



Australian Government

AusAID

10 December 2008

Request for Tender Period Offer

**Non-Government Organisations Accreditation,
Assessment and Review Services**

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REQUEST FOR TENDER

NON-GOVERNMENT ORGANISATIONS ACCREDITATION, ASSESSMENT, REVIEW SERVICES

AusAID is seeking proposals from Individuals and Organisations interested in providing services for the **Non-Government Organisations Accreditation, Assessment and Review Services** (the “**Project**”). If you, or your Organisation, choose to lodge a “**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 2 - Scope of Services.

STRUCTURE OF THE RFT

The RFT is organised into four (4) parts. References in the RFT to parts are to parts of this RFT. **Part 1** details the Tender Conditions specific to this Period Offer. **Part 2** specifies the Scope of the Services. **Part 3** of the RFT details Tender Conditions standard to all Period Offers. **Part 4** is a draft copy of the Period Offer Deed Conditions including the standard schedules.

It is AusAID’s intention to contract on the basis of the Period Offer Deed Conditions provided in this RFT. Tenderers are encouraged to fully inform themselves of the Period Offer Deed when preparing their Tenders and to make any enquiries before the Tender enquiry **closing time**, referred to in **Clause 2, Part 3**.

AusAID accepts no responsibility for failure by any Tenderer to read, understand, or comply with any requirement of this RFT.

The following definitions are provided in regard to **Part 1 Clause 6** of this RFT.

"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.

"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.

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>

PART 1 – PERIOD OFFER SPECIFIC TENDER CONDITIONS

1. BACKGROUND

- 1.1 The Australian Agency for International Development (AusAID) is responsible for managing the Australian Government's official overseas aid program. AusAID is an autonomous body within the Department of Foreign Affairs and Trade. The objective of the Australian aid program is to advance Australia's national interest by assisting developing countries to reduce poverty and achieve sustainable development.
- 1.2 The Australian development assistance program comprises a range of delivery mechanisms including program and project aid, training and commodity assistance as well as contributions to international organisations and non-government organisations (NGOs). NGOs have played an important role in meeting these challenges. The period offers will enable AusAID staff to engage contractors to undertake reviews and evaluations directly related to aspects of NGO accreditation, the Overseas Aid Gift Deduction Scheme or other elements of the Australian Government's engagement of NGOs in the delivery of the aid program, particularly as they relate to development impact and quality of service.

2. GENERAL INFORMATION FOR TENDERERS

- 2.1 All Tenders must be submitted in English.
- 2.2 For the purpose of this RFT, Tenderers may either be an **“Individual”** nominating him/herself, or an **“Organisation”** such as an incorporated entity, partnership, government agency, or institution nominating up to a maximum of three (3) people in respect of this Period Offer.
- 2.3 **Tenderers Note:** each person may only be nominated in one Tender, as either an Individual, or included with others in a Tender from an Organisation. Tenders containing personnel who are nominated in more than one Tender (including Tenders for more than one Organisation) may be regarded as nonconforming.
- 2.4 **Proficiency:** All personnel nominated must be proficient with computers, including word processing and spreadsheets, have access to a portable computer for field missions and be able to submit work required by AusAID in Microsoft Word for Windows and/or Excel as required.
- 2.5 **Assessment timeframe:** The assessment of tenderers is expected to take approximately four months from the **Closing Time**. Refer to **Clause 4.8 below** for the **Closing Time**.
- 2.6 **Preferred Tenderer(s):** AusAID may select as preferred tenderer(s), the tenderer(s) who best meet the requirements of the RFT on the basis of the tender assessment process. Preferred tenderers will be required to provide specific electronic data and financial certification as detailed in their successful notification fax. Failure to return the required information by the stated deadline may result in the withdrawal of the offer of a Period Offer Deed.

- 2.7 **Period Offer Deed:** It is AusAID's intention to contract on the basis of the Period Offer Deed contained in **Part 4**. Tenderers are encouraged to fully inform themselves of the Period Offer Deed when preparing their Tenders and to make any enquiries before the Tender enquiry **Closing Time**, in accordance with **Clause 2, Part 3**.

Tenderers should be aware that one of the key benefits to AusAID of the Period Offer approach is that staff can issue a Services Order confident that a standard Period Offer Deed applies to all service providers in that sector. Accordingly, AusAID would be extremely reluctant to make any changes to the draft deed contained in this RFT unless:

- (a) that deed contained errors; or
- (b) it was AusAID's judgement that the proposed changes would benefit both AusAID and all successful tenderers (in which case AusAID would require that any revised clauses would be included in all deeds for the sector).

It will be presumed then that, by submitting a Tender, the tenderer agrees to the conditions of Tender, including the draft Period Offer Deed.

- 2.8 **Debriefing arrangements:** AusAID will provide tenderers with a generic debriefing on the technical assessment of Tenders within 30 days of Tenderers receiving notification of the results of that assessment. AusAID will not provide any other form of debrief. The generic debrief will be available on the AusAID website: <http://www.ausaid.gov.au/business/debrief.cfm> . Tenderers may wish to review generic debriefings for previous Period Offer selections prior to preparing tenders.

3. **SCORE WEIGHTINGS**

- 3.1 The **technical assessment** of the proposals will be against the selection criteria outlined in Clause 5.3 of Part 1.
- 3.2 Following consideration of the technical merit of Tenders, individuals who are short-listed may be invited to attend an interview in Canberra. Referee checking will be conducted on short-listed individuals. Interviewees who are not resident in Canberra may elect to be interviewed by telephone at a mutually agreed time. AusAID will not meet any costs associated with tenderers' or individual's participation at interview.
- 3.3 Following technical merit assessment, the Technical Assessment Panel will make a value for money assessment based on the overall technical scores against the selection criteria and the average daily fee rates submitted for each applicant.
- 3.4 Following the final assessment and calculation of the final aggregate scores and consideration of other factors referred to in **Clause 8.6, Part 3** a recommendation to commence Period Offer Deed negotiations with the highest ranked tenderers will be made to the appropriate AusAID delegate.

4. **TENDER PARTICULARS**

- 4.1 **Mode of Submission:**
(Clause 1.1, Part 3)
- 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**.
- 4.2 **Electronic Tender Lodgement Address:**
(Clause 1.1, Part 3)
- Via AusTender at <https://tenders.gov.au>
- 4.3 **Canberra Tender Box Address:**
(Clause 1.15, Part 3)
- Tender Box, Ground Floor, AusAID,
255 London Circuit, Canberra ACT 2602,
AUSTRALIA
- 4.4 **File Format for Electronic Tenders:**
(Clause 4.3, Annex B to Part 3)
- PDF (Portable Document Format)
- 4.5 **Number of Copies of Tender:**
(Clause 1.6, Part 3)
- For electronic tender lodgement**
Technical Proposal: One (1) electronic copy in a separate file;
Financial Proposal: One (1) electronic copy in a separate file; and
Tenderer's Declaration: One (1) electronic hand-signed copy in a separate file.
- For hard copy tender lodgement**
Technical Proposal: One (1) printed Original and four (4) copies.
Financial Proposal: One (1) printed Original, in a separate, sealed envelope.
Tenderer's Declaration: One (1) hand-signed original, included with the Financial Proposal.
- 4.6 **Endorsement of hard copy Tenders:**
(Clause 1.17, Part 3)
- Tender for the **Non-Government Organisations Accreditation, Assessment and Review Services**.
- 4.7 **Tender Validity Period:**
(Clause 1.17, Part 3)
- 180 days.

- 4.8 **Closing Time:**
(Clauses 1.11 and 1.15, Part 3) 2:00pm local time in Canberra,
Australian Capital Territory, **Closing
4 February 2009.**
- 4.9 **Contact Person:**
(Clause 2.1, Part 3) Ruth Megirian
Fax: +61 2 6206 4885
Email address:
ruth.megirian@ausaid.gov.au
- 4.10 **Page Limits:**
(Clause 5.2, Part 1) Technical proposal **six (6)** pages total for
individuals and each personnel for
Organisations, plus annexes.
Curriculum Vitae **five (5)** pages each
- 4.11 **Tenderer Enquiries:**
(Clause 2.2(b)) Tenderer enquiries must be submitted to the
Contact Person no later than **21 January
2009.**
- 4.12 **Business Hours for
hard copy lodgement:**
(Clause 1.15, Part 3) Monday to Friday, 8.30 am to 5.00 pm.
Local time in Canberra, Australian Capital
Territory (ACT)
Excluding ACT and national Australian
Public holidays applicable to the ACT.
- 4.13 **Information:** The following documents are attached:
- 1) **Guidelines for Accreditation
Reviewers**
 - 2) **Overseas Aid Gift Deductibility
Scheme (OAGDS) Guidelines**
 - 3) **OAGDS Criteria Table**

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

5. TENDER SCHEDULE A – TECHNICAL PROPOSAL

Technical Proposal Formatting

- 5.1 The Technical Proposal must contain all the information described in **Clause 5.2 below** in the following format:
- (a) Front Cover: each copy of the Technical Proposal should clearly state on the front cover:

- (i) the tenderer's name and whether it is a Tender from an Individual or an Organisation; and
 - (ii) the nominated contact person and contact details (e-mail address, phone and fax numbers);
- (b) Responses to all Selection Criteria, CVs and all Annexes must be clearly labelled;
- (c) All pages are to be on A4 paper and formatted:
 - (i) in a type font of no less than 12 point (except for Experience Data Sheets and the Financial Proposal where 10 point is permitted);
 - (ii) in single column;
 - (iii) with all page margins not less than 2.5cm;
 - (iv) for hard-copy submissions: securely bound (e.g. plastic spiral binding or multiple stapled). N.B: Ring-bind folders or arch files are not desirable; and
- (d) The Tender should 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.

Technical Proposal Collation

5.2 The Technical Proposal must contain the following information in the following order:

- (a) The Tender Form (Tenderer Declaration) as provided in **Attachment 1 of this Part 1**;
- (b) The response to Selection Criteria, as detailed in **Clause 5.3 below** to a maximum of six (6) pages in total for Individuals and each nominated personnel for Organisations;
- (c) The Personnel Matrix, described in **Clause 5.4 below**, in the format provided in **Attachment 2 of this Part**;
- (d) Curriculum Vitae (maximum of five (5) pages per personnel nominated), as described in Clause 5.5 below;
- (e) Annex – Further Requirements (if any), are described in **Clause 16, Part 3**.

Tenderers that are Organisations nominating more than one personnel in their Tender are required to collate and submit the documentation outlines in this Clause 5.2 alphabetically per surname per nominated personnel.

5.3 Selection Criteria

	Description	Weighting
A	Demonstrated familiarity with operations and activities of Australian Development Non-Government Organisations (NGOs)	20%
B	Demonstrated capacity to understand and apply AusAID's NGO accreditation process and Overseas Aid Gift Deduction Scheme application process.	20%
C	Demonstrated understanding of the Australian Government's overseas aid program and policies	10%
D	Demonstrated recent and relevant experience in Project and Program review, research, analysis and evaluation in the development context	15%
E	Demonstrated strong written and oral communication skills in English, effective report writing skills and ability to engage in a partnership oriented way.	15%
F	Demonstrated ability to work in a team environment, including the ability to lead a team and respect principles of partnership.	20%
	Total	100%

5.4 Personnel Matrix

- (a) Complete the Personnel Matrix in the format provided at **Attachment 2 of this Part 1**.
- (b) Tenderers are advised to exercise due care in the completion of the Personnel Matrix, as the personnel being nominated for assessment will be extracted from the Personnel Matrix only (i.e. not Selection Criteria responses or CVs).
- (c) Tenderers Note: personnel may only be nominated in one Tender, that is, either as an Individual or in a Tender from an Organisation.
- (d) An Organisation may nominate a maximum of three (3) personnel.

5.5 Curriculum Vitae (CV)

- (a) Tenderers must submit, for each person nominated, a hand-signed CV that complies with the following requirements:
 - (i) name;

- (ii) personal contact details (this can be an email address or phone number);
- (iii) nationality and, if relevant, permanent resident status;
- (iv) professional development and qualifications, including institutions and date of award;
- (v) relevant employment history including commencement and termination dates;
- (vi) recent and relevant consultancies;
- (vii) relevant publications; and
- (viii) the name of at least two (2) referees (including day-time contact telephone numbers, firm and position held), who is able to comment on the work claimed by the nominated person. Referees may not be employed by AusAID or by the tenderer. AusAID reserves the right to check with nominated referees.

Tenderer's Note: It is recommended that CVs are tailored to the Scope of Services (outlined in Part 2) and the Selection Criteria (outlined in Part 1).

- (b) CVs must be no longer than five (5) pages, must be signed and dated by the personnel nominated and must include the following certification:

“I, **[insert name]**, declare that:

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

I am available to participate in the **Non-Government Organisations Accreditation, Assessment, Review Services** in the role in which I have been nominated in the Tender for the period or periods indicated in the Tender”.

While an original signature on CVs is preferred, copies are allowed. However, tenderers are reminded of their warranties (**paragraph 3.3**) and the potential consequences to their Tender (**paragraph 3.4**), as detailed in the Tender Declaration (**Attachment 1 of this Part 1**).

6. **CHILD PROTECTION**

- 6.1 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.
- (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 individuals' 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 6.1 of this Part 1**, AusAID may exercise its right, specified at **Clause 12.2** of Part 3, to terminate negotiations with the preferred tenderer(s) 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 nominated 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 nominated 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.

PART 1, ATTACHMENT 1 - TENDER FORM (TENDERER DECLARATION)

All Tenderers must complete in full the Tender Form (Tenderer Declaration). Failure to complete and sign the Tender Form (Tenderer Declaration), or failure to have the Tenderer's signature witnessed may result in the Tender being considered non-conforming.

The following one page checklist is provided as a guide and for your convenience. This checklist should not be included in your Tender.

Tenderers should ensure that they have included in the Tenderer Declaration:

- ☐ The name, address and, if not an Individual, the Organisation of the person making the declaration.
- ☐ The name of the Individual or Organisation for which the Tender is being tendered **(Clause 1.1 – “Tenderer means”. *This should be the exact name of the legal entity that will appear on the Period Offer Deed should your Tender be successful*).**
- ☐ The ABN (and ACN if the ABN does not include the ACN), of the Tenderer **(Clause 1.1).**
- ☐ The title of the person making the declaration (e.g. Company Director) **(Clause 2.1).**
- ☐ Details of all Addenda issued to this RFT **(Clause 3.2).**
- ☐ The address or Registered Office of the Tenderer, the address for service of notices (not a Post Office box), along with the Telephone Number and Fax Number of the Tenderer **(Clause 5).**

TENDERER DECLARATION

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

1. **DEFINITIONS**

1.1 In this declaration:

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

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

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

“**Tender Price**” means the Daily Fee Rates included in the Financial Proposal (excluding Reimbursable Expenses) indicated by a Tenderer as being the lowest amount for which that Tenderer is prepared to provide personnel to undertake the Services.

2. **BASIS OF DECLARATION**

2.1 **[Where the Tenderer is an Organisation]** 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 **[Where the Tenderer is an Individual]** I make this declaration on behalf of myself.

2.3 I declare as follows:

3. **THE OFFER**

3.1 The Tenderer tenders to provide personnel to perform the Services for the Tender Price set out in the Tender, which is submitted in a separate sealed envelope, or electronic file via AusTender.

3.2 The Tenderer undertakes (if this Tender is accepted and a Period Offer Deed acceptable to AusAID is executed by both parties) to commence the provision of personnel to undertake the Services and to perform them in accordance with the Period Offer Deed.

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 nominated personnel have been approached and confirmed their availability and that AusAID has the authority to make the inquiries referred to in **Clause 5.5(b)** according to the CV certification.

- 3.4 I acknowledge that if the Tenderer is found to have made false or misleading material claims or statements in the Tender or in this declaration, or to have used confidential information, or received improper assistance, AusAID will reject at any time any Tender lodged by or on behalf of the Tenderer.
- 3.5 I acknowledge and agree to the matters specified in **Clauses 12** (AusAID's Rights) and **13** (Tenderer's Acknowledgement) of Part 3.
- 3.6 I agree:
- (a) that the Tenderer will be bound by this Tender for the Tender Validity Period of 180 days after the **Closing Time**; and
 - (b) that this Tender may be accepted by AusAID at any time before the expiration of that period or any additional period to which we may agree.
- 3.7 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.
- 3.8 I understand that AusAID is not bound to accept the lowest priced or any Tender.
- 3.9 I warrant that in preparing the Tender for the Services the Tenderer did not act in any way which did or could have had the effect of reducing the competitiveness of the tender process for the Services. In particular I warrant that the Tenderer did not engage in:
- (a) any discussion or correspondence with other tenderers concerning the amount of the Tender;
 - (b) any collusive tendering or other anti-competitive practices with any of the other tenderers or any other person; or
 - (c) any conduct or have any arrangement or arrive at any understanding with any of the other tenderers.
- 3.10 I warrant that the Tenderer, and any subcontractor of the Tenderer are not:
- (a) listed on a World Bank List as referred to in **Clause 5** (Ineligibility to Tender) of Part 3 of this RFT;
 - (b) listed on any similar list maintained by any donor of development funding or listed 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/> (Relevant List), or;
 - (c) subject to any proceedings which could lead to listing on a World Bank List or listing on a Relevant List.

- 3.11 **[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 Neither the Tenderer nor any of its employees, agents, contractors nor any nominated personnel have been convicted of an offence of, or relating to bribery of a public official, nor are they subject to any proceedings which could lead to such a conviction.
- 3.13 I undertake that the Tenderer will not permit any of its employees, agents, contractors or the nominated personnel, to work with children if they pose an unacceptable risk to children's safety or well being.
- 3.14 No employees of the Tenderer, or its agents, contractors or nominated personnel , who have been nominated in Project positions that involve working with children, have been convicted of a criminal offence relating to child abuse, nor are they subject to any proceedings which could lead to such a conviction.
- 3.15 Neither the Tenderer nor any of its employees, agents, contractors or nominated personnel have an unsettled judicial decision against it relating to employee entitlements.
- 3.16 The Tenderer is not currently named as noncompliant under the *Equal Opportunity for Women in the Workplace Act 1999* (EEO Act).
- 3.17 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.
- 3.18 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**.
- 3.19 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 Period Offer Deed.
- 3.20 The Tenderer is genuinely competing for the Period Offer Deed and its Tender is not a "cover bid".
- 3.21 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.
- 3.22 I acknowledge that each party constituting the Tenderer is bound jointly and severally by this Tender.

4. **ADDENDA TO TENDER DOCUMENTS**

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

Number _____ Dated _____ Number _____ Dated _____

Number _____ Dated _____ Number _____ Dated _____

5. **ADDRESS OF TENDERER**

Address or Registered Office of Tenderer

Address for service of notices (NOT PO. BOX)

Telephone Number: Fax Number:

[Where the Tenderer is an Organisation]

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

Insert name and title
(Print)

Signature

WITNESSED by)

Insert name and title
(Print)

Signature

[Where the Tenderer is an Individual]

SIGNED by)

Insert name and title
(Print)

Signature

WITNESSED by)

Insert name and title
(Print)

Signature

PART 1, ATTACHMENT 2 – PERSONNEL MATRIX

	Name/s	Countries of Experience
1		
2		
3		

6. **TENDER SCHEDULE B - FINANCIAL PROPOSAL**

6.1 Tender Schedule B - the financial proposal must contain all of the information required for each nominated person and be in the format detailed in this clause.

6.2 It must:

- (a) be submitted in a separate sealed envelope if submitted in hard-copy or separate electronic file if submitted via AusTender, with the Technical Proposal;
- (b) 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;
- (c) state clearly on the front cover:
 - (i) whether it is a Tender from an Individual or an Organisation; and
 - (ii) the tenderer's name and the contact person's details (contact name, e-mail address, phone and fax numbers);
- (d) be a fully costed fixed proposal for fee rates inclusive of:
 - (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 (including medical and medical evacuation insurance); and
 - (iii) any superannuation liabilities;
- (e) provide fixed daily fee rates for the Australian financial years set out in **Attachment 3, Part 1**;
- (f) be exclusive of GST;
- (g) be expressed in Australian dollars; and
- (h) include all administrative support costs such as report and document preparation and printing, transcription, communication, and computer and internet facilities both in Australia and Overseas.

In calculating their daily fee rates, tenderers should be aware that AusAID calculates a single daily fee rate based on an eight hour working day. Any additional work undertaken within any one 24 hour period, cannot be claimed. For international travel, the Daily Fee Rate shall apply from the scheduled departure time of overseas travel via international transport.

Superannuation fund details

Individual tenderers who are seeking to be engaged by AusAID as an individual and not for example through a company, partnership or trust, and to whom AusAID would owe a superannuation contribution under the Australian legislation if they were contracted must also include in their Financial Proposal the full name and address of a nominated complying Superannuation Fund or Retirement Savings Account and their membership number.

If such details and a completed electronic funds transfer form are not provided to AusAID by the preferred tenderer prior to the execution of the Period Offer Deed, AusAID shall make any relevant contributions in relation to the contractor to the Australian Government Employees Superannuation Trust (AGEST).

Where AusAID has an obligation under the Australian Superannuation Guarantee legislation to pay a superannuation contribution to an individual, the contribution, which in 2008-09 is equivalent to 9% of the fee (excluding reimbursable costs), must be detailed separately in the invoice and will be deducted from the total fee.

The formula used to calculate the superannuation contribution will be;

Total Fee (exclusive reimbursable costs)/ 109 * 9 = superannuation contribution;

Total Fee (exclusive reimbursable costs)/ 109 *100 = fee paid to the Contractor.

6.3 **Reimbursable Costs** are described in **Part 4, Schedule 2 – Daily Fee Rates and Reimbursable Costs**.

6.4 **Extension of the Period Offer:** is described in **Clause 3.2** (Term of the Deed), **Part 4, Period Offer Deed**. The daily fee rates to be applied for any extension period is described in **Part 4, Schedule 2 – Daily Fee Rates and Reimbursable Costs**.

6.5 **Use of Information**

- (a) Information provided in the Financial Proposal will be used for any financial assessment and for the value for money price assessment in the following manner:

The Average fee rate over five (5) years according to the following formula:

$$\text{Price for Assessment} = \frac{\text{Sum of All Average Fee Rates for Each Financial Year}}{5}$$

Tenderers Note: AusAID's contracting preference is for outputs-based Service Orders, based on daily fee rates, with reimbursable costs separately payable.

PART 1, ATTACHMENT 3 – FINANCIAL PROPOSAL

Name/s of Nominated Personnel	Year 1	Year 2	Year 3	Year 4	Year 5	Average Daily Fee Rate

N.B. The Daily Fee Rate is based on an eight hour working day. Any additional work undertaken within any one 24 hour period, cannot be claimed.

PART 2 – SCOPE OF SERVICES (SCHEDULE 1) AND DAILY FEE RATES AND REIMBURSABLE COSTS (SCHEDULE 2)

Note to Tenderers:

These Schedules are specific to this Period Offer and are presented here as **Part 2** of this RFT. They will appear as Schedules 1 and 2 in the consolidated Period Offer Deed.

Schedules 3, 4, 5 and 6 are standard schedules and are attached in Part 4 of the RFT (Period Offer Deed).

SCHEDULE 1 – SCOPE OF SERVICES

NGO ACCREDITATION, ASSESSMENT AND REVIEW SERVICES

1. INTRODUCTION

- 1.1 The Australian Agency for International Development (AusAID) is responsible for managing the Australian Government's official overseas aid program. AusAID is an autonomous body within the Department of Foreign Affairs and Trade. The objective of the Australian aid program is to advance Australia's national interest by assisting developing countries to reduce poverty and achieve sustainable development.
- 1.2 The Australian development assistance program comprises a range of delivery mechanisms including program and project aid, training and commodity assistance as well as contributions to international organisations. NGOs (Non-Government Organisations) have played an important role in meeting these challenges. By working with effective NGOs, AusAID aims to achieve quality aid outcomes and to extend the reach of the aid program to the communities with which NGOs work.

2. BACKGROUND – NGO Accreditation, Assessment and Review

- 2.1 Contractors will participate in AusAID initiated reviews and evaluations directly related to aspects of NGO Accreditation, the Overseas Aid Gift Deduction Scheme or other elements of the Australian Government's engagement of NGOs in the delivery of the aid program, particularly as they relate to development impact and quality of delivery.

NGO ACCREDITATION

- 2.2 Accreditation is an assessment of an NGO's legal basis, philosophies, systems, policies and practices which, if applied effectively and consistently, are expected to produce quality development outcomes in an accountable manner. Accreditation is not an assessment of the quality or impact of an NGOs development activities.
- 2.3 The AusAID accreditation process involves assessment of an NGOs capacity and track record against a set of agreed criteria. It evaluates an Australian NGOs structure, philosophies, program, financial and management systems, and their application in the agency's work. It does not assess the Australian NGOs partner agencies in other countries. Since AusAID introduced accreditation in 1996, the process, standards, criteria and other aspects of accreditation have been revised several times.
- 2.4 The accreditation process aims to provide AusAID, and the Australian public, with confidence that the Australian Government is funding professional, well managed, community based organisations that are capable of delivering quality development outcomes. Accreditation acts as a front-end risk management process to ensure accountable use of funding with minimal activity overview by AusAID.

- 2.5 NGOs can seek accreditation at two different levels, Base or Full. There are distinct criteria for accreditation at each level and eligibility for AusAID funding is different at each level. NGOs need to be accredited by AusAID to be eligible for AusAID funding.
- 2.6 Accredited NGOs receive annual funding under the AusAID NGO Cooperation Program (ANCP). Under the ANCP, AusAID partners with accredited Australian NGOs specialising in aid development, to implement their own development and poverty alleviation programs overseas. In addition to this annual funding scheme, NGOs are eligible to access other AusAID funding opportunities through Country/Sector Programs depending on the level of accreditation obtained. In addition to obtaining initial accreditation, NGOs must apply for reaccreditation every five years.
- 2.7 Accreditation reviews are carried out by a Review Team comprised of two Development Consultants selected by AusAID and may include a third member being a financial systems assessor, also selected by AusAID. AusAID staff may from time to time also participate.
- 2.8 Financial Systems Assessments are intended to establish that an NGO has 'necessary and sufficient' financial and management systems to be accountable for funds provided by the Commonwealth of Australia.
- 2.9 Review team reports are considered by the Committee for Development Cooperation (CDC -see below) before a final decision is taken by the AusAID delegate.
- 2.10 The accreditation process involves a number of steps which can be summarised as follows: **Submission of Agency Profile:** The NGO prepares an Agency Profile which provides information relevant to each Accreditation criterion.

Desk Assessment: On the basis of the Agency Profile, a Review Team conducts a Desk Assessment of the NGO and makes a preliminary assessment of its structure, systems and philosophies, approaches to partnership, linkages with the Australian community and financial systems.

Organisation Review: The Desk Assessment report informs a Review Team when it undertakes the Organisation Review in the Australian office of the NGO. The Organisation Review continues to assess the NGO's structure, systems and philosophy, and other dimensions of capacity and track record. It addresses any specific issues raised in the Desk Assessment, and assesses the NGO's capacity. It includes interviews with staff and Board members, a review of project files and other documents. The Review Team outlines its observations and recommendation for accreditation in a Final Accreditation Report, written in the standard format also used in the Desk Assessment report.

The Committee for Development Cooperation: is a joint AusAID-NGO advisory and consultative body made up of members from the NGO community and AusAID. The role and function of the CDC is to review Accreditation Reports and make recommendations to the AusAID delegate; provide advice on accreditation criteria and ANCP policy; and act as an advisory and consultative

body to AusAID for the Australian Professional NGO community on issues of concern to the community.

Final Decision: The CDC reviews the Review Team's Final Accreditation Report and makes a recommendation to the AusAID Delegate. Peer review is a central feature of the accreditation process. The AusAID Delegate makes a final decision on accreditation status.

OVERSEAS AID GIFT DEDUCTION SCHEME

- 2.11 The Overseas Aid Gift Deduction Scheme (OAGDS) enables donations collected by NGOs for their overseas aid activities to be tax deductible. That is, it allows donors to claim their contributions to the NGO as a tax deduction.
- 2.12 Applying for the OAGDS is a two step process for NGOs. Firstly, NGOs applying for tax deductibility must be accepted as an 'approved organisation' by the Minister for Foreign Affairs. The Minister has established criteria to assist in determining the eligibility of NGOs.
- 2.13 NGOs must submit an application to AusAID that addresses all seven of the OAGDS Criteria. This application is then assessed by a contractor. The contractor makes a preliminary assessment of whether the NGO meets the criteria for the OAGDS, and is able to contact the NGO to request clarification and/or further evidence/documentation as required. The contractor prepares a report to AusAID documenting the findings of the assessment against the criteria, and makes a recommendation to AusAID.
- 2.14 Once approved by the Minister for Foreign Affairs, the second step in the process involves the NGO applying to the Australian Tax Office (ATO) to set up a developing country relief fund under the Gift Deduction Scheme for tax deductibility purposes. This step in the process is handled by the ATO and Treasury.

REVIEWS AND EVALUATIONS

- 2.15 AusAID may initiate reviews and evaluations directly related to other elements of the Australian Government's engagement with NGOs in the delivery of the aid program, particularly as they relate to development impact and quality of delivery.

3. SERVICES REQUIRED

- 3.1 AusAID requires the services of individuals, firms or organisations to provide, on an ad hoc basis, the following types of services:
 - i. Accreditation
 - (a) As part of a Review Team, assess NGOs against specific accreditation criteria. This task is comprised of up to two stages, with a written report submitted to AusAID at both stages, using AusAID provided examples (refer to Annexes 1-3 of this scope of services):
 - (i) A Desk Assessment; and

(ii) Accreditation Review Report.

ii. Overseas Aid Gift Deduction Scheme

- (a) Review all documents submitted by an NGO;
- (b) Liaise with the NGO, if required; and
- (c) Make a preliminary assessment against the criteria for the Scheme and provide a recommendation to AusAID.

iii. Reviews and Evaluations

- (a) Participate in AusAID initiated reviews and evaluations directly related to other elements of the Australian Government's engagement with NGOs in the delivery of the aid program particularly as they relate to development impact and quality of delivery.

4. REQUIREMENTS

- 4.1 Contractors will be required to provide the Specified Personnel to provide services as required by AusAID. AusAID may remove from the Period Offer Specified Personnel who are consistently unavailable when required and/or Contractors who are unable to provide personnel when required.
- 4.2 On occasion, Specified Personnel may be required to work as part of a team including personnel obtained under Period Offers from other contractors.
- 4.3 For interstate and overseas assignments, the Contractor is responsible for making all travel and accommodation arrangements to meet AusAID's requirements for the activity.
- 4.4 The Contractor must attend Reviewer Workshops at which AusAID will provide updates on NGO accreditation, assessment and review. These workshops are expected to be held on an annual basis. Reviewers are required to travel to Canberra for up to two (2) days.

5. ENGAGEMENT

- 5.1 The scope and duration of service for particular assignments will be agreed between AusAID and the Contractor through a Services Order at the time of each assignment (substantially in the format of the Services Order at Schedule 4). The Specified Personnel who will undertake the services will also be specified in the Services Order.
- 5.2 AusAID gives no guarantee of any minimum amount of work that may be offered to the Contractor under the Period Offer.

6. REPORTS

- 6.1 Reports or other documentation required shall be as specified in the Services Order pursuant to this Period Offer Deed.

7. **CONTRACTOR PERFORMANCE**

7.1 Satisfactory performance (and particularly timeliness and quality) of services as set out in a Services Order may be taken into account in awarding further work under the Period Offer Deed and in selections for future AusAID work.

7.2 AusAID reserves the right to introduce a performance system to the Period Offer Deeds at its discretion.

8. **SERVICE LEVELS**

8.1 The Contractor must, within the Fees, and in accordance with the terms and conditions of the Period Offer Deed, meet the following service levels for Services performed under all Services Orders that come into effect under the Deed:

- (a) Ensure the availability of all persons nominated as Specified Personnel in Deed **Schedule 5** of the Period Offer Deed to perform in accordance with signed Services Orders issued by AusAID;
- (b) Monitor the performance of Specified Personnel and ensure they meet performance standards prescribed in the Deed and performance standards specified in Services Orders to the highest standards;
- (c) Ensure the timely achievement of any milestones and the services required by Services Orders to the highest standards of quality;
- (d) Monitor the production of written reports by Specified Personnel as required under Services Orders, ensuring all reports:
 - (i) Meet the highest standards of quality, including report content, format, spelling and grammar;
 - (ii) Include all information required by and specified in Services Orders;
 - (iii) Are prepared in accordance with AusAID direction , as required;
 - (iv) Are compatible with AusAID's information systems;
 - (v) Are prepared in accordance with the requirements of the Period Offer Deed; and
 - (vi) Are delivered in a timely manner and in accordance with timetables specified in Services Orders;
- (e) Ensure the co-operation of all persons nominated as Specified Personnel with personnel from other contractors appointed by AusAID to undertake activities, including as a member of a team; and
- (f) Use best endeavours to ensure that Specified Personnel meet the requirements of the Deed.

- 8.2 The Contractor must ensure that any Services under any Services Order issued under the Deed are performed in accordance with the requirements of the Period Offer Deed.

9. **SECURITY**

- 9.1 Contractors should be aware that in some overseas locations security issues may need particular attention. It is the Contractor's responsibility to ensure the personal security of Contractor Personnel and the security of any equipment.

Annex 1 to Scope of Services

**DESK ASSESSMENT [DA]
ORGANISATION REVIEW [OR]
FINAL BASE ACCREDITATION REPORT**

Agency Acronym

Agency Name in Full

**Report prepared for the AusAID/NGO
Committee for Development Cooperation**

AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT

Canberra

Month Year

PART A - Narrative Report

INTRODUCTION

Overview of the Accreditation process

XXXX (hereafter referred to as XXX) currently holds Base/Full Accreditation status with AusAID. This Accreditation was granted in the year XXX. Agency XXX has applied to be reaccredited at the Base level. To fulfill the requirements of Accreditation, the Agency XXX submits an Agency Profile and undergoes a Desk Assessment review (DA) and an Organisation Review (OR).

This report, commissioned by the Committee for Development Cooperation (CDC), is a summary of the Desk Assessment review (DA) and Organisational Review (OR) in consideration of the Agency's application to AusAID for accreditation. The report is prepared by a three member Accreditation Review Team comprising two independent development consultants and a financial assessor contracted by AusAID. The report is based on the Desk Assessment of information contained in the Agency Profile and information analysed during the Organisational Review in Australia. The information is assessed against the agreed criteria for Accreditation outlined in the AusAID document *AusAID/NGO Accreditation Criteria Table – Base* (latest version)

Accreditation status is recommended by the Review Team. It is subject to the view and recommendation of the CDC. The final decision rests with the AusAID Delegate.

Summary Statement with rationale for Accreditation Recommendation

Please be mindful that NGOs vary in size and complexity. Small agencies receiving limited funding from AusAID are not expected to have as complex or sophisticated structures and systems, as NGOs receiving extensive AusAID funding. Accreditation Criteria Indicators are applied commensurate with the size of the risk to AusAID.

Accreditation Recommendation:

OVERVIEW OF THE AGENCY

Please include a statement about the Agency's size and complexity and the total value of funds received from AusAID in last three years. Your judgement about whether the Agency meets each criterion must be based on - *and indicate in the text* - your clear appreciation of the size and scale of the particular Agency.

A. AGENCY IDENTITY AND STRUCTURE

Criterion A1: Agency is voluntary, not-for-profit and non-government.

Issues / Recommendation:

Criterion A2: Agency is a legal entity, with identified office holders, with a documented structure of responsibilities and appropriate systems to ensure accountability, including to its supporters.

Issues / Recommendation:

Criterion A3: Agency has formally adopted and is compliant with the ACFID Code of Conduct for Non-Government Development Organisations.

Issues / Recommendation:

B. DEVELOPMENT PHILOSOPHIES AND MANAGEMENT PRACTICES

Criterion B1: Agency has a demonstrated record of undertaking aid projects/programs consistent with the objectives of the Australian Aid Program of *poverty alleviation and sustainable development*.

Issues / Recommendation:

Criterion B2: Agency has development philosophies not inconsistent with the objectives of the Australian Aid Program, and is able to differentiate between objectives of:

- a) Development and Welfare
- b) Development and Evangelism
- c) Development and Partisan Politics.

Issues / Recommendation:

Criterion B3: Australian Agency has the capacity to deliver its project objectives in a way that meets its contractual obligations to AusAID.

Key to this capacity are management systems that address all aspects of the project cycle, risk management and appropriate decision-making processes.

Please include comments on the appraisal of Commonwealth supported activities, management of risk related to project/program processes and outcomes, ability to influence project/program management, compliance with AusAID guidelines on family planning, terrorism, child sex tourism, child protection and environment.

Issues / Recommendation:

Criterion B4: Agency can monitor, report and rate effectiveness of activities.

Issues / Recommendation:

Criterion B5: Agency has systems for continuous improvement of its management and operations.

THIS CRITERION NOT APPLICABLE TO BASE AGENCIES

C. APPROACHES TO PARTNERSHIP AND DEVELOPMENT COLLABORATION

Criterion C1: Agency has documented arrangements with implementing partners in countries where it works and/or with global partner's networks or affiliates as appropriate.

Issues / Recommendation:

Criterion C2: Agency has assessed its own capacity and the capacity of its partner organisation to develop and implement projects.

Issues / Recommendation:

Criterion C3: NGO's partnerships are consistent with good development practice.

Issues / Recommendation:

D. LINKAGES WITH THE AUSTRALIAN COMMUNITY

Criterion D1: Agency is clearly identifiable as Australian and can demonstrate interaction with an Australian community base.

Issues / Recommendation:

Criterion D2: Agency provides accurate information about the organisation, its objectives and its activities in its public presentations, in a manner that respects the dignity of recipient communities.

Issues / Recommendation:

Criterion D3: Agency maintains Australian community support for its development projects through financial, in-kind and/or voluntary contributions.

Issues / Recommendation:

Criterion D4: Agency has a plan to increase constituency awareness of, and involvement in, contemporary development and/or relief issues.

THIS CRITERION NOT APPLICABLE TO BASE AGENCIES

E. FINANCIAL SYSTEMS AND RISK MANAGEMENT

Criterion E1: Agency has effective management, administration and financial systems for accounting for funding including systems to ensure the presence and implementation of adequate controls in partner organisations' accounting and management systems.

Issues / Recommendation:

Criterion E2: Agency and its overseas partners and its international affiliates, have a capacity and commitment to undertake activities in a professionally competent manner, especially with regard to financial operations.

THIS CRITERION NOT APPLICABLE TO BASE AGENCIES.

Criterion E3: Agency utilises systems to assess and manage financial risk which is appropriate to the level of expenditure.

THIS CRITERION NOT APPLICABLE TO BASE AGENCIES.

Criterion E4: Agency can raise contributions (a minimum \$50,000 RDE averaged over three years) from the Australian community in support of development activities.

Issues / Recommendation:

Criterion E5: Agency complies with Australian legislation pertaining to fundraising and tax deductibility.

Issues / Recommendation:

F: FAMILY PLANNING/REPRODUCTIVE HEALTH ACTIVITIES

Criterion F1: Agency has a documented policy that demonstrates an understanding of Government policies related to Family Planning/Reproductive Health issues.

Issues / Recommendation:

Criterion F2: Agency can demonstrate it has the capacity to apply the Guiding Principles, which form the basis of the Government's policy for family planning activities in the overseas aid program, in all stages of the project cycle.

Issues / Recommendation:

Criterion F3: Relevant AusAID proposals and reporting documents show that Agency meets Government Family Planning requirement.

Issues / Recommendation:

Suggestions for Improvements to Agency Systems

Note: These suggestions are based on the professional judgement of the Accreditation Review Team. It is not compulsory to implement these recommendations.

Annex 2 to Scope of Services

DESK ASSESSMENT [DA]

ORGANISATION REVIEW [OR]

FINAL FULL ACCREDITATION REPORT

Agency Acronym

Agency Name in Full

Report prepared for the AusAID/NGO

Committee for Development Cooperation

AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT

Canberra

Month Year

PART A - Narrative Report

INTRODUCTION

Overview of the Accreditation process

XXXX (hereafter referred to as XXX) currently holds Base/Full Accreditation status with AusAID. This Accreditation was granted in the year XXX. Agency XXX has applied to be reaccredited. To fulfill the requirements of Accreditation, the Agency XXX submits an Agency Profile and undergoes a Desk Assessment review (DA) and an Organisation Review (OR).

This report, commissioned by the Committee for Development Cooperation (CDC), is a summary of the Desk Assessment review (DA)/Organisational Review (OR) in consideration of the Agency's application to AusAID for Accreditation. The report is prepared by a three member Accreditation Review Team comprising two independent development consultants and a financial assessor contracted by AusAID. The report is based on the Desk Assessment of information contained in the Agency Profile and information analysed during the Organisational Review in Australia. The information is assessed against the agreed criteria for Accreditation outlined in the AusAID document *AusAID/NGO Accreditation Criteria Table - Full* (2005 edition).

Accreditation status is recommended by the Review Team. It is subject to the view and recommendation of the CDC. The final decision rests with the AusAID Delegate.

Summary Statement with rationale for Accreditation Recommendation

Please be mindful that NGOs vary in size and complexity. Small agencies receiving limited funding from AusAID are not expected to have as complex or sophisticated structures and systems, as NGOs receiving extensive AusAID funding. Accreditation Criteria Indicators are applied commensurate with the size of the risk to AusAID.

Accreditation Recommendation:

OVERVIEW OF THE AGENCY

Please include a statement about the Agency's size and complexity and the total value of funds received from AusAID in last three years. Your judgement about whether the Agency meets each criterion must be based on - *and indicate in the text* - your clear appreciation of the size and scale of the particular Agency.

A. AGENCY IDENTITY AND STRUCTURE

Criterion A1: Agency is voluntary, not-for-profit and non-government.

Issues / Recommendation:

Criterion A2: Agency is a legal entity, with identified office holders, with a documented structure of responsibilities and appropriate systems to ensure accountability, including to its supporters.

Issues / Recommendation:

Criterion A3: Agency has formally adopted and is compliant with the ACFID Code of Conduct for Non-Government Development Organisations.

Issues / Recommendation:

B. DEVELOPMENT PHILOSOPHIES AND MANAGEMENT PRACTICES

Criterion B1: Agency has a demonstrated record of undertaking aid projects/programs consistent with the objectives of the Australian Aid Program of *poverty alleviation and sustainable development*.

Issues / Recommendation:

Criterion B2: Agency has development philosophies not inconsistent with the objectives of the Australian Aid Program, and is able to differentiate between objectives of:

- a) Development and Welfare
- b) Development and Evangelism
- c) Development and Partisan Politics.

Issues / Recommendation:

Criterion B3: Australian Agency has the capacity to deliver its project/program objectives in a way that meets its contractual obligations to AusAID.

NB Key elements of this capacity are *management systems* that address all aspects of the project cycle, *risk management* and appropriate *decision-making* processes.

Please include comments on the appraisal of Commonwealth supported activities, management of risk related to project/program processes and outcomes, ability to influence project/program management, compliance with AusAID guidelines on family planning, terrorism, child sex tourism, child protection and environment.

Issues / Recommendation:

Criterion B4: Agency can monitor, report and rate effectiveness of activities.

Issues / Recommendation:

Criterion B5: Agency has systems for continuous improvement of its management and operations.

Issues / Recommendation:

C. APPROACHES TO PARTNERSHIP AND DEVELOPMENT COLLABORATION

Criterion C1: Agency has documented partnerships with organisations in countries where it works.

Issues / Recommendation:

Criterion C2: Agency has assessed its own capacity and the capacity of its partner organisation to deliver and develop projects/programs appropriate for that capacity.

Issues / Recommendation:

Criterion C3: Agency's partnerships with organisations in countries where it works, and its partners' relationships with beneficiaries, are effective and consistent with good development practice.

Issues / Recommendation:

D. LINKAGES WITH THE AUSTRALIAN COMMUNITY

Criterion D1: Agency is clearly identifiable as Australian and can demonstrate responsive interaction with an Australian community base.

Issues / Recommendation:

Criterion D2: Agency, and its partners, provide accurate information about the organisation, its objectives and activities in its public presentations, in a manner that respects the dignity of recipient communities.

Issues / Recommendation:

Criterion D3: Agency deploys and maintains Australian community support for its development projects/programs, through financial support, and in-kind and/or voluntary contributions.

Issues / Recommendation:

Criterion D4: Agency has a plan to increase constituency awareness of, and involvement in, contemporary development and/or relief issues.

Issues / Recommendation:

E. FINANCIAL SYSTEMS AND RISK MANAGEMENT

Criterion E1: Agency has effective management, administration and financial systems for accounting for funding.

Issues / Recommendation:

Criterion E2: Agency, its overseas partners and its international affiliates, have a capacity and commitment to undertake activities in a professionally competent manner, especially with regard to financial operations.

Issues / Recommendation:

Criterion E3: Agency utilises systems to assess and manage financial risk which is appropriate to the level of expenditure.

Please note that this includes risk related to expenditure through partner organisations.

Issues / Recommendation:

Criterion E4: Agency can raise contributions (a minimum \$75,000 RDE) from the Australian community in support of development activities.

Issues / Recommendation:

Criterion E5: Agency complies with Australian legislation pertaining to fundraising and tax deductibility.

Issues / Recommendation:

F: FAMILY PLANNING/REPRODUCTIVE HEALTH ACTIVITIES

Criterion F1: Agency has a documented policy that demonstrates an understanding of Government policies related to Family Planning/Reproductive Health issues.

Issues / Recommendation:

Criterion F2: Agency can demonstrate it has the capacity to apply the Guiding Principles, which form the basis of the Government's policy for family planning activities in the overseas aid program, in all stages of the project cycle.

Issues / Recommendation:

Criterion F3: Relevant AusAID proposals and reporting documents show that Agency meets Government Family Planning requirement.

Issues / Recommendation:

Suggestions for Improvements to Agency Systems

Note: These suggestions are based on the professional judgement of the Accreditation Review Team. It is not compulsory to implement these recommendations.

Annex 3 to Scope of Services

ACCREDITATION REVIEW REPORT

Bingo Aid Projects

BINGO

**Report prepared for the AusAID/NGO
Committee for Development Cooperation**

AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT

Canberra

April 2004

PART A - Narrative Report

INTRODUCTION

Overview of accreditation process

BINGO Aid Projects hereafter referred to as (BINGO), currently holds Base Accreditation status with AusAID. This accreditation was granted in 1998 and BINGO is now applying for reaccreditation with AusAID at Base Level. To fulfil the requirements of Accreditation, BINGO has submitted an Agency Profile and undergone a Desk Assessment review (DA) and an Organisation Review (OR).

This report, commissioned by the Committee for Development Cooperation (CDC), is a summary of the Desk Assessment review (DA) and Organisational Review (OR) in consideration of the BINGO's application to AusAID for accreditation. The report is prepared by a three member Accreditation Review Team comprising two independent development consultants and a financial assessor contracted by AusAID. The report is based on the Desk Assessment of information contained in the Agency Profile and information analysed during the Organisational Review. The information is assessed against the agreed criteria for Accreditation outlined in the AusAID document AusAID/NGO Accreditation Criteria Table – Base (latest version)

Accreditation status is recommended by the Review Team. It is subject to the view and recommendation of the CDC. The final decision rests with the AusAID Delegate.

Accreditation Recommendation: BINGO be accredited as a Base Agency

OVERVIEW OF THE AGENCY

BINGO is a small organisation first established in 1987 with a specific focus on assisting a partner NGO in Mongolia to assist poor communities with a major focus on women and children. They currently work in four remote areas of Mongolia and have more than 23,000 women in self help groups and 135 well trained voluntary animators. It has a well-established track record and carries out quality work with a growing profile of appropriate and well conceived community based activities. It presents policies and philosophies not inconsistent with the Accreditation Criteria and is clearly an Australian organisation with a high degree of professional voluntary engagement.

A. AGENCY IDENTITY AND STRUCTURE

Criterion A1: Agency is voluntary, not-for-profit and non-government.

The constitution of BINGO clearly identifies that the society is not-for-profit, with no possibility of distribution of income to its members and proper disbursement of Association assets in the event of dissolution to a not for profit organisation with a similar mandate and objects to that of BINGO. There are no links to government, apart from those relationships entered into for the purposes of receiving government funding.

The documentation identifies high levels of volunteerism in the activities of the association. The committee of management is entirely voluntary, supported by one part time salaried administrator.

Recommendation: BINGO meets this Criterion

Criterion A2: Agency is a legal entity, with identified office holders, with a documented structure of responsibilities and appropriate systems to ensure accountability, including to its supporters.

BINGO was first established in 1987 and incorporated as the “Australian Aid organisation for BINGO Projects”. The current organisation underwent a new Incorporation (under the Associations Incorporation Act 1981) on 13th September 1995 as BINGO Aid Projects (Registration No: A00012345). It has endorsement as an income tax exempt charitable entity (ABN: 12 34 56 78 – July 31st 2002) and endorsement as a Deductible Gift Recipient 9.1.1 overseas aid fund, entity. It is registered for fundraising activities in Victoria (Registration # 1234) and registration is reviewed annually. BINGO’s fundraising activity is limited to their support groups in Victoria but they do receive the occasional unsolicited donations from other states.

The membership of BINGO consists of anyone who on an annual basis has:

1. made a donation in excess of five dollars, or
2. sponsors a children’s group or village under BINGO’s sponsorship program, or
3. paid the annual membership fee.

Life membership is granted to those who have donated at least \$1,000. Those wishing to support BINGO but not become a member may do so as a ‘subscriber’ but are not able to vote or serve on the Committee of Management (CoM). Current subscribers total 123 members.

BINGO’s constitution establishes a Committee of Management (CoM) which serves to control and manage all affairs of the association save for those reserved for the membership at the Annual General Meeting. The CoM membership is elected from within the Formal Membership of BINGO at each Annual General Meeting. CoM officers and members are elected, based on nomination by two members and a willingness to serve with due consideration to representation from at least five ‘regional groups’. The current CoM has sixteen members. The regional groups are informal networks of supporters living in various geographical areas of the state. They have been formed following visits to Australia by representatives from the Mongolia Program. They each have a regional representative elected by the members at the AGM. The election and roles of the officers (President, two Vice Presidents, Secretary and Treasurer) are defined in the constitution.

The CoM is responsible for:

- ✓ the formulation and approval of all development and management policies and oversees their implementation.
- ✓ the overall fundraising of the association
- ✓ recruitment, hiring and firing of staff
- ✓ budgeting and auditing

- ✓ regulatory compliance
- ✓ Annual reports
- ✓ ACFID Code of Conduct compliance.

In addition to the AGM, BINGO holds at least three CoM's per annum. The constitution calls for the Secretary to keep minuted records of all proceedings and resolutions of each meeting. Documentation sighted at the OR confirms that the CoM actions are well documented and presented. Even though the Constitution allows for emergency meetings of available members to take decisions between sessions of the CoM there has not yet been occasion to call an emergency meeting.

BINGO has an open policy towards its membership and the general public. All questions regarding CoM decisions are recorded and filed. Previously, the BINGO administrator (paid staff) had voting privileges on the CoM but has now had those privileges withdrawn to strengthen the governance process and minimise potential conflict of interest.

CoM members may be removed at an AGM where there is a majority vote to do so. No documentation was sighted with regard to how the Council monitors potential conflict of interest scenarios.

Members and supporters have clear access to question the CoM and/or influence their actions. A complaint file is kept and all such complaints are handled by the CoM Chair and/or the Administrator. The Manual of Operations has a conflict of interest policy and CoM members are well aware of and practise proper duty of care in declaring potential conflicting interests although such situations are rare.

Recommendation: BINGO meets this Criterion

Criterion A3: Agency has formally adopted and is compliant with the ACFID Code of Conduct for Non-Government Development Organisations.

The minutes indicate that the Committee of Management formally adopted support for ACFID's Code of Conduct on March 22nd 1996. BINGO is listed as an ACFID member and a signatory to the code on ACFID's official website. ACFID has confirmed that BINGO is currently compliant with the Code of Conduct.

The agency's strategic plan for 2001- 5 states that the ACFID Code of Conduct forms one benchmark for the basis of their operations.

Recommendation: BINGO meets this Criterion

B. DEVELOPMENT PHILOSOPHIES AND MANAGEMENT PRACTICES

Criterion B1: Agency has a demonstrated record of undertaking aid projects consistent with the objectives of the Australian Aid Program of poverty alleviation and sustainable development.

BINGO maintains its geographic focus in Mongolia with a single partner agency, the BINGO Farm and Training Centre (BF&TC). BINGO supports BF&TC's work in four project sites targeting vulnerable and marginalised groups (eg women and other populations). Past and present project activities have explicitly targeted poverty alleviation and have demonstrated sustained results. Over the last three years, BINGO has supported the BF&TC community development program to the amount of \$473,000, with approximately 30% of these funds provided by AusAID.

BINGO has a community-based approach where the emphasis is upon improving the quality of life of the rural poor and emphasises community-owned development with full consultation between the community and BINGO's partner. BINGO's philosophy is to develop the capacity of its partner to deliver programmes which in turn works to empower vulnerable groups through self help groups and community-based initiatives. More than 23,000 women and 135 animators are now engaged in this process across four project sites. There is clear evidence that the nature of the partnership has changed over time with stronger and more integrated development initiatives such as micro-enterprise being developed and implemented and the emphasis shifting from service delivery support to community owned, managed and financed self-help groups.

There was good evidence of sustainability with self help groups and village development committees formed through project activities in the AusAID funded Working Together (1998-1999) continuing to operate and being self-sustaining financially. Self help groups from this project no longer have any need for external financial support with community activities financing payments to animators and SHGs securing low interest bank loans to a value of approx. A\$250,000. Revolving loans operating within credit coops currently have a value of more than A\$300,000 with appropriate pay back rates. The activities undertaken by BINGO fall clearly within AusAID's strategy of poverty reduction and sustainable development.

BINGO is currently supporting two AusAID funded projects, the Working and Growing Together project, and Plant Nurseries for Income and Health project. The current development model supported by BINGO builds on earlier work and emphasises the selection and training of women (and to a lesser extent, men) to operate self help groups which aim to increase self-sufficiency, reduce indebtedness and improve health and educational standards. Included in their program profile of activities are:

- Credit co-operatives and small-scale income generation activities
- Community based Health promotion and prevention
- Community based Basic Education
- Food security
- Adult literacy
- Herbal medicine alternatives as adjunct therapy

The articles of BINGO's constitution do not describe any philosophy of developmental assistance however the agency profile, annexes and project documentation clearly demonstrate that BINGO is in fact engaged in poverty alleviation and sustainable

development activities. The principle object of the Association according to the Constitution is “to raise funds for Assistance to the BINGO projects conducted by Ms Silver, (of the BINGO Farming and Training Centre) her associates and successors in Mongolia”. BINGO recognise that their constitution needs updating in order to reflect their current program mission and strategy and the board is in process to make a decision about the most appropriate way in which to do this. BINGO have sought advice on this matter of constitutional revision from AusAID and ACFOA . Despite the brevity of the existing constitutional objects the reviewers are well satisfied that BINGO does in fact conduct quality community development work that is increasing in its scope and spread substantially.

Although BINGO has had a long term partnership with BF&TC in Mongolia, the review team is satisfied that the initial project has grown and changed over time in a manner that does not suggest undue dependence on BINGO/AusAID support.

Areas of change over time include such things as:

- Supporting partner agency in identifying new potential sources of funds and assisting in preparation of funding submissions (e.g. CIDA in 2004)
- Identification of new community groups from among other religious groups;
- Piloting men’s self help groups.
- Introduction of strong self help groups with built-in sustainability provisions
- Growth of one project site to four project sites
- Successful integration of former SHGs into national banking scheme with bank loans now exceeding A\$250,000
- Successful integration of effective cost recovery / supplementation (e.g. bamboo seedling propagation) with more modest herbal gardening
- Mainstreaming of HIV/AIDS awareness and prevention (currently under way)

Recommendation: BINGO meets this criterion.

Criterion B2: The Agency has development philosophies not inconsistent with the objectives of the Australian Aid Program, and is able to differentiate between objectives of:

a) Development and Welfare

b) Development and Evangelism

c) Development and Partisan Politics

In developing their operational philosophy, the founding members of BINGO were guided by Christian values. Not the least of which were and remain that all people are ‘created in the image of God’ and therefore are worthy of dignity and that they all are created equal, therefore should be accessible to a full range of human rights and social

justice. While BINGO's philosophy is developed from within Christian beliefs and values, BINGO clearly and adequately demonstrates a commitment to practice that makes clear distinctions between rendering humanitarian assistance and evangelistic activity, and beneficiaries are clearly multi-denominational. The Mission Statement approved by both the CoM on January 18th 2004 and the BF&TC Board of management includes the following statement. "BINGO will not fund projects that have any objectives relating to evangelism or party political activities. Beneficiaries must not be chosen based upon religious or political beliefs, nor must any religious or political belief be a precondition for participating in development activities.", and in the Strategic Plan 2004 -2007 it is reinforced that "BINGO will not support or condone the proselytising of recipients by staff involved in development activities in Mongolia".

The umbrella MOU and specific project EOL's contain clauses about proper compliance with all AusAID regulations but do not specifically mention clauses regarding welfare, evangelism and partisan politics. Through interviews and document reviews at the ORA, the reviewers, however, are quite satisfied that the partner NGO BF&TC is aware of and compliant with AusAID regulations and is practising social development unencumbered by or mixed with any of these precluded activities.

Through group presentations and simple development education BINGO further discourages its donors from supporting welfare activities but acknowledges that it does provide limited assistance for welfare activities from time to time. The agency does not however use AusAID funds or matching funds for this purpose and acknowledges these small amounts of welfare assistance in its annual RDE statement. All welfare funds are accounted for separately.

BINGO has basic position statements on the following cross-cutting development issues in its Manual of Operations which has been approved by the CoM.

- Community Participation
- Food Security
- Human Rights
- Environment and Development
- Gender and Development
- HIV/AIDS in Development Activities.
- Sustainability

Position statements on each of these areas were developed in an emergent fashion as project activities expanded e.g. to focus on community animators, or as the context demanded e.g. HIV/AIDS. This demonstrated to the review team a high level of responsiveness and evidence of continuous learning approach by the supporting agency and its partner.

Recommendation: BINGO meets this criterion.

Criterion B3: The Agency has the capacity to deliver its project objectives in a way that meets its contractual obligations to AusAID.

This criterion seeks to understand the role of the NGO throughout the project cycle to establish that it exercises adequate influence and control with its organisations and implementing partners to: (i) add value to the development process and (ii) manage risk.

The BINGO board/committee of management is comprised of sixteen Australian professionals who bring a wealth of experience to the management of BINGO. Through discussion at OR and an inspection of monitoring reports and correspondence the Review Team concluded that there is ample evidence of safe and efficient management of funds and regular oversight and input into partner activities.

BINGO demonstrated an understanding and practice of risk management protocols and have a number of procedures and policies which contribute to the risk management of funds. The risk management processes include: Project Agreements, Appraisal process and summary form, Double Entry Accounting standards, Double signatories on Bank Accounts, Project ledgers, Regular Monitoring visits, Quarterly project financial reports and narratives and routine External audits of BINGO and partner.

BINGO has a documented appraisal process with a simple appraisal tool. The instrument covers the most important aspects of design appraisal. The AusAID liaison officer (non-salaried) Board member, along with the Administrative Officer (salaried) and the President review all project submissions against the approved appraisal criteria and recommend the project to the full CoM in session, following consultation with several members. For the most recent proposal submitted by BINGO, the review team sighted significant iterative discussion in email communications between the partner agency and BINGO. These emails were viewed at the time of the ORA and clearly demonstrated a full and adequate consideration of the full range of appraisal criteria. The pertinent CoM minutes (04/05/03) show discussion and approval of the aforementioned proposal as described in the Operating Procedures. Despite a clear and full consideration of the appraisal criteria, a completed appraisal form was not available in the project file. The review team were however satisfied that projects were being adequately appraised by BINGO before consideration for funding. Furthermore, evidence was sighted at ORA whereby proposals submitted by BF&TC were appraised and declined by BINGO for reasons of inadequately meeting requirements eg feasibility or cost effectiveness.

Whilst demonstrating a sound understanding of project cycle management, BINGO demonstrated an openness and willingness to seek advice and input to enhance the quality of its proposal submissions and subsequent reporting. Evidence was noted of related communications with ACFOA, and AusAID's Community Programs Section (CPS). Quarterly reports are prepared for BINGO by the partner agency reporting against expenditure to date, inputs and activities. Timely receipt of these reports and appropriate progress against stated activity plans and expenditure is required for release of subsequent tranches of funds. Email communications demonstrated follow up and analysis of information contained in these reports. Completed projects were seen to be assessed against outputs and objectives by the partner in-country and reviewed in Australia by BINGO - by way of a desk-based evaluative process - to incorporate lessons learned. BINGO has more recently demonstrated a responsiveness in the area of outcome monitoring and evaluation. Comprehensive baseline data has now been collected by the partner agency across the project sites, facilitating the development of more appropriate targets and indicators. Whilst the partner still relies upon a significant quantity of rather crude data, BINGO has demonstrated an understanding and commitment to support the partner agency to further develop these into more sensitive development indicators.

All aspects of partner activities are reviewed and verified annually by way of monitoring visits from a member of the board. Recent monitoring trip reports demonstrated a detailed scrutiny of both partner agency and project activity (e.g. self help group), financial documents and procedures. Project sites were visited and interviews conducted with the full range of stakeholders from BF&TC staff, Community animators and self help group participants. These annual visits by board members also provide the opportunity for technical input into programming, as evidenced by the incorporation of micro-credit into self help groups further to a project visit by a board member with expertise in this area. Similar programmatic changes, or quality enhancements, were also influenced by BINGO in the recently commenced Plant Nurseries project.

BINGO is a small organisation with a relatively small program. It is not part of or affiliated with any international network.

Recommendation: BINGO meets this Criterion.

Criterion B4: the Agency can monitor, report and rate effectiveness of activities.

BINGO can and does monitor and report on its projects although by its own admission, the agency relies heavily upon its local partner for project evaluation. BINGO demonstrated a capacity to rate and review its own effectiveness through its periodic CoM meetings and recent strategic planning processes.

Routine activity monitoring occurs through a system of quarterly reporting from the field to BINGO. These comprehensive field reports are complemented by regular (observed) email communications, and a substantive annual monitoring visit where all aspects of project finance and activities are assessed and or verified. Information from these reports and visits was observed to be appropriately translated into the relevant formats for external donor reporting. All reports sighted were of a high standard.

Evaluation, reviewing and assessing progress against outputs has been conducted routinely in BINGO-supported projects, as demonstrated in interim and final reports. BINGO demonstrated a firm understanding of AusAID rating systems and appropriate application of these. Succinct project reviews (desk studies) have also been conducted at project completion. Outcome monitoring and evaluation however is only recently being considered by BINGO and BF&TC. Earlier projects suffered from a lack of adequate baseline information and demographic detail to set easily measurable targets/ target groups. Investment in comprehensive community surveys has now improved data availability for quantitative indicator development, improved objective setting and monitoring and evaluation. While BINGO acknowledged a need to seek advice regarding broader evaluation principles and processes they have not utilised external expertise to date.

Minutes of CoM meetings demonstrated an ongoing process of monitoring of BINGO policy and practice with significant changes and new initiatives indicating adequate critical analysis and responsiveness. At the first CoM for 2004 for example, it was

acknowledged that additional technical expertise was required on identified key areas and a proposal was approved to develop three new working groups in the area of finance, marketing and project management (including evaluation).

In 2004, BINGO completed a process of agency review and strategic planning, producing a strategic plan for 2004 – 2007. This document supports the vision of a reflective NGO with adequate capacity to continually monitor its own capacity and the effectiveness of its interventions.

Recommendation: BINGO meets this Criterion.

Criterion B5: Agency has systems for continuous improvement of its management and operations.

THIS CRITERION IS NOT APPLICABLE TO BASE AGENCIES

APPROACHES TO PARTNERSHIP AND DEVELOPMENT COLLABORATION

Criterion C1: Agency has documented arrangements with implementing partners in countries where it works and/or with global partner's networks or affiliates as appropriate.

BINGO has one longstanding partnership with BF&TC in Mongolia. The reviewers were satisfied that the evidence shows BF&TC as a capable and effective community-based organisation. Signed copies of a jointly agreed comprehensive Strategic Plan were seen along with both a generic umbrella partnership agreement and detailed EOLs for each project supported.

Recommendation: BINGO meets this criterion.

Criterion C2: The Agency has assessed its own capacity and the capacity of its partner organisation to develop and implement projects.

As a small agency BINGO has a good understanding of its own capacity and that of its partner BF&TC. Evidence was seen of BINGO staff and CoM members detailed knowledge of their partner's capacity and of the senior management of projects. Key staff have been brought to Australia for training and substantial work has been done by the two organisations in planning for the replacement of the current project leader and manager of BF&TC, who is approaching retirement. BINGO will be having considerable influence in this replacement, demonstrating that the issue of capacity is high on their agenda. The quality of project records provided by the partners on a regular basis also speak well for

capacity in the field. The capacity of the CoM members to not only provide governance but also voluntarily engage in the project management/implementation cycle was, in the opinion of the reviewers highly commendable. Their strong commitment was matched by their transparency and self/group assessment in identifying which areas they still needed to enhance and strengthen. While there was clear evidence to satisfy the reviewers that BINGO does indeed assess capacity satisfactorily, there is room for improvement of the process through standardisation of the criteria and formalising procedures.

Recommendation: BINGO meets this criterion.

Criterion C3: The Agency's partnerships are consistent with good development practice.

BINGO has one longstanding partnership with BF&TC in Mongolia and relies on a small number of long term partnerships in a relatively small geographical and administrative region. Partnership agreements together with partner capacity checklists describe relationships based upon respect and shared decision making. These documents further describe a formal and joint process of activity selection. Files and field notes from field monitoring and planning visits were provided for examination. These documents along with copies of activity reports adequately demonstrated exchange of views and discussion regarding project activities.

Recommendation: BINGO meets this criterion.

LINKAGES WITH THE AUSTRALIAN COMMUNITY

Criterion D1: The Agency is clearly identifiable as Australian and can demonstrate interaction with an Australian community base.

BINGO is clearly Australian and has an identifiable and successful fundraising and community education program. Australian identity and contributions are acknowledged by the project partner and BINGO, in its own publications, identifies itself with both the ACFOA Code and the AusAID ANCP funding program. BINGO supporters can also sponsor a village within the program thereby increasing understanding of community development needs and processes. The Profile states that there are 16 current members of BINGO who serve on the governing body (CoM) and a further 739 financial supporters. In addition, BINGO regular makes presentations to local Rotary Clubs, Churches, schools and other community organisations.

BINGO's records show slow growth in support and the new strategic plan calls for a more comprehensive use of meetings and visitors from the project to raise the public profile in Victoria, as well as strengthened approaches to the use of the newly developed website for donations, more corporate sponsorship and planned giving.

The feedback to the BINGO constituency is given quarterly by way of a newsletter to members. The content is educational, appropriate, and sensitive to culture and reflects the scope of program activities undertaken.

Recommendation: BINGO meets this criterion.

Criterion D2: The Agency provides accurate information about the organisation, its objectives and its activities in its public presentations, in a manner that respects the dignity of recipient communities.

The Agency Profile provided examples of agency publications including a Newsletter and fundraising brochure. The content is clear, sensitive and appropriate. Both AusAID and the ACFID Code of Conduct are recognised in the literature

The publications sighted in the Agency Profile provide accurate information about BINGO and the text and images used show due respect for the dignity of the individuals portrayed.

It should also be noted here that BINGO no longer supports a child sponsorship program.

Recommendation: BINGO meets this criterion.

Criterion D3: The Agency maintains Australian community support for its development projects through financial, in-kind and/or voluntary contributions.

BINGO's supporters come from various church groups, schools and Rotary clubs in Victoria. According to the Agency Profile BINGO presently has 739 financial supporters. This indicates a drop of more than 20% in subscribers from the last accreditation review. At the OR it was confirmed that currently, subscribers are those who have donated more than \$5 per year to the agency, while during tier first accreditation those donating less than \$5 per year were also included as subscribers. BINGO also noted an increasing number of 'group' subscriptions (e.g. from schools), which could also have influenced any perceived change in supporter base. BINGO raises funds through newsletter campaigns, speaking engagements and fund raising events such as dances and art exhibitions.

Recommendation: BINGO meets this criterion.

Criterion D4: The Agency has a plan to increase constituency awareness of, and involvement in, contemporary development and/or relief issues.

THIS CRITERION IS NOT APPLICABLE TO BASE AGENCIES

FAMILY PLANNING & REPRODUCTIVE HEALTH ACTIVITIES

Criterion F1: Agency has a documented policy that demonstrates an understanding of Government policies related to Family Planning/Reproductive Health issues.

BINGO has a sound policy on Family Planning which is consistent with relevant Government policies. Further discussions and evidence viewed at ORA satisfied the reviewers that there was excellent understanding and application of the policies to their programs with support from the implementing partner.

Recommendation: BINGO meets this criterion.

Criterion F2: Agency can demonstrate it has the capacity to apply the Guiding Principles, which form the basis of the Government's policy for family planning activities in the overseas aid program, in all stages of the project cycle.

BINGO has the capacity to implement and monitor this policy and is in fact doing so.

Recommendation: BINGO meets this criterion.

Criterion F3: Relevant AusAID proposals and reporting documents show that Agency meets Government Family Planning requirements.

Proposals and Family planning checklists reviewed at ORA demonstrated a comprehensive understanding of government family planning requirements.

Recommendation: BINGO meets this criterion.

PART B – Rating Against Criteria

Ratings in this section are Pass/Fail.

Base Accreditation

<u>Criterion</u>	<u>Rating</u>	<u>Comment</u>
<u>Agency Identity and Structure</u>		
A1 Agency is voluntary, not-for-profit and non-government.	P	
A2 Agency is a legal entity, with identified office holders, with a documented structure of responsibilities and appropriate systems to ensure accountability, including to its supporters.	P	
A3 Agency has formally adopted and is compliant with the ACFID Code of Conduct for Non-Government Development Organisations.	P	
<u>Development Philosophies and Management Practices</u>		
B1 Agency has a demonstrated record of undertaking aid projects consistent with the objectives of the Australian Aid Program of poverty alleviation and sustainable development.	P	
B2 Agency has development philosophies not inconsistent with the objectives of the Australian Aid Program, and is able to differentiate between objectives of: a) Development and Welfare b) Development and Evangelism c) Development and Partisan Politics.	P	
B3 The Agency has the capacity to deliver its project objectives in a way that meets its contractual obligations to AusAID.	P	

<u>Criterion</u>	<u>Rating</u>	<u>Comment</u>
B4 Agency can monitor, report and rate effectiveness of activities.	P	
B5 Agency has systems for continuous improvement of its management and operations. THIS CRITERION NOT APPLICABLE TO BASE AGENCIES	N/A	
<u>APPROACHES TO PARTNERSHIP AND DEVELOPMENT COLLABORATION</u>		
C1 Agency has documented arrangements with implementing partners in countries where it works and/or with global partner's networks or affiliates as appropriate.	P	
C2 Agency has assessed its own capacity and the capacity of its partner organisation to develop and implement projects.	P	
C3 Agency's partnerships are consistent with good development practice.		
<u>LINKAGES WITH THE AUSTRALIAN COMMUNITY</u>		
D1 Agency is clearly identifiable as Australian and can demonstrate interaction with an Australian community base.	P	
D2 Agency provides accurate information about the organisation, its objectives and its activities in its public presentations, in a manner that respects the dignity of recipient communities.	P	
D3 Agency maintains Australian community support for its development projects through financial, in-kind and/or voluntary contributions..	P	

<u>Criterion</u>	<u>Rating</u>	<u>Comment</u>
D4 Agency has a plan to increase constituency awareness of, and involvement in, contemporary development and/or relief issues. THIS CRITERION NOT APPLICABLE TO BASE AGENCIES.	N/A	
<u>FAMILY PLANNING & REPRODUCTIVE HEALTH ACTIVITIES</u>		
F1 Agency has a documented policy that demonstrates an understanding of Government policies related to Family Planning/Reproductive Health issues.	P	
F2 Agency can demonstrate it has the capacity to apply the Guiding Principles, which form the basis of the Government's policy for family planning activities in the overseas aid program, in all stages of the project cycle.	P	
F3 Relevant AusAID proposals and reporting documents show that Agency meets Government Family Planning requirements.	P	

Suggestions for Improvements to Agency Systems

These suggestions are based on the professional judgement of the review team. It is not compulsory to implement these recommendations.

Review Team Suggestions

The review team felt that attention to the following areas could potentially even further strengthen BINGO's transparency, quality and effectiveness:

1. Cross cutting issues should be written more explicitly as actionable and measurable policy statements and elaborated upon in detail rather than generic position statements.
2. BINGO should continue the process of revising their constitution in terms of objects and powers to more accurately reflect full scope of current development activity.
3. BINGO should extend the use of their policy and practice on evangelism, partisan politics and welfare to the inclusion of their policy statement in their partner EOL's and fund request documentation.

4. In the Manual of operations separate the Policies and Procedures into either separate sections or make clearer distinction between the two.
5. Capacity assessment measures should be standardised and procedures for their use better formalised. Given CoM members' engagement in monitoring, training in Assessment across the membership should be given to ensure consistency of application.
6. In relation to the RDE and the financial statements we recommend that :
 - a. within the 'Table of Cash Movements' BINGO segregates designated funds into different grantors. This will assist with the RDE preparation as the table will show the exact disbursements that relate to grants which can not be included in the RDE;
 - b. BINGO includes the dollar value for unpaid volunteer services it receives during the year as a note in the annual report which is signed off by the external auditor.
7. BINGO should consider requesting that the partner submits the project ledger with their quarterly financial acquittal. The Administrator should check the translation of project expenditure from the local currency into \$A. In addition, the Administrator should review the expenditure and scrutinise major expenditure items requesting for explanations and supporting documentation.
8. At present BINGO receives annual audited Income and Expenditure statements from the partner. It is recommended that the Administrator reconciles the audited Income and Expenditure for the year to the cumulative expenditure acquitted by BF&TC in its quarterly reports. This serves as an additional check to ensure completeness and accuracy of the partner's project acquittal.
9. BINGO should consider requesting that the partner prepares the project Income and Expenditure statements for a 30 June financial year instead of Mongolia's 31 March financial year end.
10. BINGO should ensure that the formal documentation of appraisals conducted is attached to all project files. It would be worthwhile to review the process of appraisal for the most recent project to identify where systems and recording could be further strengthened.
11. BINGO should continue to invest in developing the agency's capacity in evaluation over the period of the strategic plan. BINGO would be well advised to seek input from an external consultant to contribute to BINGO policy and understanding on evaluation, and possibly to provide specific input through the project cycle.
12. BINGO should continue to pro-actively conduct additional institutional capacity building with BF&TC, particularly with regard to their partner's capacity to independently seek additional, alternative sources of funding.
13. The BINGO board should continue to selectively but actively invest in their own capacity development in the area of development management (eg Logical framework, M&E etc).

SCHEDULE 2 – DAILY FEE RATES AND REIMBURSABLE COSTS**NGO ACCREDITATION, ASSESSMENT AND REVIEW SERVICES****1. FEES**

- 1.1 For the provision of Services by the Specified Personnel, the Daily Fee Rates specified in **Table 1A** will apply.
- 1.2 The Daily Fee Rate is based on an eight hour working day. The fees for any part day worked will be calculated on a pro rata basis. However, the maximum amount payable for Services on any one calendar day (including a travel day) shall not exceed the Daily Fee Rate.
- 1.3 Fee rates for the Services of the Contractor under this Period Offer Deed, including any Services Order, shall be in accordance with Table 1A –Daily Fee Rate, below.
- 1.4 If AusAID exercises the option to extend the term of the Deed, in accordance with **Clause 3.2** (Term of the Deed), Daily Fee Rates for Financial Years 2011/12 and 2012/2013 specified in **Table 1B** – Daily Fee Rate will apply.

Table 1A – Daily Fee Rate – 8 hour day – Period Offer Deed Term

Specified Personnel	Financial Year 2008-09 Daily Fee Rate	Financial Year 2009-10 Daily Fee Rate	Financial Year 2010-11 Daily Fee Rate	Financial Year 2011-12 Daily Fee Rate

Table 1B – Daily Fee Rate – 8 hour day – Possible Option Period

Specified Personnel	Financial Year 2012-13 Daily Fee Rate	Financial Year 2013-14 Daily Fee Rate

- 1.5 Daily Fee rates are inclusive of all overheads and inflators, except those specifically listed as reimbursable costs below.
- 1.6 Daily Fee rates are inclusive of all administrative support costs such as report and document preparation and printing, transcription, normal business communications, computer and internet facilities in Australia (or other country of

residence) and overseas. **Note: Fees also include any superannuation liabilities.**

- 1.7 Daily Fee rates are exclusive of travel costs.
- 1.8 Daily Fee Rates shall include all insurances required to be taken by the Contractor in accordance with Standard Contract Condition clause headed 'Insurance' (including medical and medical evacuation insurances) and shall also include any other insurances such as baggage insurance.
- 1.9 Daily Fee Rates shall include inoculations and travel specific medications (e.g. malaria tablets).
- 1.10 For international travel, Daily Fee Rates shall apply from the scheduled departure time of overseas travel via international transport.

2. REIMBURSABLE COSTS

- 2.1 Costs payable and a financial limitation for Reimbursable Costs for each Service Order applicable to a specific assignment shall be specified in the relevant Services Order and shall be subject to the following conditions:
 - (a) **Airfares:** reimbursed at economy class for each flight sector of four (4) hours or less and business class for each flight sector greater than four (4) hours duration. Reimbursement shall also be made for internal project related in-country travel (in economy class). 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. A 'flight sector' means one flight departure point to any one flight landing point;
 - (b) **Compulsory Arrival and Departure Taxes, and Travel to and from Airport:** reimbursed at reasonable cost;
 - (c) **Hotel Accommodation:** reimbursed at lesser of actual cost incurred or AusAID's reimbursable travel rates for contractors as specified in a Service Order.

[For the Information of Tenderers: reimbursed in accordance with standard "Reimbursable Travel rates for Contractors", an internal AusAID document for reference by officers preparing Service Orders. Rates are specified for a variety of locations in Australia and overseas. The rates allow for 4 star standard accommodation, are derived from reputable sources and are updated periodically.]
 - (d) **Travelling Allowance:** reimbursed at the Daily Rate specified by AusAID towards the costs of meals and incidentals;
 - (e) **Transport costs:** reasonable costs directly relating to the Services and for project purposes only; and
 - (f) **International Communication costs:** which are directly project related and which exceed those reasonably required as a part of normal business

under the provision of Clause 1.6 of this Schedule 2 and as agreed in writing by AusAID.

- 2.2 Where travel is not stipulated in the relevant Services Order, any reimbursable costs relating to travel must be agreed in writing by AusAID.
- 2.3 The Contractor must keep records of reimbursable costs incurred. The Contractor may be required to provide evidence (by way of receipt, tax invoice or otherwise) of actual reimbursable costs incurred. Such evidence may be requested with any tax invoice submitted to AusAID.
- 2.4 Where appropriate, the exchange rate used when calculating reimbursable costs payable, will be the exchange rate actually applied on the day the reimbursable cost is incurred.
- 2.5 If AusAID exercises its option to extend the term of the Deed, in accordance with **Clause 3.2** (Term of the Deed) of the Period Offer Deed, reimbursable costs to apply in the extension period shall be payable as specified in this **Clause 2** of this **Schedule 2**.

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PART 3 – STANDARD TENDER CONDITIONS

Note to tenderers: Some of the 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 B** 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 as described in **Tender Schedule A, Part 1** of this RFT. The technical proposal must address the selection criteria and include the required attachments specified in **Part 1**;
 - (b) the financial proposal as described in **Tender Schedule B, Part 1** of this RFT. The financial proposal must be submitted as a separate file for electronic submissions via AusTender, and for hard copy submissions, the financial proposal must be submitted in a separate sealed envelope; and
 - (c) the completed and signed Tenderer Declaration in the form specified in **Attachment 1 of Part 1** of this RFT.
- 1.4 All documentation submitted as part of the Tender must be in English.
- 1.5 Tenderers must include all information specified as required 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 4** 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 4** of this RFT).

- 1.9 A person or persons having authority to enter into a Period Offer Deed on behalf of the Tenderer must sign the Tender Declaration (**Attachment 1 of Part 1**).
- 1.10 AusAID may extend the **Closing Time** at its sole 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 B of this Part 3** and on AusTender.
- 1.12 Where there is any inconsistency between the tender lodgement procedures set out on AusTender and those set out in this RFT, this RFT will prevail.
- 1.13 Tenders not submitted in accordance with **Clause 1.11** of this Part 3 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 Period Offer 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 Period Offer Deed Conditions; or
 - (b) wishes to make any enquiry, including seeking clarification, of the RFT, including of the Period Offer Deed 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**

3.1 A Tender lodged after the **Closing Time** is a late Tender.

3.2 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**.

3.3 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.

3.4 A late Tenders that is rejected by AusAID will be returned to the Tenderer 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.

4. **NON-CONFORMING TENDERS**

4.1 Tenders will be regarded as non-conforming if they fail to conform with one or more of the requirements of the RFT.

4.2 Subject to **Clause 3** (Late Tenders) of **Part 3** of this RFT, AusAID reserves the right to seek clarification of non-conforming Tenders in accordance with **Clause 6 of this Part**.

4.3 AusAID reserves the right to remove pages that make a Tender technically non-conforming, in order to ensure that the tender technically conforms.

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

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

5. **INELIGIBILITY TO TENDER**

5.1 A tenderer is ineligible to tender where the tenderer or any subcontractor of the tenderer is listed by the World Bank in its “Listing of Ineligible Firms” or “Listings of Firms, Letters of Reprimand” posted at www.worldbank.org (the “**World Bank List**”) and any other donor of development funding or is listed 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/>

- 5.2 Tenderers warrant by submitting a tender that the tenderer, and any subcontractor of the tenderer, are not listed on a World Bank List or other Relevant List referred to in Clause 5.1 above of this Part 3. Tenderers must also state in their tender whether the tenderer or any subcontractor of the tenderer is listed on any similar list maintained by any other donor of development funding (“**Relevant List**”) or are subject to any proceedings which could lead to listing on a World Bank List or listing on any Relevant List. Tenderers must also immediately notify AusAID where the tenderer or any of their subcontractors becomes listed on a World Bank List or Relevant List, or subject to proceedings which may lead to such a listing, after the Tender is submitted to AusAID.
- 5.3 AusAID will exclude any tender where the tenderer is in breach of the warranty, or does not disclose any circumstance required under **Clause 5.2** of this Part 3. AusAID also reserves the right to exclude any tender, where the tenderer or a subcontractor of the tenderer becomes listed on a World Bank List or Relevant List, or is subject to proceedings which could lead to such a listing.
- 5.4 Tenderers should note that if they tender in breach of this **Clause 5**, or are subsequently listed on a World Bank List or Relevant List, AusAID may terminate any contract subsequently entered into with that Tenderer.
- 5.5 For the purpose of this **Clause 5**, a reference to a tenderer or a subcontractor of a tenderer, includes any company in the same group as the tenderer or the subcontractor (including but not limited to, related bodies corporate of the tenderer or subcontractor within the meaning of the *Corporations Act 2001*) and parties with whom the tenderer or subcontractor is associated in respect of this Tender.

6. **CLARIFICATION OF TENDERS**

- 6.1 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.
- 6.2 Clarifications provided to tenderers by AusAID are on the terms of the RFT.
- 6.3 Failure to supply clarification to the satisfaction of AusAID may render the Tender liable to rejection.

7. **AMENDMENT OF THE RFT**

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

8. **ASSESSMENT OF TENDERS**

- 8.1 Tenders will be assessed on the following basis:

(a) Technical, which includes the other factors described in **Clause 8.6** of this Part 3 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. Refer also to Score Weightings, **Part 1** of this RFT.

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

Technical Assessment

- 8.3 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. The TAP will assess Tenders based on the technical selection criteria specified in **Part 1**.

- 8.4 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.

- 8.5 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 3.

- 8.6 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 and Australian Government laws and policies referred to in this RFT and the tenderer's ability to comply with the Period Offer Deed Conditions; and

(b) 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.

These other factors have not been allocated any specific weightings.

- 8.7 TAP members may adjust technical scores as a consequence of the consideration of past performance.

Goods and Services Tax

- 8.8 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 value for money assessment, the financial proposal must state the value of the supplies exclusive of the GST.

Insurances

- 8.9 The financial proposal must be inclusive of all necessary insurances required by the Period Offer Deed Conditions and for the performance of the Services. Notwithstanding the requirements of the Period Offer Deed, 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 Period Offer or earlier termination.

9. OWNERSHIP OF TENDERS AND RFT

- 9.1 All Tenders become the property of AusAID on lodgement.
- 9.2 Such intellectual property rights as may exist in the information contained in each Tender will remain the property of the tenderer.
- 9.3 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.
- 9.4 Copyright in the RFT is reserved to AusAID.

10. CONFLICT OF INTEREST

- 10.1 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 for conflict of interest in relation to the project.

- 10.2 If any actual or potential conflicts of interest arise for a tenderer before entering into a Period Offer Deed 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.

11. TENDERING CONDUCT

- 11.1 Each tenderer warrants that it has not engaged in collusive or anti-competitive practices with any other tenderer in the preparation of its Tender.
- 11.2 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.

12. AusAID'S RIGHTS

- 12.1 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.
- 12.2 AusAID reserves the right to:
 - (a) seek Tenders from any individual or organisation;
 - (b) accept or reject any Tender (subject to **Clause 3** (Later Tenders) of Part 3 of this RFT;
 - (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 individual or organisation that has not been invited to submit a Tender;
 - (f) terminate negotiations with the preferred tenderer(s) and commence negotiations with any other tenderer;
 - (g) evaluate Tenders as AusAID sees appropriate; and
 - (h) negotiate with any one or more tenderers.

13. TENDERER'S ACKNOWLEDGEMENT

- 13.1 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 or any RFT) unless and until Period Offer Deed 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(s), 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, or any RFT issued subsequent to the evaluation of Tenders;
- (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; and
- (d) the tenderer acknowledges and agrees to the conditions as set out in the Period Offer Deed at Part 4 of this RFT. AusAID does not anticipate major changes to this Deed.

14. DEBRIEFING OF TENDERERS

- 14.1 AusAID will provide tenderers with a generic debriefing on the technical assessment of Tenders within 30 days of Tenderers receiving notification of the results of that assessment. AusAID will not provide any other form of debrief. The generic debrief will be available on the AusAID website: <http://www.ausaid.gov.au/business/debrief.cfm> . Tenderers may wish to review generic debriefings for previous Period Offer selections prior to preparing tenders.
- 14.2 AusAID will not enter into discussion or communications on the content of the tender debrief once it has been completed.

15. AUSAID POLICIES AND AUSTRALIAN GOVERNMENT LAWS AND POLICIES

15.1 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.

15.2 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 Period Offer Deed 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 tenderer acknowledges that the Privacy Act 1988 reflects the principles of the International Covenant on Civil and Political Rights and OECD Guidelines, in particular, the Organisation of Economic Cooperation and Development (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.

15.3 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 Period Offer Deed 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 Deed and any 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.

15.4 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.

15.5 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.

15.6 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 “Listings of Firms, Letters of Reprimand” posted at www.worldbank.org (the “World Bank List”) and/or any similar list maintained by any other donor of development funding.

15.7 Other Australian Government and AusAID Policies

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

is available on AusAID's website at
<http://www.ausaid.gov.au/publications/default.cfm>; and

- (iv) any other policies published from time to time on
<http://www.ausaid.gov.au> or as otherwise notified to tenderers.

16. FURTHER REQUIREMENTS

- 16.1 Tenderers should be aware that current employees of AusAID cannot be included in Tenders for AusAID projects. Former AusAID employees may be included in Tenders if doing so does not represent a breach of conflict of interest. See AusAID's Frequently Asked Questions website for further information:
www.ausaid.gov.au/business/frequent.cfm.
- 16.2 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.
- 16.3 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.

17. PERIOD OFFER DEED NEGOTIATIONS

- 17.1 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.

18. APPLICABLE LAW

- 18.1 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, the quality of work performed and the accuracy of information provided, 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 – CONDITIONS FOR USE OF AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

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

2. REGISTERED TENDERERS AND NOTICES

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

- 2.6 If a tenderer has obtained tender documentation other than from AusTender, they must visit AusTender, register as a user and download the tender documentation for this RFT.

3. **AUSTENDER HELP DESK**

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

AusTender Help Desk

Telephone: 1300 651 698

Email: tenders@finance.gov.au

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

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

Virus Checking

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

Tender File Formats, Naming Conventions and Sizes

- 4.2 Tenderers must lodge their tender in accordance with the requirements set out in this **Clause 4** for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the tender not uploading successfully and/or may eliminate the bid from consideration.
- 4.3 AusAID will accept tenders lodged in the **File Formats for Electronic Tenders** specified in the Tender Particulars (**Clause 4 of Part 1** of this RFT).
- 4.4 The tender file name/s must:
- (a) incorporate the tenderer's company name
 - (b) reflect the various parts of the bid they represent, where the tender comprises multiple files;
 - (c) not contain \ / : * ? " < > | characters. Check your files and re-name them if necessary; and
 - (d) not exceed 100 characters.
- 4.5 Tender files:
- (a) must not exceed a combined file size of 5 megabytes per upload;

- (b) should be uploaded from a high level directory on a tenderer's desktop, so as not to impede the upload process; and
 - (c) should be zipped (compressed) together for transmission to AusTender.
- 4.6 AusTender will accept up to a maximum of five files in any one upload of a tender. Each upload should not exceed the combined file size limit of 5 megabytes. If an upload would otherwise exceed 5 megabytes, the tenderer should either:
 - (a) transmit the tender files as a compressed (zip) file not exceeding 5 megabytes; and/or
 - (b) lodge the tender in multiple uploads ensuring that each upload does not exceed 5 megabytes and clearly identify each upload as part of the tender.
- 4.7 If a tender consists of multiple uploads, due to the number of files or file size, tenderers should ensure that transmission of all files is completed before the **Closing Time**.
- 4.8 Tenders must be completely self-contained. No hyperlinked or other material may be incorporated by reference.

Scanned or Imaged Material, including Statutory Declarations

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

5. ELECTRONIC LODGEMENT PROCESS

- 5.1 Before submitting an electronic tender, tenderers must:
 - (a) ensure their technology platform meets the minimum requirements identified on AusTender;
 - (b) refer to AusTender's Help guidance, if required, on uploading tenders;
 - (c) take all steps to ensure that the tender is free from anything that might reasonably affect useability or the security or operations of AusTender and/or AusAID computing environment;
 - (d) ensure that the tender does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by AusAID; and
 - (e) ensure that the tender complies with all file type, format, naming conventions, size limitations or other requirements specified in **Clause 4** above or otherwise advised by AusAID or required by AusTender.

- 5.2 Tenderers must allow sufficient time for tender lodgement, including time that may be required for any problem analysis and resolution prior to the **Closing Time**.
- 5.3 Tenderers should be aware that holding the “Lodge a Response” page in the web browser will not hold the electronic tender box open beyond the **Closing Time**. An error message will be issued if the lodgement process is attempted after the **Closing Time**.
- 5.4 Tenders lodged through AusTender will be deemed to be authorised by the tenderer.
- 5.5 If tenderers have any problem in accessing the AusTender website or uploading a tender they must contact AusAID via the nominated **Contact Person (Clause 4 of Part 1)** or the AusTender Help Desk (**Clause 3.1** above) **prior to the Closing Time**. Failure to do so will exclude a tender from consideration.
- 6. **LATE TENDERS, INCOMPLETE TENDERS AND CORRUPTED FILES**
 - 6.1 Any attempt to lodge a tender electronically after the **Closing Time** will not be permitted by AusTender. Such a tender will be deemed to be a late Tender.
 - 6.2 Where electronic submission of a tender has commenced prior to the **Closing Time** but concluded after the **Closing Time**, and upload of the tender file/s has completed successfully, as confirmed by AusTender system logs, the tender will not be deemed to be a Late Tender. Such tenders will be identified by AusTender to AusAID as having commenced transmission prior to, but completed lodgement after, **Closing Time**.
 - 6.3 Where a tender lodgement consists of multiple uploads, due to the number and/or size of the files, tenderers must ensure that transmission of all files is completed and receipted before the **Closing Time** and **Clause 6.2** above will only apply to the final upload.
 - 6.4 Late Tenders, incomplete tenders, including those with electronic files that cannot be read or decrypted, tenders which AusAID believes to potentially contain any virus, malicious code or anything else that might compromise the integrity or security of AusTender and/or AusAID’s computing environment, will be excluded from evaluation.
- 7. **PROOF OF LODGEMENT**
 - 7.1 When a tender lodgement has successfully completed, an official receipt is provided on screen. The on-screen receipt will record the time and date the tender was received by AusTender and will be conclusive evidence of successful lodgement of a tender. It is essential that tenderers save and print this receipt as proof of lodgement. A separate email confirming receipt of the tender will also be automatically dispatched to the email address of the registered user whose details were recorded at login.

- 7.2 Failure to receive a receipt means that lodgement has not completed successfully. Where no receipt has been issued by AusTender, the attempted lodgement will be deemed to have been unsuccessful. Tenderers should refer to **Clauses 5.2 and 5.5** above.

8. **AUSTENDER SECURITY**

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

PART 4 - STANDARD PERIOD OFFER DEED CONDITIONS

Below in this Part 4 is a Period Offer Deed. AusAID reserves the right to alter or amend the Period Offer Deed. However, AusAID does not anticipate major changes to the Deed. |

draft

PERIOD OFFER DEED

BETWEEN

COMMONWEALTH OF AUSTRALIA

represented by the Australian Agency for International Development

and

Name

ABN XX XXX XXX XXX

FOR

**NON-GOVERNMENT ORGANISATIONS ACCREDITATION,
ASSESSMENT AND REVIEW SERVICES**

BETWEEN:

AND

RECITALS:

- A. AusAID wishes to enter into an umbrella arrangement under which it may require the Contractor to supply Services from time to time.
- B. The Contractor wishes to enter into such an arrangement.
- C. The Contractor has expertise in the provision of the Services and has offered to provide the Services to AusAID from time to time for the period and upon and subject to the terms and conditions specified in this Deed.

OPERATIVE:

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

Executed as a Deed

SIGNED for and on behalf of the)
COMMONWEALTH OF AUSTRALIA)
represented by the Australian Agency for)
International Development by:)
Signature of ***Print Name***
FMA Act s44 Delegate
Position

In the presence of:

.....

Name of witness

.....

Signature of witness

SIGNED for and on behalf of
[Contractor's Name] by:

.....

Signature of director **or Contractor**

.....

Signature of director/secretary **or witness**

Name of director **or Contractor** Name of director/secretary **or witness**
(Print) **(Print)**

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PERIOD OFFER DEED CONDITIONS

1. INTERPRETATION

1.1 Definitions

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

“Contract” means the periodic contract brought into existence on the issue of a Services Order contemplated by **Clause 4.2** (Formation of Periodic Contracts).

“Contractor Personnel” means personnel either employed or engaged by the Contractor on a sub-contract basis or agents of the Contractor engaged in the provision of the Services.

“Effective Control” means in relation to partnerships:

- (a) control of the composition of the Contractor’s board of partners; and
- (b) control of more than half of the voting rights attaching to the partnership structure in the Contractor.

“Fees” means the fees for the Services set out in the relevant Services Order and calculated and determined by reference to **Schedule 2** (Daily Fee Rates and Reimbursable Costs). Note this replaces the definition of “Fees” included in the Standard Conditions.

“Financial Year” means the Australian financial year, commencing 1 July and ending 30 June.

“Offer Period” means the term of the Deed as detailed in **Clause 3.1 below** and any extension pursuant to **Clause 3.2 below**.

“Partner Country” means the country, if not Australia, in which the Project is undertaken.

“Party” means AusAID or the Contractor.

“Period Offer Deed” or “Deed” means the umbrella arrangement under which AusAID may require Services to be supplied from time to time.

“Project” means the activity to be undertaken pursuant to the Services Order.

“Services” references in the context of the Deed, means the services described in **Schedule 1** in respect of which a Services Order may be issued by AusAID from time to time during the Offer Period.

“Services Order” means an order issued in accordance with **Clause 4** (Formation of Periodic Contracts) substantially in the format provided in **Schedule 5**.

“Specified Personnel” means those personnel listed in **Schedule 6** that are specified in the relevant Service Order to perform the Services.

“Standard Conditions” means the contract conditions set out in **Part A of this Deed** that will be incorporated into any periodic contract.

1.2 General

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

- (a) a word denoting the singular number includes the plural number and vice versa;
- (b) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;
- (c) a word denoting a gender includes all genders; and
- (d) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Deed.

1.3 Deed prevails

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

2. PURPOSE OF THIS DEED

- 2.1 The purpose of this Deed is to establish a contractual regime for the periodic provision of the Services at the request and discretion of AusAID.

3. TERM OF THE DEED

- 3.1 This Deed sets out the three (3) year Offer Period during which the Contractor offers to supply and AusAID may require from time to time the provision of the Services and the contractual terms that regulate each supply of Services by the Contractor to AusAID beginning on the **Start Date**.
- 3.2 The Contractor grants to AusAID an option to extend the term of the Deed for a period of up to 24 months. The option must be exercised by notice in writing to the Contractor prior to the conclusion of the initial Offer Period referred to in **Clause 3.1 above**. Fees for any extension shall be in accordance with **Clause 1.4 (Fees) of Schedule 2**.
- 3.3 AusAID shall not be required to issue any Services Order during the Offer Period.

4. FORMATION OF PERIODIC CONTRACTS

- 4.1 At any time during the Offer Period AusAID may issue a Services Order to the Contractor containing the information specified in **Clause 4.4 below**. Prior to issuing a Services Order, AusAID will establish that the appropriately qualified Specified Personnel are available to undertake the task and reach agreement with the Contractor on the terms of reference, the duration and overall cost of the proposed Services.
- 4.2 The issue of a signed Services Order by AusAID shall immediately bring into existence a periodic contract for the provision of the Services described in the Services Order.

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- 4.3 The Contract formed by the issue of a signed Services Order incorporates the terms and conditions described in the **Part A** Standard Contract Conditions and any additional clauses in **Part B**, explicitly referred to as Project Specific Conditions.
- 4.4 The Services Order shall be substantially in the format set out in **Schedule 5** and contain the following information:
- (a) a description of the Services to be provided and milestones to be achieved;
 - (b) the Specified Personnel;
 - (c) the date of commencement of the Services;
 - (d) if relevant, the term of the periodic contract being the period in which the Services must be provided;
 - (e) the total amount payable, including the Fees and reimbursable costs;
 - (f) if applicable, details of any reimbursable costs payable to the Contractor;
 - (g) any particular performance standards applicable to the Services Order in addition to those prescribed in the terms and conditions; and
 - (h) reports to be provided.
5. **NON-EXCLUSIVITY**
- 5.1 The Contractor acknowledges and agrees that nothing in this Deed shall operate to constitute the Contractor an exclusive provider of the Services to AusAID.
- 5.2 The Contractor must, within the Fees, cooperate with any other contractor appointed by AusAID to ensure the integrated and efficient provision of all Services and must provide reasonable assistance to other contractors as AusAID may request.
- 5.3 The Contractor acknowledges and agrees that AusAID may during the Offer Period make available to other interested and relevant third parties (including other government departments or agencies and other aid agencies and donors), personal information such as name, contact details, sectoral expertise and CVs but excluding agreed fee rates of Specified Personnel.
6. **DEED AMENDMENTS**
- 6.1 This Deed (including the Schedules) may be amended by a Deed of Amendment signed by AusAID and the Contractor except for changes to **Schedule 6** [and changes to **Schedule 2** for name changes only (not fee rates)] which may be effected in accordance with **Clause 8.3** of this Deed.
7. **NOTICES**
- 7.1 For the purposes of serving notices to either Party of this Deed the procedures established in Standard Conditions **Clause 36.1**(Notices) shall apply. The addresses of each of the Parties shall be the same as set out in Project Specific Conditions **Clause 41.1**(Notices).

8. SUBSTITUTION OF SPECIFIED PERSONNEL

- 8.1 The list of Specified Personnel contained in **Schedule 6** may, subject to AusAID's agreement, be amended from time to time during the Offer Period by a request from the Contractor. The request for substitution of personnel must be accompanied by each person's response to the Selection Criteria, Experience Data Sheets and certified CV as per the RFT for the Period Offer.
- 8.2 Personnel approved by AusAID must provide an electronic copy of their CV within 14 days of the written approval from AusAID.
- 8.3 An agreed change to the list of Specified Personnel shall be enacted in the form of a Variation Order to this Deed as described in Standard Conditions **Clauses 14.3 – 14.5** (Contract Variation).

9. ACQUIREMENT OF KNOWLEDGE

- 9.1 Specified Personnel are required to have a satisfactory knowledge of AusAID and its operations and interests.
- 9.2 The Contractor may not charge AusAID any fees for the acquisition of such knowledge.
- 9.3 AusAID will endeavour to keep the Contractor informed of significant developments within AusAID that are important to an understanding of AusAID.

10. CHANGE IN OWNERSHIP OF THE CONTRACTOR

- 10.1 The Contractor will be in default under the Deed if, without AusAID's prior written consent, Effective Control in the Contractor is changed by:
- (a) a change in the ownership of the Contractor;
 - (b) the creation of, or amendment to, the partnership structure under which the Contractor must operate; or
 - (c) by any other arrangement.

PART A – STANDARD CONTRACT CONDITIONS

11. INTERPRETATION

11.1 Definitions

In the Contract (that is, a Services Order), 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).

"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* (Cth),

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 www.ausaid.gov.au/business.

"AusGUIDE" means AusAID's basic reference manual for achieving high quality project preparation and implementation and means AusGUIDE 1999 and any amendments thereto.

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

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

"Contract" means the agreement brought into existence by the issue by AusAID of a signed Services Order and includes Part A **"Standard Contract Conditions"** and Part B **"Project Specific Contract Conditions"**.

"Contract Conditions" means the conditions contained in Part A **"Standard Contract Conditions"** and Part B **"Project Specific Contract Conditions"** of the Period Offer Deed.

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

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

"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.

"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.

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

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

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

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

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

"**Loss**" or "**Losses**" means any loss, 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 including any related "**Subsidiary Arrangement**" entered into between the Government of Australia (including as represented by 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 Country**" means the country (other than Australia) in which the Services are to be delivered in whole or in part.

"**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 Specific Conditions**" means the **Part B** Project Specific Conditions in this Period Offer Deed.

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

"**Services**" means the services described in the Services Order 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.

"**Standard Conditions**" means Contract Conditions in **Part A** of this Period Offer Deed.

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

"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.

11.2 General

In the 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, except for this clause 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 Period Offer Deed;
- (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 the 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.

11.3 Counterparts of the Contract

The 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.

11.4 **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.

11.5 **Inconsistency**

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

12. **PROVISION OF SERVICES**

12.1 In providing the Services, the Contractor must:

- (a) perform the Services at minimum to a standard which would be expected of a competent, experienced and professional contractor in like position to that of the Contractor under the Contract;
- (b) accept and implement AusAID's reasonable directions in relation to the management of the Project;
- (c) conduct itself in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct*;
- (d) subject to any flexibility permitted in the Contract, ensure all timing obligations included in the Contract are fully met;
- (e) 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;
- (f) not 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;
- (g) provide adequate support resources to secure the aims and objectives of the Project; and
- (h) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity.

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12.2 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.

12.3 The Contractor shall not by virtue of this Contract be, or for any purpose be deemed to be, and must not represent itself as being, an employee, partner or agent of AusAID.

13. NON-EXCLUSIVITY

13.1 The Contractor may not be the exclusive provider of services to AusAID similar to those provided under this Contract.

13.2 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.

14. CONTRACT AMENDMENTS AND VARIATION

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

Contract Amendment

14.2 Changes to Contract Conditions or significant changes to the Services that require substantial negotiation 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.

Contract Variation

14.3 AusAID or the Contractor may propose variations to the manner of providing the Services or changes to the Project, at any time for the purpose of improving the delivery of the Services or, the efficiency, cost-effectiveness and development impact of the Services. These changes shall be subject to a "Variation Order".

14.4 If AusAID decides to implement a proposal for variation under this clause, implementation shall be effected by issuing a Variation Order in the form of **Schedule 4A** and subject to the appropriate rates and fees detailed in **Schedule 2**.

14.5 No proposed variation must take effect unless it is in writing, titled a Variation Order and signed by AusAID. A summary of changes effected by Variation Orders will be maintained in the form set out in **Schedule 4B** (Variation Summary Schedule).

15. EXTENSION OF TIME

15.1 Subject to **Clause 15.6 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

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- (d) a change in the laws of Australia or the Partner Country that directly impacts on the provision of the Services.
- 15.2 Where in the Contractor's reasonable opinion there is likely to be a delay in the Contractor's discharging an obligation under the Contract because of a Relevant Cause the Contractor must:
- (a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;
 - (b) give details of the likely effect on the Project and any Contractual implications;
 - (c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;
 - (d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances in the form of a Variation Order in accordance with **Clause 14.3 above**; and
 - (e) use its best endeavours to continue to perform its obligations under the Contract.
- 15.3 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.
- 15.4 If AusAID approves in writing a request, the approval should be titled a "Variation Order" and recorded in the Variation Schedule, **Schedule 4B** (Variation Summary Schedule). The Contract shall be deemed to have been varied accordingly.
- 15.5 Even if the Contractor has not given notice under **Clause 15.2 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.
- 15.6 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.
- 15.7 A notice of suspension, deletion or termination of the Contract under **Clause 15.6 above** takes effect on the date that the notification is received by the Contractor.

- 15.8 In the event of suspension, deletion or termination of Services or the Contract under **Clause 15.6 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.

16. ACCOUNTS AND RECORDS

- 16.1 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, including those involving foreign exchange transactions.
- 16.2 Accounts and records must be provided for inspection by AusAID immediately upon the request of AusAID.
- 16.3 The accounts and records must be held for the term of the Contract and for a period of seven (7) years from the date of expiry or termination of the Contract.

17. REPORTS

- 17.1 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.
- 17.2 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.
- 17.3 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.

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

- 18.1 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.
- 18.2 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 the Contract, subject to reasonable prior notice; and
 - (c) at no additional charge to AusAID.
- 18.3 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.

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- 18.4 This clause applies for the term of the Contract and for a period of seven (7) years from the date of its expiration or termination.
19. **PAYMENT**
- 19.1 AusAID must make payment of the Fees within 30 days of:
- (a) AusAID's acceptance in writing of the satisfactory completion of the Services or relevant payment milestone as specified in **Schedule 2**; and
 - (b) receipt of a correctly rendered invoice.
- 19.2 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.
- 19.3 The Fees are fixed for the term of the Period Offer Deed unless varied in accordance with the Period Offer Deed.
- 19.4 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.
- 19.5 Subject to the Contract AusAID shall pay Reimbursable Costs within 30 days of receipt of a correctly-rendered invoice.
- 19.6 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 is based upon the calculation of Fees referred to in **Schedule 2**; and
 - (c) a authorized representative 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 the Contract; and
 - (iii) in the case of Reimbursable Costs that these costs have been paid.
- 19.7 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.
- 19.8 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

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available remedies the overpayment may be offset against any amount subsequently due to the Contractor.

- 19.9 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.
- 19.10 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.
- 19.11 Except as otherwise specified in the 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.
- 19.12 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.

In 2003 AusAID is required by the PAYG legislation to withhold 48.5% of the total amount payable to Contractors who do not have an ABN. Contractors can provide AusAID with a completed "Statement by a Supplier" if they consider that they are covered by one of the exceptions under the legislation and therefore AusAID would not have to withhold any money. The Statement is available on the Australian Tax Office (ATO) website as a form in relation to ABNs: <http://www.ato.gov.au/businesses/content.asp?doc=/content/38509.htm>

- 19.13 AusAID will make all amounts payable to the Contractor under the Contract into a bank account or accounts nominated by the Contractor. The Contractor must provide AusAID with the necessary details as soon as possible following execution of this Period Offer Deed. Requests to change bank accounts must be provided to AusAID with 45 days notice.

20. GOODS AND SERVICES TAX

- 20.1 Except as provided by this clause, all taxes, duties and charges imposed or levied in Australia in connection with the performance of the Contract shall be borne by the Contractor or its sub-contractor(s), as the case requires.
- 20.2 The amount shown against each item in **Schedule 2** is the 'value' of the 'periodic supplies' to be made under the Contract, as these terms are used in the *A New Tax System Act 1999* (Cth).
- 20.3 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.
- 20.4 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.

20.5 AusAID shall not pay to the Contractor any amount referable to GST, except as provided in this clause.

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

21.1 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 as is reasonably assessed by AusAID.

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 warrants that any use of Contract Material by AusAID or others will not infringe any moral rights of authors with regards to the rights of attribution and integrity of authorship or the right against false attribution.

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

23. **CONFIDENTIALITY**

23.1 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.

23.2 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.

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

24. **PRIVACY**

24.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services.

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- 24.2 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 the Contract;
 - (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (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 the 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 the Contract (if any) that are inconsistent with a NPP binding a party to the 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 subcontractor;
 - (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.
- 24.3 The Contractor agrees to 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 the requirement in relation to subcontracts.
- 24.4 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 subcontractor under the subcontract provisions referred to in **Clause 24.3**.

24.5 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*.

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

25. **AusAID USE OF CONTRACT INFORMATION**

25.1 AusAID may disclose matters relating to the Contract, including the Contract and the names of sub-contractors as specified in **Clause 38.4 below**, except where such information may breach the *Privacy Act 1988*, to governmental departments and agencies, Ministers and Parliamentary Secretaries, and to Parliament, including responding to requests for information from Parliamentary committees or inquiries.

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

26. **PUBLICITY**

26.1 The Contractor must not make any press, media or other announcements or releases relating to the 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.

26.2 Subject to **Clause 26.1** above, the Contractor is encouraged to identify and implement appropriate opportunities for publicising the Project.

26.3 The Contractor must acknowledge the Australian Government contribution in publicity of any form relating to the Project. 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.

27. **TERMINATION FOR CONTRACTOR DEFAULT**

27.1 In addition to any other rights or remedies it has at law or in equity or under the Contract, AusAID may, by notice in writing to the Contractor terminate the Contract, with effect from the date in the notice, if the Contractor:

- (a) commits a breach of the 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;

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- (b) becomes, or in AusAID's reasonable opinion is likely to become, bankrupt, insolvent or otherwise financially unable to fulfil its obligations under the 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 the Contract;
 - (h) ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under the 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 the 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 the Contract;
 - (k) 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 Period Offer Deed;
 - (l) 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 Period Offer Deed;
 - (m) is in breach of the warranty, regarding listing on a World Bank List or Relevant List, given the Tenderer Declaration submitted by the Contractor with its tender leading to this Period Offer Deed; or
 - (n) is, during the term of this Period Offer Deed or the Contract, listed on a World Bank List or Relevant List.

27.2 If the Contract is terminated under this **Clause 27**:

- (a) subject to the Contract, the parties are relieved from future performance of the Contract, without prejudice to any right of action that has accrued at the date of termination;
- (b) subject to the Contract, all licences and authorisations granted to the Contractor by AusAID under the 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 the 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 the Contract by the Contractor (including those arising from affected subcontracts).

28. TERMINATION FOR CONVENIENCE

- 28.1 In addition to any other rights or remedies it has at law or in equity or under the Contract, AusAID may, by notice in writing to the Contractor, terminate or reduce the scope of the 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 the Contract.
- 28.2 Where notice is given under **Clause 28.1** 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 subcontracts) arising in consequence of termination of the Contract under this **Clause 28**.
- 28.3 In the event of termination or reduction in scope under this **Clause 28**, subject to **Clause 28.4**, 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 the 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.
- 28.4 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 the Contract under this **Clause 28**.

29. INDEMNITY

- 29.1 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 the Contract.
- 29.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 29.1 above** for the benefit of each of such persons in the name of AusAID or of such persons.
- 29.3 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.
- 29.4 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.
- 29.5 This indemnity shall survive termination or expiration of the Contract.

30. INSURANCE

- 30.1 The Contractor must arrange and maintain for the duration of the Contract:
- (a) adequate medical and dental insurance for Contractor Personnel who are engaged to operate outside their country of permanent residence; and
 - (b) adequate insurance for medical evacuation and evacuation resulting from an insured event for all Contractor Personnel.
- 30.2 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.
- 30.3 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 the Contract or at law.
- 30.4 In the event of an insurance claim any deductible/excess payable shall be the responsibility of the Contractor.

31. CONFLICT OF INTEREST

- 31.1 The Contractor warrants that, at the date of signing the Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract.
- 31.2 The Contractor must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. Where a conflict of interest, or a potential conflict of interest, arises in the performance of the Contractor's obligations under the Contract, the Contractor must notify AusAID immediately, and may request permission from AusAID to undertake the work despite that conflict of interest.

32. FRAUD

- 32.1 For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means.
- 32.2 The Contractor and its subcontractors must not engage in any fraudulent activity.
- 32.3 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*.
- 32.4 The Contractor is responsible for preventing and detecting fraud including fraud within those functions outsourced / performed by a subcontractor 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.
- 32.5 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 (e.g., political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and
 - (j) the current status of any inquiries commenced by the Contractor.
- 32.6 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

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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.

- 32.7 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.
- 32.8 Following the conclusion of an investigation, where the investigation finds the Contractor, an employee of the Contractor or a subcontractor of the Contractor has acted in a fraudulent manner, the Contractor shall:
- (a) where money has been misappropriated, pay to AusAID or the project the full value of the AusAID funds that have been misappropriated; or
 - (b) where an item of property has been misappropriated, either return the item to AusAID or the project or if the item cannot be recovered or has been damaged so that it is no longer usable, replace the item with one of equal quality.
- 32.9 Following the conclusion of an investigation, where the investigation finds that a party other than the Contractor, an employee of the Contractor or a subcontractor of the Contractor, has acted in a fraudulent manner, the Contractor shall at the Contractor's cost:
- (a) make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, one or both of the following:
 - (i) taking recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country. Before commencing any recovery action, the Contractor may consult with AusAID regarding the proposed course of action and may request assistance from AusAID in meeting the costs of the recovery action. Provided that the Contractor has consulted with AusAID before commencing recovery action, AusAID may in its absolute discretion agree to meet some or all of those costs.
 - (ii) referring the matter to the relevant Partner Country police or other authorities responsible for prosecution of fraudulent activity.
 - (b) keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.
- 32.10 If the Contractor considers that after all reasonable action has been taken to recover the funds or funded property and full recovery has not been achieved or recovery has only been achieved in part, the Contractor may seek approval from AusAID that no further recovery action be taken. The Contractor must provide to AusAID all information, records and documents required by AusAID to enable the AusAID delegate to make a decision on whether to approve non-recovery of funds or funded property.
- 32.11 In the event that any investigation finds that the contractor, an employee of the Contractor or a subcontractor of the Contractor has been involved in any fraudulent activity, or in the

event that AusAID discovers that a suspected, attempted or detected fraud has not been reported to AusAID, AusAID, at AusAID's sole discretion, reserves the right to:

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

33. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

33.1 The Contractor must at all times have regard to and comply with, and use its best endeavours to ensure that all Contractor Personnel comply with, the laws in Australia, the Partner Country and applicable laws of other countries.

33.2 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 33.1**.

33.3 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>.

33.4 The Contractor must notify AusAID of any material breach by the Contractor or Contractor Personnel of a law or guideline referred to in this **Clause 33**.

33.5 On becoming aware of a material breach by the Contractor or Contractor Personnel of a law or guideline, whether or not such a breach is notified to AusAID by the Contractor, AusAID may, in addition to any other rights available to AusAID, terminate the Contract under **Clause 27**.

33.6 The Contractor must in carrying out its obligations under the 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 the Contract do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of the Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform AusAID immediately.

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33.7 The Contractor must when providing any Services and procuring the Supplies have regard to and operate in accordance with Australian policies on developmental aid to foreign countries including:

- (a) The Policy Gender Equality in Australia's Aid Program – Why and How (March 2007);
- (b) Child Protection, in particular the Child Protection Compliance Standards at Attachment 1 to AusAID's Child Protection Policy;
- (c) Environment. AusAID is bound by the Commonwealth's Environment Protection and Biodiversity Conservation Act 1999, which applies to all aid activities. The Contractor must:
 - i. ensure that environmental requirements specified in the Services are implemented, monitored and reported;
 - ii. comply with AusAID's Environmental Management System outlined in the *Environmental Management Guide for Australia's Aid Program*, including:
 - A. assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;
 - B. report regularly on any such impacts as required by the Scope of Services; and
 - iii. comply with all relevant environmental laws and regulations of the Partner Country.

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

34. INVESTIGATION BY THE OMBUDSMAN

34.1 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.

34.2 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.

34.3 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.

34.4 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.

34.5 The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under the 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.

34.6 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.

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

35. RESOLUTION OF DISPUTES

35.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with the Contract. Subject to **Clause 19.9** (Payment) and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under the Contract.

36. NOTICES

36.1 A notice required or permitted to be given by one Party to another under the 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).

37. MISCELLANEOUS

37.1 Waiver

The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon that Party by the 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 the Contract.

37.2 Liability of Party

If any Party to the 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.

37.3 Entire agreement

The 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 the Contract is of no force or effect.

37.4 Severance

If any provision of the 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.

37.5 Assignment

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

37.6 Governing Law and Jurisdiction

The 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.

37.7 Contra Proferentum

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

37.8 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.

37.9 Anti-Corruption

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 the Contract. In addition, the Contractor shall not bribe public officials and use their best endeavours to ensure that all sub-contractors comply with this provision. Any breach of this clause shall be grounds for immediate termination of this Contract under Standard Conditions **Clause 28** (Termination for Contractor Default) by notice from AusAID.

PART B – PROJECT SPECIFIC CONDITIONS**38. SUBCONTRACTS**

- 38.1 The Contractor must not subcontract the whole of its obligation under the Contract.
- 38.2 The Contractor must not subcontract any part of its obligation without the prior written consent of AusAID.
- 38.3 Notwithstanding any subcontract, the Contractor will remain fully responsible for performing the Contract.
- 38.4 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. Each sub-contract must include the right of AusAID to disclose the name of the sub-contractor, in accordance with **Clause 25.1** (AusAID Use of Contract Information) **above**.

39. SPECIFIED PERSONNEL

- 39.1 The Contractor must ensure that Specified Personnel are aware of, and use their best endeavours to ensure Specified Personnel comply with, the requirements of the Contract.
- 39.2 The Contractor must use their best endeavours to ensure that all Specified 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*.
- 39.3 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.
- 39.4 The Contractor must ensure the reasonable availability of all Specified Personnel during the term of the Contract.
- 39.5 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:
- (a) are of good fame and character;
 - (b) are properly qualified for the tasks they are to perform;
 - (c) act in a fit and proper manner while they are carrying out work or performing duties under the Contract.
- 39.6 AusAID may request additional personnel proposed by the Contractor to work in connection with the Contract, and who are acceptable to AusAID.

40. WORKING IN-COUNTRY

- 40.1 The Contractor is responsible for the security of all Contractor Personnel and for taking-out and maintaining all appropriate insurances.
- 40.2 The Contractor must liaise and cooperate with AusAID, with the Project stakeholders, and the Australian Diplomatic Mission in or having responsibility for the Partner Country especially in relation to project security, personal safety and welfare matters.
- 40.3 The Contractor must use its best endeavours to ensure that all Contractor Personnel working in the Partner Country:
- (a) 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
 - (b) are adequately briefed and understand the environment and culture of the Partner Country.
- 40.4 The Contractor must use its best endeavours to ensure that no Contractor Personnel or their accompanying family members become involved in the political affairs or interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country).
- 40.5 AusAID may require Contractor Personnel to attend a meeting at the Australian Diplomatic Mission in or having responsibility for the Partner Country before the commencement of implementation.

41. NOTICES

- 41.1 For the purposes of serving notices with respect to the Contract, 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: Contracts Officer

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

Street Address: 255 London Cct
CANBERRA ACT 2601
AUSTRALIA

Facsimile: Facsimile

For correspondence relating to a particular Services Order contact the Agreement Manager responsible for arranging the Services Order.

Contractor:

To:	Name
Attention:	Contact Person
Postal Address:	Postal Address
Street Address:	Street Address
Facsimile:	Facsimile

42. SUPERANNUATION GUARANTEE (CONTRIBUTION (SGC))

[Note to Tenderers: This clause will only be included in Period Offer Deeds where the Contractor is contracted as an individual]

A Superannuation Guarantee Contribution will be paid by AusAID, to a complying Superannuation Fund nominated by the Contractor, in accordance with the Superannuation (Productivity Benefit) Act Cth 1988 (PB Act).

Currently the stipulated level is 9% of the fee (excluding reimbursable costs) payable to the Contractor under this Contract. The Fee is inclusive of the 9% superannuation contribution and will be separately paid at the time of payment.

- 42.1 The Contractor must include in their invoice for the Services, the following information with regards to the superannuation contributions: superannuation guarantee contribution amount; the full name and address of their nominated fund; and their membership number.

43. CHILD PROTECTION

- 43.1 The Contractor must comply with AusAID's Child Protection Compliance Standards, which are specified in Attachment 1 of AusAID's *Child Protection Policy* (<http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>). AusAID may audit the Contractor's compliance with AusAID's *Child protection policy* and child protection compliance standards. The Contractor must participate cooperatively in any reviews conducted by AusAID.

- 43.2 If the Child Protection Officer finds that the Contractor has failed to comply with AusAID's Child Protection Compliance Standards, the Contractor must promptly, and at the cost of the Contractor, take such actions as are required to ensure compliance with the Compliance Standards.

[Note to Tenderers: The following Clause 43.3 will be included in Period Offer Deeds where the Contractor is an individual]

- 43.3 The Contractor must sign and return to AusAID, the Child Protection Code of Conduct at **Schedule 7** to this Period Offer Deed.

44. PROFESSIONAL INDEMNITY INSURANCE

- 44.1 In addition to the Standard Conditions clause headed **Insurance** the Contractor must arrange and maintain for the duration of the Contract, adequate professional indemnity insurance.

Request for Tender Part 4

- 44.2 The Contractor must, within 14 days, after a request by AusAID, provide written proof of the insurance and its currency to the satisfaction of AusAID.

SCHEDULE 1 – SCOPE OF SERVICES

LOCATED IN **PART 2** OF THE RFT

SCHEDULE 2 – DAILY FEE RATES AND REIMBURSABLE COSTS

LOCATED IN **PART 2** OF THE RFT

SCHEDULE 3 - DEED OF CONFIDENTIALITY

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

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

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

RECITALS

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

THE RECIPIENT DECLARES AS FOLLOWS:

1. INTERPRETATION

In this Deed:

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

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

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

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

2. **NON DISCLOSURE**

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

3. **RESTRICTION ON USE**

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

4. **DELIVERY UP OF DOCUMENTS**

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

5. **SURVIVAL OF OBLIGATIONS**

- 5.1 The obligations in this Deed are perpetual.

EXECUTED as a deed poll.

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

.....

Signature of witness

.....

Name of witness

SCHEDULE 4A – VARIATION ORDER PRO FORMA

**VARIATION ORDER NO. [Insert Number]
FOR CONTRACT [Insert Number]**

between

COMMONWEALTH OF AUSTRALIA

represented by

**The Australian Agency for International Development
(AusAID)**

ABN 62 921 558 838

and

[Insert CONTRACTOR'S NAME]

ABN [Insert ABN Number]

in relation to

VARIATION ORDER No. Period Offer Name FOR
CONTRACT Period Offer Name

TO: **Period Offer Name**

FROM: AusAID

1. The Contract Schedule 1 and/or Schedule 2 is varied as follows:
 - 1.1 Schedule 1
<enter details if applicable>
 - 1.2 Schedule 2
<enter details if applicable>
 - 1.3 Delete Schedule 1, Scope of Services and replace with the attached Scope of Services.
 - 1.4 Delete Schedule 2, Basis of Payment and replace with the attached Basis of Payment.
2. There will be *<an increase/a decrease/no change>* in the financial limit of this Contract for the performance of these Services.
3. In all other regards you are required to carry out the Services as described in the Contract.

Yours sincerely,

.....

FMA Act s.44 Delegate Signature

.....

Date

.....

Name and Designation

CONTRACT PERIOD OFFER NAME

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

[illegible]

SCHEDULE 5 – FORM OF SERVICES ORDER

This Services Order is issued by AusAID in accordance with clause headed **Formation of Periodic Contracts** of the Period Offer Deed number *insert Period Offer number* between AusAID and *Name of Individual or Organisation* (“**Contractor**”) and brings into existence a periodic contract between AusAID and the Contractor for the provision of the Services detailed below subject to the terms and conditions set out in Parts A and B of the Deed.

1. INTERPRETATION

- 1.1 All terms used in this Services Order have the same meaning as is given to them in the Deed, unless the context otherwise requires.

2. COMMENCEMENT AND COMPLETION OF SERVICES

- 2.1 The Contractor shall commence the Services on **Start Date**, which date is known as the Project Start Date. The Contractor shall complete the Services no later than **End Date**.

3. THE SERVICES

- 3.1 The Contractor shall provide the following Services:

- (a)
- (b)
- (c)
- (d)

4. REPORTING REQUIREMENTS

- 4.1 The Contractor must provide the following reports by the date, in the format and the number of copies indicated:

- (a)
- (b)
- (c)

- 4.2 All reports must:

- (a) be provided in accordance with the specification under Standard Conditions clause headed **Reports**;
- (b) be accurate and not misleading in any respect;
- (c) be prepared as directed by AusAID;
- (d) be provided in the format and on the media approved or requested by AusAID;

- (e) not incorporate either the AusAID or the Contractor's logo;
- (f) be provided at the time specified in this Services Order; and
- (g) incorporate sufficient information which allows AusAID to monitor and assess the success of the Services in achieving the objectives of AusAID's Gender and Development Policy.

4.3 The Contractor must provide the following reports by the date, in the format and the number of copies indicated:

- (a)
- (b)
- (c)

5. CONTRACTOR PERFORMANCE ASSESSMENT

The Contractor agrees that AusAID may issue a contractor performance assessment in relation to the Contract. The contractor performance assessment shall be substantially in accordance with the assessment sheet attached at Schedule 2 to this Services Order. The Contractor shall sign and return the completed contractor performance assessment together with any response the Contractor wishes to include.

6. SPECIFIED PERSONNEL

6.1 The Contractor shall provide the following Personnel:

Name of Personnel
<i>Insert name 1</i>
<i>Insert name 2</i>
<i>Insert name 3</i>

Note to Tenderers: it is AusAID policy to contract on an outputs basis for periodic contracts. Contractors should provide a lump sum quote to cover the costs of all the work involved including items otherwise treated as reimbursable.

7. TOTAL AMOUNT PAYABLE

7.1 The maximum amount payable by AusAID to the Contractor for the provision of the Services shall not exceed the sum of **A\$Amount** plus GST if any up to a maximum amount of **\$Insert 10 percent of the Agreement amount**. AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.

In addition to the above amounts AusAID shall pay up to Amount in superannuation guarantee contribution on behalf of the Contractor to **insert name of super fund**.

8. FEES PAYABLE TO THE CONTRACTOR

8.1 The Fees shall be paid progressively as follows:

- (a) 70% of the monthly billing rates (as detailed in **Table 1**) will be paid monthly on receipt of a monthly report certifying the Specified Personnel have been satisfactorily providing the Services as required; and

Table 1: Personnel costs
(as per Schedule 2 of Period Offer number *Insert Period Offer number*).

(as per Schedule 2 of Period Offer number <i>insert Period Offer number</i>):					
PERSONNEL	DURATION		COST/RATE		TOTAL FEE (\$)
	(Days)		(\$)		
	Australia	Overseas	Australia	Overseas	

- (b) 30% of the monthly billing rate will be paid progressively within thirty (30) days of the satisfactory achievement of milestones or the acceptance by AusAID in writing of outputs, as the case requires:

<i>Output Reference</i>	<i>Milestone No.</i>	<i>Milestone Description</i>	<i>Verifiable Indicators</i>	<i>Amount \$</i>

8.2 Reimbursable Costs

The following Reimbursable Costs will be paid progressively up to a maximum amount of **AUD[Insert amount]**:

Reimbursable Costs.

EXPENSE	TRIPS/DAYS (#)	COST/RATE (AUD)	COST* (AUD)
Domestic Airfares			
International Airfares			
Accommodation			
Travel Related Costs			
Total Upper Limit			

*Estimate or agreed cost.

9. SUPERANNUATION GUARANTEE

9.1 ***1. You are hiring an individual for whom the superannuation guarantee contribution will be paid into a complying superannuation fund; include this clause:***

AusAID will, in accordance with legislative requirements, contribute to a complying Superannuation Fund or a pre-existing superannuation fund nominated by the Contractor at the percentage which is stipulated from time to time in the Superannuation (Productivity Benefit) Act Cth 1988.

Currently the stipulated level is 9% of the fee (excluding reimbursable costs) payable to the Contractor. The Fee is inclusive of the 9% superannuation contribution and will be separately paid at the time of payment.

The Superannuation Guarantee Contribution will be paid by AusAID under this Service Order Contract ***insert number and title***. The Contractor must include the following details in their invoice for the Services, with regards to the Superannuation Guarantee Contributions:

- (a) Service Order Contract number;
- (b) Superannuation Guarantee Contribution amount payable in accordance with this **Clause 9;**
- (c) Full name and address of the Contractor's Superannuation Fund; and
- (d) Contractor's membership number.

OR

2. You are hiring an individual for whom the superannuation guarantee contribution will be paid directly to the individual; include this clause:

A Superannuation Guarantee Contribution will be paid by AusAID to the Contractor at the percentage which is stipulated from time to time in the Superannuation (Productivity Benefit) Act Cth 1988.

Currently the stipulated level is 9% of the fee (excluding reimbursable costs) payable to the Contractor. The Fee is inclusive of the 9% superannuation contribution and will be separately paid at the time of payment.

9.2 The amount of the Superannuation Guarantee Contribution payable by AusAID will be calculated as follows:

Superannuation Guarantee Contribution	=	Personnel Fees (excluding Superannuation Guarantee Contribution and Reimbursable Costs) claimed by the Contractor in a correctly rendered invoice and payable in accordance with this Contract.	x	Percentage stipulated from time to time in the PB Act) (%).
---------------------------------------	---	---	---	---

9.3 The current percentage stipulated in the PB Act is 9%.

10. CLAIMS FOR PAYMENT

10.1 Claims for payment must be submitted when due in accordance with this Services Order, in a form identifying the project/activity title and the relevant Services Order number and in accordance with Standard Conditions clause headed **Payment** of the Deed.

10.2 All claims for payment must be **made** to:

Chief Finance Officer
Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601
AUSTRALIA

10.3 Tax invoices should be sent to the above address. Alternatively AusAID will accept electronic tax invoices. These can be sent to accountsprocessing@ausaid.gov.au

10.4 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>

Issued for and on behalf of the **Commonwealth of Australia** represented by the Australian Agency for International Development by:

Signature of FMA Act s44 Delegate

Name
(*Print*)

Position

In the presence of:

Signature of witness

Name of witness
(*Print*)

SCHEDULE 1 (OF SCHEDULE 5) - DEED OF CONFIDENTIALITY

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

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

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

RECITALS

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

THE RECIPIENT DECLARES AS FOLLOWS:**1. INTERPRETATION**

In this Deed:

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

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

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

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

2. **NON DISCLOSURE**

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

3. **RESTRICTION ON USE**

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

4. **DELIVERY UP OF DOCUMENTS**

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

5. **SURVIVAL OF OBLIGATIONS**

- 5.1 The obligations in this Deed are perpetual.

EXECUTED as a deed poll.

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

.....

Signature of witness

.....

Name of witness
(Print)

SCHEDULE 2 (OF SCHEDULE 5) – SMALL VALUE CONTRACTOR PERFORMANCE ASSESSMENT

Activity:	
Contractor:	Country:
Activity Manager:	Contract #:
Contract Period:	Date of Assessment:
Nature of Assignment:	

1=Weak 2=Marginally Satisfactory 3=Satisfactory 4=Highly Satisfactory 5=Best Practice

Assessment Criteria	Performance Rating*					
Organisation's Management & Administrative Support	N/A	1	2	3	4	5
Adequacy of preparations and logistical support for assignment (including overseas)						
Timeliness & accuracy of invoicing etc and compliance with relevant contract terms						
Performance of Personnel	N/A	1	2	3	4	5
Understanding of the requirements of ToR or Scope of Services						
Awareness & Response concerning Assignment Risks, Issues and Problems						
Effectiveness of Communications with Counterparts, AusAID & Other Stakeholders						
Responsiveness to AusAID Requests and Instructions						
Activity Outcomes	N/A	1	2	3	4	5
Quality of Contract Milestones and Deliverables (incl reports, assessments & advice)						
Assignment Completed Within Time and Budget						

* NOTE: A rating of 2 or less needs to be supported by further comments below

Further Comments:

.....
AusAID Activity Manager

.....
Contractor Representative

Response Attached Yes / No

NOTE TO CONTRACTOR

A copy of this assessment will be provided to our Procurement Policy Group (PPG) for placement on your performance file. The information may be used by AusAID as part of any future contractor selection process including consideration by Tender Assessment Panels convened by AusAID to evaluate tender proposals. Should you wish to respond to any of the issues raised, a copy of your response should be attached to this assessment and sent to AusAID within 28 days. This response will also be provided to PPG for placement on your performance file.

SCHEDULE 6 – SPECIFIED PERSONNEL

	Specified Personnel
1	
2	
3	
4	
5	

SCHEDULE 7 - CHILD PROTECTION CODE OF CONDUCT

I, **[insert name]**, agree that while implementing AusAID-funded aid activities, I will:

- treat children with respect regardless of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status
- not use language or behaviour towards children that is inappropriate, harassing, abusive, sexually provocative, demeaning or culturally inappropriate
- not engage children in any form of sexual activity or acts, including paying for sexual services or acts
- wherever possible, ensure that another adult is present when working in the proximity of children
- not invite unaccompanied children into my home, unless they are at immediate risk of injury or in physical danger
- not sleep close to unsupervised children unless absolutely necessary, in which case I must obtain my supervisor's permission, and ensure that another adult is present if possible
- use any computers, mobile phones, or video and digital cameras appropriately, and never to exploit or harass children or to access child pornography through any medium (see also 'Use of children's images for work related purposes')
- refrain from physical punishment or discipline of children (excluding my own children)
- refrain from hiring children for domestic or other labour which is inappropriate given their age or developmental stage, which interferes with their time available for education and recreational activities, or which places them at significant risk of injury
- comply with all relevant Australian and local legislation, including labour laws in relation to child labour
- immediately report concerns or allegations of child abuse in accordance with appropriate procedures.

Use of children's images for work related purposes

When photographing or filming a child for work related purposes, I must:

- before photographing or filming a child, assess and endeavour to comply with local traditions or restrictions for reproducing personal images
- before photographing or filming a child, obtain consent from the child or a parent or guardian of the child. As part of this I must explain how the photograph or film will be used
- ensure photographs, films, videos and DVDs present children in a dignified and respectful manner and not in a vulnerable or submissive manner. Children should be adequately clothed and not in poses that could be seen as sexually suggestive
- ensure images are honest representations of the context and the facts
- ensure file labels do not reveal identifying information about a child when sending images electronically.

I understand that the onus is on me to use common sense and avoid actions or behaviours that could be construed as child abuse when implementing AusAID-funded activities.

Signed: _____

Date: _____