days (weekdays and AusAID Manila Public Holidays) in Month}}$$
- 7.7 The payment will be made by AusAID within 30 days of receipt of a correctly rendered monthly invoice for the agreed amounts.
- 7.8 The Contractor is required to maintain official time sheets, in relation to actual days worked by each Personnel and signed by the particular personnel.
- 7.9 The Contractor's financial and other records in relation to Monthly Personnel Payments will be subject to audit by the Commonwealth, or any party appointed by the Commonwealth, in the sole and absolute discretion of the Commonwealth.
- 7.10 Any payments made to the Contractor in relation to Personnel inputs, which are subsequently discovered to have been paid which were not provided by the personnel or inputs that are determined by AusAID to be of insufficient quality, will be a debt due to and payable by the Contractor.

- 7.11 Amendment to Personnel inputs and names will be accepted if the Contractor and AusAID agree in writing to the reasons for the variation and outlined in the Quarterly or Exception Reports and the rates relating to that variation.
- 7.12 For the purpose of calculating part months where necessary, a full month is deemed to be 30 days. Part months will be pro-rated on a daily basis.
- 7.13 Leave accrued during the Program for Specified Personnel shall be deemed to be taken in the year it falls due and cannot be accumulated or paid out.

8. REIMBURSABLE OPERATIONAL COSTS

- 8.1 AusAID shall reimburse the Contractor up to a maximum of **AUD2,600,000** for the following cost categories:
- (a) Training;
 - (b) Procurement including Office Set-up Costs;
 - (c) Program travel;
 - (d) Stakeholder workshops;
 - (e) Production and copying of materials; and
 - (f) Any subcontracting costs.
- 8.2 The reimbursable costs will be determined in the approved Annual Plans. The Contractor will be reimbursed at cost up to the amount specified in each Annual Plan, provided this amount does not exceed the overall cost limit. If projected expenditure on agreed items will exceed budgeted costs in the Annual Plan by more than 10%, the Contractor must obtain AusAID's written approval prior to commitment to the expenditure.
- 8.3 The Contractor must provide AusAID with an invoice on a monthly basis for reimbursables incurred in the preceding month. AusAID will pay the Contractor within 30 days after receipt of a correctly rendered invoice.
- 8.4 The entitlement to reimbursement for travel costs is as follows:
- (a) reimbursed at economy class for flight legs under four hours and business class flight legs over four hours. Any travel undertaken at cheaper rates (e.g. discount fares) does not entitle the Contractor to reimbursement of the cost of any higher class of travel. Travel must be via the most direct and cost effective route;
 - (b) international travel undertaken on an Economy Class airfare does not entitle the Contractor to claim for reimbursement of the equivalent business class airfare.

8.5 When total reimbursable expenditure reaches 80% of the maximum limit specified in this Schedule 2, the Contractor must advise AusAID of the remaining commitments and must ensure that the maximum limit is not exceeded.

8.6 The Contractor must maintain a Register of Assets in accordance with **Clause 10.4 of Part B – Standard Contract Conditions** in the format described in **Annex 2** to this Schedule 2.

9. REIMBURSABLE CONTRACTOR ADMINISTRATION AND EQUIPMENT COSTS

9.1 Reimbursable Contractor Administration and Equipment Costs are the costs associated with Contractor office equipment, vehicles, vehicle running costs, office materials and supplies and administrative costs in support of planning and review workshops.

9.2 The maximum amount payable to the Contractor for Reimbursable Contractor Administration and Equipment Costs will be **AUDXXX**.

10. CONTRACTOR PERFORMANCE ASSESSMENT – QUALITY ASSURANCE PAYMENTS

10.1 AusAID may pay the Contractor a Quality Assurance Payment following the conduct of a Contractor Performance Assessment in accordance with **Clause 10.4 below**.

10.2 Quality Assurance Payments (if due) will be paid in accordance with **Table 1 (Milestone Payments)** to this Schedule 1 - Basis of Payment within 30 days of AusAID's receipt of a correctly rendered invoice.

10.3 The actual amount payable for the Quality Assurance Payment will be determined by the six-monthly Contractor Performance Assessment conducted by AusAID which will be conducted, in accordance with **Clause 10.4 below**

10.4 In the last month of each six months of the Program, AusAID will conduct a Contractor Performance Assessment against the criteria set out in **Annex 4** of this Schedule. AusAID will use reports from any Independent Program Reviews in addition to its insights from participating in the Program activities, written reports and financial statements and feedback from stakeholders to evaluate the Contractor's performance.

11. CLAIMS FOR PAYMENT

11.1 The Contractor's claims for payment must be submitted when due pursuant to this Schedule 2 in accordance with the Standard Contract Conditions Clause headed **Payment** in the Contract, and shall be submitted in a form identifiable with the Services.

- 11.2 Claims for payment should include the Payment Event Number that will be issued by AusAID. Payment event numbers will be issued for:
- (a) Regular Payments;
 - (b) Milestone Payments;
 - (c) Reimbursable Grant and Implementation Payments;
 - (d) Reimbursable Personnel Payments;
 - (e) Reimbursable Operational Costs; and
 - (f) Reimbursable Administration and Equipment Costs.
- 11.3 Invoices involving foreign exchange transactions must be made in accordance with **Clause 20.5 in Part B – Standard Contract Conditions**.
- 11.4 All claims for payment shall be made to:
- Chief Finance Officer
Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601
- 11.5 Tax invoices should be sent to the above address. Alternatively AusAID will accept electronic tax invoices. These can be sent to accounts.processing@ausaid.gov.au.
- 11.6 A copy (electronic or hard copy) of the invoice should also be forwarded to the Activity Manager.
- 11.7 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>

Annex 1 to Schedule 2: Milestone Payments

Table 1

No.	Deliverable Output	Verifiable Indicator	Completion Date (indicative, subject to contract negotiation)	(A\$)
1	First Annual Plan (Year 2011 - 2012)	Accepted by AusAID and DepED in writing	Within 6 months after mobilisation - August 2011	
2	1st Six Monthly Progress Report (SMPR)	Accepted by AusAID in writing	15 September 2011	
3	1st Contractor Performance Assessment	Rating of “Satisfactory” or better	September 2011	
4	2nd SMPR	Accepted by AusAID in writing	15 February 2012	
5	2nd Contractor Performance Assessment	Rating of “Satisfactory” or better	March 2012	
6	3rd Contractor Performance Assessment	Rating of “Satisfactory” or better	September 2012	
7	Second Annual Plan (Year 2013)	Accepted by AusAID and DepED in writing	30 November 2012	
8	3rd SMPR	Accepted by AusAID in writing	15 August 2012	
9	4th Contractor Performance Assessment	Rating of “Satisfactory” or better	March 2013	
10	5th Contractor Performance Assessment	Rating of “Satisfactory” or better	September 2013	
11	Third Annual Plan (Year 2014-2015)	Accepted by AusAID and DepED in writing	30 November 2013	

12	4th SMPR	Accepted by AusAID in writing	15 February 2013	
13	6th Contractor Performance Assessment	Rating of “Satisfactory” or better	March 2014	
14	5th SMPR	Accepted by AusAID in writing	August 2013	
15	6th SMPR	Accepted by AusAID in writing	February 2014	
16	Activity Completion Report (ACR)	Accepted by AusAID in writing	30 May 2014	
TOTAL				100%

Annex 2 to Schedule 2:

Table 1A Specified Personnel for 1 March 2011 – 31 December 2011

Position	Name	Salary	Taxes	Superannuation (A\$)	Leave Allowance (A\$)	Mobilisation (A\$)	Accommodation (A\$)	Other	Total Monthly Fee Rate (A\$)
Program Director									
Monitoring and Evaluation Adviser									
Accounts Manager									
Field-based Program Officers (6)	N/A								
Administrative Support Staff	N/A								
TOTAL (1 March 2011 – 31 December 2011)									

Tenderer's Notes and Assumptions:

Table 1B Specified Personnel for 1 January 2012 – 31 December 2012

Position	Name	Taxes	Superannuation (A\$)	Leave Allowance (A\$)	Accommodation (A\$)	Other (A\$)	Total Monthly Fee Rate (A\$)
Program Director							
Monitoring and Evaluation Adviser							
Accounts Manager							
Field-based Program Officers (6)	N/A						
Administrative Support Staff	N/A						
TOTAL (1 January 2012 – 31 December 2012)							

Tenderer's Notes and Assumptions:

Table 1C Specified Personnel for 1 January 2013 – 31 December 2013

Position	Name	Taxes	Superannuation (A\$)	Leave Allowance (A\$)	Accommodation (A\$)	Other (A\$)	Total Monthly Fee Rate (A\$)
Program Director							
Monitoring and Evaluation Adviser							
Accounts Manager							
Field-based Program Officers (6)	N/A						
Administrative Support Staff	N/A						
TOTAL (1 January 2013 – 31 December 2013)							

Tenderer's Notes and Assumptions:

Table 1D Specified Personnel for 1 January 2014 – 30 June 2014

Position	Name	Salary	Taxes (A\$)	Superannuation (A\$)	Leave Allowance (A\$)	Demobilisation (A\$)	Accommodation (A\$)	Other	Total Monthly Fee Rate (A\$)
Program Director									
Monitoring and Evaluation Adviser									
Accounts Manager									
Field-based Program Officers (6)	N/A								
Administrative Support Staff	N/A								
TOTAL (1 January 2014 – 30 June 2014)									

Tenderer's Notes and Assumptions:

Table 1E: Total Specified Personnel Costs

Table	Description	Amount (A\$)
Total from Table 1A	Specified Personnel Fees for 1 March 2011 – 31 December 2011	
Total from Table 1B	Specified Personnel Fees for 1 January 2012 – 31 December 2012	
Total from Table 1C	Specified Personnel Fees for 1 January 2013 – 31 December 2013	
Total from Table 1D	Specified Personnel Fees for 1 January 2014 – 30 June 2014	
TOTAL		

Table 1

Table 1

Annex 4 – Contractor Performance Assessment

1. AusAID will be directly responsible for carrying out the Contractor Performance Assessment which will be used as the basis for the Quality Assurance Payment. In the last month of each six months, AusAID will undertake an assessment of contractor performance against the criteria shown below (see **Table 1 below**). AusAID may draw upon the reports of the Independent Program Review as well as their own participation in the Program, written reports and financial statement, and Minutes of the TWG as well as feedback from participating stakeholders, in carrying out their assessments.
2. This Quality Assurance Payment uses an “exception approach” as a means to highlight performance issues and give the Contractor an opportunity to respond and take action. The Quality Assurance Payment will be payable upon a rating of ‘satisfactory’ or better for each and every criteria. For any criteria where an ‘unsatisfactory’ rating is made, AusAID will reduce the Quality Assurance Payment in direct proportion to the total number of satisfactory ratings provided (e.g. if 1 out of 5 criteria are rating unsatisfactory, the payment will be reduced by 20% for that period).
3. If the lowest rating is ‘needs attention’ ,the full Quality Assurance Payment will still be made and the Contractor will have the opportunity to rectify performance or provide a response to the rating.
4. Where the Contractor receives a ‘needs attention’ rating for the same criteria for three consecutive assessments, this will be regarded as unsatisfactory and AusAID will reduce the Quality Assurance Payment on the third assessment in direct proportion to the total number of satisfactory ratings provided as indicated in Paragraph 2.

Table 1 – Contractor Performance Assessment Criteria

Report for the period ending: (date)

Criteria	Rating	Comment
Relationship Management • Effective relationships between key stakeholders and partners supported; • Functional networks and linkages with men and women maintained; • Regular, clear and meaningful communication through materials and in person conducted; • Business processes are consistent with partnership principles and AusAID's policies.	Outstanding Satisfactory Needs Attention Unsatisfactory	<i>Substantive comments and examples should be provided</i>
Personnel management • Systems for the recruitment, mobilisation, performance management of men and women operating effectively; • Staff appropriately qualified, experienced for the positions and supported in their work; • Appropriate balance of men and women; • Staff work effectively as a team.	Outstanding Satisfactory Needs Attention Unsatisfactory	
Capacity Building • Capacity building for partners and stakeholders operates at a pace and approach that is appropriate and consistent with their priorities, responsibilities and absorptive ability; • High quality, timely and appropriate technical assistance is provided in an equitable manner, in accordance with partner's priorities.	Outstanding Satisfactory Needs Attention Unsatisfactory	
Monitoring and evaluation • Data collection and reporting systems operating effectively to meet analytical needs; • High level analytical support provided to DepED and AusAID. • Continuous improvement and learning across stakeholders is supported.	Outstanding Satisfactory Needs Attention Unsatisfactory	
Financial Management • Grants distributed in a timely manner and in accordance with the Annual Plan; • Financial administration conducted in accordance with the approved Procedures Manual; • Provision timely and accurate financial information to AusAID as required; • Audit system operating effectively.	Outstanding Satisfactory Needs Attention Unsatisfactory	

SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

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PART 5 – STANDARD TENDER CONDITIONS

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

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

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

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

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

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

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

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

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

Conditions Applying to Electronic Tender Lodgement

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

Conditions Applying to Hard Copy Tender Lodgement

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

2. TENDERER ENQUIRIES

- 2.1 Any enquiries that Tenderers may have must only be directed to the **Contact Person** specified in the Tender Particulars.
- 2.2 If a Tenderer:

- (a) finds any discrepancy, error or omission in the terms and conditions of the RFT, including of the Contract Conditions; or
- (b) wishes to make any enquiry, including seeking clarification, of the RFT, including of the Contract Conditions,

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

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

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

3. **LATE TENDERS**

Conditions Applying to Tenders Lodged Electronically

3.1 A Tender lodged electronically is a **Late Tender** in accordance with the conditions specified in **Clause 5, Annex D of this Part** and will be excluded from evaluation.

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

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

Conditions Applying to Tenders Lodged in Hard Copy

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

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

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

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

4. **NON-CONFORMING TENDERS**

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

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

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

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

5. **CLARIFICATION OF TENDERS**

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

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

5.2 Clarifications are provided on the terms of the RFT.

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

6. **AMENDMENT OF THE RFT**

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

7. **ASSESSMENT OF TENDERS**

7.1 Tenders will be assessed on the following basis:

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

to achieve the best value for money outcome.

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

Technical Assessment

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

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

Specified Personnel are unable to attend, a teleconference presentation may be arranged. Specified Personnel will be required to answer any questions asked by the TAP. The TAP will be convened in Canberra and the costs of the Tenderer's (and its personnel's) attendance must be borne by the Tenderer.

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

These other factors have not been allocated any specific weightings.

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

Goods and Services Tax

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

Insurances

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

maintained for the duration, plus a further 3 years, of the full Term of the Contract or earlier termination.

Project Vehicles

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

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

Technical proposal format

- 7.15 The technical proposal must:
- (a) indicate the Tenderer’s nominated contact person and contact details on the cover page;
 - (b) be in a type font of no less than 12 point on A4 paper;
 - (c) have left and right page margins of no less than 2.5 cm, and top and bottom page margins of no less than 3 cm, excluding headers, footers and page numbers;

- (d) not have the AusAID logo or any other representation or mark which may indicate that the Tenderer is in any way related to or connected with AusAID; and
- (e) be no longer than the page limit detailed in the Tender Particulars (inclusive of tables, diagrams or graphs), but exclusive of required annexes.

Curricula vitae

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

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

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

“I, **[insert name]**, declare that:

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

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

Referees

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

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

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

7.20 Tenderers must further ensure that nominated referees:

- (a) are available to be contacted in the 3 week period after the **Closing Time**; and
- (b) are able to provide comments in English.

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

8. **JOINT VENTURES AND CONSORTIUMS**

8.1 AusAID intends to contract with a single legal entity.

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

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

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

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

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

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

- (a) details on the activities to be performed and responsibilities assumed by each party where Associates are involved must be described in the body of the text of **Tender Schedule A**; and
- (b) assurance to AusAID from an authorised representative of the Associate of their corporate commitment to and involvement in the Project in the form of a single page Letter of Association in a separate annex to **Tender Schedule A**.

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

9.3 In addition to Associates, Tenderers are required to include detailed information on other work to be sub-contracted (excluding Specified Personnel) and proposed sub-contractors,

where these are reasonably known at the time of the Tender and have expressed their willingness to be involved in the Project. These details must also be included in a separate annex to **Tender Schedule A** in the form described in **Clause 9.4 below**.

9.4 Letters in which organisation's express their willingness to be involved with the Tenderer in the Project as a sub-contractor must be limited to a single page per organisation and include details on the broad skills or areas in which the organisation may add value.

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

10. OWNERSHIP OF TENDERS AND RFT

10.1 All Tenders become the property of AusAID on lodgement.

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

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

10.4 Copyright in the RFT is reserved to AusAID.

11. CONFLICT OF INTEREST

11.1 Tenderers must:

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

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

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

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

12. TENDERING CONDUCT

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

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

13. INELIGIBILITY TO TENDER

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

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

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

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

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

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

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

- 13.6 AusAID will exclude any Tender from evaluation if the Tenderer is in breach of the warranty in **Clause 13.3**, or does not disclose any circumstance required under **Clause 13.4** or **13.5**.
- 13.7 AusAID reserves the right to exclude any Tender from evaluation if the Tenderer or a Related Entity:
- (a) becomes listed on a World Bank List or Relevant List, or is subject to proceedings or an informal process which could lead to such a listing;
 - (b) is or becomes temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process; or
 - (c) is or becomes temporarily suspended from tendering by a donor of development funding other than the World Bank.
- 13.8 Tenderers should note that if they tender in breach of this **Clause 13**, or are subsequently listed on a World Bank List or Relevant List, AusAID may terminate any contract subsequently entered into with that Tenderer.

14. **AusAID's RIGHTS**

- 14.1 As a Commonwealth Government agency, all AusAID procurement is subject to the Commonwealth Procurement Guidelines. The core principle of Commonwealth procurement is to achieve value for money. AusAID is also bound to conduct its procurement in an ethical, accountable, transparent, efficient and effective manner.
- 14.2 AusAID reserves the right to:
- (a) seek Tenders from any organisation;
 - (b) accept or reject any Tender;
 - (c) terminate, extend or vary its procurement process for the Services;
 - (d) request clarification in relation to a Tender;
 - (e) seek information or negotiate with any organisation that has not been invited to submit a Tender;
 - (f) terminate negotiations with the preferred Tenderer and commence negotiations with any other Tenderer;
 - (g) evaluate Tenders as AusAID sees appropriate; and
 - (h) negotiate with any one or more Tenderers.

15. **TENDERER'S ACKNOWLEDGEMENT**

- 15.1 A Tender is submitted on the following basis:
- (a) no legal obligation or agreement whatsoever is intended to be or is created between AusAID and any Tenderer by virtue of the tender process (including but not limited to statements contained in this RFT) unless and until contract negotiations are

completed and a formal written agreement acceptable to AusAID is entered into and executed by an authorised officer of AusAID and by the successful Tenderer, if any;

- (b) the Tenderer acknowledges and agrees that AusAID, its employees, agents and advisers are not, and will not be responsible, or liable for the accuracy or completeness of any information contained in this RFT; and
- (c) the Tenderer is responsible for all costs of and incidental to the preparation and delivery of the Tender, including obtaining this RFT, or any subsequent stage of the procurement process, including answering any queries and providing any further information sought by AusAID.

16. DEBRIEFING OF TENDERERS

- 16.1 If requested, AusAID will provide Tenderers with a written debriefing on the results of the assessment of their Tender, including reasons why the tender was not successful.
- 16.2 AusAID will not enter into discussion or communications on the content of the tender debrief once it has been completed.

17. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

17.1 Freedom of Information

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

17.2 Privacy

- (a) The *Privacy Act 1988* establishes a national scheme providing, through codes of practice adopted by private sector organisations and the National Privacy Principles, for the appropriate collection, holding, use, correction, disclosure and transfer of personal information by private sector organisations.
- (b) The Draft Contract provides that the Contractor will comply with the *Privacy Act 1988*, including the Information Privacy Principles and the National Privacy Principles whether or not the Contractor is an organisation subject to the *Privacy Act 1988*.
- (c) The Tenderers acknowledge that the *Privacy Act 1988* reflects the principles of the International Covenant on Civil and Political Rights and OECD Guidelines, in particular, the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.

- (d) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Privacy Act 1988* on their participation in this RFT process and any subsequent contract.

17.3 Access by Australian National Audit Office

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

17.4 Access by Ombudsman

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

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

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

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

- (a) AusAID will exclude from consideration any Tender from a Tenderer who is listed:
 - (i) by the Minister for Foreign Affairs under the *Charter of the United Nations Act 1945* and/or listed in regulations made under Division 102 of the

Criminal Code Act 1995 (Cth). Further information about listed persons and entities is available from the Department of Foreign Affairs and Trade website at www.dfat.gov.au/icat/UNSC_financial_sanctions.html and from <http://www.nationalsecurity.gov.au/>

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

17.7 Fair Work Principles

- (a) Tenderers should note that the Australian Government Fair Work Principles apply to this procurement. More information on the Fair Work Principles and their associated User Guide can be found at www.deewr.gov.au/fairworkprinciples.
- (b) In particular Tenderers should note that in accordance with the Fair Work Principles AusAID will not enter into a contract with a Tenderer who:
 - (i) fails, when required by the Commonwealth, to confirm it understands and complies with all relevant workplace relations law, occupational health and safety law, or workers’ compensation law;
 - (ii) is subject to an order from any Court or Tribunal decisions relating to a breach of workplace relations law, occupational health and safety law, or workers’ compensation law with which the Tenderer has not fully complied or is not fully complying;
 - (iii) has a *Fair Work Act 2009* agreement that was made on or after 1 January 2010 that does not include genuine dispute resolution procedures;
 - (iv) fails to provide information when requested by AusAID relevant to their compliance with the Fair Work Principles;
- (c) For the purposes of **Clause 17.7(b)** above:
 - (i) a genuine dispute resolution procedure is one which provides each of the following processes to resolve workplace disputes:
 - (A) the ability for employees to appoint a representative in relation to the dispute;
 - (B) in the first instance procedures to resolve the dispute at the workplace level;
 - (C) if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and
 - (D) if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.

- (ii) a decision or order with which the Tenderer has not fully complied or is not fully complying includes any relevant penalty or order of a Court or Tribunal, but it does not extend to infringement notices issued by workplace inspectors or a provisional improvement notice issued by an occupational health and safety inspector, or those instances where a penalty or a requirement has been imposed but the period for payment/compliance has not expired.

17.8 Other Australian Government and AusAID Policies

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

18. FURTHER REQUIREMENTS

- 18.1 Tenderers should be aware that current employees of AusAID cannot be included in Tenders for AusAID projects. Former AusAID employees may be included in Tenders if doing so does not represent a breach of conflict of interest.
- 18.2 Tenderers should note that the Commonwealth Procurement Guidelines require that Commonwealth agencies must not enter into agreements with suppliers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not paid the claim. AusAID will reject submissions from tenderers in this position.
- 18.3 Tenderers must keep any discussions or contact with AusAID in connection with the Tender, the RFT and any contract negotiations confidential. Any unauthorised approach by

a Tenderer to an AusAID officer or discussion of matters pertaining to the procurement process will be considered a breach of confidentiality.

19. **CONTRACT NEGOTIATIONS**

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

20. **CONTRACT PLANS**

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

21. **APPLICABLE LAW**

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

ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION

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

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

ANNEX B – TENDERER DECLARATION

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

1. DEFINITIONS

1.1 In this declaration:

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

“**Related Entity**” has the meaning given in **Clause 13.1** (Ineligibility to Tender) of **Part 5** of the RFT;

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

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

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

2. BASIS OF DECLARATION

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

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

3. THE OFFER

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

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

3.3 The Tender is accurate in every respect. In particular, I warrant that the information and certification included in each CV submitted in the Tender is accurate, that the proposed team members have been approached and confirmed their availability, that no proposed team member is a current AusAID employee, and that AusAID has the authority to make the inquiries referred according to the CV certification.

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

3.5 I acknowledge that if the Tenderer is found to have made false or misleading material claims or statements in the Tender or in this declaration, or to have used confidential information, or

received improper assistance, AusAID will reject at any time any Tender lodged by or on behalf of the Tenderer.

- 3.6 I acknowledge and agree to the matters specified in **Clauses 14** (AusAID's Rights) and **15** (Tenderer's Acknowledgement) of **Part 5**.
- 3.7 I agree:
- (a) that the Tenderer will be bound by this Tender for the Tender Validity Period of 180 days after the **Closing Time**; and
 - (b) that this Tender may be accepted by AusAID at any time before the expiration of that period or any additional period to which we may agree.
- 3.8 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.
- 3.9 I understand that AusAID is not bound to accept the lowest priced or any Tender.
- 3.10 I warrant that in preparing the Tender for the Services the Tenderer did not act in any way which did or could have had the effect of reducing the competitiveness of the tender process for the Services. In particular I warrant that the Tenderer did not engage in:
- (a) any discussion or correspondence with other tenderers concerning the amount of the Tender;
 - (b) any collusive tendering or other anti-competitive practices with any of the other Tenderers or any other person; or
 - (c) any conduct or have any arrangement or arrive at any understanding with any of the other Tenderers.
- 3.11 **[This clause applies to government owned Tenderers only.]** I warrant that in preparing the Tender, the Tenderer has complied with the principles of competitive neutrality.
- 3.12 I warrant that the Tenderer and its Related Entities are not:
- (a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of the RFT; or
 - (b) listed on a Relevant List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of the RFT.
- 3.13 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not subject to any proceedings or informal processes which could lead to listing on a World Bank List or listing on a Relevant List. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity is subject to proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List. I warrant that the Tenderer has included information regarding the proceedings in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).

- 3.14 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process, or temporarily suspended from tendering by a donor of development funding other than the World Bank. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity has been temporarily suspended from tendering by either the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the temporary suspension in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).
- 3.15 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity is the subject of a formal or informal investigation by the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the investigation in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).
- 3.16 I undertake that, if the Tenderer becomes aware of a circumstance referred to in **Clause 13.4** (Ineligibility to Tender) of **Part 5** of the RFT after it has submitted its Tender, I will immediately notify AusAID in writing.
- 3.17 Neither the Tenderer nor any of its employees, agents or contractors have been convicted of an offence of, or relating to bribery of a public official, nor are they subject to any proceedings which could lead to such a conviction.
- 3.18 I undertake that the Tenderer will not permit any of its employees, agents or contractors, to work with children if they pose an unacceptable risk to children's safety or well being.
- 3.19 No employees of the Tenderer, or its agents or contractors, who have been nominated in 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.
- 3.20 Neither the Tenderer nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.

[Note to Tenderers: The following Clauses 3.21 and 3.22 will be used by AusAID to confirm the Tenderer's compliance with the relevant requirements of the Fair Work Principles]

- 3.21 The Tenderer has read and understood the Fair Work Principles User Guide and understands that the Fair Work Principles will apply to the procurement for the Project.
- 3.22 Compliance with Fair Work Principles
- (a) The Tenderer declares the following:
- (i) The Tenderer has had _____ **[Nil or specify number]** adverse Court or Tribunal decision for a breach of workplace relations law, occupational health and safety law, or workers' compensation law in the past two years preceding the date of this Request for Tender.
[If response is nil adverse decisions go to 3.22(a)(iii) below]
- (ii) **[Note to Tenderers: Strike through whichever option does not apply]**

The Tenderer has fully complied or is fully complying with all penalties or

orders arising from the Court or Tribunal decisions declared above.

OR

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

Tenderers must provide additional information about each decision declared above in Clause 3.22(a)(ii) as specified in Appendix A to the Fair Work Principles User Guide. Tenderers should note that they will not be eligible for further consideration for this procurement if they have not fully complied with, or are not fully complying with, any Court or Tribunal decision, or have not appealed the decision prior to the end of the appeal period.

- (iii) The Tenderer understands its obligations under all applicable workplace relations, occupational health and safety, and workers' compensation laws. The Tenderer undertakes that it complies with all of these obligations.
- (iv) The Tenderer confirms that (except where it is an overseas based supplier to which these requirements do not apply in accordance with the Fair Work Principles User Guide) it:
 - (A) has consultation arrangements which encourage cooperation and engagement of employees and management; and
 - (B) understands and respects their employees' rights in relation to freedom of association and the right to representation at work, including that the Tenderer allows its employees to be able to make a free and informed choice about whether to join a union and be represented at work.
- (v) Where the Tenderer has a *Fair Work Act 2009* enterprise agreement that was approved on or after 1 January 2010 that enterprise agreement includes a genuine dispute resolution procedure that includes the following:
 - (A) the ability for employees to appoint a representative in relation to the dispute;
 - (B) in the first instance procedures to resolve the dispute at the workplace level;
 - (C) if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and
 - (D) if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.

- (b) If at any time prior to entry into a contract with the preferred Tenderer, any information provided in this declaration changes, the Tenderer agrees to advise AusAID of that change within 7 calendar days.

- (c) The Tenderer agrees AusAID may provide any information collected, or provided to it by the Tenderer during the course of this RFT process (including breaches of the Fair Work Principles) to other Commonwealth agencies or regulatory bodies including the Department of Education, Employment and Workplace Relations, Australian National Audit Office, Fair Work Ombudsman and Fair Work Australia.

- (d) The Tenderer agrees that failure to comply with **Clause 3.22** of this Tenderer Declaration will result in its Tender being excluded from further consideration.

3.23 Neither the Tenderer nor any of its employees, agents or contractors had knowledge of the technical proposal or the Tender Price for the Services of any other tenderer prior to the Tenderer submitting its Tender for the Services.

3.24 Neither the Tenderer nor any of its employees, agents or contractors disclosed the technical proposal or the Tender Price for the Services submitted by the Tenderer to any other tenderer who submitted a tender for the Services or to any other person or organisation prior to the **Closing Time**.

3.25 Neither the Tenderer nor any of its employees, agents or contractors provided information to any other tenderer, person or organisation, to assist another tenderer for the Services to prepare a tender known in the building and construction industry as a “cover bid”, whereby the Tenderer was of the opinion or belief that another tenderer did not intend to genuinely compete for the Contract.

3.26 The Tenderer is genuinely competing for the Contract and its Tender is not a “cover bid”.

3.27 Prior to the Tenderer submitting its Tender for the Services neither the Tenderer nor any of its employees, agents or contractors entered into any Contract, agreement, arrangement or understanding that the successful Tenderer for the Services would pay any money, or would provide any other benefit or other financial advantage, to or for the benefit of any other tenderer who unsuccessfully tendered for the Tender.

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

4. **ADDENDA TO TENDER DOCUMENTS**

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

Number _____ Dated _____ Number _____ Dated _____

Number _____ Dated _____ Number _____ Dated _____

5. **ADDRESS OF TENDERER**

Address or Registered Office of Tenderer

Philippines Muslim Indigenous Peoples' Education Program
Request for Tender – Part 5 Standard Tender Conditions

Address for service of notices (NOT PO. BOX)

Telephone Number: Fax Number:

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

insert name and title

Signature

ANNEX C – TENDERER’S SUBMISSION CHECKLIST

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

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

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

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

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

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

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

1. **AusTender, the Australian Government Tender System**

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

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

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

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

2. **Preparing to Lodge a Tender Electronically**

Virus Checking

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

Tender File Formats, Naming Conventions and Sizes

2.2 Tenderers must lodge their tender in accordance with the requirements set out in this **Clause 2** for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the tender not uploading successfully and/or may eliminate the bid from consideration.

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

2.4 The tender file name/s:

- (a) should incorporate the tenderer's company name;
- (b) should reflect the various parts of the bid they represent, where the tender comprises multiple files;
- (c) must not contain \ / : * ? " < > | characters. Check your files and re-name them if necessary; and

- (d) must not exceed 100 characters including the file extension.

2.5 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.

2.6 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.

2.7 If a tender consists of multiple uploads, due to the number of files or file size, tenderers should ensure that transmission of all files is completed before the **Closing Time**.

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

3. **Scanned or Imaged Material, including Statutory Declarations**

3.1 Scanned images of signed and/or initialled pages within the tender, including Statutory Declarations and Deeds of Confidentiality, where they are required, are permitted so long as the total file size does not exceed the 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.

4. **Electronic Lodgement Process**

4.1 Before submitting an electronic tender, tenderers must:

- (a) ensure their technology platform meets the minimum requirements identified on AusTender;
- (b) refer to AusTender's Help guidance, if required, on uploading tenders;
- (c) take all steps to ensure that the tender is free from anything that might reasonably affect useability or the security or operations of AusTender and/or AusAID's computing environment;
- (d) ensure that the tender does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by AusAID; and

- (e) ensure that the tender complies with all file type, format, naming conventions, size limitations or other requirements specified in **Clause 2** or otherwise advised by AusAID or required by AusTender.

4.2 Tenderers must allow sufficient time for tender lodgement, including time that may be required for any problem analysis and resolution prior to the **Closing Time**.

4.3 Tenderers should be aware that holding the “Lodge a Response” page in the web browser will not hold the electronic tender box open beyond the **Closing Time**. An error message will be issued if the lodgement process is attempted after the **Closing Time**.

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

4.5 If tenderers have any problem in accessing the AusTender website or uploading a tender they must contact AusAID via the nominated **Contact Person (Clause 1 of Part 1)** or the AusTender Help Desk (**Clause 1.2** above) **prior to Closing Time**. Failure to do so will exclude a tender from consideration.

5. **Late Tenders, Incomplete Tenders and Corrupted Files**

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

5.2 Where electronic submission of a tender has commenced prior to the **Closing Time** but concluded after the **Closing Time**, and upload of the tender file/s has completed successfully, as confirmed by AusTender system logs, the tender will not be deemed to be a Late Tender. Such tenders will be identified by AusTender to AusAID as having commenced transmission prior to, but completed lodgement after, **Closing Time**.

5.3 Where a tender lodgement consists of multiple uploads, due to the number and/or size of the files, tenderers must ensure that transmission of all files is completed and receipted before the **Closing Time** and **Clause 5.2** will only apply to the final upload.

5.4 Late Tenders, incomplete tenders, including those with electronic files that cannot be read or decrypted, tenders which AusAID believes to potentially contain any virus, malicious code or anything else that might compromise the integrity or security of AusTender and/or AusAID’s computing environment, will be excluded from evaluation.

6. **Proof of Lodgement**

6.1 When a tender lodgement has successfully completed, an official receipt is provided on screen. The on-screen receipt will record the time and date the tender was received by AusTender and will be conclusive evidence of successful lodgement of a tender. It is essential that tenderers save and print this receipt as proof of lodgement. A separate email confirming receipt of the tender will also be automatically dispatched to the email address of the registered user whose details were recorded at login.

6.2 Failure to receive a receipt means that lodgement has not completed successfully. Where no receipt has been issued by AusTender, the attempted lodgement will be deemed to have been unsuccessful. Tenderers should refer to **Clauses 4.2** and **4.5**.

7. **AusTender Security**

7.1 Tenderers acknowledge that although the Commonwealth has implemented the security measures described on AusTender, the Commonwealth does not warrant that unauthorised access to information and data transmitted via the Internet will not occur.

7.2 Tenderers acknowledge that:

- (a) lodgement of their tender on time and in accordance with these conditions of tender is entirely their responsibility; and
- (b) AusAID will not be liable for any loss, damage, costs or expenses incurred by tenderers or any other person if, for any reason, a tender or any other material or communication relevant to this RFT, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

PART 6 - STANDARD CONTRACT CONDITIONS

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

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PART B – STANDARD CONTRACT CONDITIONS

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

"APS Code of Conduct" refers to the code of conduct of the Australian Public Service (for details visit the Internet website address: www.apsc.gov.au).

"APS Values" refers to the values of the Australian Public Service (for details visit the Internet website address: www.apsc.gov.au).

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

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

"AusAID Confidential Information" means information that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Document" includes:

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

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

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

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

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

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

"**Intellectual Property**" means all copyright and all rights in relation to inventions (including patent rights), trade marks, designs and confidential information, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

General

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

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

1.2 Counterparts of the Contract

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

1.3 Contract prevails

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

1.4 Inconsistency

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

2. SCOPE OF CONTRACT

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

3. AUSAID'S OBLIGATIONS

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

4. NON-EXCLUSIVITY

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

5. PROVISION OF SERVICES

- 5.1 In providing the Services, the Contractor must:
 - (a) perform the Services as described in **Schedule 1** for the term of the Contract, unless the Contract is terminated earlier;
 - (b) accept and implement AusAID's reasonable directions in relation to the management of the Project;
 - (c) use its best endeavours to ensure the spirit and intent of the Project are fully met by the Services, including acting within the spirit and intent of the Treaty, MOU or Subsidiary Arrangement;

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

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

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

6. EARLY NOTIFICATION

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

7. CONTRACTOR PERSONNEL

- 7.1 The Contractor must ensure that Contractor Personnel are aware of, and must use its best endeavours to ensure Contractor Personnel comply with, the requirements of the Contract.
- 7.2 The Contractor must use its best endeavours to ensure that all Contractor Personnel are of good fame and character.
- 7.3 The Contractor must use its best endeavours to ensure that all Contractor Personnel conduct themselves in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct*.
- 7.4 The Contractor must use its best endeavours to ensure that all Contractor Personnel and their accompanying family members while in-country:
- (a) are aware of local laws, culture and customs in the Partner Country; and
 - (b) act in a fit and proper manner.
- 7.5 The Contractor must use its best endeavours to ensure that no Contractor Personnel or their accompanying family members:
- (a) become involved in the political affairs of the Partner Country (unless citizens of the Partner Country);
 - (b) interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country); or
 - (c) share information known as a result of their work on, or relationship to, the Project, in a way that a reasonable person could foresee may be detrimental to the relationship between the Australian and Partner Governments.
- 7.6 The Contractor must not employ a currently serving Commonwealth employee in any capacity in connection with the Services without the prior written approval of AusAID.
- 7.7 The Contractor must ensure that media advertisements placed by the Contractor for personnel to fill a Project position acknowledge that the Project is funded by AusAID as part of the Australian Government's official overseas aid program.
- 7.8 AusAID may give notice to the Contractor requiring the Contractor to remove any Contractor Personnel from work in respect of the Services. The Contractor must promptly arrange for the removal of such Contractor Personnel from work in respect of the Services and their replacement (if required) with Contractor Personnel acceptable to AusAID.

- 7.9 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Contractor Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.
- 7.10 The Contractor must advise AusAID immediately in writing if any Contractor Personnel is arrested for, or convicted of, criminal offences relating to child abuse, or for accessing or possessing child pornography. AusAID may require Contractor Personnel under formal investigation in relation to such criminal offences to be suspended from duty or transferred to other duties during the investigation.
- 7.11 AusAID may give notice to the Contractor requiring the Contractor to temporarily suspend from duty, or transfer to other duties, any Contractor Personnel who are under criminal or internal investigation in relation to child abuse or accessing or possessing child pornography. The Contractor must comply promptly with any such notice.

8. SPECIFIED PERSONNEL

- 8.1 The Contractor must provide all Specified Personnel for the Project and for the minimum periods specified in **Schedule 1**.
- 8.2 During the minimum periods specified in **Schedule 1**, the Long Term Advisers included in the Specified Personnel must be exclusively dedicated to the Project and only perform the duties required under this Contract unless otherwise agreed in writing by AusAID.
- 8.3 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:
- (a) are properly qualified for the tasks they are to perform;
 - (b) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner; and
 - (c) are adequately briefed and understand the environment and culture of the Partner Country.
- 8.4 The Contractor must use its best endeavours to secure the availability of Specified Personnel for the term of the Contract. If a change to Specified Personnel is required the Contractor must provide AusAID with not less than 3 months prior written notice of such change except where circumstances beyond the reasonable control of the Contractor make the giving of such notice impracticable. Any proposed change to the Specified Personnel must only be made after written consent from AusAID and in accordance with the procedure set out in **Clause 8.8 below**.
- 8.5 Subject to **Clause 8.4 above**, Specified Personnel may be temporarily absent from the Project. Where Specified Personnel are unavailable for work in respect of the Contract, for any period in excess of 2 weeks, the Contractor must notify AusAID in writing immediately and, if requested, must provide replacement personnel acceptable to AusAID and the Partner Government at no additional charge and at the earliest opportunity and for the duration of the absence.

- 8.6 The costs incurred by the Contractors in providing temporary substitute personnel due to the absence of Specified Personnel are the responsibility of the Contractor.
- 8.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Specified Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.
- 8.8 Before appointing Specified Personnel to the Project, the Contractor must obtain AusAID's written approval. In seeking approval of proposed Specified Personnel the Contractor must provide to AusAID:
- (a) the full names, dates of birth, and nationalities of proposed personnel and their accompanying dependants;
 - (b) a statement demonstrating that the proposed personnel has the demonstrated skills and capacity to undertake the job specification of the position and duration of the proposed appointment;
 - (c) a copy of the proposed person's curriculum vitae certified as accurate by the person and showing recent and relevant experience and formal qualifications including dates of award; and
 - (d) assurances that the nominated personnel has no existing commitments (defined in relation to the commitments of the position and not the individual's commitment to a particular organisation), to other AusAID projects that will suffer detriment if accepted on this Project. If this is not the case AusAID may require further information before assessing the individual's suitability.
- 8.9 If the Contractor is unable to provide acceptable replacement Specified Personnel with equivalent qualifications and experience AusAID may seek a reduction in fees.
- 8.10 This clause is a fundamental term of the Contract, such that breach shall entitle AusAID to terminate the Contract in accordance with **Clause 31** and sue for damages.

9. PROJECT VEHICLE CONTRIBUTION

- 9.1 For the purposes of this clause, "Project Vehicles" are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Project and that are provided for Project activities. Vehicles purchased by the Project, but handed over to the Partner Country immediately (where maintenance and insurance are Partner Country responsibilities and Contractor Personnel do not use the vehicles or only use them on an exceptional basis) are not considered Project Vehicles for the purposes of requiring a financial contribution by the Contractor.
- 9.2 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute \$250.00 for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor's invoices.
- 9.3 The Contractor must abide by the following requirements with regards to Project Vehicles:
- (a) Project demands must always take precedence over private use;

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

10. PROCUREMENT SERVICES

10.1 In procuring all Supplies, the Contractor must:

- (a) determine what Supplies are required for proper implementation of the Services and advise AusAID;
- (b) keep AusAID informed of ongoing requirements for Supplies in connection with the Project;
- (c) implement procedures so that procurement is undertaken in a manner that is consistent with the Commonwealth Procurement Guidelines, in particular, observing the core principle of achieving value for money and the supporting principles;
- (d) maintain complete and accurate records documenting the procedures followed in procuring, and the particulars of Supplies; and
- (e) use its best endeavours to ensure Supplies are maintained including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed.

10.2 The Contractor shall bear the loss or damage in respect of Supplies until handover of Supplies to the Partner Government.

10.3 The Contractor must use its best endeavours to ensure all Supplies are free from defects in design, material, manufacture or workmanship. The Contractor must replace defective Supplies under warranty provisions or at its own cost.

10.4 The Contractor shall establish and maintain a Register of Assets which shall record any non-consumable Supplies valued at \$2,000 or more, which at a minimum contains the following information: reference identification number (which may be for example, a serial number, engine number or chassis number); description of the asset; date of procurement; cost; location; current status; and disposal or handover details.

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

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

11. SUB-CONTRACTING

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

- (a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;
- (b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;
- (c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:
 - (i) comply with relevant and applicable laws, regulations and development policies, including AusAID's *Child protection policy* (<http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>) and child protection compliance standards (Attachment 1 to the policy), both in Australia and in the Partner Country, and also *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.ausaid.gov.au/keyaid/health.cfm>);
 - (ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;
 - (iii) be bound by the same obligations regarding **Clauses 15** (Accounts and Records), **18** (Audits), **19** (Access to Premises), **26** (Privacy), and **35.4** (Anti-corruption) **below** and as required by Project Specific Contract Conditions **Clause 3** (Accounts and Records) as the Contractor; and
 - (iv) be bound by appropriate obligations in relation to ongoing software licensing, computer maintenance requirements and handover arrangements to the Partner Country;
- (d) if requested by AusAID, the Contractor must provide to AusAID an executed Deed of Novation and Substitution in the form at **Schedule 4** (Deed of Novation), contemporaneously with or within 10 Business Days of execution of the sub-contract by the Contractor;
- (e) the sub-contract must include the right of AusAID, in the event of AusAID issuing a notice of substitution under the Deed of Novation at **Schedule 4** (Deed of Novation), to further novate the sub-contract to another contractor;
- (f) the Contractor must maintain up-to-date records of the names of all sub-contractors engaged by the Contractor to perform part of the Services. If requested by AusAID, the Contractor must, within five (5) working days, provide to AusAID a copy of the

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

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

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

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

12. **CONTRACT AMENDMENT**

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

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

12.3 AusAID or the Contractor may propose an amendment to the manner of providing the Services or changes to the Project, at any time for the purpose of improving the delivery of the Services or, the efficiency, cost-effectiveness and development impact of the Services.

12.4 The Contractor must prepare an "Amendment Proposal" for any change sought by AusAID, or the Contractor, at no extra cost to AusAID and this must be submitted to AusAID in a timely manner.

12.5 The Amendment Proposal must include specific identification of the proposed change, associated cost implications, a cost/benefit and risk analysis, including of developmental impact improvements, a general plan for implementation of the change and a projected time schedule.

12.6 AusAID may, at its sole discretion, accept or reject the Amendment Proposal submitted by the Contractor.

13. **EXTENSION OF TIME**

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

- (a) a Force Majeure Event;
- (b) a significant change in circumstances beyond the control of the Contractor;
- (c) an Australia-wide or Partner Country-wide industrial dispute; or

- (d) a change in the laws of Australia or the Partner Country that directly impacts on the provision of the Services.
- 13.2 Where in the Contractor's reasonable opinion there is likely to be a delay in the Contractor's discharging an obligation under the Contract because of a Relevant Cause the Contractor must:
- (a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;
 - (b) give details of the likely effect on the Project and any Contractual implications;
 - (c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;
 - (d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances in the form of an Amendment Proposal in accordance with **Clause 12.5 above**; and
 - (e) use its best endeavours to continue to perform its obligations under the Contract.
- 13.3 AusAID must give consideration to the Contractor's recommendations and request for an extension of time and as soon as practicable after receiving the request notify the Contractor in writing whether it has determined that a Relevant Cause has occurred and whether all or part of the request has been granted. AusAID's approval of a request may be granted subject to conditions.
- 13.4 If AusAID approves in writing a request, the extension of time and any approved changes to the Contract will be documented in a "Deed of Amendment". The Contract shall be deemed to have been varied once the Deed of Amendment is signed by both the Contractor and AusAID.
- 13.5 Even if the Contractor has not given notice under **Clause 13.2 above**, where AusAID considers that a delay has arisen, in whole or in part, because of an act or omission on the part of AusAID, its employees or agents, AusAID may, by notice in writing to the Contractor, extend the time for performance of the relevant obligation of the Contractor.
- 13.6 Where AusAID has determined that a Relevant Cause has occurred, and the Contractor's inability to perform its obligations due to a Relevant Cause exceeds 45 Business Days, AusAID may:
- (a) notify the Contractor that the Contract is suspended for a specified period of time; or
 - (b) delete part of the Services; or
 - (c) immediately or thereafter terminate the Contract in whole or in part by providing notice in writing to the Contractor.
- 13.7 A notice of suspension, deletion or termination of the Contract under **Clause 13.6 above** takes effect on the date that the notification is received by the Contractor.

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

14. **HANDOVER**

14.1 The Contractor must within 12 months of the Project Start Date draft a Handover Plan which includes all the functions to be performed to hand over Contract Material, Supplies, information, documents and other materials to the Partner Country in a manner which ensures the Partner Country is able to benefit from the Project and in particular enables the Partner Country to manage ongoing maintenance requirements, as well as any other matters specified in **Schedule 1**. The Contractor must provide a copy of the Draft Handover Plan to AusAID within 12 months of the Project Start Date.

14.2 The Contractor must make changes to the Handover Plan as reasonably requested by AusAID and update the Handover Plan as necessary during the Project but at least annually and 6 months before the end of the Contract.

14.3 The Contractor must ensure that a finalised Handover Plan is provided to AusAID within seven (7) days of any early termination of the Project, or one month prior to the expected completion of the Project.

14.4 The Contractor must provide all reasonable assistance and cooperation necessary, on expiration or termination of the Contract, to facilitate the provision of further maintenance by AusAID or an alternative service provider. In particular the Contractor must:

- (a) deliver to AusAID or its nominee complete copies of all the Data and Contract Material, in a form and on a media approved by AusAID, and any other AusAID property including the Supplies;
- (b) either destroy or deliver to AusAID all copies of AusAID Confidential Information as required by AusAID;
- (c) if requested by AusAID, facilitate the assignment to AusAID, AusAID's nominee or to the Partner Country of sub-contracts relating to Supplies, including for licensing and support of information technology and any construction work maintenance;
- (d) vacate the Project Office where this has been supplied by AusAID or the Partner Country;
- (e) co-operate with AusAID and, if requested, AusAID's nominee, and provide reasonable assistance relating to the transfer of any contracts to AusAID, its nominee or the Partner Country;
- (f) provide to AusAID or, if requested, to AusAID's nominee all information, including Data and Contract Material, necessary for an alternative service provider to assume provision of the Services;

- (g) continue the provision of the Services for as long as reasonably requested by AusAID on the terms and conditions of the Contract;
- (h) cooperate with AusAID and any other service provider in the ongoing provision of services similar to the Services; and
- (i) allow AusAID to audit compliance with this clause.

15. ACCOUNTS AND RECORDS

- 15.1 The Contractor must at all times maintain full, true, separate and up-to-date accounts and records in relation to the Fees, Supplies and the Services. Such accounts and records must:
- (a) record all receipts and expenses in relation to the Supplies and Services, including those involving foreign exchange transactions;
 - (b) be kept in a manner that permits them to be conveniently and properly audited;
 - (c) enable the extraction of all information relevant to this Contract;
 - (d) contain details of the disposition of Supplies as agreed to by AusAID such as replacement, write-off or transfer to the Partner Country; and
 - (e) the Contractor shall provide to AusAID a statement of Project expenditure on a regular basis for the duration of the Project. The details of the timing and content of the statement of expenditure are defined in Part A Project Specific Contract Conditions.
- 15.2 Accounts and records must be provided for inspection by AusAID immediately upon the request of AusAID.
- 15.3 The accounts and records must be held for the term of this Contract and for a period of seven (7) years from the date of expiry or termination of this Contract.

16. REPORTS

- 16.1 The Contractor must ensure that all reports required in accordance with **Schedule 1**, provide the information required and conform with the quality and format requirements specified.
- 16.2 The Contractor is responsible for any extra costs occasioned by any clarifications, discrepancies, errors or omissions in reports provided to AusAID or other information supplied in writing by the Contractor, provided such discrepancies, errors or omissions are not due to inaccurate information supplied in writing to the Contractor by AusAID.
- 16.3 AusAID may reject and withhold payment of Fees for any report which does not conform to the requirements of the Contract until the Contractor rectifies the report.

17. REVIEWS

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

- 17.2 The Contractor must participate cooperatively in any reviews conducted by AusAID or its nominees. In addition the Contractor must respond in writing to any draft review report within 28 days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.
- 17.3 Reviews may be conducted of:
- (a) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services, including procurement and risk management procedures;
 - (b) the accuracy and reliability of the Contractor's financial management systems;
 - (c) the Contractor's compliance with their obligations under the Contract in relation to foreign exchange transactions;
 - (d) the accuracy of the Contractor's reports in relation to the provision of the Services;
 - (e) the Contractor's compliance with AusAID's *Child protection policy* and child protection compliance standards (Attachment 1 to the policy);
 - (f) the Contractor's compliance with its Contractor Personnel, confidentiality and privacy obligations; or
 - (g) any other matters relevant to the performance of any Services including user satisfaction.
- 17.4 Each Party must bear its own costs of any such reviews conducted by or on behalf of AusAID.
- 17.5 The requirement for, and participation in, reviews does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

18. AUDITS

- 18.1 Where AusAID has reasonable concerns regarding the Contractor's financial management systems AusAID must provide the Contractor with written notification of those concerns and what action is required of the Contractor. This may include:
- (a) that the Company Director must provide a Statutory Declaration confirming that they have sighted the necessary supporting documentation and confirm the veracity of the claim for payment;
 - (b) providing AusAID with additional documentation to support the claim for payment; or
 - (c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including invoicing procedures and practices.
- 18.2 The Contractor must respond to any notice received under **Clause 18.1 above** within 14 days.
- 18.3 Where the Contractor does not respond within 14 days, or the response does not alleviate AusAID's concern, AusAID reserves the right, if it has not already done so, to direct the Philippines Muslim Indigenous Peoples' Education Program
- Request for Tender – Part 6 Standard Contract Conditions

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

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

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

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

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

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

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

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

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

20. PAYMENT

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

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

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

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

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

21. GOODS AND SERVICES TAX

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

22. INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

23. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

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

24. MORAL RIGHTS

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

25. CONFIDENTIALITY

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

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

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

25.4 The Contractor may disclose AusAID Confidential Information:

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

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

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

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

26. **PRIVACY**

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

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

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

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

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

27. **AusAID USE OF CONTRACT INFORMATION**

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

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

28. **PUBLICITY**

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

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

29. WARRANTIES

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

30. PERSONNEL SECURITY

- 30.1 The Contractor is responsible for the security of Contractor Personnel and for taking out and maintaining appropriate insurances in respect of Contractor Personnel.

- 30.2 The Contractor is responsible for the immediate development and implementation of a Security Plan to ensure the safety and security of Contractor Personnel. The Security Plan should incorporate prevention strategies and response plans, including evacuation plans where appropriate. The Contractor shall submit a copy of the Security Plan to AusAID prior to mobilisation in the Partner Country. The Contractor shall review and update the Security Plan whenever considered necessary by the Contractor and shall submit the revised document to AusAID.
- 30.3 The Contractor must keep abreast of the security situation in the Partner Country including where relevant having regard to travel advisories and notices including those issued by the Australian Department of Foreign Affairs and Trade. The Australian advisories and notices are available at: www.dfat.gov.au
- 30.4 The Contractor acknowledges and confirms that, notwithstanding any other provisions of the Contract:
- (a) it is not the function or responsibility of AusAID or any person acting or purporting to act on behalf of AusAID, to comment on or approve the Contractor's Security Plans; and
 - (b) the Contractor has not entered the Contract based on any representation, statement or assurance by AusAID or any person acting or purporting to act on behalf of AusAID, in respect of the safety or security of the Contractor, Contractor Personnel or any person acting on behalf of the Contractor, in the Partner Country or in any other location.

31. TERMINATION FOR CONTRACTOR DEFAULT

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

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

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

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

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

32. TERMINATION FOR CONVENIENCE

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

33. INDEMNITY

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

34. INSURANCE

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

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

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

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

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

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

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

35. CONFLICT OF INTEREST

Conflict of Interest

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

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

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

Anti-Corruption

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

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

36. FRAUD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37.7 As far as practicable, the Contractor must:

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

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

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

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

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

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

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

38. INVESTIGATION BY THE OMBUDSMAN

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

39. RESOLUTION OF DISPUTES

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

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

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

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

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

40. **NOTICES**

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

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

41. **MISCELLANEOUS**

41.1 **Waiver**

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

41.2 **Liability of Party**

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

41.3 **Entire agreement**

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

41.4 **Severance**

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

41.5 Assignment

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

41.6 Governing Law and Jurisdiction

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

41.7 Contra Proferentem

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

41.8 False and Misleading Information

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