Australian Government

AusAID

13 July 2010

Request for Tender

Pacific Horticultural and Agricultural Market Access Program

(PHAMA)

REQUEST FOR TENDER

Pacific Horticultural and Agricultural Market Access Program

AusAID is seeking proposals from organisations interested in providing services for Pacific Horticultural and Agricultural Market Access Program (PHAMA) (the "**Project**"). If your organisation chooses to lodge a proposal (the "**Tender**") it must be submitted on the terms of this document and the attached Parts (together referred to as the "**Request for Tender**" or "**RFT**"). The required services (the "**Services**") are described in detail in Part 3 - Scope of Services.

STRUCTURE OF THE RFT

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

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

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

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

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

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

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

AusAID Contracts Charter

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

SECTION 1 – PROJECT SPECIFIC TENDER AND CONTRACT CONDITIONS

PART 1 – PROJECT SPECIFIC TENDER CONDITIONS

1. TENDER PARTICULARS

Closing Time: (Clauses 1.11 and 1.15, Part 5)	2.00 pm local time in Canberra Australian Capital Territory, **31 August 2010**.
Mode of submission: (Clause 1.1, Part 5)	**<u>Either</u>:** Electronically, via AusTender at https://tenders.gov.au before the tender **Closing Time**; **<u>or</u>** in hard copy, by depositing by hand in the Canberra Tender Box before the tender **Closing Time**.
Electronic Tender Lodgement Address: (Clause 1.11, Part 5)	Via AusTender at https://tenders.gov.au
Canberra Tender Box Address: (Clause 1.15, Part 5)	Tender Box, AusAID Ground Floor, 255 London Circuit Canberra ACT 2601, AUSTRALIA.
Business Hours for hard copy lodgement: (Clause 1.15, Part 5)	Monday to Friday, 8.30am to 5.00pm local time in Canberra, ACT excluding Public holidays.
File Format for Electronic Tenders: (Clause 4.3, Annex D to Part 5)	PDF (Portable Document Format)
Number of Copies of Tender: (Clause 1.6, Part 5)	**<u>For electronic tender lodgement</u>** **Tender Schedule A - Technical Proposal**: One (1) electronic copy. **Tender Schedule B - Specified Personnel**: One (1) electronic copy. **Tender Schedule C - Financial Proposal**: One (1) electronic copy in a separate file. **Tender Schedule D - Financial Assessment**: One (1) electronic copy in a separate file.

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

<u>**For hard copy tender lodgement**</u>
Tender Schedule A- Technical Proposal:
One (1) printed Original.

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

Tender Schedule C - Financial Proposal:
One (1) printed Original, in a separate, sealed envelope.
Tender Schedule D - Financial Assessment material: One (1) printed Original copy in a separate sealed envelope.
Tenderer's Submission Checklist:
One (1) printed Original.

One (1) CD: containing the files specified as for electronic lodgement.

Endorsement of hard copy Tenders:
(Clause 1.17, Part 5)

"**Tender for Pacific Horticultural and Agricultural Market Access Program**"

Tender Validity Period:
(Clause 1.8, Part 5)

180 days

Contact Person:
(Clause 2.1, Part 5)

Email address: PHAMA@ausaid.gov.au

Page limits:
(Clauses 7.15 and 7.17, Part 5)

1. Technical proposal - twelve (12) pages plus annexes.
2. CurriculumVitae - three (3) pages each
3. Annex 1 - one (1) A4 page per example, and up to four (4) examples
4. Annex 2 - one (1) A3 page
5. Annex 3 - three (3) A4 pages
6. Annex 4 - three (3) A4 pages
7. Annex 5 - as required

Information:

The following documents are attached:
1. Project Design Document
2. Financial tables
3. Tenderer's checklist
4. Tenderer declaration
5. Abbreviations and Acronyms List

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

2. PRE-TENDER BRIEFING

2.1 AusAID intends to hold the pre-tender briefing at **10:00am on Monday, 02 August 2010** at AusAID House, Canberra, Australia.

2.2 Tenderers planning to attend the pre-tender briefing are requested to send advanced notification by email, indicating the name of the organisation and the number of people planning to attend to, PHAMA@ausaid.gov.au by 5:00pm on **29 July 2010**.

Note to Tenderers: AusAID House is a “secure building”. This means that all visitors must be signed in and out of the building and escorted while inside the building at all times.

3. SCORE WEIGHTINGS

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

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

3.2 Following consideration of the technical merit of Tenders, AusAID will invite selected Tenderers’ key personnel to interview. The following personnel will be required to attend: the Team Leader, Principal Market Access Specialist, Quarantine/ Biosecurity Specialist, and one other representative nominated by the Tenderer. Tenderers are required to attend the interview at their own cost and may attend via teleconference. Tenderers not invited to interview will be notified that their Tender will not be further considered.

3.3 Following consideration of the technical merit of Tenders, and interviews, AusAID will undertake a like-for-like price assessment of the proposals that were assessed by the Technical Assessment Panel (TAP) as technically suitable.

3.4 The like-for-like price assessment will represent **15**% of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

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

3.5 Following the final assessment and calculation of the final aggregate scores, confirmation of the Tenderer’s financial capacity to meet the contractual obligations referred to in **Clause 6 of this Part** and consideration of other factors referred to in **Clause 7.8, Part 5**, a recommendation for further action will be made to the appropriate AusAID delegate. Tenderers should be aware that the delegate is not bound to accept the TAP recommendation and may direct that other action be taken in accordance with this RFT.

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

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

(a) a technical proposal that substantively and individually addresses the selection criteria provided in **Clause 4.2 of this Part** taking into consideration "other factors" under **Clause 7.8, Part 5**; and

(b) the required annexes included in **Clause 1 of this Part**.

4.2 **Selection Criteria**

(A) THE ORGANISATION:
Management and Administrative Support Arrangements (Weighting 40%)

A 'Management Capability Statement' that demonstrates:

(i) appropriate systems and processes to support large and complex development activities in diverse locations with a wide range of partners;

(ii) the ability to successfully manage a regional program spanning several countries (preferably in the Pacific);

(iii) the ability to manage a coordinated approach that involves establishing partnerships between government and private sector;

(iv) the ability to establish and manage backward linkages into importing country regulatory agencies;

(v) the ability to mobilise and manage multiple ongoing inputs from Short Term Personnel (STP)/ sub-contractors under a flexible programmatic approach;

(vi) the ability to coordinate and link with the work of other donors and government/NGO's and align with government systems, programs and priorities; and

(vii) demonstrated robustness in the linkages established as well as a clear management framework detailing the roles and responsibilities of each party, by the lead bidder where Tenderers are part of a consortium or association with another party.

(B) APPROACH (Weighting 20%)

A 'Statement of Approach' that demonstrates the Tenderer's strategic understanding of the Program, including:

(i) the development context of target Pacific Island Countries and Territories (PICTs) in terms of the sort of market issues they face and the particular difficulties likely to be experienced in addressing these issues;

(ii) the need for a practical and highly strategic approach;

(iii) the technical nature of the Project and the need for highly specific skill sets to support implementation;

(iv) key stakeholders and linkages necessary for the success of the Project including the ability to manage the critical relationships with various stakeholders while balancing program priorities and resources;

(v) communication, risk management, and monitoring, evaluation, reporting and improvement strategies; and

(vi) critical constraints that may impede the Project's success in the form of a critique of the Program Design Document, including its strengths, weaknesses, and suggestions for improvement.

(C) PERSONNEL (Weighting 40%)

Demonstrate appropriate skills, experience and team balance and the Tenderer's capacity to recruit, retain and effectively manage high quality staff over the life of the Project.

Tenderers are required to nominate personnel for the following positions:

(i) Team Leader (International)

(ii) Principal Market Access Specialist (International)

(iii) Quarantine and Biosecurity Specialist (International)

(iv) Administrative Assistant/Secretary (International)

(v) Procurement and Finance Officer (National)

(vi) National Market Access Coordinator 1 - Fiji (National)

(vii) National Market Access Coordinator 2 - Samoa (National)

(viii) National Market Access Coordinator 3 - Tonga (National)

(ix) National Market Access Coordinator 4 - Vanuatu (National)

(x) National Market Access Coordinator 5 - Solomon Islands (National)

In addition to the above ten (10) Specified Personnel, the Tenderer is required to also nominate up to nine (9) Short Term Personnel that can be mobilised on a sub-contract basis to help the National Market Access Working Groups address particular market access opportunities and issues. The balance of technical skills able to be provided by Short Term Personnel is to be determined by the Tenderer.

ANNEXES

Annex 1 – Past Experience Form (one (1) A4 page)

Details of relevant activities or projects in which the Tenderer has been involved which demonstrate the Tenderer's ability to fulfil the objectives of the Project must be presented in the format outlined below. This annex must not contain more than **four (4) examples** and details of each activity must not exceed one (1) A4 page.

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

PAST EXPERIENCE FORM

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

Annex 2 – Risk Management Plan (one (1) A3 page)

A detailed plan of the Risk Management Matrix included in the Project Design Document must identify:

(a) all risks that can be reasonably anticipated;

(b) the level of probability of the risk eventuating;

(c) the impact on the Project if the risk eventuates along with possible options for ameliorating the risk;

(d) the entity/entities responsible for managing the risk consistent with the PDD; and

(e) the approach to be taken to mitigate any impact.

Annex 3 – Draft Inception Plan (three (3) A4 pages)

A detailed Draft Inception Plan for the first **six (6) months** of the Project. The Inception Plan must include provision for:

(a) establishment of communication channels with AusAID and other Stakeholders;

(b) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including but not limited to:

(i) establishment of report preparation and delivery mechanisms;

(ii) establishment of financial control procedures;

(iii) establishment of all other management and administration requirements; and

(iv) any other matters specified in the Scope of Services, Part 3 of this RFT.

Annex 4 – Letters of Association and other details of other proposed sub-contractors (three (3) A4 pages)

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

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

Annex 5 – Commonwealth Government Policies Compliance

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

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

5. TENDER SCHEDULE B – SPECIFIED PERSONNEL

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

(a) a list of proposed team members in the table (in landscape) format provided and in accordance with the instructions included in **Clauses 5.2-5.3** below;

(b) a skills matrix providing a summary illustration of the skills of the proposed Project team as a whole (broken down by individual team members) in the key skill areas required for the Project’s implementation; and

(c) a curriculum vitae for each proposed team member that conforms with the requirements outlined in **Clauses 7.16 and 7.17, Part 5**.

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

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

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

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

5.6 Tenderers are reminded of the requirements of **Clause 19.2, Part 5** particularly in relation to providing police clearance certificates for all Project Personnel nominated in the Specified Personnel table for positions specified as working with children (NB: no positions are specified as working with children).

5.7 Tenderers must request the required criminal record checks in sufficient time to ensure that police clearance certificates can be provided in accordance with **Clause 19.2, Part 5**.

5.8 Tenderers should note that in Australia, national criminal record checks are available through the Australian Federal Police and take around twenty (20) working days. The type of employment should be specified as 'overseas employment.' Overseas, different checking procedures apply in each country and may take six (6) weeks or longer. Individuals need to give their consent to a criminal record check and should be informed of the purpose for which it will be used, including sighting by AusAID.

SPECIFIED PERSONNEL

Position	Name	Total Inputs in person months		Referee Contact Details		Commitments
		Home Base	O/s	#1	#2	
Team Leader (International)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Principal Market Access Specialist (International)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Quarantine and Biosecurity Specialist (International)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Administrative Assistant/Secretary (International)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Procurement and Finance Officer (National)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
National Market Access Coordinator 1 - Fiji (National)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
National Market Access Coordinator 2 - Samoa (National)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
National Market Access Coordinator 3 - Tonga (National)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*

National Market Access Coordinator 4 - Vanuatu (National)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
National Market Access Coordinator 5 - Solomon Islands (National)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*

6. TENDER SCHEDULE C - FINANCIAL PROPOSAL

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

(a) be in the format of Tables A, B, C1, C2 and D below;

(b) be a fully costed fixed price based on the outputs and/or inputs as specified in the Scope of Services, including:

(i) escalation and any allowance for foreign exchange rate variations; and

(ii) necessary insurances required by the Contract Conditions and for the performance of the Services.

(c) be expressed in Australian dollars; and

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

6.2 Any escalators, foreign exchange rate variations, or other price risks, must be built into the fixed price proposal but separately disclosed as a single escalator factor. AusAID will not consider any "across the board" escalators subsequently applied to any rates or Project costs. Information provided in the tables will be used for any financial assessment and for the like-for-like price assessment.

6.3 The Basis of Payment at Part 4 outlines the payment regime in detail. The Contract will include five (5) categories of payments:

(a) The **Total Management Fee (TMF)** in accordance with **Clause 2** of **Section 1 – Part 4** and paid as Milestone Payments in accordance with **Clause 3 of Section 1 – Part 4**, up to a specified maximum total amount;

(b) **Reimbursable Long Term Personnel Costs**, in accordance with **Clause 4** of **Section 1 – Part 4**, up to a specified maximum total amount;

(c) **Reimbursable Short Term Personnel Costs** in accordance with **Clause 5** of this **Section 1 – Part 4**, up to a specified maximum total amount;

(d) **Reimbursable Administration, Equipment and Operational Costs**, in accordance with **Clause 6** of **Section 1 – Part 4**, up to a maximum total amount; and

(e) **Reimbursable Activity Costs**, in accordance with **Clause 7** of **Section 1 – Part 4**, up to a maximum total amount.

Personnel Costs

6.4 Tenderers must detail in the financial proposal **Table C2** the entitlements of nominated Specified Personnel. Where annual recreation leave entitlements exceed two (2) trips or a total of four (4) weeks per twelve (12) month period, a justification must also be provided along with a narrative description of how the Tenderer will ensure, during Specified Personnel absences, the continued quality of Services. Tenderers should note that leave entitlements and the management strategy may be assessed by the TAP or AusAID as part of the technical assessment process. AusAID reserves the right to negotiate leave entitlements should AusAID consider them excessive.

Project Administration and Equipment Costs

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

(a) The purchase of these goods will not attract a procurement fee; and

(b) Goods procured for the Program Management Office are considered Commonwealth property and will be disposed of appropriately after the PHAMA Program is completed.

Reimbursable Costs

6.6 Reimbursable Costs comprise of Reimbursable Personnel Fees for Long Term and Short Term personnel, Reimbursable Project Administration, Equipment and Operational Costs, and Reimbursable Activity Costs.

Table A – Like-for-like assessment (in AUD)

	Initial Contract Period (2 years and 7 months)			Option Period (4 years)				
	Year 1 (1 December 2010 to 30 June 2011) (7 months)	**Year 2 (1 July 2011 to 30 June 2012) (12 months)**	**Year 3 (1 July 2012 to 30 June 2013) (12 months)**	**Year 4 (1 July 2013 to 30 June 2014) (12 months)**	**Year 5 (1 July 2014 to 30 June 2015) (12 months)**	**Year 6 (1 July 2015 to 30 June 2016) (12 months)**	**Year 7 (1 July 2016 to 30 June 2017) (12 months)**	**Total Cost (AUD)**
Table B (TMF)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Table C (LTP)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Table D (STP)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Reimbursables (Administration, Equipment & Operational Costs)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Reimbursable Activity Costs	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*
Total	***specify***	***specify***	***specify***	***specify***	***specify***	***specify***	***specify***	***Total for like-for-like assessment***

Table B – Total Management Fee (in AUD)

	Initial Contract Period (2 years and 7 months)			Option Period (4 years)				
	Year 1 (1 December 2010 to 30 June 2011) (7 months)	Year 2 (1 July 2011 to 30 June 2012) (12 months)	Year 3 (1 July 2012 to 30 June 2013) (12 months)	Year 4 (1 July 2013 to 30 June 2014) (12 months)	Year 5 (1 July 2014 to 30 June 2015) (12 months)	Year 6 (1 July 2015 to 30 June 2016) (12 months)	Year 7 (1 July 2016 to 30 June 2017) (12 months)	Total Cost (AUD)
Total Management Fee	7 x monthly fee	12 x monthly fee x escalator	12 x monthly fee x escalator applied to year 2 amount	12 x monthly fee x escalator applied to year 3 amount	12 x monthly fee x escalator applied to year 4 amount	12 x monthly fee x escalator applied to year 5 amount	12 x monthly fee x escalator applied to year 6 amount	
	specify	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Financing Fee	*specify %*	*specify %*	*specify %*	*specify %*	*specify %*	*specify %*	*specify %*	*specify %*
TOTAL	***specify***	***specify***	***specify***	***specify***	***specify***	***specify***	***specify***	***specify***

Note: Tenderers must provide a comprehensive and detailed breakdown of what the Total Management Fee comprises of in their response to the RFT.

Table C1 – Long Term Personnel Costs (in AUD)

				Initial Contract Period (2 years and 7 months)										Option Period (4 years)							
		Name	Monthly Rate	Inputs for Year 1 (mths)	Year 1 (1 December 2010 to 30 June 2011) (7 months)	Inputs for Year 2 (mths)	Year 2 (1 July 2011 to 30 June 2012) (12 months)	Inputs for Year 3 (mths)	Year 3 (1 July 2012 to 30 June 2013) (12 months)	Mobilisation	Demobilisation	Total Cost for Initial Contract Period (AUD)	Inputs for Year 4 (mths)	Year 4 (1 July 2013 to 30 June 2014) (12 months)	Inputs for Year 5 (mths)	Year 5 (1 July 2014 to 30 June 2015) (12 months)	Inputs for Year 6 (mths)	Year 6 (1 July 2015 to 30 June 2016) (12 months)	Inputs for Year 7 (mths)	Year 7 (1 July 2016 to 30 June 2017) (12 months)	Total Cost (AUD)
1	**Team Leader (International)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
2	**Principal Market Access Specialist (International)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
3	**Quarantine and Biosecurity Specialist (International)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
4	**Administrative Assistant/Secretary (International)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
5	**Procurement and Finance Officer (National)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
6	**National Market Access Coordinator - Fiji (National)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
7	**National Market Access Coordinator - Samoa (National)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
8	**National Market Access Coordinator - Tonga (National)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
9	**National Market Access Coordinator - Vanuatu (National)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
10	**National Market Access Coordinator - Solomon Islands (National)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
	TOTAL (AUD)	*N/A*	*N/A*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***

Table C2 – Long Term Personnel Monthly Breakdown (in AUD)

	Position	Monthly Fee									
		Salary (A)	Allowances (B)	Support Costs (C)	Total Monthly Rate Yr 1 (AUD)	Total Monthly Rate Yr 2 (AUD)	Total Monthly Rate Yr 3 (AUD)	Total Monthly Rate Yr 4 (AUD)	Total Monthly Rate Yr 5 (AUD)	Total Monthly Rate Yr 6 (AUD)	Total Monthly Rate Yr 7 (AUD)
1	**Team Leader (International)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
2	**Principal Market Access Specialist (International)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
3	**Quarantine and Biosecurity Specialist (International)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
4	**Administrative Assistant/Secretary (International)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
5	**Procurement and Finance Officer (National)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
6	**National Market Access Coordinator - Fiji (National)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
7	**National Market Access Coordinator - Samoa (National)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
8	**National Market Access Coordinator - Tonga (National)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
9	**National Market Access Coordinator - Vanuatu (National)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
10	**National Market Access Coordinator - Solomon Islands (National)**	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
	TOTAL (AUD)	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*

Note:

Monthly Salary: represents total salary/wages (including leave entitlements and superannuation where appropriate) paid to the individual each month.

Monthly Allowances: represent all allowance entitlements to be paid to the individual each month (this may include such items as living allowance, vehicle allowance, dependent schooling assistance, travel and reunion costs, etc.)

Monthly Support Costs: represent any costs which are not paid directly to the individual as part of their salary/allowances where these are provided by the Tenderer on the individual's behalf.

Do not include GST in any of these amounts.

Tenderers may be asked to provide further breakdowns of these figures during the tender assessment process and later during contract negotiation if they are the preferred Tenderer.

Table D – Short Term Personnel Costs (in AUD)

			Initial Contract Period (2 years and 7 months)							Option Period (4 years)								
		Daily Rate	Inputs for Year 1 (mths)	Year 1 (1 December 2010 to 30 June 2011) (7 months)	Inputs for Year 2 (mths)	Year 2 (1 July 2011 to 30 June 2012) (12 months)	Inputs for Year 3 (mths)	Year 3 (1 July 2012 to 30 June 2013) (12 months)	Total Cost for Initial Contract Period (AUD)	Inputs for Year 4 (mths)	Year 4 (1 July 2013 to 30 June 2014) (12 months)	Inputs for Year 5 (mths)	Year 5 (1 July 2014 to 30 June 2015) (12 months)	Inputs for Year 6 (mths)	Year 6 (1 July 2015 to 30 June 2016) (12 months)	Inputs for Year 7 (mths)	Year 7 (1 July 2016 to 30 June 2017) (12 months)	Total Cost (AUD)
1	Monitoring and Evaluation Specialist	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
2	*Core competency specialist 1*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
3	*Core competency specialist 2*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
4	*Core competency specialist 3*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
5	*Core competency specialist 4*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
6	*Core competency specialist 5*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
7	*Core competency specialist 6*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
8	*Core competency specialist 7*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
9	*Core competency specialist 8*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	***Specify***
10	Reimbursables (lump sum)								***Specify***									***Specify***

Notes: Based on a 30-day month.
Positions 2-9 to be identified by Tenderers.

Table E – Escalation Table

	% for Option Period to be applied annually
Total Management Fee (TMF)	*Specify*
Long Term Personnel (LTP)	*Specify*
Short Term Personnel (STP)	*Specify*

TENDER SCHEDULE D – FINANCIAL ASSESSMENT

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

<u>Option 1</u>

6.8 This option is mandatory for:

(a) those Tenderers who have not been subject to a financial assessment by AusAID in the twelve (12) months preceding the date of release of this Tender; or

(b) those Tenderers who have been subject to a financial assessment by AusAID within the twelve (12) months preceding the date of release of this Tender who have experienced a material change in financial position since the last financial assessment was completed by AusAID; or

(c) those Tenderers who have finalised their latest annual financial statements since the Tenderers last financial assessment by AusAID.

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

(a) the name of the tendering entity and its ultimate owner(s);

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

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

(i) a balance sheet;

(ii) a profit and loss statement; and

(iii) a cashflow statement;

each prepared on an accrual accounting basis.

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

(d) contact name and telephone number of the Tenderer's financial accountant;

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

<u>Option 2</u>

6.10 This option may be considered by a Tenderer where:

(a) a Tenderer has been subject to an AusAID financial assessment in the previous twelve (12) months, except where the Tenderers latest annual financial statements have been finalised since the last financial assessment by AusAID; and

(b) the Tenderer can demonstrate to the satisfaction of AusAID that their financial circumstances have not materially changed since the time of the previous financial assessment.

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

(a) the date of its most recent financial assessment and the name of the tender for which this assessment was undertaken;

(b) an explanation of why a Tenderer believes a further financial assessment is not warranted; and

(c) a statutory declaration declaring that the Tenderer's financial position has not altered materially since the date of the previous assessment.

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

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

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

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

6.16 The financial information of Tenderers will be treated confidentially.

PART 2 - PROJECT SPECIFIC CONTRACT CONDITIONS

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

CONTENTS

PART A – PROJECT SPECIFIC CONTRACT CONDITIONS

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

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

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

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

"**Project Design Document**" or "**PDD**" means the project design document.

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

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

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

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

1.2 For a full list of abbreviations and acronyms please see Attachment 5 to the Request for Tender.

2. TERM OF CONTRACT

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

2.2 The Contractor must commence the Services in the Partner Country no later than **TBA December 2010** (indicative start date) and must complete the Services by **30 June 2013** unless the option in **Clause 2.3** below of this **Part A** of this Contract is exercised by the Commonwealth.

2.3 The Contractor grants to the Commonwealth an option to extend the period of the Services for a period of up to four (4) years. The option must be exercised by notice in writing to the Contractor 90 days prior to the date of completion of the Services as specified in **Clause 2.2** above of this **Part A** of this Contract. If this option to extend is exercised, the Contractor shall continue to provide the Services for the extended period on the terms and conditions contained in this Contract, except that this **Clause 2.3** shall no longer apply.

3. ACCOUNTS AND RECORDS

3.1 The statement of Project expenditure referred to in Standard Conditions **Clause 15.1(e)** (Accounts and Records) must be provided on a six (6) monthly basis and must indicate:

(a) total expenditure of the Project to date;

(b) disaggregated expenditure for the Project to date identifying all categories of expenditure including the Fees component and Reimbursable items;

(c) total expenditure for the period of six (6) months; and

(d) forward expenditure and expenses by category for the period of six (6) months.

4. NOTICES

4.1 For the purposes of Standard Conditions **Clause 40** (Notices), the address of a Party is the address set out below or another address of which that Party may from time to time give notice in writing to each other Party:

AusAID

To:	Program Director Name Pacific Horticultural and Agricultural Market Access (PHAMA) Program
Postal Address:	PO Box 887 Canberra ACT 2601 AUSTRALIA
Street Address:	255 London Circuit Canberra City ACT 2600 AUSTRALIA
Facsimile:	

Contractor:

To:	Contractor's Name
Attention:	Title First Name Surname
Postal Address:	Postal Address
Street Address:	Street Address
Facsimile:	Fax

5. MANAGEMENT SERVICES

5.1 The Contractor must provide all Management Services necessary for the provision of the Services. In addition to the other requirements specified by the Contract, at a minimum the Contractor must provide the following Management Services:

(a) provide pre-mobilisation briefings to Contractor Personnel including security, medical/health situation, cultural environment, detail on project objectives, relevant contract obligations and AusAID’s policies on gender, disability, fraud and anti-corruption, HIV and AIDS, child protection and the environment.

(b) decision-making within the Contractor's organisation and the advising of AusAID of decisions required by AusAID;

(c) pro-actively identifying and rectifying problems or recommending strategies to AusAID on how to rectify problems, which may arise in, or during, the performance of the Services;

(d) managing those risks which are the Contractor's responsibility under the Contract in accordance with the Risk Management Plan including in relation to Supplies after delivery and before their incorporation into the Project; and

(e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID.

6. INDEPENDENT REVIEW MECHANISM

6.1 AusAID may establish an Independent Review Mechanism (the "IRM") whose purpose is to provide AusAID with independent technical and other advice on any aspects of the Project and to assist AusAID to assess the performance of the Services.

6.2 The Contractor must:

(a) attend and participate in those IRM meetings which AusAID directs it in writing to attend;

(b) when required by AusAID, consult with the IRM on matters related to the Project including:

(i) progress and performance of the Services;

(ii) any matters, circumstances or events which may be affecting or impacting upon the Contractor's relationship with the Partner Country, Stakeholders, AusAID or the IRM and suggest actions to avoid or counteract any adverse effects on the relationships;

(iii) any matters, circumstances or events which may affect the Project and if there are anticipated or contingent problems or difficulties, suggestions to avoid or counteract those problems or difficulties; and

(iv) any issues or concerns which the Contractor may want to raise with AusAID.

(c) co-operate with and assist in any way requested by the IRM in the performance of its monitoring and review;

(d) co-operate with and assist the IRM by providing all necessary information and Contractor Personnel and ensuring its Contractor Personnel are available and willing to assist in answering inquiries or requests for information in respect of the performance of the Services; and

(e) provide to the IRM copies of all reports, notices, information or other Project material which the IRM reasonably requires to fully and efficiently perform its monitoring and review as soon as practicable after such material is produced or received by the Contractor.

7. ANNUAL STRATEGIC PLAN

7.1 The Contractor must provide to AusAID, within two (2) months of the Project Start Date, and by June in each following year of the Project, a consolidated Annual Strategic Plan covering all Components of the Project, (i.e. covering

Contractor-implemented Component 1-3 activities as well as Secretariat of the Pacific Community (SPC)-implemented Component 4 activities) which, before it is implemented, must be approved by AusAID. The Annual Strategic Plans will identify major priority areas to be addressed by the Project over the coming year together with budget requirements, implementation responsibilities, and component linkages.

7.2 The Annual Strategic Plan should be prepared in accordance with directions provided in writing by AusAID, must be consistent with this Contract and shall:

(a) be developed in conjunction with the national Market Access Working Groups (MAWGs) to ensure that the plan is aligned to their needs and expectations;

(b) be developed in consultation with other key stakeholders particularly SPC in order to ensure maximum coordination between the Contractor-implemented Components and the SPC-implemented Component 4;

(c) include the Contractor's plan for performance of the Services required for the period of the Plan including:

(i) defining the objectives and output targets planned for the period of the Plan in keeping with the objectives and outputs identified in the Scope of Services;

(ii) submitting a request to identify any modifications to the Project from its description in the Scope of Services;

(iii) providing updates to the Project Documents identified in **Clause 6** to the Scope of Services; and

(iv) defining plans for Activities that will occur and that are part of Activity Reimbursables.

(d) include an updated analysis of risk and measures being adopted to manage key risks;

(e) include a description of the current capacity development approaches being promoted within the Project;

(f) define achievements with reference to the Contractor Performance Assessment Framework in the Basis of Payments;

(g) include a detailed budget for the period of the Plan which includes:

(i) a list of the scheduled activities including expenses to be accrued and expensed against Activity Reimbursables (by month and by site but not necessarily by line item) to achieve these outputs. These activities should be consistent with those identified in the Scope of Services;

(ii) a list of required inputs for the planned activities including analysis of Short-Term Personnel and sub-contractor requirements for the coming year and an indicative TOR for the roles; and

(iii) a list of estimated quarterly expenditure and detail of quarterly cash flows.

(h) include the Contractor's proposed strategy for coordinating any Third Party Issues and for providing the Services in a flexible manner as is appropriate.

7.3 The Contractor must make amendments to the Annual Strategic Plan as reasonably requested by AusAID.

7.4 Within thirty (30) days of receipt of the Annual Strategic Plan in accordance with **Clause 7.1 above** AusAID shall notify the Contractor in writing when a decision is likely to be made to reject or accept the Annual Plan. If such Annual Plan has not been approved or rejected within the stated period of thirty (30) days AusAID shall give fair and reasonable consideration to granting an extension of time to the Contractor in respect of the performance of the Services.

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

8. SUB-CONTRACTING

8.1 In addition to the Standard Conditions **Clause 11** (Sub-Contracting) the following conditions apply to sub-contracts entered into by the Contractor:

(a) the Contractor must obtain the prior written approval of AusAID to sub-contracts with any party, except Specified Personnel, to the value of AUD100,000 or more. In granting its approval AusAID may impose such conditions, in AusAID’s opinion are appropriate, in relation to a proposed sub-contract; and

(b) if AusAID objects to the Contractor’s recommended sub-contractor, or AusAID nominates a particular sub-contractor, the Contractor must enter into an agreement with such other sub-contractor as directed by AusAID on the basis of remuneration approved by AusAID and provide AusAID with a copy of the executed sub-contract.

8.2 Standard Conditions **Clauses 11.1** (Sub-contracting) **(d)** and **(e)** (with respect to Deeds of Novation and Substitution) will only apply to sub-contracts valued at AUD100,000 or more.

9. MEETINGS

9.1 The Contractor's Representative and Team Leader must attend meetings with AusAID's nominee in Canberra as required by AusAID, to review or discuss the Contract including the following matters:

(a) the general progress of the Project;

(b) matters arising from the Contractor's reports to AusAID;

(c) any issues arising as a result of communication by either Party with Stakeholders;

(d) any other Third Party Issues and the Contractor's proposal for resolution of any issue referred to in **9.1 (c) above**;

(e) any variations proposed to the Project including in relation to timing, whether or not any such variations have been agreed to by AusAID;

(f) Contract performance matters;

(g) the accuracy of invoices; and

(h) such other matters in relation to which either Party provides five (5) Business Days' notice in writing to the other Party.

9.2 AusAID may also require the Team Leader and other Specified Personnel to attend a meeting at the Australian Diplomatic Mission in Suva, Fiji, or having responsibility for the Partner Country before commencement of implementation.

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

10. RIGHT OF AusAID TO RECOVER MONEY

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

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

(a) if the total of the amount paid to the Contractor is greater than AusAID determines by review to be payable under the Contract, then AusAID must notify the Contractor in writing of the amount of refund it has determined to be repayable;

(b) the Contractor must within twenty eight (28) days after receipt of AusAID's notification:

(i) refund the excess to AusAID; or

(ii) provide AusAID with evidence supporting the Contractor's opinion concerning the amount of the refund.

(c) failure by the Contractor to provide evidence as required in **Clause 10.2(b)(ii) above** will, in the absence of payment in full of the refund claimed, be deemed to be evidence of the Contractor's acceptance that the amount of refund is correct and payable to AusAID on demand or deductible from subsequent payments due under the Contract; and

(d) AusAID must, within twenty eight (28) days of receipt after the Contractor's evidence supporting its opinion concerning the amount of the refund, consider the Contractor's evidence and give the Contractor written notice either:

(i) calling for payment within twenty eight (28) days of the refund determined by AusAID's review; or

(ii) calling for payment within tenty eight (28) days of the refund as re-determined following its consideration of the Contractor's evidence; or

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

10.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 10.2**, or pay any amount due to AusAID, the amount of the refund or payment is recoverable by AusAID from the Contractor by deducting the amount from subsequent payments owed to the Contractor or in any court of competent jurisdiction as a debt due and payable to AusAID by the Contractor.

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

11. GOVERNMENT TAXES, DUTIES AND CHARGES

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

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

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

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

must be paid by the Contractor.

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

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

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

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

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

11.4 Subject to **Clause 11.8 below** if any new or existing government tax, duty or charge ("Changed Tax") levied in Australia or the Partner Country in connection with the performance of the Services under this Contract is introduced, increases, decreases or is removed in its entirety and this affects the cost to the Contractor of providing the Services, the Contractor must give AusAID:

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

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

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

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

11.5 An increase in the Fees under **Clause 11.4 above** shall not be approved and AusAID is not obliged to pay the amount claimed to be attributable to the change in the Changed Tax unless and until the Contractor provides AusAID with evidence of the net effect of the change in the Changed Tax on the cost of supplying the Services and AusAID is satisfied that:

(a) the claimed increase is actually attributable to that Changed Tax and takes into account reductions in any other Changed Tax; and

(b) the net change in the Changed Tax has affected the Fees for supplying the Services,

and the increase shall take effect from the date on which the Changed Tax became effective.

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

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

11.8 **Clause 11.4 above** does not apply to income tax, taxes on turnover or revenue or similar taxes imposed on or in respect of income, turnover or revenue.

12. INSURANCES

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

(a) AusAID is notified immediately the Contractor becomes aware of any actual, threatened or likely claims under all of the insurances required by this Contract or any act or omission by the Contractor which could materially reduce the available limit of indemnity;

(b) AusAID is notified in writing whenever the insurer gives the Contractor a notice of cancellation of project-related insurances;

(c) in respect of public liability insurance and property insurance that:

(i) all insurance agreements and endorsements (with the exception of limits of liability) name, and operate as if there was a separate policy of insurance covering, AusAID, the Contractor and sub-contractors; and

(ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;

(d) where AusAID is a joint insured under an insurance policy, the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against AusAID; and

(e) all premiums are promptly paid.

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

12.3 In respect of the public liability insurance, Standard Conditions **Clause 34.1(a)** is amended as follows: the Contractor must ensure that the limit for each and every claim is AUD20,000,000.

13. COMPLIANCE WITH AusAID POLICIES

13.1 In respect to its obligations to comply with AusAID's Policies, the Contractor must, upon mobilisation, implement plans contained in their Tender for compliance with AusAID's Gender, Disability, Fraud and Anti-corruption, HIV and AIDS, child protection and the Environmental Policy and report regularly to AusAID on any anticipated or unanticipated issues that may alter the Project Environmental Management Plan.

14. REDUCTION IN FEES FOR NON-PERFORMANCE

14.1 If the Contractor fails to supply the Services in accordance with the Contract, the Fees shall be reduced to cover the reduced level of Services rendered to AusAID or loss or damage suffered by AusAID (as appropriate) because of that failure in accordance with the formula set out in **Annex 2 to Part 4, "Basis of Payment"**.

15. PERFORMANCE GUARANTEE

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

Note: the requirement for a Performance Guarantee will be discussed with the preferred Tenderer during contract negotiations, however Tenderers should ensure it is costed in their financial proposals.

PART 3 - SCOPE OF SERVICES

Pacific Horticultural And Agricultural Market Access Program (PHAMA)

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

Although this Scope of Services is presented as Part 3 of this RFT, in the consolidated contract it will appear as Schedule 1.

SCHEDULE 1 – SCOPE OF SERVICES

1. BACKGROUND

1.1 Despite the fact that most Pacific Island Countries (PICs) are primarily agricultural economies, export performance for non-commodity primary products in general and high-value products in particular has been poor. However PICs:

(i) are agriculture-based economies, often with very limited alternative development opportunities;

(ii) have a comparative advantage for the production and export of a wide range of high-value agricultural and horticultural products;

(iii) are in close proximity with some reasonably affluent markets; and

(iv) commonly acknowledge the role of trade as a mechanism for promoting economic growth and regional stability.

1.2 Difficulties faced by PICs in managing the *regulatory* processes associated with accessing key markets are often cited as a major reason for poor export performance. Key constraints to improving Market Access (MA) include:

(i) poor identification of MA priorities leading to the highly limited resources available within both exporting and importing country regulatory agencies being squandered on submissions that are unlikely to be successful or even if successful unlikely to result in significant economic gains;

(ii) limited ability of export country regulatory agencies to prepare and progress high-quality MA submissions;

(iii) limited capacity of exporting countries to implement Sanitary and Phytosanitary (SPS) measures required to comply with MA agreements;

(iv) limited capacity to identify and conduct research and development (R&D) required to establish, improve or maintain MA;

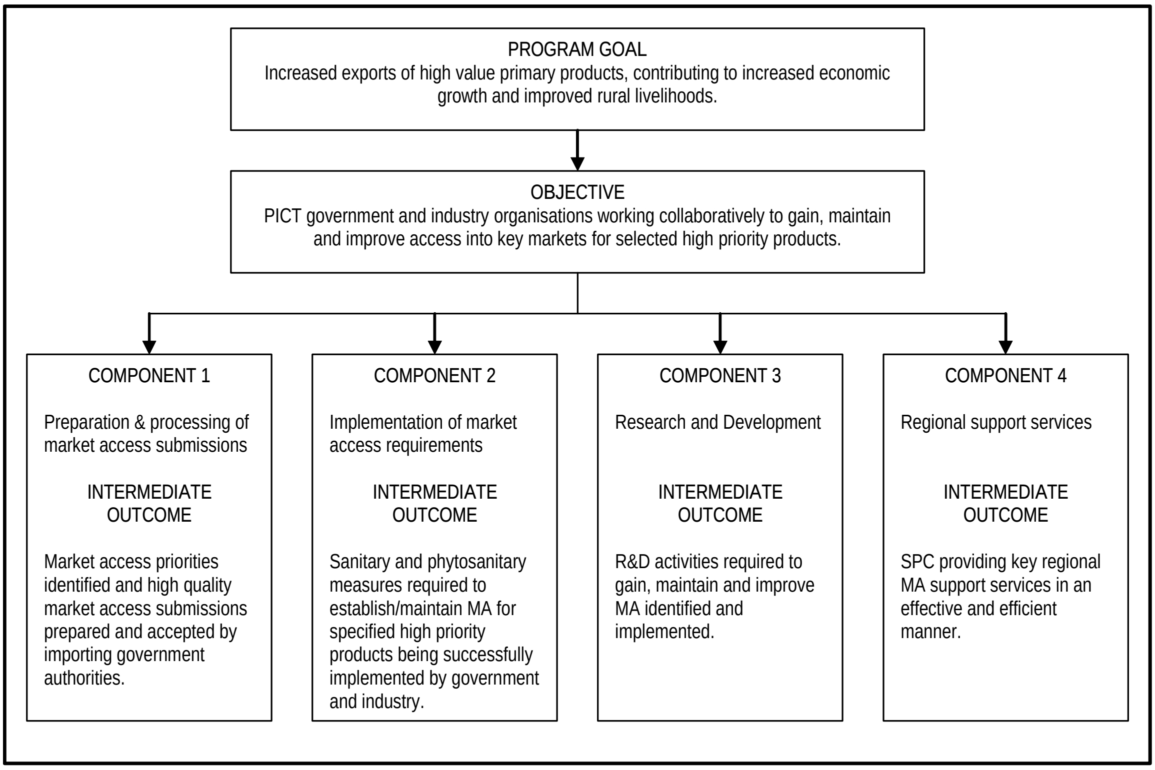
(v) lack of industry consultation and involvement in MA work; and

(vi) limited capacity of Secretariat of the Pacific Community (SPC) to help address MA issues.

PHAMA is designed to directly address these issues.

1.3 The overall strategic structure for the Program is as follows:

Table 1: Strategic Structure



1.4 Key features of the approach and methodology include:

(a) Implementation of a structured, strategic, and actively managed approach to addressing *regulatory* aspects of MA;

(b) Focus on high-value primary products (fresh and processed), particularly agricultural and horticultural but also fish and forest products where warranted;

(c) Targeted approach aimed at identifying and working with highest priority products and MA issues. Depending on the particular product and issue, this could potentially involve seeking new access for new products, improving access for existing trade (e.g. through negotiation of less onerous quarantine requirements), or maintaining access by developing capacity to meet required SPS protocols;

(d) While major focus will inevitably be placed on Australian and NZ markets, improved access into other markets (e.g. Japan, EU, USA, Canada, intra-Pacific trade) will also be actively pursued;

(e) Development of a strong partnership between industry and relevant national government agencies in the pursuit of improved MA. The private sector should:

(i) drive the identification of products to be targeted;

(ii) be fully consulted during the development of MA submissions and agreements;

(iii) play a major role in determining R&D priorities; and

(iv) be an important partner in the implementation of MA protocols.

(f) Selection of particular MA issues to be addressed on the basis of:

(i) potential economic impact;

(ii) cost of establishing MA and probability of achieving a successful outcome; and

(iii) potential distributional impacts for more marginalised or vulnerable groups, including rural households and women.

(g) Implementation of a two-pronged approach to capacity building:

(i) building SPC's capacity to provide a clearly defined set of generic, higher-level MA-support services in line with its regional mandate (through Component 4); and

(ii) developing the capacity of national organisations (public and private) to manage MA issues (through Components 1-3) – but at the same time recognising that many smaller PICs are likely to remain dependent on facilitation by SPC and other external service providers in the longer term. Capacity building will be strongly centred on 'learning by doing' approaches.

(h) Seeking explicit, costed contributions from both government and industry wherever the opportunity and capacity exists;

(i) Separation of the management of SPC-implemented (Component 4) activities from other activities implemented under the Program. Due to the significant technical and financial constraints currently faced by SPC, the Phase 1 design limits SPC's involvement to managing the implementation of a core set of higher-level activities; with the management of other activities at national-level being delegated to a Contractor. Consistent with the Regional Institutions Framework and the mandated role of SPC in providing MA-support services to member countries, it is intended that the Contractor-managed activities will be progressively integrated into SPC's core program from the start of Phase 2 (with continuing donor support), with a corresponding phase-out of the Contractor, subject to development of appropriate capacity within and funding arrangements for SPC;

(j) Active linkage with other supply chain/value chain development programs. Where programs of this nature are working with the development of export-oriented supply chains and particular MA issues are identified, PHAMA will provide a vehicle for addressing these issues; and

(k) Adoption of a flexible, programmatic approach that is able to mobilise high quality technical and specialist services and other resources to address specific MA issues as they are identified on a case-by-case basis.

1.5 PHAMA is designed as an eight (8) year Program of support. Phase 1 of the Program will run from mid 2009 to mid 2013. The first year (2009/10) has been focused on finalisation of the design and implementation of a range of preparatory activities. These activities include:

(a) appropriate liaison and endorsement obtained from PICs for participation in PHAMA;

(b) PIC government and private sector stakeholders made aware of the process of prioritisation, and considered membership to the national Market Access Working Groups;

(c) awareness and interest generated in-country and in Australia regarding the Program;

(d) agreement with SPC to manage Component 4 of PHAMA; and

(e) agreement with the Australian Department of Agriculture, Forestry and Fisheries for a Pacific Market Liaison Officer within the Biosecurity Services Group.

1.6 Progression to Phase 2, four (4) financial years over 2013/2014 to 2016/2017, will be dependent on the performance of Phase 1.

1.7 For targeted MA activities (i.e. Component 1-3 activities), Phase 1 will focus on Fiji, Samoa, Tonga, Vanuatu and the Solomon Islands. Phase 2 will possibly expand to other PICs deemed to have strong export opportunities. Component 4 (SPC-managed regional support services) will benefit all PICs in line with SPC's regional mandate.

2. MANAGEMENT AND COORDINATION ARRANGEMENTS

2.1 Key elements of PHAMA management arrangements include:

(a) The Contractor will be directly responsible for implementation of the activities in Components 1-3. It will establish a regional Program

Management Office (PMO) in Suva, physically located within SPC[1]. Core PMO staffing will include:

(i) PHAMA Team Leader;

(ii) Principal Market Access Specialist;

(iii) Quarantine/Biosecurity Specialist;

(iv) Administrative Assistant/Secretary;

(v) Procurement and Finance Officer; and

(vi) 5 x National Market Access Coordinators (located in identified countries).

(b) Implementation of Component 4 activities will be delegated to the Land Resource Division of SPC (Biosecurity and Trade Facilitation Thematic Group), in close coordination with the Contractor. The Contractor will be expected to actively coordinate with SPC in relation to the planning, implementation and monitoring of program activities. The Principal Market Access Specialist appointed by SPC will be the designated Activity Manager for Component 4 activities, under the direction of the SPC Biosecurity and Trade Facilitation Thematic Group Coordinator, and will provide the key coordination point for the Contractor within SPC;

(c) Under the Program, a Market Access Working Group (MAWG) will be established (or strengthened if a suitable institution already exists) in the five countries where Components 1-3 are implemented. The MAWGs will include representation from key government agencies and industry and will have major responsibility for determining MA priorities and action plans, and coordinating the implementation of Program activities, in each country[2]; and

(d) Five (5) National Market Access Coordinators (NMACs) will be employed by the Program in all countries where Components 1-3 are implemented. They will be responsible for providing secretariat support to the MAWGs and for maintaining an operational linkage between MAWG members, and between the PMO and the MAWGs[3].

[1] Location in Fiji to be confirmed by AusAID.
[2] Preliminary arrangements for the MAWG in each country, including membership, have been defined during the pre-startup phase.
[3] Possible location of Secretariat Offices, and possible candidates for the NMACs positions, have been defined during the pre-startup phase, pending confirmation by the MC.

2.2 A regional Program Coordinating Committee (PCC) will be established, which will be responsible for providing high-level oversight of and strategic direction to the Program. Membership will include:

(a) AusAID one (1) regional representative;

(b) SPC (Head of LRD or designate);

(c) the current chair of the MAWGs in each country;

(d) ACIAR;

(e) The PHAMA Team Leader;

(f) New Zealand International Development Group (formerly NZAID); and

(g) DAFF Biosecurity Services Group and MAF Biosecurity New Zealand will participate in advisory roles.

2.3 The PCC will meet formally twice a year, coinciding with approval of Annual Strategic Plans and six (6)-monthly Progress Reports. It is intended that the PCC will liaise closely with the SPC Governing Council in respect of SPC's role in the Program. The Contractor will be required to facilitate the effective working of the PCC.

3. MANAGEMENT AND GOVERNANCE SERVICES

3.1 The Contractor will be responsible for managing the implementation of all aspects of Components 1-3 of the Program. It will also be required to work closely with SPC (Land Resources Division, Biosecurity and Trade Facilitation thematic group) which will be implementing Component 4, ensuring that the planning, implementation, monitoring and evaluation of activities is as closely coordinated as possible across all components.

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

(a) develop effective and efficient planning, management and business processes for implementation of the Program;

(b) provide strategic direction and technical guidance, particularly directed to the national MAWGs, and guide the prioritisation and phasing of the activities required to achieve desired outcomes;

(c) actively manage human resources, including:

(i) recruit, manage and maintain the personnel necessary for Program implementation, including Long and Short Term

Personnel, National Market Access Coordinators (NMACs) and Support Staff as set out in **Clause 7** of this Scope of Services.;

(ii) conduct an induction program for and regular training of all personnel;

(iii) routinely communicate with, and actively mentor the NMACs, identifying and responding to issues raised from National level effectively and efficiently;

(iv) ensure all personnel have Terms of Reference (TOR) in accordance with the Position Descriptions in Annex A of this Schedule;

(v) ensure all personnel have annual work plans (reviewed every six (6) months) that contain explicit capacity building strategies appropriate to the position;

(vi) complete annual performance appraisals for all personnel, including gathering and providing feedback from counterparts;

(vii) regularly review the roles and responsibilities of Long Term Personnel (LTP) including redeveloping and updating TOR as required;

(viii) ensure the Program is adequately supported by administrative, logistics and Short Term Personnel (STP) necessary for the effective and efficient management of the Program; and

(ix) ensure all personnel behave ethically and appropriately at all times including developing a "PHAMA Code of Conduct" within **three (3) months of the Project Start Date** and ensuring personnel are briefed on and comply with AusAID's policies on cross-cutting issues including, gender, disability, fraud and anti-corruption, HIV and AIDS, child protection and the environment.

(d) prepare detailed TOR to identify, contract, and manage the performance of STP and sub-contractors mobilised to support the implementation of Components 1-3;

(e) establish a pool of eight (8) STP to ensure continuity of Services;

(f) ensure that all STP/ sub-contractor services provided conform to the following general guidelines:

(i) the sub-contractor/STP must work closely with the MAWG and other national partners so as to maintain relevance of the activity and build local ownership and capacity;

(ii) the MAWG should play a central role in coordinating the implementation of all activities;

(iii) output must be reported in a form that is of immediate and direct application to the issue being addressed, and is fully communicated with all key stakeholders as an integral part of the sub-contract; and

(iv) wherever possible a formal training component should be incorporated as an integral part of services provided so as to enhance ‘learning by doing’.

(g) establish and maintain a Program Management Office (PMO), physically located within Land Resources Division of SPC in Suva[4], with appropriate administrative and financial systems; and ensure that this office is sufficiently resourced at all times (including security, logistics, and communications);

(h) establish and maintain MAWG Secretariat offices in each country (Fiji, Samoa, Tonga, Vanuatu and the Solomon Islands), with appropriate administrative and financial systems; and ensure that these offices are sufficiently resourced at all times;

(i) prepare consolidated Annual Strategic Plans (ASP) for the Program, including:

(i) facilitate the MAWGs to identify and prioritise, on an annual basis, MA opportunities and issues to be addressed by the Program, together with proposed plans of action for addressing these issues;

(ii) rationalise and consolidate these action plans into an ASP for Component 1-3 activities, liaising with Australian Government and New Zealand Government stakeholders where necessary (ACIAR, DAFF, MAF);

(iii) liaise with SPC and if necessary assist them to prepare an ASP for Component 4 activities;

(iv) prepare a consolidated ASP for the overall Program (based on the outputs of steps (ii) and (iii) above); and

(v) submit the ASP to the Program Coordinating Committee (PCC) for endorsement by the beginning of June of each year.

(j) prepare Program Documentation and Reporting as detailed in **Clauses 5 and 6** (below);

[4] Location in Fiji to be confirmed by AusAID.

(k) manage the procurement of all Program assets;

(l) manage coordination of relationships between key stakeholders, including:

(i) developing and implementation of (and progressively revise as necessary) a Communication and Media Strategy for the Program;

(ii) establishing and maintaining an effective working relationship with SPC (Land Resources Division, Biosecurity and Trade Facilitation thematic group) to ensure close coordination of Contractor-implemented Components 1-3 and SPC-implemented Component 4, and to ensure that Component 4 activities are as closely oriented towards intended Program outcomes as possible;

(iii) establishing and maintaining an effective working relationship with the MAWGs, building commitment to the Program by involving them in Program planning and implementation in ways that are consistent with ‘bottom-up’ planning and implementation, and by developing capacity of the MAWG as a functional unit able to determine and progress MA priorities;

(iv) establishing and maintaining a close working relationship with the quarantine/ biosecurity regulatory authorities in key importing countries (e.g. Australia and NZ) so as to facilitate the efficient assessment of MA requests and resolution of MA issues;

(v) conducting annual workshops, rotated between countries, involving key PMO staff, MAWG chairpersons and the NMACs;

(vi) facilitating six (6) monthly planning and review meetings by the MAWGs in each country, whenever possible attended by PMO and SPC staff;

(vii) conducting monthly internal planning and review meetings involving key PMO staff and SPC staff; and

(viii) maintaining regular communication and consultation with AusAID and other key stakeholders, with particular emphasis on identifying and developing linkages between PHAMA and other supply chain development initiatives.

(m) manage the Program’s financial resources, including:

(i) establishing and managing a financial management system that supports six (6) monthly financial reporting in a format acceptable to AusAID, and document this system in the "PHAMA Operational Manual";

(ii) providing an acquittal of expenditures against budget, and a forward projection of funding on a six (6) monthly basis; and

(iii) developing a PHAMA Audit Regime and organise an independent annual audit of the program as a whole, in accordance with AusAID requirements.

(n) implementing and managing Program Monitoring, Evaluation, Reporting and Improvement (MERI) Framework currently being developed by AusAID, including:

(i) providing specialised inputs from a sufficient MERI STP to ensure the establishment and efficient operation of MERI processes for the Program;

(ii) managing implementation of the MERI Framework for Component 1-3 activities;

(iii) routinely liaising with SPC concerning the implementation by SPC of MERI arrangements for Component 4, ensuring that these are in line with the overarching Framework;

(iv) providing start-up and as necessary follow-up training for key MERI actors, with particular emphasis on the NMACs, MAWGs and key SPC staff;

(v) ensuring that the implementation of MERI emphasises the dual objectives of:

(A) accountability to key implementation partners ('to prove'); and

(B) continuous learning and program improvement as an integral part of program implementation ('to improve').

(vi) routinely assess the quality of implementation processes, including learning and improvements to the implementation approach, and learning and improvements to the management systems;

(vii) incorporating MERI data provided by SPC for Component 4, prepare consolidated Monitoring and Evaluation (M&E) reports for the overall Program (all components);

(viii) ensuring results and lessons learned from MERI are distributed to relevant stakeholders in a timely fashion and in line with the Communications Strategy, with particular emphasis on the NMACs, MAWGs and SPC, and that they are incorporated into the Program as appropriate;

(ix) facilitating and fully cooperating with AusAID quality performance reviews and a program review;

(x) undertaking field or site visits as necessary to support activities, monitor progress and undertake analysis of progress towards outcomes;

(o) identify and manage risk, including:

(i) developing a Risk Management Plan **within three (3) months of the Project Start Date** that supports and complements the MERI Framework;

(ii) systematically identifying any new risks, in collaboration with AusAID and other stakeholders, on an on going basis;

(iii) routinely monitoring all levels of risk (management, intervention and development) and implement appropriate responses; and

(iv) reporting risk status and possible consequences to the PCC and AusAID on a regular basis.

(p) actively encourage, support and facilitate participation by Program counterparts and stakeholders including:

(i) working closely with key Program counterparts, particularly SPC, the national MAWGs, personnel from key national agencies, donors and related AusAID activities, and other service providers, to implement Program activities;

(ii) developing a central role for the MAWGs in identifying priorities to be addressed by the Program and coordinating work programs in-country;

(iii) ensuring that implementation is carried out in a manner that facilitates the enhancement of regional and national capacity to the maximum extent possible;

(iv) ensuring all Program plans, guidelines, manuals, studies, reviews, capacity building, monitoring, research and evaluations are the result of collaboration with counterparts and consultation with stakeholders, with particular emphasis on engagement with the MAWGs. Where appropriate, counterparts should be involved in the writing of Program related documentation, and supported in these activities;

(v) allowing participants the opportunity for discussion and involvement in decision-making; and

(vi) encouraging Program counterparts to facilitate training activities, including workshops and provide support to participants in workshop planning and preparations.

(q) provide support to the PCC, including:

(i) providing a comprehensive induction for all members of the PCC;

(ii) organising meetings of the PCC every six (6) months;

(iii) providing secretariat support to the PCC including organising and notifying meetings, distributing draft and final agendas, providing members with background information required to enable the PCC to perform effectively; and

(iv) preparing and distributing minutes of the meeting.

(r) implement AusAID’s Gender, Disability, Fraud and Anti-corruption, HIV and AIDS, Child Protection and Environmental policies including:

(i) mainstreaming and monitoring gender, disability, fraud an anti-corruption, HIV and AIDS, child protection strategies; and

(ii) ensuring advisers and counterparts review work plans to actively address gender, disability, fraud and anti-corruption, HIV and AIDS, child protection, the environment and other cross-cutting development issues.

(s) monitor and advise the PCC and AusAID on the strategic direction of the Program, and ensure AusAID (and any other partners/donors) are kept informed on a routine basis of progress and critical emerging issues;

(t) ensure activities are appropriately coordinated/linked with other relevant national and donor activities;

(u) actively identify and promote opportunities for coordinated approaches (involving several PICs) to particular MA issues, and actively promote the transfer of best practices and lessons learned between the various PICs involved under the Program.

4. COMPONENT SERVICES

4.1 The Contractor will be responsible for the implementation of Components 1-3 of the Program as detailed in **Clauses 4.2-4.5** below.

4.2 In line with the programmatic approach adopted, the scale and nature of activities implemented in any component will depend largely on the MA opportunities and issues as identified by the national MAWGs, and the nature of the assistance required to resolve these issues.

4.3 **Component 1: Preparation and Processing of Market Access Submissions**

(a) Formally establish MAWGs in each target country and ensure that these are motivated and competent to drive Program implementation at national level, including:

(i) finalise an operational charter for the MAWGs[5];

(ii) advise on the selection of members, ensuring an appropriate balance of suitable government and private sector representatives;

(iii) provide start-up and as required follow-up training in administrative and operational procedures;

(iv) provide ongoing administrative/ secretariat support, including appointment of the NMACs and establishment and resourcing of a small MAWG Secretariat Office in each country (Fiji, Solomon Islands, Samoa, Tonga and Vanuatu)[6];

(v) facilitate six (6) monthly planning and review meetings by the MAWGs in each country, whenever possible attended by PMO and SPC staff, to identify high priority MA issues to be addressed by the Program, to develop action plans to address identified needs, and to review progress;

(vi) ensure priorities proposed for Program funding are selected following the prescribed prioritisation process;

(vii) work with the MAWGs to identify the need for external STP to be mobilised by the Program to address identified needs;

(viii) work with the MAWGs to identify local partners to work with external STP, and associated modalities;

[5] A draft “PHAMA Operational Manual” has been developed during the preparation phase.
[6] Possible locations for the Secretariat Office, and a number of possible candidates for the NMAC positions, have been identified during the pre-startup phase.

(ix) through the Secretariat, ensure on-going and active communication and coordination between MAWG members, and between the MAWGs and the PMO;

(x) provide on-going strategic guidance and oversight of the MAWGs (and NMACs) through regular visits by and communication with the Program's Long Term Personnel; and

(xi) conduct annual performance reviews and feedback surveys, carried out together with the MAWGs and other national stakeholders.

(b) assist the MAWGs to develop MA submissions, associated data packages, and preliminary risk management packages related to selected priority MA issues;

(c) assist national quarantine agencies to manage coordination and communication with importing country regulatory agencies, including:

(i) coordinate with the AusAID-funded Pacific MA Coordinator within Biosecurity Services Group (DAFF) Australia;

(ii) ensure appropriate linkages are developed between the Program and dedicated MA Coordinator Positions in the regulatory agencies of other importing countries (e.g. NZ MAF);

(iii) work with exporting country regulatory agencies to ensure systematic and timely follow-up of all communications between exporting and importing country authorities;

(iv) provide technical support for bilateral consultations and representations conducted to progress current MA requests and issues;

(v) ensure national representatives are thoroughly prepared for these consultations;

(vi) investigate, in conjunction with regulatory authorities of importing countries;

(A) the feasibility of holding combined (multi-PIC) bilateral negotiations, and if the concept proves feasible provide organisational and technical support to develop this concept; and

(B) the feasibility of resolving multi-country MA issues through generic MA policies;

(d) evaluate on an on going basis the potential for approaches and materials being developed in one (1) country to be transferred to another; and for coordinated multi-country approaches to particular MA issues to be adopted.

4.4 Component 2: Implementation of Market Access Requirements

(a) Facilitate the development of detailed operational procedures required to implement agreed Sanitary and Phytosanitary (SPS) protocols for selected high priority products. Depending on the particular product and the nature of the MA issue, this could include development of any of the following:

(i) extension materials and manuals (e.g. commodity pathway manuals) outlining roles and responsibilities of various actors in the supply and export chain;

(ii) audit and verification procedures;

(iii) extension and training programs supporting the introduction of new/ revised procedures (potentially targeting quarantine officers, producers, exporters and treatment facility operators);

(iv) communication protocols; and

(v) quality standards for growers/ producers promoting the supply of quality product that has minimal risk of failing stipulated target market requirements.

(b) Develop the capacity of quarantine officers, exporters, producers and treatment facility operators to successfully implement required procedures and meet target market quality standards for selected high priority products, including:

(i) assessment of training needs associated with the introduction of new/ revised operating procedures;

(ii) development of targeted training activities and materials;

(iii) implementation of training activities, ensuring that they are practical and field-based to the maximum extent possible; and

(iv) implementation of routine post-training assessment and conduct follow-up training as required.

(c) Support development of the operational capacity of government quarantine agencies (staff, operating budget, equipment) to implement agreed SPS protocols for selected high priority products, in areas such as certification of export consignments, pest surveillance, and maintenance of risk management strategies such as pest-free areas and systems approaches:

(i) conduct assessments of operational capacity in critical areas;

(ii) identify specific resource gaps;

(iii) assess the capacity of government and industry to contribute additional resources to address identified gaps;

(iv) develop and implement a joint Program/ government plan to address identified gaps. Any Program support will be provided on a progressively declining basis with a corresponding increase in government/ industry contributions, and should be provided subject to meeting explicit performance targets;

(d) ensure required SPS treatment, sanitary handling, and diagnostic facilities required to establish/ maintain trade in high priority products are established and operating effectively, including:

(i) assess the need for establishment/ upgrading of proposed facilities, including assessment of possible alternatives to the proposed investment;

(ii) assess the likely sustainability of the investment post-development, particularly in terms of financial and institutional/ management aspects;

(iii) develop a costed design for any proposed developments, and subject to approval, contract and supervise establishment and commissioning of the facility;

(iv) ensure users of the facility are adequately trained in all aspects of operation; and

(v) monitor the use of the facility post-implementation, with particular emphasis on sustainability aspects.

4.5 Component 3: Research and Development

(a) Work with the MAWGs to identify the need for specific R&D activities to address selected high priority market opportunities and MA issues. Specific R&D activities supported will potentially fall into one (1) of the following areas:

(i) assessment of potential export markets and preparation of export feasibility studies;

(ii) conduct of commodity-specific pest surveys and preparation of pest lists;

(iii) development/ refinement of SPC treatment protocols;

(iv) development of product standards;

(v) assessment of the applicability of international zoosanitary, phytosantiary and food safety standards;

(vi) improving the capacity/ skills of exporters to enter new markets with targeted products, through:

(A) the provision of targeted training for exporters on regulatory, administrative and logistical requirements of the importing country;

(B) the organisation of outwards trade missions and inward buyer missions; and

(C) the provision and management of small development grants with industry co-contribution, to new companies seeking to establish new markets;

(b) design, commission and supervise the implementation of R&D activities to meet identified needs;

(c) ensure the overall R&D program is well-managed and that:

(i) it remains targeted towards addressing market opportunities and specific MA issues as prioritised by the MAWGs;

(ii) activity designs are relevant and practical;

(iii) all STP/ sub-contractors engaged in R&D activities work closely with and regularly report to the national MAWGs, and that all output is provided to the MAWG and other national stakeholders in the detail and format appropriate to the need;

(iv) local implementation partners are clearly identified and engaged;

(v) progress of activities is closely monitored, with feedback mechanisms in place in order to share and analyse findings with stakeholders, and make necessary adjustments;

(vi) local capacity is enhanced wherever possible;

(vii) the opportunity for implementation of coordinated R&D activities that address the needs of several countries is routinely assessed;

(viii) the application of R&D being supported by the Program in one (1) country to possible needs in other PICs is routinely assessed; and

(ix) information of what is, and is not, working, is transferred between countries.

5. PROGRAM DOCUMENTS

5.1 The Contractor shall provide AusAID and the PCC with drafts of the following documents within **three (3) months of the Project Start Date** unless otherwise specified. Where relevant, the documentation will be based on documentation already prepared during the preparatory, pre-implementation phase:

(a) "PHAMA Operational Manual", including Security and Administration Procedures and PHAMA Code of Conduct (Contractor to develop);

(b) Financial Management Handbook, including the PHAMA Audit Regime (Contractor to develop);

(c) Risk Management Plan (Contractor to develop);

(d) Communications and Media Strategy (Contractor to develop);

(e) Implementation Plan for the MERI Framework (to be completed);

(f) MAWG Operational Charter (draft completed).

5.2 AusAID will provide comments on the draft documents and advise if they are acceptable.

5.3 The Contractor will revise the draft documents (if required) and submit a final version.

6. REPORTING REQUIREMENTS

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

(a) <u>Annual Strategic Plans</u> (ASPs) as specified in **Clause 7** of Project Specific Contract Conditions. The first ASP will be submitted within two (2) months of the Project Start Date, building on the planning work done during the preparatory phase. Subsequent ASPs must be submitted by **1 June each year**, covering the following July-June Australian FY. The ASPs will be regarded as an enabling framework designed to guide implementation, rather than a constraining blueprint;

(b) <u>Six (6) monthly Progress Reports</u> to be submitted by the **end of January** (covering the period July-December) **and July** (covering the period January-June) each year. These reports which, in addition to providing information for the PCC and AusAID, will provide a basis for communicating with stakeholders, related programs of assistance and other donors. They will:

(i) report on progress of the Program for the reporting period in a manner that is consistent with the ASP and the MERI Framework;

(ii) briefly describe the nature and progress of activities being implemented;

(iii) report on and update (if required) the Risk Management Plan. Any issues affecting the progress of the Program not included in the Risk Management Plan should be added;

(iv) provide a summary of key issues and problems, and recommend specific remedial actions;

(v) update the Program staffing situation including details on Long Term and Short Term Personnel;

(vi) detail achievements with reference to the Contractor Performance Assessment Framework and the MERI Framework;

(vii) highlight major successes in a form that can be easily incorporated into PR materials;

(viii) report on inter-Program/program coordination and cooperation;

(ix) provide an update on expenditure for the previous six (6) month period and anticipated expenditure for the following six (6) month period, as required under **Clause 3** of the Project Specific Conditions;

(x) provide comment on the management of stakeholder relationships; and

(xi) detail any variations from the ASP.

(c) <u>Quarterly Exception Reports</u> to be submitted at the end of each quarter. These will be brief (maximum three (3) pages) reports highlighting any significant issues that have arisen over the quarter, and how these issues are being addressed. They will also highlight any major achievements over the quarter;

(d) <u>Transition Plan,</u> to be submitted **six (6) months before the end of Phase 1 of the Program**. This Transition Plan will also inform the Phase 1 Completion Report for Phase 1;

(e) <u>Phase 1 Completion Report,</u> to be submitted **two (2) months before the end of Phase 1 of the Program**. The Completion Report must be prepared in accordance with current AusAID guidelines on such reports. It will detail progress achieved against the goal, objectives, and outcomes of the Program as anticipated at design. The Completion Report will be substantially informed by the six (6) monthly Progress Reports, and is intended to provide a major input into design adjustments and approvals for Phase 2; and

(f) Phase 2 Completion Report, to be submitted **two (2) months before the end of Phase 2 of the Program**. The Completion Report must be prepared in accordance with current AusAID guidelines on such reports. It will detail progress achieved against the goal, objectives, and outcomes of the Program as anticipated at design. The Completion Report will be substantially informed by the six (6) monthly Progress Reports.

Table 2: Reporting Requirements

Report	Due	Format
Annual Strategic Plans	Within two (2) months of the Project Start Date then by 1 June each year	Two (2) hard copies and one (1) electronic copy in MS Word.
Six (6) monthly Progress Reports	by the end of January (covering the period July-Dec) and July (covering the period Jan-June) each year	Two (2) hard copies and one (1) electronic copy in MS Word.
Quarterly Exception Reports	At the end of each quarter (March, June, September, December)	Two (2) hard copies and one (1) electronic copy in MS Word.
Phase 1 Completion Report	Two (2) months before the end of Phase 1 of the Program	Two (2) hard copies and one (1) electronic copy in MS Word.
Phase 2 Completion Report	Two (2) months before the end of Phase 2 of the Program (2017) if the contract extension option is exercised	Two (2) hard copies and one (1) electronic copy in MS Word.

6.2 All reports must be concise, provide high quality analysis and be clearly focused on facilitating management decision-making. All reports shall be delivered to the AusAID Activity Manager unless otherwise specified. Unless otherwise specified two (2) hard copies and one (1) electronic copy of each report are to be submitted.

6.3 Where relevant, reports will be prepared as consolidated whole-of-program reports, incorporating both Contractor and SPC-managed components. SPC will be required to prepare contributions for the preparation of consolidated reports following formats and timelines prescribed by the Contractor. The Contractor will be responsible for final consolidation of materials provided.

6.4 The Contractor shall maintain a collection (electronic and hard copies) of all reports, technical papers and publications produced by the Program for and on behalf of AusAID. Specifically, for every sub-contracted activity approved, a brief Activity Design Document will be prepared and held on file. For every activity completed, a brief Activity Completion Report will also be prepared and held on file summarising results achieved and referring to broader program objectives.

6.5 Within fourteen (14) days of receiving AusAID advice of any required amendments to the draft Annual Strategic Plan or any other report, the Contractor will submit copies of the final documentation to AusAID (two (2) hard copies and one (1) soft copy).

6.6 The Contractor shall provide copies of all reports to AusAID, the PCC and relevant government agencies as directed by AusAID.

7. PERSONNEL

7.1 The Program will be directed by a Team Leader, who will lead a team of development specialists, National Market Access Coordinators, and staff based in a Program Management Office preferably located within Land Resources Division of SPC in Suva, Fiji[7].

7.2 The Contractor shall provide the following key positions and key personnel to undertake the Services:

(a) Team Leader - full-time;

(b) Principal Market Access Specialist – preferably full-time (see Note below);

(c) Quarantine/ Biosecurity Specialist – preferably full-time (see Note below);

(d) Five (5) National Market Access Coodinators (located in-country, full-time);

(e) Procurement/ Finance Officer - full-time; and

(f) Administrative Assistant/ Secretary.

Position descriptions are provided at Annex A to this Schedule 1 Scope of Services.

[7] Final location to be confirmed by AusAID.

[*Tenderers Note:* A combined Terms of Reference (TOR) is presented for the two (2) key technical positions within the PMO – the Principal MA Specialist and the Quarantine/ Biosecurity Specialist – on the basis that there is likely to be considerable crossover in roles and responsibilities. Tenderers will be given flexibility to 'mix and match' the particular skill sets of candidates proposed to specific elements of the job description provided. As reflected in the position titles, it is likely that one of the candidates will have more experience in managing the process of *gaining* market access; the other in the implementation of biosecurity and quarantine measures required to *maintain* access once gained.

Also note that the Principal MA Specialist and the Quarantine/ Biosecurity Specialist positions are costed as full-time positions. It may however prove difficult to attract candidates with the required skills and experience for long-term placement. The option of utilising periodic short term inputs would be an acceptable alternative, *provided* on going involvement of the same person can be assured.]

ANNEX A: POSITION DESCRIPTIONS FOR KEY POSITIONS

(A) TEAM LEADER (INTERNATIONAL)

LOCATION AND DURATION:

This position will be based in the PMO in Suva Fiji; and will initially be for a two (2) years, seven (7) months period through to the end of Phase 1 in mid 2013. A moderate amount of travel within the Pacific will be required.

GENERAL DESCRIPTION:

The Team Leader will:

(a) have overall responsibility for managing the implementation of PHAMA in accordance with the PDD, the contract and the approved Annual Strategic Plans;

(b) ensure the overall coherence and quality of program implementation, team management, personnel development, stakeholder relations, reporting and adherence to contract conditions; and

(c) represent the Contractor in all dealings with AusAID and outside parties.

She/he will report to and be responsible to the Contractor for all actions taken.

SPECIFIC TASKS AND RESPONSIBILITIES:

The Team Leader will:

1. Recruit, guide and mentor Program staff;
2. Establish robust financial and administrative systems;
3. Establish systems for program planning, monitoring and performance evaluation;
4. Together with the MA Specialist, oversee the contracting and supervision of service providers mobilised to help address particular issues as identified by the MAWGs;
5. Monitor the use and acquittal of Program funds, ensuring funds are applied in line with the contract and approved Annual Strategic Plans;
6. Establish mechanisms that ensure effective communication and coordination within the Program. Particular attention should be paid to coordination of PMO-managed and SPC-managed components/activities;
7. Liaise and coordinate with relevant government agencies, private sector organisations, and regional organisations;
8. Liaise with donors and actively investigate opportunities for linking with relevant supply chain development initiatives;
9. Maintain a responsive relationship with the PCC and AusAID by providing timely information, advice and recommendations on all PHAMA matters; and

10. Analyse and synthesise project experiences and actively contribute to the on-going development of the PHAMA design.

QUALIFICATIONS AND EXPERIENCE:

The successful candidate will have:

1. A post-graduate degree from a recognised University in a relevant field – preferably agricultural economics, agribusiness or rural development.
2. At least ten (10) years experience working in international development, preferably including experience in the Pacific.
3. A general understanding of the process and issues involved in establishing market access for agricultural products.
4. Proven managerial skills, particularly in:

   (a) Planning, administration and financial management of donor projects;

   (b) Working with and coordinating professional teams;

   (c) Coordinating geographically dispersed development activities;

   (d) Leading AusAID or other donor development activities; and

   (e) Effectively liaising with government and non-government organisations.

5. Demonstrated ability to establish strong working relationships with national counterparts at a senior level.
6. Well developed skills in: inter-personal communication; report writing; numeracy; analysis; and networking.
7. Advanced computer literacy.

(B) 2 POSITIONS:

<u>PRINCIPAL MARKET ACCESS SPECIALIST x 1 (International);</u> and

<u>QUARANTINE & BIOSECURITY SPECIALIST x 1 (International)</u>

LOCATION AND DURATION:

These positions will be based in the PMO in Suva, Fiji; and will initially be for a two (2) years, seven (7) months period through to the end of Phase 1 in mid 2013. Frequent travel between Suva and the countries where PHAMA is being implemented will be required.

A combined TOR is presented for the two (2) positions on the basis that there is likely to be considerable crossover in roles and responsibilities. Tenderers will be given flexibility to ‘mix and match’ the particular skill sets of candidates proposed to specific elements of the job description provided. As reflected in the position titles, it is likely that one of the candidates will have more experience in managing the process of gaining market access and the other will have more experience in the implementation of biosecurity and quarantine measures required to maintain access once gained.

Also note that the two (2) positions are costed as full-time positions. It may however prove difficult to attract candidates with the required skills and experience for long-term placement. The option of utilising periodic ST inputs totalling four to six (4-6) months per year, per position, would be an acceptable alternative, provided on going involvement of the same person could be assured.

GENERAL DESCRIPTION:

The Principal Market Access Specialist and the Quarantine and Biosecurity Specialist will:

(a) have overall responsibility for development and management of the market access strategies and action plans to be supported under PHAMA;

(b) ensure the overall coherence and quality of market access strategies developed and implemented by the MAWGs in each country;

(c) ensure coherence between Contractor-implemented and SPC-implemented components of the Program; and

(d) represent the Team Leader on market access and technical issues when dealing with AusAID and outside parties, as required.

Both positions will report to and be responsible to the Team Leader.

SPECIFIC TASKS AND RESPONSIBILITIES:

The Principal Market Access Specialist and the Quarantine and Biosecurity Specialist will:

1. Assist with the establishment/recruitment, guidance and mentoring of the MAWGs, NMACs, and the SPC-based Market Access Specialist;
2. Provide technical support to the MAWGs, NMACs, and the SPC Market Access Specialist;
3. Oversee the activities of the MAWGs, assisted by the NMACs, related to identifying high priority market access issues and development of action plans to address these issues;
4. Oversee the identification, contracting and supervision of service providers to be mobilised to help address particular market access issues as identified by the MAWGs;
5. Directly assist PICT government NPPOs in market access negotiations, as requested;
6. Oversee the activities of SPC-BAT, promoting maximum coherence between Component 4 activities and Component 1-3 activities;
7. Ensure that market access strategies and activities are in line with relevant international SPS standards (e.g. pest free areas, post-harvest treatments);
8. Liaise and coordinate with relevant government agencies, private sector organisations, and regional organisations (including SPC-BAT) on market access issues;
9. Ensure that market access strategies and activities are appropriately aligned with other donor activities, where relevant;
10. Monitor, report and provide technical input on regional/international biological and quarantine related activities or developments that may impact (adversely or favourably) on technical market access for the PICs;
11. Investigate and promote opportunities for developing regional market access agreements;
12. Identify and promote the transfer of experiences and 'lessons learned' between participating countries;
13. Provide technical assistance to the PPPO Secretariat as required;
14. Assist the Team Leader to establish mechanisms that ensure effective communication and coordination within the program, especially between the PMO and the MAWGs/NMACs; and between the PMO and SPC-BAT; and
15. Assist the Team Leader to establish systems for program planning, monitoring and performance evaluation.

QUALIFICATIONS AND EXPERIENCE:

The successful candidates will have:

1. A graduate degree from a recognised University in a relevant field – preferably agricultural science, animal or plant sciences. For one of the positions a post-graduate degree in animal health or plant protection would be desirable.
2. At least ten (10) years experience working in relevant technical market access-related areas, preferably including experience in the Pacific.

3. A thorough understanding of the processes and issues involved in establishing market access for agricultural products, and/or developing biosecurity systems enabling safe trade in agricultural products, including:

   (a) Relevant SPS issues underpinning technical market access;

   (b) Quarantine and biosecurity-related issues (e.g. surveillance, incursion response, reporting) that may impact upon technical market access, particularly in the Pacific region; and

   (c) Technical market access, quarantine and biosecurity mechanisms, structures and processes within governments of the PICs and destination target markets including Australia and NZ.

4. Proven technical market access skills, including:

   (a) Working with industry groups to identify, prioritise and resolve market access issues;

   (b) Working with industry groups to develop and establish appropriate surveillance and monitoring systems in support of market access;

   (c) Development and evaluation of technical market access submissions, data packages and strategies;

   (d) Experience in the conduct of risk analyses related to export market access requests;

   (e) Experience in the identification, commissioning and supervision of technical market access related R&D;

   (f) Experience in bilateral market access strategy development and negotiations, preferably at senior government level; and

   (g) Experience in developing the capacity of quarantine/ biosecurity agencies to protect trade.

5. Demonstrated ability to establish strong working relationships with national counterparts at a senior level.
6. Well developed skills in: inter-personal communication; report writing; numeracy; analysis; and networking.
7. Advanced computer literacy.

(C) NATIONAL MARKET ACCESS COORDINATORS X 5 (Nationals)

LOCATION AND DURATION:

The positions will be based in-country, co-located with a relevant industry or government organisation.

NMACs will be locally recruited by the PHAMA PMO. The initial contracts will be for a two (2) years, seven (7) months period through to the end of Phase 1 in mid 2013. Occasional travel to the PMO in Suva, or to other PICs, will be required.

GENERAL DESCRIPTION:

The NMACs form a critical link in the program management structure, providing an operational link between Market Access Working Group (MAWG) members, and between the MAWGs, the PMO and SPC. They will be the key in-country contact points for the overall Program, responsible for:

(a) providing secretariat support to the MAWGs in each country;

(b) assisting with the identification of priority market access issues and development of corresponding workplans;

(c) coordination of activities being supported by PHAMA to help address particular issues; and

(d) monitoring of in-country activities and results.

The NMACs will report to the PHAMA Team Leader through the Principal Market Access Specialist. They will also be expected to maintain a particularly close working relationship with the chairman of the MAWG.

SPECIFIC TASKS AND RESPONSIBILITIES:

The NMACs will:

1. Provide administrative support to the MAWG, including convening and coordinating MAWG meetings;
2. Facilitate communication and coordination between MAWG members;
3. Provide an operational linkage between the MAWG, the PMO, and SP;
4. Assist with the development of annual workplans, in line with PMO requirements;
5. Assist the MAWG and PMO to identify the need for external STP to address priority market access issues, where possible identifying suitable local STP resources;
6. Assist the MAWG to coordinate the implementation of market access activities being funded by the Program;
7. Monitor the implementation of PHAMA-funded activities, in line with PMO requirements;

8. Coordinate with other market access and supply chain development activities, including other donor-supported initiatives; and
9. Work with emerging exporters of priority products to build capacity in the implementation of required quarantine procedures.

QUALIFICATIONS AND EXPERIENCE:

Successful candidates will have:

1. A graduate degree in a relevant field – preferably agricultural economics, agribusiness, trade development, or agricultural science.
2. At least five (5) years experience working in a relevant field. Ideally this will include experience in establishing market access arrangements for agricultural/ horticultural export industries, either with government or industry.
3. A basic understanding of the technical quarantine/ biosecurity issues involved in gaining and maintaining access for agricultural products. Detailed technical knowledge is not required but an ability to understand and communicate issues to the MAWG, PMO and SPC will be required.
4. Demonstrated ability to work with both government and industry stakeholders.
5. Demonstrated ability to actively network and coordinate activities across a team.
6. Well developed interpersonal communication and writing skills.
7. Computer literacy.

(D) <u>PROCUREMENT/ FINANCE OFFICER (National)</u>

LOCATION AND DURATION:

This position will be based in the PMO in Suva, Fiji; and will initially be for a two (2) years, seven (7) months period through to the end of Phase 1 in mid 2013. Occasional travel to countries covered under the Program may be required.

GENERAL DESCRIPTION:

Under the direction of the Team Leader, the Procurement/ Finance Officer will be responsible for establishing and managing the PMO's procurement and financial control systems, including:

(a) preparation and management of annual operating budgets;

(b) coordination and submission of estimates on administration and program running costs;

(c) procurement, including contracting and oversighting the financial performance of sub-contractors engaged by the Program; and

(d) monitoring of expenditure.

SPECIFIC TASKS AND RESPONSIBILITIES:

The Procurement/ Finance Officer will:

1. Assist the Team Leader to prepare consolidated Annual Strategic Plans (ASPs) for the Program;
2. Assist SPC and the MAWGs/ NMACs with preparation of annual workplans for Component 4 activities and in-country activities, respectively; for incorporation into the ASPs;
3. Manage the procurement of all goods and services for the PMO, in line with AusAID procurement guidelines. This will involve a significant level of sub-contracting to external service providers;
4. Establish and manage electronic and paper-based systems to record PMO purchase orders, contracts, claims for payment, and expenditures;
5. Ensure that PMO financial records and accounts, both paper and electronic, are efficiently managed and kept up-to-date;
6. Routinely liaise with the Contractor through the Team Leader on funding allocations, charge codes and required financial management procedures and reporting formats;
7. Establish and manage a petty cash system for the PMO and the NMACs, including advances, accountable expenditures and reimbursement of claims;
8. Prepare consolidated six (6) monthly financial reports covering PMO and SPC expenditures for submission to AusAID, ensuring that actual expenditures are approximately in line with ASP approvals;
9. Prepare *ad hoc* financial reports for the Team Leader and AusAID, as required;

10. Assist AusAID to engage local auditors to undertake audit services in line with the procurement guidelines, including contract preparation and finalisation; and ensure that appropriate preparations are completed by the PMO prior to the annual audit;
11. Establish and manage a payroll system for locally-hired staff, covering salary rates, pay increases, overtime, bonuses, termination, and other salary and allowance payments; and overtime and pay variation advice forms;
12. Assist the Team Leader with preparation of a simple financial procedures manual;
13. Provide training to PMO staff in the operation of relevant financial procedures and systems, as required; and
14. Perform other financial management tasks as directed by the Team Leader.

QUALIFICATIONS AND EXPERIENCE:

The successful candidate will have:

1. Relevant tertiary qualifications in accounting/financial management.
2. A minimum of five (5) years work experience in financial management, preferably including experience working for an international development agency.
3. Demonstrated experience in the establishment and operation of financial control systems.
4. Demonstrated experience in procurement and payment procedures.
5. Demonstrated experience in managing sub-contractors.
6. Sound organisational skills, and a demonstrated ability to set priorities and meet deadlines and to work under minimal supervision.
7. Adequate working knowledge of written and spoken English.
8. Advanced computer literacy, including a sound knowledge of computerised accounting systems.

(E) ADMINISTRATIVE ASSISTANT/ SECRETARY (International)

LOCATION AND DURATION:

This position will be based in the PMO in Suva, Fiji and will initially be for a two (2) years, seven (7) months period through to the end of Phase 1 in mid 2013. Occasional travel to countries covered under the Program may be required.

GENERAL DESCRIPTION:

Under the direction of the Team Leader, the Administrative Assistant/ Secretary will be responsible for the day-to-day administrative management of the PMO. The position will also play a key role in facilitating liaison between the PMO, SPC, the MAWGs.

SPECIFIC TASKS AND RESPONSIBILITIES:

The Administrative Assistant/Secretary will:

1. Manage the general operation of the PMO on a day-to-day basis, ensuring the office is run effectively and efficiently at all times;
2. Facilitate routine liaison between the Team Leader, SPC and the MAWGs;
3. Establish and manage electronic and paper filing systems for the PMO;
4. Ensure email and internet security protocols are established, and that all electronic data relating to Program activities is securely managed under central control;
5. Establish and manage registers for PMO assets; incoming and outgoing correspondence; and Short Term Personnel and sub contractors used engaged by the PMO;
6. Manage the recruitment, mobilisation and orientation of any new PMO staff and Short Term Personnel;
7. Maintain relevant personnel records for all PMO staff, including a record of official PMO staff movements, staff leave, etc;
8. Directly supervise any administrative support staff employed by the Program (e.g. drivers, security);
9. Assist the Team Leader to implement a performance appraisal system for PMO staff;
10. Coordinate travel arrangements for PMO staff;
11. Assist with the organisation of PCC meetings, including preparation of meeting agendas and minutes;
12. Organise repairs and maintenance of PMO office facilities and equipment;
13. Assist with the preparation of PMO manuals, reports and other documentation as required;
14. Manage the distribution of relevant reports and documents to AusAID, SPC, MAWGs, partner governments etc as required;
15. Assist the Team Leader with preparation of a simple administrative procedures manual; and
16. Perform other administrative tasks as directed by the Team Leader.

QUALIFICATIONS AND EXPERIENCE:

The successful candidate will have:

1. A minimum of three (3) years work experience in office administration, finance and human resources management, preferably including experience working for an international development agency.
2. Sound organisational skills, a demonstrated ability to set priorities and meet deadlines.
3. Demonstrated ability to work independently and exercise initiative.
4. Ability to work sensitively and cooperatively with people in a multicultural environment.
5. Fluency in written and spoken English including a demonstrated ability to prepare correspondence and reports in English.
6. Excellent communication, interpersonal and teamwork abilities.
7. A high level of computer literacy, including a sound knowledge of word processing and spreadsheet applications.
8. Desirable but not essential: Relevant tertiary qualifications.

ANNEX B: POSITION DESCRIPTIONS FOR SHORT TERM PERSONNEL

(A) MONITORING AND EVALUATION (M&E) SPECIALIST

CONTEXT:

Monitoring, evaluation, reporting and improvement (MERI) processes are central to the evolution and responsiveness of PHAMA. MERI is under development to ensure (i) accountability to key implementation partners and the donor (to prove) and (ii) continuous learning and program improvement as part of implementation (to improve).

LOCATION AND DURATION:

The Monitoring and Evaluation Specialist may be retained for up to two (2) months per financial year from 2010/11 through to 2012/13.

It is anticipated that this position will be managed through the PMO in Suva, Fiji; although travel to the other PHAMA countries may be required.

GENERAL DESCRIPTION:

The M&E Specialist will report to the PHAMA Team Leader and liaise closely with National Market Access Coordinators (NMACs).

The M&E Specialist will be responsible for developing operational processes and norms for the implementation and delivery of the Final Monitoring and Evaluation (M&E) Framework (forthcoming: draft included in the Appendices of the Program Design Document).

SPECIFIC TASKS AND RESPONSIBILITIES:

The M&E Specialist will perform the following services including, but not limited to:

1. Working with the PHAMA Team Leader to implement the Final M&E Framework;
2. Initial set-up of MERI procedures in line with the Final M&E Framework (including training of key Market Access Working Group (MAWG) members and National Market Access Coordinators);
3. Formal assessment of results at intermediate outcome (component objective) level at the end of each year and assessment of impact at the goal/objective level at the end of each year;
4. To be responsible for all aspects of Monitoring and Evaluation input into the Annual and six(6)-monthly Reports and MERI activities, and activity completion reporting at the end of 2012;
5. All other aspects of M&E that will be included in the Final M&E Framework.

QUALIFICATIONS AND EXPERIENCE

The successful candidate will have:

1. A Masters degree in trade, development, statistics or related field and at least five (5) years work experience in international development.
2. Familiarity with the principles and current approaches to MERI in the international development context.
3. Experience supporting international development projects with a trade and/or Pacific focus.
4. Prior management and supervision experience.
5. Experience in the design, conduct and analysis of research studies (quantitative and qualitative).
6. Ability to contribute to capacity-building efforts and work with colleagues in diverse cultures.
7. Ability to work independently and to manage various projects on a daily basis with minimal supervision.
8. Ability to work effectively and harmoniously in a team environment.
9. Computer literacy with demonstrated use of word processing, database and presentation software (Word, Excel, Power Point). Experience using statistical analysis software (SPSS, EPI-INFO, STATA or similar) required.
10. Excellent organisational and time management skills and strong attention to detail.
11. Excellent writing and communications skills in English required.
12. Pacific experience will be strongly valued.

(B) CORE COMPETENCY SPECIALIST POSITIONS

CONTEXT:

The Contractor is required to nominate a pool of eight (8) Short Term Personnel (STP). The skill set covered by the STP will be the skills most often required in the Program and as such, are considered core competencies.

LOCATION AND DURATION:

Each of the eight (8) core competency Specialists may be retained for up to two (2) months in financial year 2010/11; up to five (5) months in financial year 2011/12; and up to seven (7) months in financial year 2012/13.

It is anticipated that nominated STP will be managed through the Project Management Office (PMO) in Suva, Fiji.

GENERAL DESCRIPTION:

A group of eight (8) STP will provide specialist and technical advice to the PHAMA Program.

The skill set covered by the STP will be the skills most often required in the Program and as such, are considered core competencies. The Contractor is required to analyse likely core competencies to be needed by the Program.

They will be the key technical personnel supporting the PHAMA Long Term Personnel (LTP) for the overall program, and will be responsible for advice relating to Components 1 through to 3 as managed by the Contractor.

The STP will report to the PHAMA Team Leader through the Market Access Specialist and/or the Quarantine and Biosecurity Specialist.

SPECIFIC TASKS AND RESPONSIBILITIES:

The STP will provide the following services including, but not limited to:

1. Provide advice and technical expertise in their respective core competencies to Market Access Working Groups and National Market Access Coordinators as facilitated by the PHAMA PMO;
2. Provide technical support to the MAWGs, NMACs and the SPC Market Access Coordinator;
3. Oversight activities of the MAWGs, assisted by the NMACs directly related to their areas of core competency;
4. At all times, ensure coherence in communication, coordination and liaison between MAWGs, NMACs, SPC and PHAMA PMO;
5. Directly advise PIC NPPOs particularly where emergency activities arise;
6. Ensure all activities are conducted in line with international best practice; and
7. Assist the Team Leader and Monitoring and Evaluation Specialist with monitoring and evaluation inputs.

Part 4 – Basis of Payment

Note to Tenderers: Although this Basis of Payment is presented as Part 4 of this RFT, in the consolidated Contract it will appear as Schedule 2.

PART 4 - BASIS OF PAYMENT

1. TOTAL AMOUNT

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

1.2 The total amount will comprise of the following elements:

(a) **Total Management Fee (TMF)** in accordance with **Clauses 2, 3 and 5** of this Part 4 of **AUDXXXX;**

(b) **Reimburseable Long Term Personnel Costs**, in accordance with **Clause 4** of this Part 4, up to a maximum amount of **AUDXXX;**

(c) **Reimburseable Short Term Personnel Costs**, in accordance with **Clause 5** of this Part 4, up to a maximum amount of **AUDXXX;** and

(d) **Reimbursable Administration, Equipment and Operational Costs** in accordance with **Clause 6** of this Part 4 of **AUDTBA.**

(e) **Reimbursable Activity Costs** in accordance with **Clause 7** of this Part 4 of **AUDTBA**.

1.3 AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of the amount in **Clause 1.1**.

2. TOTAL MANAGEMENT FEE (TMF)

2.1 The TMF will comprise (but will not be limited to):

(a) All aspects of profit, including commercial margins for all personnel;

(b) All overheads, including rent and utilities, maintenance for office and computer equipment, supplies and consumables, vehicular maintenance and petrol costs for the Contractor’s head office;

(c) Communications and telecommunications costs;

(d) Financial management costs and financing costs, if any;

(e) All management support costs for all nominated personnel;

(f) Cost of Contractor head office staff;

(g) Security costs for all personnel;

(h) Insurance, as required in accordance with **Clauses 33 and 34** of Part B (Standard Contract Conditions) of the Contract;

(i) Taxation, as applicable;

(j) Health, Medical Evacuation, worker's compensation, liability and indemnity insurances;

(k) Costs, including financial costs and freight, associated with any subcontracting, tendering and procurement of goods and services;

(l) Costs of complying with the Contractor's reporting and liaison obligations under the Contract;

(m) Costs associated with personnel recruitment and all personnel briefings in Australia or in-country;

(n) Costs, including domestic and international travel, accommodation, per diems, and local transport costs where required for all Contractor Head Office personnel (*other* than those listed as Long Term or Short Term Personnel costs at **Clauses 4 and 5** of this Part 4);

(o) All other costs not specified as Reimbursable Costs; and

(p) Allowances for risks and contingencies.

3. MILESTONE PAYMENTS

3.1 AusAID shall pay the Contractor the TMF in instalments know as Milestone Payments. The Milestone Payments payable by the Commonwealth to the Contractor shall not exceed the sum of **AUDXXX**, plus GST, if any, to a maximum of **AUDXXX**. The amount payable by the Commonwealth may be reduced in accordance with **Annex 2**.

3.2 The criteria for "satisfactory completion" of an identified output will be as specified in Table 1 – Milestone-based payments as the "verifiable indicator".

3.3 Where a Milestone Payment is to follow acceptance of a report, AusAID shall not be obliged to make payment until all of the outputs to be achieved by the Contractor in the period covered by the report have been achieved.

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

3.5 AusAID will pay the Contractor within thirty (30) days of AusAID's acceptance of the satisfactory completion of identified outputs and a correctly rendered invoice.

Table 1 – Milestone Based Payments

No.	Description	Due Date	Verifiable Indicator	Amount (AUD)
1	Risk Management Plan/Inception Report (mobilisation)	1 December 2010	Contract signed with AusAID, Risk Management Plan, Inception Report and PHAMA Code of Conduct received by AusAID/PCC and accepted by AusAID in writing	TBA
2	Inaugural Six (6) Monthly Progress Report including a Communications Strategy	31 January 2011	Hardcopy and softcopy of report and Communications Strategy received by AusAID/PCC and accepted by AusAID in writing	TBA
3	Annual Strategic Plan	31 January 2011	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
4	PHAMA Operational Manual	31 March 2011	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
5	Financial Management Handbook			TBA
6	Implementation Plan for MERI Framework			TBA
7	Risk Management Plan			TBA
8	Communications and Media Strategy			TBA
9	MAWG Operational Charter (draft)			TBA
10	Annual Strategic Plan	1 June 2011	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
11	Six (6) Monthly Progress Report	31 July 2011	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
12	Draft Handover Plan	30 November 2011	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
13	Six (6) Monthly Progress Report	31 January 2012	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA

No.	Description	Due Date	Verifiable Indicator	Amount (AUD)
14	Annual Strategic Plan	1 June 2012	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
15	Six (6) Monthly Progress Report	31 January 2013	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
16	Six (6) Monthly Progress Report	31 July 2012	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
17	Transition Plan (Phase 1 to Phase 2)	31 January 2013	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
18	Phase 1 Completion Report (comprising the Quality at Entry and Mid-term review requirements)	30 April 2013	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
19	Annual Strategic Plan	1 June 2013	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA

Extension period: Milestone-based payments (subject to change)				
No.	**Description**	**Due Date**	**Verifiable Indicator**	**Amount (AUD)**
1	Six (6) Monthly Progress Report	31 July 2013	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
2	Six (6) Monthly Progress Report	31 January 2014	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
3	Annual Strategic Plan	1 June 2014	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
4	Six (6) Monthly Progress Report	31 July 2014	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA

No.	Description	Due Date	Verifiable Indicator	Amount (AUD)
5	Six (6) Monthly Progress Report	31 January 2015	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
6	Annual Strategic Plan	1 June 2015	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
7	Six (6) Monthly Progress Report	31 July 2015	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
8	Six (6) Monthly Progress Report	31 January 2016	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
9	Annual Strategic Plan	1 June 2016	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
10	Six (6) Monthly Progress Report	31 July 2016	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
11	Six (6) Monthly Progress Report	31 January 2017	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA
12	Phase 2 Completion Report, inclusive of final six (6) monthly report.	1 June 2017	Hardcopy and softcopy of report received by AusAID/PCC and accepted by AusAID in writing	TBA

4. REIMBURSABLE LONG TERM PERSONNEL

4.1 AusAID shall reimburse the Contractor up to a maximum total of **AUDXXX** for Long Term Personnel Costs.

4.2 For each identified Long Term Personnel, AusAID shall pay the contractor, monthly on a reimbursable basis in arrears, Monthly Fees up to a maximum amounts specified in **Table 2** below. Mobilisation and Demobilisation costs will be reimbursed at cost up to the maximum one-off amounts which apply to each position.

Table 2 – Long Term Personnel (LTP) Costs (in AUD)

		Name	Monthly Rate	Inputs for Year 1 (mths)	Year 1 (1 Dec 2010 to 30 Jun 2011) (7 mths)	Inputs for Year 2 (mths)	Year 2 (1 Jul 2011 to 30 Jun 2012) (12 mths)	Inputs for Year 3 (mths)	Year 3 (1 Jul 2012 to 30 Jun 2013) (12 mths)	Mobilisation	Demobilisation	Total Cost for Initial Contract Period (AUD)
				Initial Contract Period (2 years and 7 months)								
1	Team Leader (International)	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
2	Principal Market Access Specialist (International)	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
3	Quarantine and Biosecurity Specialist (International)	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
4	Administrative Assistant/Secretary (International)	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
5	Procurement and Finance Officer (National)	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
6	National Market Access Coordinator - Fiji (National)	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
7	National Market Access Coordinator - Samoa (National)	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
8	National Market Access Coordinator - Tonga (National)	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
9	National Market Access Coordinator - Vanuatu (National)	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
10	National Market Access Coordinator - Solomon Islands (National)	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
	TOTAL (AUD)	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***

4.3 The monthly fee is:

(a) ***Inclusive*** of all personnel-related taxes and levies incurred in Fiji , Samoa, Solomon Islands, Tonga and Vanuatu and Australia, except;

(i) GST for Services performed in Australia in accordance with **Clause 21** of Part 6 (Goods and Services Tax);

(b) ***Inclusive*** of superannuation levy, if any, as appropriate;

(c) ***Inclusive*** of paid annual leave allowances of up to four (4) weeks per annum, to accrue on a pro rata basis per twelve (12) months' continuous engagement on the Program (noting that leave allowances cannot be carried over from one twelve (12) month period to another and must be taken in the twelve (12) month period in which they fall due), including all leave costs such as airfares to and from Fiji; Samoa, Solomon Islands, Tonga and Vanuatu;

(d) ***Inclusive*** of accommodation, utilities and private transport costs;

(e) ***Inclusive*** of all escalators for the first three (3) years of the Program;

(f) ***Inclusive*** of domestic and international travel, accommodation, per diems, and local transport costs where required for all Contractor Head Office personnel; but

(g) ***Exclusive*** of mobilisation/demobilisation costs (including airfares, in accordance with **Clause 4.7 below**), which will be reimbursed at cost (subject to reasonableness in arrears); and

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

4.4 Where Contractor leave entitlements for Long Term Personnel exceeds two (2) trips or a total of four (4) weeks per twelve (12) month period, a satisfactory justification must be provided to AusAID of how the Contractor will ensure, during Specified Personnel absences, the continued quality of the Services.

4.5 If any personnel inputs have not been supplied in accordance with **Table 2**, the Contractor must, in its final claim for payment, reduce the amount claimed based on the number of days that any personnel have not provided the required inputs. The Contractor must include with the claim details of the inputs not provided, together with the amount of the reduction in the total cost for relevant personnel.

4.6 For the purpose of calculating part months, where necessary, a full month is deemed to be 30 days. Part months will be pro-rated on a daily basis.

4.7 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. 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 from any one flight departure point to any one flight landing point.

4.8 Should AusAID exercise its rights, under **Clause 4** of Part A to extend the term of this Contract, the Long Term Personnel Costs applying to the Contract extension will be the rates specified in **Table 2** above with the escalators specified in **Table 5** below.

5. REIMBURSABLE SHORT TERM PERSONNEL (STP)

5.1 AusAID shall reimburse the Contractor up to a maximum total of **AUDXXX** for Short Term Personnel Costs.

5.2 For each Short Term Personnel, AusAID shall pay the contractor, monthly on a reimbursable basis in arrears, a Daily Fee in accordance with the relevant rate(s) detailed in **Table 3** below.

Table 3 – Short Term Personnel Costs (in AUD)

			Initial Contract Period (2 years and 7 months)						
		Daily Rate	**Inputs for Year 1 (mths)**	**Year 1 (1 December 2010 to 30 June 2011) (7 months)**	**Inputs for Year 2 (mths)**	**Year 2 (1 July 2011 to 30 June 2012) (12 months)**	**Inputs for Year 3 (mths)**	**Year 3 (1 July 2012 to 30 June 2013) (12 months)**	**Total Cost for Initial Contract Period (AUD)**
1	Monitoring and Evaluation Specialist	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
2	Core competency specialist 1	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
3	Core competency specialist 2	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
4	Core competency specialist 3	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
5	Core competency specialist 4	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
6	Core competency specialist 5	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
7	Core competency specialist 6	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
8	Core competency specialist 7	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
9	Core competency specialist 8	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	*TBA*	***TBA***
10	Reimbursables (lump sum)								***TBA***

5.3 The Daily Fee for Short Term Personnel, is based on an eight (8) hour working day. Any additional work undertaken within any one twenty-four (24) hour period shall not be claimed.

5.4 The Monthly Fee for Short Term Personnel, is based on a five (5) day working week for home country inputs and a seven (7) day working week for in-country (Fiji, Samoa, Solomon Islands, Tonga and Vanuatu) inputs.

5.5 The Daily and Monthly Fee for Short Term Personnel, is:

(a) ***Inclusive*** of all personnel-related taxes and levies incurred in Fiji, Samoa, Solomon Islands, Tonga and Vanuatu and Australia, with the exception of GST for Services performed in Australia [refer to **Clause 21** of the Standard Contract Conditions (Goods and Services Tax)];

(b) ***Inclusive*** of superannuation levy, if any, as appropriate;

(c) ***Inclusive*** of all escalators for the full period of the Program; **but**

(d) ***Exclusive*** of any profit, overheads, administration or management fee, or any other mark-up on the part of the Contractor.

5.6 In addition to the items listed under Clause 5.5 above, the following items only will be reimbursed at cost (subject to reasonableness) in arrears up to a maximum of **AUDXXX**.

(a) Airfares reimbursed at economy class for flight legs under four (4) hours and business class for flight legs over four (4) hours. Any travel undertaken at cheaper rates (e.g. discount fares) does not entitle the Contractor to reimbursement of the cost of any higher class of travel. Travel must be via the most direct and cost effective route;

(b) Compulsory Arrival and Departure Taxes, and Travel to and from Airport: reimbursed at cost;

(c) Hotel Accommodation: a pre-agreed amount to be reimbursed at actual cost incurred; and

(d) Travelling Allowance: A pre-agreed daily rate towards the costs of meals and incidentals.

5.7 Should AusAID exercise its rights, under **Clause 2.3** of Part 2 - Project Specific Contract Conditions to extend the term of this Contract, the Short Term Personnel Costs applying to the Contract extension will be the rates specified in **Table 3** above with the escalators specified in **Table 5** below.

6. REIMBURSABLE ADMINISTRATION, EQUIPMENT AND OPERATIONAL COSTS

6.1 AusAID shall reimburse the Contractor up to a maximum of **AUDTBA** for Administration, Equipment and Operational Costs.

6.2 The Contractor will be reimbursed on the basis of the actual cost incurred for items identified as reimbursable, up to the maximum amounts specified in **Table 4 below**. The actual cost will be exclusive of any costs that are included in the TMF in accordance with **Clause 2** of this Part.

6.3 In accordance with **Clause 6.1** above, the Contractor will be entitled to reimbursement for reasonable expenses incurred in respect of Reimburseable Administration, Equipment and Operational Costs subject to:

(a) Details of the items purchased or expenses incurred contained in a quarterly payment invoice prepared in accordance with **Clause 20** of the Standard Contract Conditions (Payment); and

(b) Original receipts and invoices being maintained to substantiate any claim.

6.4 When expenditure reaches 80% of the limits specified in **Table 4 below** the Contractor must advise AusAID of the remaining commitments and must ensure that the upper limits are not exceeded.

6.5 The Contractor may vary the sums assigned against individual line items in Table 3, within the overall financial limitation of this payment stream and subject to AusAID's written approval. Changes to the value of individual line items will not require a variation to this Contract.

6.6 The Contractor must notify AusAID in writing of the intended changes to the descriptions of individual line items. Any changes will be subject to AusAID's written approval. Such changes will not require a variation to this Contract.

6.7 The Contractor must maintain a Register of Assets in accordance with **Clause 10** of the Standard Contract Conditions of the Contract in the format described in Annex 1 to this Part 4.

6.8 Should AusAID exercise its rights, under **Clause 2.3** of Part 2 - Project Specific Contract Conditions to extend the term of this Contract, the Reimbursable Administration, Equipment and Operational Costs applying to the Contract extension will be subject to agreement between AusAID and the Contractor.

Table 4: Administration, Equipment and Operational Costs (Initial Period)

Item	Financial Limitation (Up to AUD)
Program Management Office	
Vehicle	TBA
Desktop computer	TBA
Printer	TBA
Software	TBA
Fixed phones and installation	TBA
Photocopier/fax/scanner	TBA
Network installation	TBA
Mobile phones	TBA
Office furniture/misc. fitout	TBA
Project Administration and Equipment Costs (National Secretariats in Fiji, Tonga, Solomon Islands and Vanuatu)	
Motorcycles	TBA
Desktop computer	TBA
Printer	TBA
Software	TBA
Photocopier/fax/scanner	TBA
Mobile phones	TBA
Office furniture/misc. equipment	TBA
TOTAL	**TBA**

7. REIMBURSABLE ACTIVITY COSTS

7.1 AusAID shall reimburse the Contractor up to a maximum of **AUDTBA** for Activities associated with Components 1-3 not captured under **Clauses 2-6**.

7.2 These costs will be for activities listed in the Annual Strategic Plans, or Monthly Exception reporting as in **Clause 8.3** below, that are approved through the Program Coordinating Committee, which will include but is not limited to:

(a) Meeting costs for Market Access Working Groups;

(b) Treatment and handling infrastructure to meet biosecurity requirements; and

(c) Quarantine and biosecurity activities such as pest surveillance;

(d) Short Term Personnel (not being STP reimbursed under **Clause 5** of this Basis of Payment). The Contractor must obtain written approval from AusAID for the fees to be paid to these short term personnel prior to engaging any personnel.

7.3 Where the Contractor is required to undertake an activity not included in the Annual Strategic Plan (for example, but not limited to, an emergency measure to respond to a biosecurity issue where trade is threatened) the Contractor must obtain written approval prior to the activity taking place from the National Market Access Coordinator for the particular country where the activity will be undertaken, by the AusAID Activity Manager and the Market Access Coordinator from SPC. The activity must be reflected in the Monthly Exception report and in all required reporting mechanisms.

7.4 The Contractor will be reimbursed monthly for the actual costs incurred for items identified as reimbursable Activity costs. The actual costs will be exclusive of any costs that are included in the TMF, LTP, STP or Administration, Equipment and Operational costs in accordance with **Clauses 2-6** of this Part.

8. RATES FOR OPTION PERIOD

8.1 Should AusAID exercise its rights, under **Clause 2.3** of Part 2 - Project Specific Contract Conditions to extend the term of this Contract, the LTP Monthly Fee Rates and STP Daily Fee Rates applying to the Contract extension will be increased in accordance with the Escalation percentage in **Table 5** below.

Table 5 – Escalation Table

	% for Option Period to be applied annually
Long Term Personnel (LTP)	*TBA*
Short Term Personnel (STP)	*TBA*

9. LEAVE

9.1 Leave accrued by LTP shall be deemed to be taken in the year it falls due and cannot be accumulated or paid out.

10. CLAIMS FOR PAYMENT

10.1 All claims for payment must be **made out to:**

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

10.2 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

10.3 Invalid invoices will be returned to contractors. Information on what constitutes a valid tax invoice can be found at http://www.ato.gov.au/businesses/content.asp?doc=/content/50913.htm

Annex 1

PHAMA – Assets Register

IDENTIFICATION NUMBER	DESCRIPTION OF ASSET	PURCHASE REFERENCE	PURCHASE DATE	PURCHASE PRICE	DATE RECEIVED LOCATION	REMARKS INCLUDING DISPOSAL ACTION & PRICE RECEIVED

Annex 2

Contractor Performance Assessment

AusAID will be directly responsible for carrying out the Contactor Performance Assessment which will be used as the basis for the Six Monthly Milestone Payment. In the last month of each six (6) months, AusAID will undertake an assessment of Contractor performance against the criteria shown below. AusAID will draw on the reports of the Independent Review Mechanism as well as their own participation in the program, written reports and financial statements, and minutes of the PCC as well as feedback from participating stakeholders (for example MAWGs), in carrying out their assessments.

Each of the Six Monthly Milestone Payments uses an "exception approach" as a means to highlight performance issues and give the Contractor an opportunity to respond and take action. It will be used in conjunction with ongoing communication and dialogue between AusAID and the Contractor on performance issues. The Six Monthly Milestone Payments will be payable upon a rating of 'satisfactory' or better for each and every criteria. For any criteria where an 'unsatisfactory' rating is made, AusAID will reduce the Six Monthly Milestone Payment in direct proportion to the total number of satisfactory ratings provided (e.g. if 1 out of 4 criteria are rated unsatisfactory, the payment will be reduced by 25% for that period).

For any criteria where a rating of 'needs attention' is given, the Six Monthly Milestone Payment will still be made and the Contractor will have the opportunity to rectify performance or provide a response to the rating.

Where the Contractor receives a 'needs attention' rating for the same criteria for three (3) consecutive assessments, this will be regarded as unsatisfactory and AusAID will reduce the Six Monthly Milestone Payment on the third assessment in direct proportion to the total number of satisfactory ratings provided.

Criteria	***Rating***	***Comment***
Partnerships and advocacy • All potential networks and partnerships are identified and effective relationships are established and supported, particularly with the national MAWGs and SPC; • Functional mechanisms to facilitate ongoing links and communication with partners and networks are clear, in use and actively promoted; • All partners and networks support and reinforce PHAMA.	Outstanding Satisfactory Needs Attention Unsatisfactory	*Substantive comments and examples should be provided*
Interventions • MA opportunities and issues being clearly identified and prioritised by the MAWGs and action plans developed to address top priorities; • PHAMA, in close collaboration with the MAWGs, effectively plans, implements and monitors activities to address top priorities; • Linkages with supply-chain development Programs developed.	Outstanding Satisfactory Needs Attention Unsatisfactory	
Capacity Building • Capacity building for the MAWGs, SPC, NMACs and office staff operates at a pace and approach that is appropriate and consistent with their priorities, responsibilities and absorptive ability; • High quality, timely and appropriate technical assistance is provided in an equitable manner, in accordance with PHAMA priorities; • MAWGs are established, supported, equipped and resourced to plan and monitor PHAMA activities;	Outstanding Satisfactory Needs Attention Unsatisfactory	
Project management • Systems for the equitable recruitment, mobilisation, performance management of staff and subcontractors operating effectively; • Staff and subcontractors are appropriately qualified, experienced for the positions, supported in their work and working effectively as a team; • High quality inputs and support are procured	Outstanding Satisfactory Needs Attention Unsatisfactory	

in line with PHAMA procedures and quality processes are maintained; • Project planning, management, coordination and communication is effective; • An integrated M&E system is designed and implemented and provides a substantive input to progressive learning; • Financial administration conducted in accordance with the approved Finance/ Operations Manual, with timely and accurate financial information being provided to AusAID; • Effective support provided to the PCC.		

Note: Key Performance Indicators will be worked up with the preferred tenderer.

SECTION 2 – STANDARD TENDER CONDITIONS

CONTENTS

PART 5 – STANDARD TENDER CONDITIONS

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

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

(a) Electronically, via AusTender at https://tenders.gov.au before the **Closing Time** and in accordance with the tender lodgement procedures set out in **Annex D to this Part** and on AusTender; or

(b) Physically, by depositing by hand in the Canberra Tender Box before the **Closing Time**.

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

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

(a) the technical proposal which includes:

(i) **Tender Schedule A** addressing the selection criteria and including the required annexes in the form specified in **Part 1**; and

(ii) **Tender Schedule B** providing details of Specified Personnel in the form specified in **Part 1**;

(b) The financial proposal in the form specified in **Part 1 Tender Schedule C**. For electronic submissions, **Tender Schedule C** must be submitted as a separate file, and for hard copy submissions, **Tender Schedule C** must be submitted in a separate sealed envelope;

(c) The financial assessment material in the form specified in **Part 1** Tender Schedule D. For electronic submissions, **Tender Schedule D** must be submitted as a separate file, and for hard copy submissions, **Tender Schedule D** must be submitted in a separate sealed envelope; and

(d) The completed and signed Tenderer Declaration in the form specified in **Annex B of this Part**.

(e) The completed and signed Tenderer's Submission Checklist in the form specified in **Annex C of this Part.**

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

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

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

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

1.8 It is a condition of this RFT that each Tender must remain valid and available for acceptance by AusAID for the **Tender Validity Period** specified in the Tender Particulars (**Part 1 Clause 1** of this RFT).

1.9 A person or persons having authority to lodge the Tender and enter into a contract on behalf of the Tenderer must sign the Tenderer Declaration (**Annex B of this Part**).

1.10 AusAID may extend the **Closing Time** at its sole and absolute discretion, and will issue an Addendum notifying any decision to extend.

Conditions Applying to Electronic Tender Lodgement

1.11 Electronic tenders must be lodged electronically via the Australian Government Tender System, AusTender, at https://www.tenders.gov.au before the **Closing Time** and in accordance with the tender lodgement procedures set out in **Annex D of this Part** and on AusTender.

1.12 Where there is any inconsistency between the tender lodgement procedures set out on AusTender and those set out in this RFT, this RFT will prevail.

1.13 Tenders not submitted in accordance with **Clause 1.11** will be excluded from evaluation.

1.14 It is the responsibility of tenderers to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on AusTender. Neither AusAID nor the Commonwealth takes any responsibility for any problems arising from tenderers' infrastructure and/or Internet connectivity.

Conditions Applying to Hard Copy Tender Lodgement

1.15 For hard copy lodgement, the Tenderer is responsible for the delivery of their Tender. The Tender must be placed in AusAID's **Canberra Tender Box**. The Tender must be delivered during **Business Hours** by the **Closing Time**. Failure to submit a Tender in accordance with this clause may render the Tender liable to rejection.

1.16 The Original Tender document and any copies requested should be bound using a plastic comb binding, and should contain no plastic page separators.

1.17 The Tender should be endorsed with the name of the Project and marked: "Tender Box: Attention **Contact Person.**" The Tenderer's postal address and fax number should be provided on the outside of the Tender.

2. TENDERER ENQUIRIES

2.1 Any enquiries that Tenderers may have must only be directed to the **Contact Person** specified in the Tender Particulars.

2.2 If a Tenderer:

(a) finds any discrepancy, error or omission in the terms and conditions of the RFT, including of the Contract Conditions; or

(b) wishes to make any enquiry, including seeking clarification, of the RFT, including of the Contract Conditions,

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

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

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

3. LATE TENDERS

Conditions Applying to Tenders Lodged Electronically

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

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

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

Conditions Applying to Tenders Lodged in Hard Copy

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

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

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

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

4. NON-CONFORMING TENDERS

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

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

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

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

5. CLARIFICATION OF TENDERS

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

(a) respond to any request for clarification within the time period specified by AusAID;

(b) ensure that additional information provided answers AusAID's enquiry and is fully consistent with the Tender submitted by the Tenderer; and

(c) not seek to change any aspect of their Tender by providing additional information to AusAID.

5.2 Clarifications are provided on the terms of the RFT.

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

6. AMENDMENT OF THE RFT

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

7. ASSESSMENT OF TENDERS

7.1 Tenders will be assessed on the following basis:

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

(b) financial

to achieve the best value for money outcome.

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

Technical Assessment

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

7.4 AusAID may invite a Tenderer (shortlisted or otherwise) to give AusAID a short presentation and be interviewed by the TAP. Specified Personnel, such as the Finance and Administration Manager and the Development Practitioner - Prevention, will be required to attend at the presentation. If Specified Personnel are unable to attend, a teleconference presentation may be arranged. Specified Personnel will be required to answer any questions asked by the TAP. The TAP will be convened in Papua New Guinea and the costs of the Tenderer's (and its personnel's) attendance must be borne by the Tenderer.

7.5 Tenderers should note that failure by a Tenderer or proposed Specified Personnel to attend the presentation (either in person or via teleconference) may disadvantage the Tender.

7.6 TAP members are required to maintain the "commercial-in-confidence" nature of the proceedings of the TAP meeting. TAP members must not discuss matters relating to the technical assessment of any tender with any party. Tenderers must not make contact with any members of the TAP, outside any TAP meeting, and any such contact will be considered a breach of confidentiality and may result in AusAID rejecting the tender of the Tenderer concerned.

7.7 AusAID reserves the right to take into account in the assessment of this Tender the past performance of the Tenderer or any proposed personnel contained in the Tender in accordance with **Annex A of this Part**.

7.8 In making its assessment the TAP or AusAID may have regard to other factors relevant to the suitability, capacity and qualifications of a Tenderer including but not limited to:

(a) the Tenderer's ability to comply with AusAID policies referred to in this RFT and the Tenderer's ability to comply with the **Contract Conditions**;

(b) the resourcing of Tenders;

(c) information obtained from any source which is relevant to the capacity of the Tenderer or any proposed personnel to perform the Services and achieve the Project goals and objectives. Such information may be the result of inquiries made by AusAID; and

(d) the Tenderer's demonstrated understanding of the cultural environment of the Project.

These other factors have not been allocated any specific weightings.

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

Goods and Services Tax

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

Insurances

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

Project Vehicles

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

7.13 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute AUD250.00 for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor's invoices.

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

(a) Project demands must always take precedence over private use;

(b) the Contractor must ensure that any persons driving the Project Vehicle must have a current valid international or Partner Country drivers license for the class of Project Vehicle;

(c) the Contractor is responsible for ensuring Project Vehicles are appropriately insured;

(d) the Contractor is responsible for ensuring that seat belts are fitted and must make every effort to ensure that they are worn at all times by drivers and all passengers;

(e) the Contractor is responsible for any costs incurred in the event of an accident while the Project Vehicle is being privately used; and

(f) the Contractor must ensure that Project Vehicles are serviced in accordance with manufacturer's requirements.

Tenderers Note: compliance with the requirements detailed in **Clause 7.14 above** may be subject to a review undertaken by or on behalf of AusAID under the **Standard Conditions** clause of the Contract titled **Reviews**.

Technical proposal format

7.15 The technical proposal must:

(a) indicate the Tenderer's nominated contact person and contact details on the cover page;

(b) be in a type font of no less than 12 point on A4 paper;

(c) have left and right page margins of no less than 2.5cm, and top and bottom page margins of no less than 3cm, excluding headers, footers and page numbers;

(d) not have the AusAID logo or any other representation or mark which may indicate that the Tenderer is in any way related to or connected with AusAID; and

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

Curricula vitae

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

(a) name and personal contact details (this can be an email address or phone number);

(b) nationality and if relevant permanent resident status;

(c) professional qualifications, including institution and date of award; and

(d) details of recent relevant professional and development work experience, including the duration and extent of inputs.

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

"I, ***[insert name]***, declare that:

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

(b) I am available to participate in the Project in the role in which I have been nominated in the Tender for the period or periods indicated in the Tender;

(c) I am a person of good fame and character; and

(d) I have not been convicted of an offence of, or relating to, bribery of a public official, nor am I subject to any proceedings which could lead to such a conviction."

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

Referees

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

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

(a) are not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with, the Tenderer or a subsidiary organisation of the Tenderer;

(b) are not included in the Tender as proposed team members; and

(c) are not AusAID employees.

7.20 Tenderers must further ensure that nominated referees:

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

(b) are able to provide comments in English.

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

8. JOINT VENTURES AND CONSORTIUMS

8.1 AusAID intends to contract with a single legal entity.

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

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

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

9. ASSOCIATES AND OTHER SUB-CONTRACTORS

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

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

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

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

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

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

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

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

10. OWNERSHIP OF TENDERS AND RFT

10.1 All Tenders become the property of AusAID on lodgement.

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

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

10.4 Copyright in the RFT is reserved to AusAID.

11. CONFLICT OF INTEREST

11.1 Tenderers must:

(a) identify any actual or potential conflict of interest; and

(b) the procedures they intend to implement for dealing with, any actual or potential conflicts of interest,

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

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

(a) enter into discussions to seek to resolve such conflict of interest; or

(b) disregard the Tender submitted by such a Tenderer; or

(c) take any other action that AusAID considers appropriate.

12. TENDERING CONDUCT

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

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

13. INELIGIBILITY TO TENDER

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

(a) "**Proposed Subcontractor**" means a subcontractor that the Tenderer intends to engage for the Project, whether or not nominated in its Tender;

(b) "Related Entity" means any person or company which is:

(i) a Proposed Subcontractor;

(ii) in the same group as the Tenderer or a Proposed Subcontractor;

(iii) a 'related body corporate' of the Tenderer or a Proposed Subcontractor, within the meaning of the *Corporations Act 2001*; or

(iv) associated with the Tenderer or a Proposed Subcontractor in respect of its Tender;

(c) “Relevant List” means any list maintained by a donor of development funding which is similar to the World Bank List; and

(d) “World Bank List” means the World Bank’s “Listing of Ineligible Firms” or the “Listing of Firms Letters of Reprimand” posted at www.worldbank.org.

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

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

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

(a) is listed on a World Bank List or on a Relevant List;

(b) is subject to any proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List;

(c) is temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process;

(d) is temporarily suspended from tendering by a donor of development funding other than the World Bank; or

(e) is the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.

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

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

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

(a) becomes listed on a World Bank List or Relevant List, or is subject to proceedings or an informal process which could lead to such a listing;

(b) is or becomes temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process; or

(c) is or becomes temporarily suspended from tendering by a donor of development funding other than the World Bank.

13.8 Tenderers should note that if they tender in breach of this Clause 13, or are subsequently listed on a World Bank List or Relevant List, AusAID may terminate any contract subsequently entered into with that Tenderer.

14. AusAID's RIGHTS

14.1 As a Commonwealth Government agency, all AusAID procurement is subject to the Commonwealth Procurement Guidelines. The core principle of Commonwealth procurement is to achieve value for money. AusAID is also bound to conduct its procurement in an ethical, accountable, transparent, efficient and effective manner.

14.2 AusAID reserves the right to:

(a) seek Tenders from any organisation;

(b) accept or reject any Tender;

(c) terminate, extend or vary its procurement process for the Services;

(d) request clarification in relation to a Tender;

(e) seek information or negotiate with any organisation that has not been invited to submit a Tender;

(f) terminate negotiations with the preferred Tenderer and commence negotiations with any other Tenderer;

(g) evaluate Tenders as AusAID sees appropriate; and

(h) negotiate with any one or more Tenderers.

15. TENDERER'S ACKNOWLEDGEMENT

15.1 A Tender is submitted on the following basis:

(a) no legal obligation or agreement whatsoever is intended to be or is created between AusAID and any Tenderer by virtue of the tender process (including but not limited to statements contained in this RFT) unless and until contract negotiations are completed and a formal written agreement acceptable to AusAID is entered into and executed by an authorised officer of AusAID and by the successful Tenderer, if any;

(b) the Tenderer acknowledges and agrees that AusAID, its employees, agents and advisers are not, and will not be responsible, or liable for the accuracy or completeness of any information contained in this RFT; and

(c) the Tenderer is responsible for all costs of and incidental to the preparation and delivery of the Tender, including obtaining this RFT, or any subsequent stage of the procurement process, including answering any queries and providing any further information sought by AusAID.

16. DEBRIEFING OF TENDERERS

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

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

17. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

17.1 Freedom of Information

(a) The *Freedom of Information Act 1982* gives members of the public rights of access to official documents of the Australian Government and its agencies. The *Freedom of Information Act 1982* extends, as far as possible, the right of the Australian community to access information (generally documents) in the possession of the Australian Government, limited only by considerations of the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.

(b) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Freedom of Information Act 1982* on their participation in this RFT process and any subsequent contract.

17.2 Privacy

(a) The *Privacy Act 1988* establishes a national scheme providing, through codes of practice adopted by private sector organisations and the National Privacy Principles, for the appropriate collection, holding, use, correction, disclosure and transfer of personal information by private sector organisations.

(b) The Draft Contract provides that the Contractor will comply with the *Privacy Act 1988*, including the Information Privacy Principles and the National Privacy Principles whether or not the Contractor is an organisation subject to the *Privacy Act 1988*.

(c) The Tenderers acknowledge that the *Privacy Act 1988* reflects the principles of the International Covenant on Civil and Political Rights and OECD Guidelines, in particular, the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.

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

17.3 Access by Australian National Audit Office

(a) Attention of Tenderers is drawn to the *Auditor-General Act 1997* which provides the Auditor-General, or an authorised person, with a right to have, at all reasonable times, access to information, documents and records.

(b) In addition to the Auditor-General's powers under the *Auditor-General Act 1997*, the Draft Contract provides that the Contractor will provide the Auditor-General, or an authorised person, access to information, documents, records and agency assets, including those on the Contractor's premises. Such access will apply for the term of the contract and for a period of seven years from the date of expiration or termination.

(c) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997* on their participation in the RFT process and any subsequent contract.

17.4 Access by Ombudsman

(a) Attention of Tenderers is drawn to the *Ombudsman Act 1976* which gives Australians access to a government officer, known as an ombudsman, who investigates complaints from the public about government agencies and their operations and decisions, and reports on ways in which they may be resolved.

(b) In addition to the ombudsman's powers under the *Ombudsman Act 1976*, the Draft Contract provides that the Contractor will provide the ombudsman, access to information, documents, records and agency assets, including those on the Contractor's premises. Such access will apply for the term of the contract and for a period of seven years from the date of expiration or termination.

(c) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Ombudsman Act 1976* on their participation in the RFT process and any subsequent contract.

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

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

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

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

(a) AusAID will exclude from consideration any Tender from a Tenderer who is listed:

(i) by the Minister for Foreign Affairs under the *Charter of the United Nations Act 1945* and/or listed in regulations made under Division 102 of the *Criminal Code Act 1995* (Cth). Further information about listed persons and entities is available from the Department of Foreign Affairs and Trade website at www.dfat.gov.au/icat/UNSC_financial_sanctions.html and from http://www.nationalsecurity.gov.au/

(ii) by the World Bank on its "Listing of Ineligible Firms" or "Listing of Firms Letters of Reprimand" posted at www.worldbank.org (the "World Bank List"); or

(iii) by any other donor of development funding on a list similar to the World Bank List.

17.7 Fair Work Principles

(a) Tenderers should note that the Australian Government Fair Work Principles apply to this procurement. More information on the Fair Work Principles and their associated User Guide can be found at www.deewr.gov.au/fairworkprinciples.

(b) In particular Tenderers should note that in accordance with the Fair Work Principles AusAID will not enter into a contract with a Tenderer who:

(i) fails, when required by the Commonwealth, to confirm it understands and complies with all relevant workplace relations law, occupational health and safety law, or workers' compensation law;

(ii) is subject to an order from any Court or Tribunal decisions relating to a breach of workplace relations law, occupational health and safety law, or workers' compensation law with which the Tenderer has not fully complied or is not fully complying;

(iii) has a *Fair Work Act 2009* agreement that was made on or after 1 January 2010 that does not include genuine dispute resolution procedures;

(iv) fails to provide information when requested by AusAID relevant to their compliance with the Fair Work Principles;

(c) For the purposes of **Clause 17.7(b)** above:

(i) a genuine dispute resolution procedure is one which provides each of the following processes to resolve workplace disputes:

(1) the ability for employees to appoint a representative in relation to the dispute;

(2) in the first instance procedures to resolve the dispute at the workplace level;

(3) if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and

(4) if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.

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

17.8 Other Australian Government and AusAID Policies

(a) Tenderers should familiarise themselves with AusAID policies including:

(i) the policy *Gender Equality in Australia's Aid Program – Why and How* (March 2007). This document is available on AusAID's website at http://www.ausaid.gov.au/publications/default.cfm;

(ii) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014', and in particular the strategy's six guiding principles, located at http://www.ausaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;

(iii) AusAID's policy on the environment as set out in the *Environmental Management Guide for Australia's Aid Program*. This document is available on AusAID's website at http://www.ausaid.gov.au/keyaid/envt.cfm.

(iv) AusAID's *Child protection policy*, in particular the child protection compliance standards at Attachment 1 to the policy. This document is available on AusAID's website at http://www.ausaid.gov.au/publications/default.cfm.

(v) any other policies published from time to time on http://www.ausaid.gov.au or as otherwise notified to Tenderers.

18. FURTHER REQUIREMENTS

18.1 Tenderers should be aware that current employees of AusAID cannot be included in Tenders for AusAID projects. Former AusAID employees may be included in Tenders if doing so does not represent a breach of conflict of interest.

18.2 Tenderers should note that the Commonwealth Procurement Guidelines require that Commonwealth agencies must not enter into agreements with suppliers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not paid the claim. AusAID will reject submissions from tenderers in this position.

18.3 Tenderers must keep any discussions or contact with AusAID in connection with the Tender, the RFT and any contract negotiations confidential. Any unauthorised approach by a Tenderer to an AusAID officer or discussion of matters pertaining to the procurement process will be considered a breach of confidentiality.

19. CONTRACT NEGOTIATIONS

19.1 AusAID may select, as preferred Tenderer, the Tenderer(s) who best meet the requirements of the RFT on the basis of the tender assessment process.

19.2 The preferred Tenderer(s) must within fourteen (14) days of written notification from AusAID that it has been selected as preferred Tenderer, provide AusAID with originals of Police Clearance Certificates for all Personnel nominated in their Tender in positions specified in the Specified Personnel Table (**Clause 5, Part 1 of the RFT**) as working with children.

(a) Police Clearance Certificates must be provided for each country in which the individual has lived for twelve (12) months or longer over the last five (5) years, and for the individual's country of citizenship;

(b) Police Clearance Certificates must be dated no earlier than twelve (12) months before the Tender Closing Time;

(c) If any required Police Clearance Certificates are not provided to AusAID in accordance with **Clause 19.2** above, AusAID may exercise its right, specified at **Clause 14.2** above, to terminate negotiations with the preferred Tenderer and commence negotiation with any other Tenderer. AusAID recognises that in limited instances it may prove impossible to obtain a reliable Criminal Record Check, and will take non-provision of a Criminal Record Check into account upon request;

(d) AusAID reserves the right to require the preferred Tenderer(s) to replace any Personnel whose Police Clearance Certificate shows conviction of criminal offences of, or relating to, child abuse where AusAID, in its absolute discretion, considers that the Personnel poses an unacceptable risk to children's safety or well-being. Nominated replacement Personnel must have qualifications and experience equal to or better than those of the personnel being replaced, and must be acceptable to AusAID.

19.3 It is AusAID's intention to contract on the basis of the Contract Conditions contained in this RFT. Following the selection of a preferred Tenderer AusAID may enter into negotiations with the preferred Tenderer in respect of the Scope of Services and the Basis of Payments of the contract. Such negotiations will be strictly limited to matters of detail rather than substance.

19.4 If the Scope of Services is reduced as a result of constraints imposed on AusAID before or after the **Closing Time**, AusAID and the preferred Tenderer must negotiate, in good faith, a proportionate reduction, if necessary, to the fixed price quote.

19.5 Enhancements to the Scope of Services included in the Tender in accordance with the selection criteria should be costed into the fixed price quote for the purposes of the like-for-like price assessment. Where AusAID has instructed that the like-for-like price assessment is to be based on indicative values, the Tenderer must clearly specify all cost implications of enhancements proposed in the Tenderer's technical proposal.

20. CONTRACT PLANS

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

21. APPLICABLE LAW

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

ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION

1. AusAID reserves the right to take into account in the assessment of this Tender the past performance, in previous AusAID and non-AusAID activities, or activities of:

   (a) any Tenderer; and

   (b) any member of the proposed personnel,

   in its capacity as:

   (c) contractor, consultant or sub-contractor;

   (d) an associate or employee of a contractor, consultant or sub-contractor; or

   (e) a joint venture partner.

2. AusAID may:

   (a) include in the assessment any contractor performance information contained in any internal AusAID contractor performance reporting systems in relation to performance of the Tenderer or proposed management, administrative and 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 twelve (12) months.

3. AusAID reserves the right to use any relevant information obtained in relation to a Tenderer or proposed personnel member obtained either during the Tender period or within the previous twelve (12) month period by providing it to the Technical Assessment Panel (TAP) or to any other relevant person for the purposes of Tender assessment, and such information may be taken into account in the course of assessment of the Tender by the TAP and AusAID. Where information has been received in accordance with paragraph 2 (a) above, this may also be introduced into the TAP process.

4. AusAID may, at any time, make independent inquiries of:

   (a) any person or entity which it reasonably believes to have actual knowledge of the performance of the Tenderer or proposed personnel member/s on a previous project or activity, whether or not that person or entity is nominated in the Tender as a referee for the Tenderer or proposed personnel member; and

   (b) any Commonwealth Government department, agency or other government entity in Australia whether Commonwealth or State, or any other country, including law enforcement agencies in relation to a person who is proposed for inclusion in a Tender or a Tenderer.

5. AusAID may request a Tenderer to provide additional or clarifying information in relation to information obtained during the assessment process following the **Closing Time** for the purpose of assessment of the Tender.

6. Information obtained as a result of inquiries made by AusAID in relation to performance on previous activities will be sought on a confidential basis and AusAID shall not be obliged to disclose the content or source of prior performance information about a Tenderer or individual to any person.

7. AusAID shall not be liable upon any claim, demand, proceeding suit or action by any Tenderer or any proposed personnel member in relation to any matter, thing or issue arising out of or in any way in relation to the collection of information from any source or the use of any information collected pursuant to this Annex in the Tender assessment process.

ANNEX B – TENDERER DECLARATION

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

1. DEFINITIONS

1.1 In this declaration:

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

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

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

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

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

2. BASIS OF DECLARATION

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

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

3. THE OFFER

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

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

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

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

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

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

3.7 I agree:

(a) that the Tenderer will be bound by this Tender for the Tender Validity Period of 180 days after the **Closing Time**; and

(b) that this Tender may be accepted by AusAID at any time before the expiration of that period or any additional period to which we may agree.

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

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

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

(a) any discussion or correspondence with other tenderers concerning the amount of the Tender;

(b) any collusive tendering or other anti-competitive practices with any of the other Tenderers or any other person; or

(c) any conduct or have any arrangement or arrive at any understanding with any of the other Tenderers.

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

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

(a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of the RFT; or

(b) listed on a Relevant List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of the RFT.

3.13 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not subject to any proceedings or informal processes which could lead to listing on a World Bank List or listing on a Relevant List. ***OR*** **[Option B:]** I acknowledge that the Tenderer or a Related Entity is subject to proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List. I warrant that the Tenderer has included information regarding the proceedings in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).

3.14 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process, or temporarily suspended from tendering by a donor of development funding other than the World Bank. ***OR*** **[Option B:]** I acknowledge that the Tenderer or a Related Entity has been temporarily suspended from tendering by either the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the temporary suspension in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).

3.15 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding. ***OR*** **[Option B:]** I acknowledge that the Tenderer or a Related Entity is the subject of a formal or informal investigation by the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the investigation in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).

3.16 I undertake that, if the Tenderer becomes aware of a circumstance referred to in **Clause 13.4** (Ineligibility to Tender) of **Part 5** of the RFT after it has submitted its Tender, I will immediately notify AusAID in writing.

3.17 Neither the Tenderer nor any of its employees, agents or contractors have been convicted of an offence of, or relating to bribery of a public official, nor are they subject to any proceedings which could lead to such a conviction.

3.18 I undertake that the Tenderer will not permit any of its employees, agents or contractors, to work with children if they pose an unacceptable risk to children's safety or well being.

3.19 No employees of the Tenderer, or its agents or contractors, who have been nominated in Project positions that involve working with children, have been convicted of a criminal offence relating to child abuse, nor are they subject to any proceedings which could lead to such a conviction.

3.20 Neither the Tenderer nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.

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

3.21 The Tenderer has read and understood the Fair Work Principles User Guide and understands that the Fair Work Principles will apply to the procurement for the Project.

3.22 Compliance with Fair Work Principles

(a) The Tenderer declares the following:

(i) The Tenderer has had **_______** ***[Nil or specify number]*** adverse Court or Tribunal decision for a breach of workplace relations law, occupational health and safety law, or workers' compensation law in the past two years preceding the date of this Request for Tender.
[If response is nil adverse decisions go to 3.22(a)(iii) below]

(ii) ***[Note to Tenderers: Strike through whichever option does not apply]***

The Tenderer has fully complied or is fully complying with all penalties or orders arising from the Court or Tribunal decisions declared above.

OR

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

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

(iii) The Tenderer understands its obligations under all applicable workplace relations, occupational health and safety, and workers' compensation laws. The Tenderer undertakes that it complies with all of these obligations.

(iv) The Tenderer confirms that (except where it is an overseas based supplier to which these requirements do not apply in accordance with the Fair Work Principles User Guide) it:

(A) has consultation arrangements which encourage cooperation and engagement of employees and management; and

(B) understands and respects their employees' rights in relation to freedom of association and the right to representation at work, including that the Tenderer allows its employees to be able to make a free and informed choice about whether to join a union and be represented at work.

(v) Where the Tenderer has a *Fair Work Act 2009* enterprise agreement that was approved on or after 1 January 2010 that enterprise agreement includes a genuine dispute resolution procedure that includes the following:

(A) the ability for employees to appoint a representative in relation to the dispute;

(B) in the first instance procedures to resolve the dispute at the workplace level;

(C) if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and

(D) if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.

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

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

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

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

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

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

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

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

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

4. ADDENDA TO TENDER DOCUMENTS

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

Number _____ Dated _____ Number _____ Dated ____

Number _____ Dated ____ Number _____ Dated ____

5. ADDRESS OF TENDERER

Address or Registered Office of Tenderer

Address for service of notices (NOT PO. BOX)

Telephone Number: .... Fax Number: ....

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

______________________________ ______________________________

insert name and title *Signature*

ANNEX C – TENDERER'S SUBMISSION CHECKLIST

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

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

	Checked
Tenderer's Declaration	
Has the Tenderer's Declaration been completed and signed?	
For electronic lodgement has one (1) electronic copy in a separate file been submitted?	
For hard copy lodgement, has one (1) printed original been submitted?	
Tender Schedule A: Technical Proposal and Annexes	
Is the Technical Proposal within the specified page limit?	
Does the Technical Proposal address each of the selection criteria individually?	
Does the Technical Proposal indicate the Tenderer's nominated contact person and contact details on the cover page?	

Are the required annexes included and within the specified page limit(s)?	
If the Past Experience Annex is used have at least two (2) referees been nominated and has it been confirmed that they are: a) not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with the Tenderer or a subsidiary of the Tenderer? b) not included in the Tender as proposed team members? c) not AusAID employees?	
Are both the Technical Proposal and annexes: a) in a type font of no less than 12 point on A4 paper? b) formatted with left and right page margins no less than 2.5cm and top and bottom page margins no less than 3cm, excluding headers, footers and page numbers? c) absent of AusAID's logo or any representation or mark which indicates that the Tenderer is in any way related to or connected with AusAID?	
For electronic lodgement, has one (1) electronic copy containing all parts and annexes been provided?	
For hard copy lodgement, has one (1) printed original containing all parts and annexes been provided?	
Tender Schedule B: Specified Personnel	
Are the CVs within the specified page limit and certified and signed by the nominated personnel?	
Do the CVs include the name and personal contact details of the nominated personnel?	
Do the CVs include the nationality and, if relevant, permanent residency status of the nominated personnel?	

Do the CVs include details of the professional qualifications of nominated personnel (if relevant), including institution and date of award?	
Do the CVs include details of recent relevant professional and development work experience, including the duration and extent of inputs?	
Have at least two (2) referees been nominated on each of the CVs and has it been confirmed that they are: a) not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with the Tenderer or a subsidiary of the Tenderer b) not included in the Tender as proposed team members? c) not AusAID employees?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed original been provided?	
Tender Schedule C: Financial Proposal	
Is the financial proposal in the required format?	
Is the financial proposal a fully costed schedule of rates and based on the inputs as specified in the Scope of Services, including: (a) escalation? (b) necessary insurances required by the Contract Conditions and for the performance of the Services? (c) detailed information on assumptions used in preparing the pricing?	
For electronic lodgement has one (1) electronic copy been provided in a separate file?	

For hard copy lodgement has one (1) printed original been provided in a separate, sealed envelope?	
Tender Schedule D: Financial Proposal **(Option 1 or 2 is to be selected by Tenderers in accordance with the terms detailed in the RFT).**	
Option 1	
Have the names of the tendering entity and its ultimate owners been provided?	
Have the names and financial relationships between the tendering entity, its parent entity (if relevant) and other related entities within the group been provided?	
Have the previous three (3) years annual financial statements for the tendering entity been provided including: (a) a balance sheet? (b) a profit and loss statement? (c) a cashflow statement? (d) contact name and telephone number of the Tenderer's financial accountant? (e) a statement detailing any other tendering opportunities being pursued by the tendering entity or the group and the likely impact of such tendering opportunities on the financial capacity of the Tenderer to discharge its potential contractual obligations to AusAID under this RFT ?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed copy been provided in a separate sealed envelope?	
Option 2	
Has the date of the most recent financial assessment and the name of the Tender for which this assessment was undertaken been provided?	

Has an explanation of why the Tenderer believes a further financial assessment is not necessary been provided?	
Has a statutory declaration declaring that the Tenderer's financial position has not altered materially since the date of the previous assessment been provided?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed copy been provided in a separate sealed envelope?	

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

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

1.1 AusTender is the online tendering system for Australian Government Agencies. AusTender allows tenderers to download tender documentation and upload tender responses. Tenderers must first register with AusTender at https://www.tenders.gov.au.

1.2 Access to and use of AusTender is subject to terms and conditions. Tenderers must agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender.

1.3 It is the responsibility of tenderers to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on AusTender. Neither AusAID nor the Commonwealth take any responsibility for any problems arising from tenderers' infrastructure and/or Internet connectivity.

1.4 Tenderers must inform themselves concerning all security measures and other aspects of the AusTender technical environment. Tenderers must make their own assessment of the AusTender system prior to using it for any matter related to this RFT and no responsibility will be accepted by AusAID arising in respect of any use or attempted use by any party of AusTender.

2. REGISTERED TENDERERS AND NOTICES

2.1 In the event that AusAID elects to vary or supplement this RFT or change the conditions of tender, it will make reasonable efforts to inform tenderers in accordance with this **Clause 2**.

2.2 Tenderers may be informed by notices and other information issued as addenda posted on the webpage for this RFT on AusTender.

2.3 Tenderers who have registered and downloaded the tender documentation will be notified by AusTender via email of any addenda issuance. It is in the interest of tenderers to ensure they have correctly recorded their contact details prior to downloading tender documentation. If tenderers have not recorded their details correctly, they should amend their details and download the tender documentation again.

2.4 Tenderers are required to log in to AusTender and collect addenda as notified.

2.5 The Commonwealth will accept no responsibility if a tenderer fails to become aware of any addendum notice which would have been apparent from a visit to the AusTender page for this RFT.

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

3. AUSTENDER HELP DESK

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

AusTender Help Desk
Telephone: 1300 651 698
Email: tenders@finance.gov.au

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

4. PREPARING TO LODGE A TENDER ELECTRONICALLY

Virus Checking

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

Tender File Formats, Naming Conventions and Sizes

4.2 Tenderers must lodge their tender in accordance with the requirements set out in this **Clause 4** for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the tender not uploading successfully and/or may eliminate the bid from consideration.

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

4.4 The tender file name/s must:

(a) incorporate the tenderer's company name

(b) reflect the various parts of the bid they represent, where the tender comprises multiple files;

(c) not contain \ / : * ? " < > | characters. Check your files and re-name them if necessary; and

(d) not exceed one hundred (100) characters.

4.5 Tender files:

(a) must not exceed a combined file size of five (5) megabytes per upload;

(b) should be uploaded from a high level directory on a tenderer's desktop, so as not to impede the upload process; and

(c) should be zipped (compressed) together for transmission to AusTender.

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 five (5) megabytes. If an upload would otherwise exceed five (5) megabytes, the tenderer should either:

(a) transmit the tender files as a compressed (zip) file not exceeding five (5) megabytes; and/or

(b) lodge the tender in multiple uploads ensuring that each upload does not exceed five (5) megabytes and clearly identify each upload as part of the tender.

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

5. ELECTRONIC LODGEMENT PROCESS

5.1 Before submitting an electronic tender, tenderers must:

(a) ensure their technology platform meets the minimum requirements identified on AusTender;

(b) refer to AusTender's Help guidance, if required, on uploading tenders;

(c) take all steps to ensure that the tender is free from anything that might reasonably affect useability or the security or operations of AusTender and/or AusAID computing environment;

(d) ensure that the tender does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by AusAID; and

(e) ensure that the tender complies with all file type, format, naming conventions, size limitations or other requirements specified in **Clause 4** above or otherwise advised by AusAID or required by AusTender.

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

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

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

5.5 If tenderers have any problem in accessing the AusTender website or uploading a tender they must contact AusAID via the nominated **Contact Person** (**Clause 1 of Part 1 of the RFT**) or the AusTender Help Desk (**Clause 3.1** above) **prior to the Closing Time.** Failure to do so will exclude a tender from consideration.

6. LATE TENDERS, INCOMPLETE TENDERS AND CORRUPTED FILES

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

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

6.3 Where a tender lodgement consists of multiple uploads, due to the number and/or size of the files, tenderers must ensure that transmission of all files is completed and receipted before the **Closing Time** and **Clause 6.2** above will only apply to the final upload.

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

7. PROOF OF LODGEMENT

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

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

8. AUSTENDER SECURITY

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

8.2 Tenderers acknowledge that:

(a) lodgement of their tender on time and in accordance with these conditions of tender is entirely their responsibility; and

(b) AusAID will not be liable for any loss, damage, costs or expenses incurred by tenderers or any other person if, for any reason, a tender or any other material or communication relevant to this RFT, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

PART 6 - STANDARD CONTRACT CONDITIONS

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

PART B – STANDARD CONTRACT CONDITIONS

CONTENTS

PART B – STANDARD CONTRACT CONDITIONS

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

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

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

(a) is designated by AusAID as confidential; or

(b) the Contractor knows or ought to know is confidential;

(c) is comprised in or relating to the Contract Material, the Data, any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID, or the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;

(d) is personal information under the *Privacy Act 1988*,

but does not include this Contract or information which:

(e) is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation; or

(f) has been independently developed or acquired by the Contractor, as established by written evidence.

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

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

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

"**Commonwealth Procurement Guidelines**" means the guidelines issued by the Minister for Finance and Administration that governs purchasing by Commonwealth agencies and departments. Details are available at: http://www.finance.gov.au/procurement/procurement_guidelines.html.

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

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

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

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

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

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

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

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

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

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

"**Document**" includes:

(g) 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

(h) a disc, tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device.

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

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

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

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

(b) acts of war (whether declared or not), invasion, acts of foreign enemies, mobilisation, requisition, or embargo;

(c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution, or military usurped power, or civil war; and

(d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosion, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

General

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

(a) the contractual obligations of the Parties must be interpreted and performed in accordance with the Contract as a whole;

(b) Contract clause headings are for convenience only and shall not be taken into consideration in the interpretation or construction of the Contract;

(c) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;

(d) a word denoting the singular number includes the plural number and vice versa;

(e) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;

(f) a word denoting a gender includes all genders;

(g) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Contract;

(h) where used in the Contract the words "including" or "includes" will be read as "including, without limitation" or "includes, without limitation" (as the case may be);

(i) a reference to any contract or document is to that contract or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;

(j) "shall" and "must" denote an equivalent positive obligation;

(k) a reference to any Party to this Contract, or any other document or arrangement, includes that Party's executors, administrators, substitutes, successors and permitted assigns; and

(l) a reference to "dollars" or "$" is to an amount in Australian currency.

1.2 **Counterparts of the Contract**

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

1.3 **Contract prevails**

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

1.4 **Inconsistency**

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

2. SCOPE OF CONTRACT

2.1 The Contract sets out the terms and conditions on which the Contractor agrees to secure the aims and objectives of the Project supplying, or procuring the supply of, the provision of the Services.

2.2 The activities to be performed and responsibilities assumed by the Contractor are detailed in **Schedule 1**.

2.3 Neither the Contractor, nor Contractor Personnel or Associates, shall by virtue of this Contract be, or for any purpose be deemed to be, and must not represent themselves as being, an employee, partner or agent of AusAID.

3. AUSAID'S OBLIGATIONS

3.1 AusAID must:

(a) make payments to the Contractor in accordance with the Contract; and

(b) perform, fulfill, comply with, submit to and observe the terms and conditions of the Contract, which are to be performed, fulfilled, complied with, submitted to or observed by AusAID.

4. NON-EXCLUSIVITY

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

4.2 The Contractor must cooperate with any other service provider appointed by AusAID to ensure the integrated and efficient carrying on of the Project and must provide such reasonable assistance to other service providers as AusAID may reasonably request.

5. PROVISION OF SERVICES

5.1 In providing the Services, the Contractor must:

(a) perform the Services as described in **Schedule 1** for the term of the Contract, unless the Contract is terminated earlier;

(b) accept and implement AusAID’s reasonable directions in relation to the management of the Project;

(c) use its best endeavours to ensure the spirit and intent of the Project are fully met by the Services, including acting within the spirit and intent of the Treaty, MOU or Subsidiary Arrangement;

(d) liaise and cooperate with AusAID, with the stakeholders, and the Australian Diplomatic Mission in or having responsibility for the Partner Country especially in relation to security, personal safety and welfare matters;

(e) subject to any flexibility permitted in the Contract, ensure all timing obligations included in the Contract are fully met;

(f) within the term of the Contract assist AusAID in the maintenance and ongoing implementation of the Services, including monitoring and evaluating the Services to ensure results accord with the aims of the Project, and provide necessary handover assistance to any subsequent service provider and to the Partner Country;

(g) ensure that the Services are provided to a standard which shall promote Australia's international reputation and standing as a source of skill and expertise in the provision of international assistance;

(h) perform the Services in a manner which, as far as possible, establishes and maintains a harmonious, cooperative and effective working relationship with stakeholders and any personnel from the Partner Country involved in the Project;

(i) if a Risk Management Plan for the Project has not been prepared prior to the Project Start Date, the Contractor must prepare a Risk Management Plan within three (3) months after the Project Start Date. If requested by AusAID, the Contractor will make the Risk Management Plan available to AusAID;

(j) whether a Risk Management Plan is prepared under paragraph (i) above, or was prepared prior to the Project Start Date (for example, as part of the Contractor's tender for the Project or as part of the Project Design Document or similar document), the Contractor must maintain and update the Risk Management Plan, as necessary, to ensure that at all times it adequately reflects Project risks and includes risk-minimisation strategies. The Contractor must promptly advise AusAID of any significant risks in accordance with **Clause 6 below**. The Contractor must also ensure the Risk Management Plan contains provisions for advance notification of AusAID of risks that may lead to disruption or delay of the Project;

(k) liaise with, and obtain all necessary consents, approvals and authorisations from any public and other authorities in the Partner Country;

(l) provide adequate support resources to secure the aims and objectives of the Project;

(m) be responsive to the changing needs and environment of the Partner Country; and

(n) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity.

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

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

6. EARLY NOTIFICATION

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

7. CONTRACTOR PERSONNEL

7.1 The Contractor must ensure that Contractor Personnel are aware of, and must use its best endeavours to ensure Contractor Personnel comply with, the requirements of the Contract.

7.2 The Contractor must use its best endeavours to ensure that all Contractor Personnel are of good fame and character.

7.3 The Contractor must use its best endeavours to ensure that all Contractor Personnel conduct themselves in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct.*

7.4 The Contractor must use its best endeavours to ensure that all Contractor Personnel and their accompanying family members while in-country:

(a) are aware of local laws, culture and customs in the Partner Country; and

(b) act in a fit and proper manner.

7.5 The Contractor must use its best endeavours to ensure that no Contractor Personnel or their accompanying family members:

(a) become involved in the political affairs of the Partner Country (unless citizens of the Partner Country);

(b) interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country); or

(c) share information known as a result of their work on, or relationship to, the Project,

in a way that a reasonable person could foresee may be detrimental to the relationship between the Australian and Partner Governments.

7.6 The Contractor must not employ a currently serving Commonwealth employee in any capacity in connection with the Services without the prior written approval of AusAID.

7.7 The Contractor must ensure that media advertisements placed by the Contractor for personnel to fill a Project position acknowledge that the Project is funded by AusAID as part of the Australian Government’s official overseas aid program.

7.8 AusAID may give notice to the Contractor requiring the Contractor to remove any Contractor Personnel from work in respect of the Services. The Contractor must promptly arrange for the removal of such Contractor Personnel from work in respect of the Services and their replacement (if required) with Contractor Personnel acceptable to AusAID.

7.9 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Contractor Personnel that, in the Contractor’s reasonable opinion, is likely to affect AusAID’s assessment of the person under the Contract.

7.10 The Contractor must advise AusAID immediately in writing if any Contractor Personnel is arrested for, or convicted of, criminal offences relating to child abuse, or for accessing or possessing child pornography. AusAID may require Contractor Personnel under formal investigation in relation to such criminal offences to be suspended from duty or transferred to other duties during the investigation.

7.11 AusAID may give notice to the Contractor requiring the Contractor to temporarily suspend from duty, or transfer to other duties, any Contractor Personnel who are under criminal or internal investigation in relation to child abuse or accessing or possessing child pornography. The Contractor must comply promptly with any such notice.

8. SPECIFIED PERSONNEL

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

8.2 During the minimum periods specified in **Schedule 1**, the Long Term Advisers included in the Specified Personnel must be exclusively dedicated to the Project and only perform the duties required under this Contract unless otherwise agreed in writing by AusAID.

8.3 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:

(a) are properly qualified for the tasks they are to perform;

(b) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner; and

(c) are adequately briefed and understand the environment and culture of the Partner Country.

8.4 The Contractor must use its best endeavours to secure the availability of Specified Personnel for the term of the Contract. If a change to Specified Personnel is required the Contractor must provide AusAID with not less than three (3) months prior written notice of such change except where circumstances beyond the reasonable control of the Contractor make the giving of such notice impracticable. Any proposed change to the Specified Personnel must only be made after written consent from AusAID and in accordance with the procedure set out in **Clause 8.8 below**.

8.5 Subject to **Clause 8.4 above**, Specified Personnel may be temporarily absent from the Project. Where Specified Personnel are unavailable for work in respect of the Contract, for any period in excess of 2 weeks, the Contractor must notify AusAID in writing immediately and, if requested, must provide replacement personnel acceptable to AusAID and the Partner Government at no additional charge and at the earliest opportunity and for the duration of the absence.

8.6 The costs incurred by the Contractors in providing temporary substitute personnel due to the absence of Specified Personnel are the responsibility of the Contractor.

8.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Specified Personnel that, in the Contractor’s reasonable opinion, is likely to affect AusAID’s assessment of the person under the Contract.

8.8 Before appointing Specified Personnel to the Project, the Contractor must obtain AusAID’s written approval. In seeking approval of proposed Specified Personnel the Contractor must provide to AusAID:

(a) the full names, dates of birth, and nationalities of proposed personnel and their accompanying dependants;

(b) a statement demonstrating that the proposed personnel has the demonstrated skills and capacity to undertake the job specification of the position and duration of the proposed appointment;

(c) a copy of the proposed person's curriculum vitae certified as accurate by the person and showing recent and relevant experience and formal qualifications including dates of award; and

(d) assurances that the nominated personnel has no existing commitments (defined in relation to the commitments of the position and not the individual's commitment to a particular organisation), to other AusAID projects that will suffer detriment if accepted on this Project. If this is not the case AusAID may require further information before assessing the individual's suitability.

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

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

9. PROJECT VEHICLE CONTRIBUTION

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

9.2 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute AUD250.00 for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor's invoices.

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

(a) Project demands must always take precedence over private use;

(b) the Contractor must ensure that any persons driving the Project Vehicle must have a current valid international or Partner Country drivers license for the class of Project Vehicle;

(c) the Contractor is responsible for ensuring Project Vehicles are appropriately insured;

(d) the Contractor is responsible for ensuring that seat belts are fitted and must make every effort to ensure that they are worn at all times by drivers and all passengers;

(e) the Contractor is responsible for any costs incurred in the event of an accident while the Project Vehicle is being privately used; and

(f) the Contractor must ensure that Project Vehicles are serviced in accordance with manufacturer's requirements.

10. PROCUREMENT SERVICES

10.1 In procuring all Supplies, the Contractor must:

(a) determine what Supplies are required for proper implementation of the Services and advise AusAID;

(b) keep AusAID informed of ongoing requirements for Supplies in connection with the Project;

(c) implement procedures so that procurement is undertaken in a manner that is consistent with the Commonwealth Procurement Guidelines, in particular, observing the Core Principle of achieving value for money and the supporting principles;

(d) maintain complete and accurate records documenting the procedures followed in procuring, and the particulars of Supplies; and

(e) use its best endeavours to ensure Supplies are maintained including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed.

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

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

10.4 The Contractor shall establish and maintain a Register of Assets which shall record any non-consumable Supplies valued at AUD2,000 or more, which at a minimum contains the following information: reference identification number (which may be for example, a serial number, engine number or chassis number); description of the asset; date of procurement; cost; location; current status; and disposal or handover details.

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

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

11. SUB-CONTRACTING

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

(a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;

(b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;

(c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:

(i) comply with relevant and applicable laws, regulations and development policies, including AusAID's *Child protection policy* (http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments) and child protection compliance standards (Attachment 1 to the policy), both in Australia and in the Partner Country;

(ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;

(iii) be bound by the same obligations regarding **Clauses 15** (Accounts and Records), **18** (Audits), **19** (Access to Premises), **26** (Privacy), and **35.4** (Anti-corruption) **below** and as required by Project Specific Conditions **Clause 3** (Accounts and Records) as the Contractor; and

(iv) be bound by appropriate obligations in relation to ongoing software licensing, computer maintenance requirements and handover arrangements to the Partner Country;

(d) if requested by AusAID, the Contractor must provide to AusAID an executed Deed of Novation and Substitution in the form at **Schedule 4** (Deed of Novation), contemporaneously with or within ten (10) Business Days of execution of the sub-contract by the Contractor;

(e) the sub-contract must include the right of AusAID, in the event of AusAID issuing a notice of substitution under the Deed of Novation at **Schedule 4** (Deed of Novation), to further novate the sub-contract to another contractor;

(f) the Contractor must maintain up-to-date records of the names of all sub-contractors engaged by the Contractor to perform part of the Services. If requested by AusAID, the Contractor must, within five (5) working days, provide to AusAID a copy of the records of sub-contractors' names, in the format specified by AusAID. The sub-contract must include the right of

AusAID to disclose the name of the sub-contractor, in accordance with **Clause 27** (AusAID Use of Contract Information) **below**;

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

(h) if requested by AusAID, the Contractor must provide to AusAID a copy of any proposed or executed sub-contract.

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

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

12. CONTRACT AMENDMENT

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

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

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

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

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

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

13. EXTENSION OF TIME

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

(a) a Force Majeure Event;

(b) a significant change in circumstances beyond the control of the Contractor;

(c) an Australia-wide or Partner Country-wide industrial dispute; or

(d) a change in the laws of Australia or the Partner Country that directly impacts on the provision of the Services.

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

(a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;

(b) give details of the likely effect on the Project and any Contractual implications;

(c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;

(d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances in the form of an Amendment Proposal in accordance with **Clause 12.5 above**; and

(e) use its best endeavours to continue to perform its obligations under the Contract.

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

13.4 If AusAID approves in writing a request, the extension of time and any approved changes to the Contract will be documented in a "Deed of Amendment". The Contract shall be deemed to have been varied once the Deed of Amendment is signed by both the Contractor and AusAID.

13.5 Even if the Contractor has not given notice under **Clause 13.2 above**, where AusAID considers that a delay has arisen, in whole or in part, because of an act or omission on the part of AusAID, its employees or agents, AusAID may, by notice in writing to the Contractor, extend the time for performance of the relevant obligation of the Contractor.

13.6 Where AusAID has determined that a Relevant Cause has occurred, and the Contractor's inability to perform its obligations due to a Relevant Cause exceeds forty five (45) Business Days, AusAID may:

(a) notify the Contractor that the Contract is suspended for a specified period of time; or

(b) delete part of the Services; or

(c) immediately or thereafter terminate the Contract in whole or in part by providing notice in writing to the Contractor.

13.7 A notice of suspension, deletion or termination of the Contract under **Clause 13.6 above** takes effect on the date that the notification is received by the Contractor.

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

14. HANDOVER

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

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

14.3 The Contractor must ensure that a finalised Handover Plan is provided to AusAID within seven (7) days of any early termination of the Project, or one (1) month prior to the expected completion of the Project.

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

(a) deliver to AusAID or its nominee complete copies of all the Data and Contract Material, in a form and on a media approved by AusAID, and any other AusAID property including the Supplies;

(b) either destroy or deliver to AusAID all copies of AusAID Confidential Information as required by AusAID;

(c) if requested by AusAID, facilitate the assignment to AusAID, AusAID's nominee or to the Partner Country of sub-contracts relating to Supplies, including for licensing and support of information technology and any construction work maintenance;

(d) vacate the Project Office where this has been supplied by AusAID or the Partner Country;

(e) co-operate with AusAID and, if requested, AusAID's nominee, and provide reasonable assistance relating to the transfer of any contracts to AusAID, its nominee or the Partner Country;

(f) provide to AusAID or, if requested, to AusAID’s nominee all information, including Data and Contract Material, necessary for an alternative service provider to assume provision of the Services;

(g) continue the provision of the Services for as long as reasonably requested by AusAID on the terms and conditions of the Contract;

(h) cooperate with AusAID and any other service provider in the ongoing provision of services similar to the Services; and

(i) allow AusAID to audit compliance with this clause.

15. ACCOUNTS AND RECORDS

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

(a) record all receipts and expenses in relation to the Supplies and Services, including those involving foreign exchange transactions;

(b) be kept in a manner that permits them to be conveniently and properly audited;

(c) enable the extraction of all information relevant to this Contract;

(d) contain details of the disposition of Supplies as agreed to by AusAID such as replacement, write-off or transfer to the Partner Country; and

(e) the Contractor shall provide to AusAID a statement of Project expenditure on a regular basis for the duration of the Project. The details of the timing and content of the statement of expenditure are defined in Part A Project Specific Contract Conditions.

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

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

16. REPORTS

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

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

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

17. REVIEWS

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

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

17.3 Reviews may be conducted of:

(a) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services, including procurement and risk management procedures;

(b) the accuracy and reliability of the Contractor’s financial management systems;

(c) the Contractor’s compliance with their obligations under the Contract in relation to foreign exchange transactions;

(d) the accuracy of the Contractor's reports in relation to the provision of the Services;

(e) the Contractor’s compliance with AusAID’s *Child protection policy* and child protection compliance standards (Attachment 1 to the policy);

(f) the Contractor's compliance with its Contractor Personnel, confidentiality and privacy obligations; or

(g) any other matters relevant to the performance of any Services including user satisfaction.

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

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

18. AUDITS

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

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

(b) providing AusAID with additional documentation to support the claim for payment; or

(c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including invoicing procedures and practices.

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

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

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

(a) the terms of reference must be agreed in writing by AusAID;

(b) the audit must be undertaken according to the standards of the professional body relevant to the particular audit and those standards must be detailed in the terms of reference;

(c) the Contractor will bear the total cost of the audit; and

(d) AusAID will not make any further payments owed to the Contractor pending certification of the reliability of the Contractor's financial management systems and the veracity of the invoicing procedures and practices.

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

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

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

(a) during the hours of 9am and 5pm on a Business Day;

(b) except in the case of a breach of this Contract, subject to reasonable prior notice; and

(c) at no additional charge to AusAID.

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

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

20. PAYMENT

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

(a) AusAID's acceptance of the satisfactory completion of the Services or relevant Payment Milestone as specified in **Schedule 2**; and

(b) receipt of a correctly rendered invoice.

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

20.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.

20.4 The Contractor must make all foreign exchange transactions at arms length and at commercially competitive rates. Supporting documentation must be retained in accordance with Standard Conditions **Clause 15.1** (Accounts and Records) and may be audited by AusAID in accordance with Standard Conditions **Clause 17** (Reviews).

20.5 Where the Contractor is entitled to reimbursement for expenditure in a currency other than Australian dollars under this Contract, the Contractor must invoice AusAID for the equivalent Australian dollar amount as recorded by the Contractor in their general ledger converted at an exchange rate which is calculated in accordance with appropriate accounting standards.

20.6 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.

20.7 Subject to the Contract AusAID shall pay Reimbursable Costs within thirty (30) days of receipt of a correctly-rendered invoice.

20.8 An invoice is correctly rendered if:

(a) the invoice details all Services provided against the Fees and records the amount payable in respect of each category of Services described in the Contract;

(b) the invoice details the Contractor’s monthly contribution toward Project Vehicles in accordance with **Clause 9.2**;

(c) the invoice is based upon the calculation of Fees referred to in **Schedule 2**; and

(d) a company director of the Contractor, or their delegate has certified that the invoice:

(i) has been correctly calculated;

(ii) that the Services included in it have been performed in accordance with this Contract; and

(iii) in the case of Reimbursable Costs that these costs have been paid.

20.9 If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Contractor, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due from AusAID to the Contractor.

20.10 A payment by AusAID is not an admission of liability. In the event that AusAID makes a payment for the completion of a Payment Milestone or the procurement of Supplies or inputs that AusAID subsequently learns have not been completed to the quality or performance specifications required or provided as required, the payment shall be deemed an overpayment and recoverable from the Contractor. Without limiting recourse to other available remedies, the overpayment may be offset against any amount subsequently due to the Contractor.

20.11 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.

20.12 AusAID need not pay any amount due to the Contractor until the Contractor delivers to AusAID a written statement which satisfies the requirements of section 127 of the *Industrial Relations Act 1996* (NSW) or the requirements of similar State or Territory legislation, in relation to the payment of employees or sub-contractors of the Contractor who were engaged in the performance of the Contract.

20.13 Except as otherwise specified in this Contract, the Fees are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Contractor in providing the Services.

20.14 If the Contractor does not have an Australian Business Number (ABN), AusAID, in accordance with the relevant provisions of the Pay as You Go (PAYG) legislation, shall be required to withhold a prescribed proportion of the amount payable to the Contractor under the Contract, unless the exceptions under Division 12 of the PAYG legislation apply.

20.15 AusAID will make all amounts payable to the Contractor under this Contract into a bank account nominated by the Contractor. The Contractor must provide AusAID with the necessary details as soon as possible following execution of this Contract. Requests to change bank account must be provided to AusAID with forty five (45) days notice.

21. GOODS AND SERVICES TAX

21.1 Except as provided by this clause, all taxes, duties and charges imposed or levied in Australia in connection with the performance of this Contract shall be borne by the Contractor or its sub-contractor(s), as the case requires.

21.2 The amount shown against each item in **Schedule 2** is the ‘value’ of the ‘periodic supplies’ to be made under this Contract, as these terms are used in the *A New Tax System Act 1999* (Cth).

21.3 The amount payable under the Contract for each supply listed in **Schedule 2** is the value of that supply plus any GST payable by the Contractor under the GST legislation. Payment by AusAID to the Contractor of the GST shall be subject to the Contractor providing AusAID with a valid Tax Invoice issued in accordance with the relevant provisions of the GST legislation and regulations.

21.4 The total amount of GST payable by the Contractor, and for which the Contractor seeks payment from AusAID, in respect of any supply shall be shown as a separate item on the Tax Invoice.

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

22. INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

23. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

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

24. MORAL RIGHTS

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

25. CONFIDENTIALITY

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

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

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

25.4 The Contractor may disclose AusAID Confidential Information:

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

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

(c) if required in connection with legal proceedings,

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

25.5 The Contractor must not transfer AusAID Confidential Information outside Australia, except to the Partner Country, or allow parties outside Australia to have access to it, without the prior approval of AusAID.

25.6 The Contractor must use AusAID Confidential Information held, acquired or which the Contractor may have had access to in connection with this Contract only for the purposes of fulfilling its obligations under this Contract. Upon expiry or earlier termination of this Contract the Contractor must either destroy or deliver to AusAID all AusAID Confidential Information, as required by AusAID.

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

26. PRIVACY

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

26.2 In this clause, the terms ‘agency’, ‘Information Privacy Principles’ (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meaning as they have in section 6 of the *Privacy Act 1988*.

26.3 The Contractor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services:

(a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;

(b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;

(c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;

(d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;

(e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to10) where that section or NPP is applicable to the Contractor, unless:

(i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or

(ii) in the case of a NPP – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorized by this Contract is inconsistent with the NPP;

(f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with a NPP binding a party to this Contract;

(g) to immediately notify AusAID if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any sub-contractor;

(h) not to transfer such information outside Australia, except to the Partner Country, or to allow parties outside Australia or the Partner Country to have access to it, without the prior approval of AusAID; and

(i) to ensure that any employee of the Contractor who is required to deal with Personal Information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause.

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

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

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

27. AusAID USE OF CONTRACT INFORMATION

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

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

28. PUBLICITY

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

28.2 The Contractor must not make any press, media or other announcements or releases relating to this Contract and the Services without the prior approval of AusAID Public Affairs Group as to the form, content and manner of the announcement or release.

28.3 The Contractor must only use the Australian Government/AusAID logo (in-line version) to denote association with Australia, the Australian Government or AusAID in any publicity or other project related materials. The Contractor must comply with the "AusAID Logo Guidelines for Managing Contractors" at all times, including when advertising for sub-contractors or personnel. The Guidelines are available from the AusAID Business website.

28.4 The Contractor shall, if appropriate, erect a sign at each Project site that acknowledges the contributions of the Australian and Partner Governments. Such signs shall in all cases be discussed and agreed between AusAID and the Partner Government. Signs should use the Australian Government/AusAID logo (in-line version). No independent project or program logos or emblems are to be used. Contractor signs may also be displayed, but not in greater number or prominence than acknowledgments to either the Australian or Partner Governments.

29. WARRANTIES

29.1 The Contractor represents and warrants that it has made its own assessment of all information made available to the Contractor in respect of the Services and sought appropriate professional advice concerning:

(a) any information, statements or representations;

(b) the regulatory regime applicable to the delivery of the Services both in Australia and in the Partner Country;

(c) the assumptions, uncertainties and contingencies which may affect the future business of the Services; and

(d) the impact that a variation in future outcomes may have on any Services.

29.2 Subject to any law to the contrary, and to the maximum extent permitted by law, AusAID, its employees, agents and advisers each disclaim all liability for any Losses (whether foreseeable or not) suffered by any other person acting on any part of the information made available to the Contractor in respect of the Service, whether or not the loss arises in connection with any negligence, default or lack of care on the part of AusAID, its employees, agents or advisers or any other person or any misrepresentation or any other cause.

29.3 The Contractor warrants that it shall have full corporate power and authority to enter into, perform and observe its obligations under this Contract and that the execution, delivery and performance of this Contract shall be duly and validly authorised by all necessary corporate action.

30. PERSONNEL SECURITY

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

30.2 The Contractor is responsible for the immediate development and implementation of a Security Plan to ensure the safety and security of Contractor Personnel. The Security

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

30.3 The Contractor must keep abreast of the security situation in the Partner Country including where relevant having regard to travel advisories and notices including those issued by the Australian Department of Foreign Affairs and Trade. The Australian advisories and notices are available at: www.dfat.gov.au

30.4 The Contractor acknowledges and confirms that, notwithstanding any other provisions of the Contract:

(a) it is not the function or responsibility of AusAID or any person acting or purporting to act on behalf of AusAID, to comment on or approve the Contractor's Security Plans; and

(b) the Contractor has not entered the Contract based on any representation, statement or assurance by AusAID or any person acting or purporting to act on behalf of AusAID, in respect of the safety or security of the Contractor, Contractor Personnel or any person acting on behalf of the Contractor, in the Partner Country or in any other location.

31. TERMINATION FOR CONTRACTOR DEFAULT

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

(a) commits a breach of this Contract and:

(i) that breach is not capable of remedy;

(ii) fails to remedy that breach within ten (10) Business Days (or such further time as AusAID may, in its absolute discretion, specify), after receiving a notice from AusAID requiring the Contractor to remedy the breach; or

(iii) does not commence to remedy that breach, within a reasonable time (having regard to the nature of the breach) after being given notice by AusAID requiring the Contractor to remedy the breach;

(b) becomes, or in AusAID's reasonable opinion is likely to become, bankrupt, insolvent or otherwise financially unable to fulfil its obligations under this Contract;

(c) becomes subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act* 2001;

(d) is wound up by resolution or an order of the court;

(e) ceases to carry on business;

(f) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;

(g) suffers any execution against its assets having, or which in AusAID's reasonable opinion is likely to have, an adverse effect on its ability to perform this Contract;

(h) ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Contract (except to the extent that this is outside the Contractor's reasonable control);

(i) assigns its rights otherwise than in accordance with the requirements of this Contract;

(j) suffers a change in Control which in AusAID's reasonable opinion may adversely affect the Contractor's ability to perform the Services under this Contract;

(k) is in breach of the warranty, regarding listing on a World Bank List or Relevant List, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;

(l) is, during the term of this Contract, listed on a World Bank List or Relevant List;

(m) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, bribery of a public official, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;

(n) is in breach of the warranty, regarding unsettled judicial decisions relating to employee entitlements, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;

(o) is, during the term of this Contract, convicted of an offence of, or relating to, bribery of a public official. In this **Clause 31.1(o)** the Contractor includes Contractor Personnel;

(p) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, child abuse, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract; or

(q) is in breach of the warranty, regarding the good fame and character of Contractor Personnel, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract.

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

(a) subject to this Contract, the parties are relieved from future performance of this Contract, without prejudice to any right of action that has accrued at the date of termination;

(b) subject to this Contract, all licences and authorisations granted to the Contractor by AusAID under this Contract terminate immediately despite anything to the contrary contained in the relevant licence or authorisation;

(c) the AusAID Confidential Information, Supplies and any other property supplied or given to the Contractor by AusAID pursuant to this Contract must be immediately returned to AusAID;

(d) AusAID is not obliged to make any further payments (including the payment of Fees) to the Contractor. However, AusAID may, in its absolute discretion, consider making a payment to the Contractor in such amount and upon such terms as AusAID determines is appropriate in the circumstances; and

(e) the Contractor will indemnify and hold AusAID harmless against any Losses, costs and expenses arising out of or in connection with the termination or any breach of this Contract by the Contractor (including those arising from affected sub-contracts).

32. TERMINATION FOR CONVENIENCE

32.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor, terminate or reduce the scope of this Contract from the time specified in the notice (and without the need to give further notice) and, in that event, AusAID may give to the Contractor such directions as it thinks fit in relation to subsequent performance of this Contract.

32.2 Where notice is given under **Clause 32.1** the Contractor must:

(a) comply with all directions given by AusAID;

(b) cease or reduce (as applicable) the performance of work under the Contract; and

(c) immediately do everything possible to mitigate its Losses, and all other loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination (including those arising from affected sub-contracts) arising in consequence of termination of this Contract under this **Clause 32**.

32.3 In the event of termination or reduction in scope under this **Clause 32**, subject to **Clause 32.4**, AusAID will only be liable to the Contractor for:

(a) Fees, as payable under **Schedule 2**, for Services performed prior to the termination, on a pro rata basis; and

(b) Costs that are:

(i) directly attributable to the termination or reduction in scope of this Contract; and

(ii) in AusAID's opinion, reasonably and properly incurred by the Contractor in connection with the Contract,

to the extent that such Costs are substantiated to AusAID.

32.4 AusAID is not liable for any loss of profits or any other form of expectation loss arising out of, or in connection with, the termination or reduction in scope of this Contract under this **Clause 32**.

33. INDEMNITY

33.1 The Contractor must at all times indemnify AusAID, its employees, agents and contractors (except the Contractor) ("**those indemnified**") from and against any Loss or liability whatsoever suffered by those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such Loss or liability was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the Contractor, or any Contractor Personnel in connection with this Contract.

33.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 33.1 above** for the benefit of each of such persons in the name of AusAID or of such persons.

33.3 The indemnity in this clause is reduced to the extent that the Loss or liability is directly caused by AusAID, its employees or contractors (except the Contractor), as substantiated by the Contractor.

33.4 The Contractor is responsible for all risks associated with the Data, the Supplies and any AusAID property while in the possession or control of the Contractor.

33.5 This indemnity shall survive termination or expiration of this Contract.

34. INSURANCE

34.1 The Contractor must arrange and maintain for the duration of the Contract unless otherwise specified:

(a) public liability insurance with a limit of at least $5 million for each and every claim which covers:

(i) loss of, or damage to, or loss of use of any real or personal property; or

(ii) personal injury to, illness (including mental illness) or death of any person arising from the performance of the Contract;

(b) motor vehicle third party property damage insurance;

(c) workers' compensation insurance:

(i) which fully insures the Contractor for any amount it becomes liable to pay under any statute relating to workers' or accident compensation or for employer's liability at common law;

(ii) to be effected in the Partner Country as well as every state or territory in Australia where the Contractor Personnel normally reside or in which their contract of employment was made; and

(iii) which, where possible at law extends to indemnify AusAID as principal for AusAID's liability to persons engaged by the Contractor.

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

(d) property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value;

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

(f) adequate medical and dental insurance for Contractor Personnel who are engaged to operate outside their country of permanent residence; and

(g) adequate insurance for medical evacuation and evacuation resulting from an insured event for all Contractor Personnel.

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

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

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

35. CONFLICT OF INTEREST

Conflict of Interest

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

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

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

Anti-Corruption

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

36. FRAUD

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

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

36.3 The Contractor must prepare a fraud risk assessment and zero tolerance fraud control strategy. These must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures that comply with the *Commonwealth Fraud Control Guidelines*.

36.4 The Contractor is responsible for preventing and detecting fraud including fraud within those functions outsourced / performed by a sub-contractor or under any other arrangement established by the Contractor relating to the management or administration of AusAID provided funds. The Contractor is responsible for ensuring that its staff and its subcontractors’ staff are responsible and accountable to the Contractor for preventing and reporting any fraud or suspected fraud as part of their routine responsibilities.

36.5 The Contractor must report in writing within five (5) working days to AusAID any detected, suspected, or attempted fraudulent activity involving AusAID provided funds. Where a matter is reported in writing to AusAID by a Contractor, the advice must provide where known:

(a) the name of the 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.

36.6 The Contractor must, in consultation with AusAID, develop and implement a strategy to investigate the detected, suspected or attempted fraud based on the principles set out in the *Australian Government Investigations Standards* which are available from AusAID when a demonstrated need to distribute them exists. The Contractor will be responsible for the conduct of the investigation. Any investigator appointed by the Contractor should possess the minimum qualifications specified in the *Commonwealth Fraud Control Guidelines.* Before engaging a qualified investigator, the Contractor may consult with AusAID regarding the appointment and may request assistance from AusAID in meeting the actual costs of a qualified investigator. Provided that the Contractor has consulted with AusAID before engaging an investigator, AusAID may in its absolute discretion agree to meet some or all of those costs.

36.7 AusAID reserves the right to appoint its own investigator, conduct the investigation, conduct a concurrent investigation or refer the allegations to the appropriate law enforcement agencies or any other person or entity AusAID deems appropriate in Australia or in the partner countries for investigation. In this instance the Contractor shall provide all assistance that may be required at the Contractor’s sole expense.

36.8 Following the conclusion of an investigation, where the investigation finds the Contractor, an employee of the Contractor or a subcontractor of the Contractor has acted in a fraudulent manner, the Contractor shall:

(a) where money has been misappropriated, pay to AusAID or the project the full value of the AusAID funds that have been misappropriated; or

(b) where an item of property has been misappropriated, either return the item to AusAID or the project or if the item cannot be recovered or has been damaged so that it is no longer usable, replace the item with one of equal quality.

36.9 Following the conclusion of an investigation, where the investigation finds that a party other than the Contractor, an employee of the Contractor or a subcontractor of the Contractor, has acted in a fraudulent manner, the Contractor shall at the Contractor’s cost:

(a) make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, one or both of the following:

(i) taking recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country. Before commencing any recovery action, the Contractor may consult with AusAID regarding the proposed course of action and may request assistance from AusAID in meeting the costs of the recovery action. Provided that the Contractor has consulted with AusAID before commencing recovery action, AusAID may in its absolute discretion agree to meet some or all of those costs.

(ii) referring the matter to the relevant Partner Country police or other authorities responsible for prosecution of fraudulent activity.

(b) keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.

36.10 If the Contractor considers that after all reasonable action has been taken to recover the funds or funded property and full recovery has not been achieved or recovery has only been achieved in part, the Contractor may seek approval from AusAID that no further recovery action be taken. The Contractor must provide to AusAID all information, records and documents required by AusAID to enable the AusAID delegate to make a decision on whether to approve non-recovery of funds or funded property.

36.11 In the event that any investigation finds that the contractor, an employee of the Contractor or a subcontractor of the Contractor has been involved in any fraudulent activity, or in the event that AusAID discovers that a suspected, attempted or detected fraud has not been reported to AusAID, AusAID, at AusAID's sole discretion, reserves the right to:

(a) Terminate the Contract with the Contractor, in which event, AusAID shall not be liable to the Contractor for any claim, demand, proceeding suit or action by the Contractor, and the Contractor shall indemnify, defend and hold harmless AusAID from any claim, demand, proceeding suit or action from any party or individual resulting from such termination; and / or.

(b) Not enter into any further agreement with the Contractor until such time as AusAID is satisfied that any recommended changes to the Contractor's management and procedures have been made in order to prevent any further fraudulent activity from occurring and to ensure timely reporting of suspected, attempted or detected fraud to AusAID.

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

a) any fraud detected by the Contractor before the date of expiry of this Contract but the Contractor had not commenced an investigation under **Clause 36.6** before that date,

b) any investigation commenced by the Contractor under **Clause 36.6**, but not completed, before the date of expiry of this Contract, and

c) any investigation commenced by AusAID under **Clause 36.7**, but not completed, before the date of expiry of this Contract.

37. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

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

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

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

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

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

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

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

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

(a) the policy Gender Equality in Australia’s Aid Program – Why and How (March 2007);

(b) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014', and in particular the strategy’s six guiding principles, located at http://www.ausaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;

(c) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child protection policy*;

(d) Environment. AusAID is bound by the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:

1. ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;

2. comply with AusAID's Environmental Management System outlined in the *Environmental Management Guide for Australia's Aid Program*, including:

   a. assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;

   b. report regularly on any such impacts as required by the Scope of Services; and

3. comply with all relevant environmental laws and regulations of the Partner Country.

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

38. INVESTIGATION BY THE OMBUDSMAN

38.1 In carrying out the Services, the Contractor, and an employee or subcontractor of the Contractor, may be a "Commonwealth service provider' under section 3BA of the Ombudsman Act 1976.

38.2 The Contractor must use its best endeavours, and must ensure that employees and subcontractors of the Contractor use their best endeavours, in undertaking the Services, not to engage in conduct that:

(a) would, if the Contractor or an employee or subcontractor were an officer of AusAID, amount to a breach of duty or to misconduct; or

(b) should be brought to the attention of the principal officer of AusAID.

38.3 If the Commonwealth Ombudsman commences an investigation of conduct of the Contractor, as a Commonwealth service provider, the Contractor, at the cost of the Contractor, must cooperate with the investigator including:

(a) providing all documentation required by the investigator,

(b) making Contractor Personnel available to assist the investigator and

(c) allowing the investigator, at any reasonable time of the day, to enter a place occupied by the Contractor and carry on the investigation at that place.

38.4 If the Ombudsman brings evidence to the notice of AusAID concerning the conduct of the Contractor, or of an employee or subcontractor of the Contractor, the Contractor must, at the cost of the Contractor, take whatever remedial action is required by AusAID or by the Ombudsman to rectify the situation.

38.5 The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including this requirement in relation to subcontracts.

38.6 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID, due to conduct of the Contractor or of an employee or subcontractor, which arise directly or indirectly, as a result of an investigation carried out by the Ombudsman.

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

39. RESOLUTION OF DISPUTES

39.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Contract. Subject to **Clause 20.11** (Payment) and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Contract.

39.2 A Party may give the other Party a notice of dispute ("**dispute notice**") in connection with this Contract. Following the giving of a dispute notice, the dispute must be referred to a senior officer of AusAID and a senior officer of the Contractor, who must use reasonable endeavours to resolve the dispute within twenty (20) Business Days or such other period as is agreed by the Parties.

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

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

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

40. NOTICES

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

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

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

(c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

41. MISCELLANEOUS

41.1 Waiver

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

41.2 Liability of Party

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

41.3 Entire agreement

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

41.4 Severance

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

41.5 Assignment

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

41.6 Governing Law and Jurisdiction

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

41.7 Contra Proferentem

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

41.8 False and Misleading Information

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

SCHEDULE 1 – SCOPE OF SERVICES

Note to Tenderers: Part 3 of this RFT will appear as Schedule 1 of the consolidated contract.

SCHEDULE 2 – BASIS OF PAYMENT

Note to Tenderers: Part 4 of this RFT will appear as Schedule 2 of the consolidated contract.

SCHEDULE 3 - DEED OF CONFIDENTIALITY

THIS DEED POLL is made on the day of [ ]

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

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

RECITALS

A. AusAID and **Contractor's Name** (the "**Contractor**") have entered into a Contract for the purpose of a project in **Country**.

B. The Recipient has been engaged by the Contractor to work on the project.

C. The Recipient will, in carrying out that work, be given access to Confidential Information.

D. AusAID requires the Recipient to enter into this Deed in relation to use of Confidential Information.

THE RECIPIENT DECLARES AS FOLLOWS:

1. **INTERPRETATION**

In this Deed:

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

(a) is designated by AusAID as confidential; or

(b) the Recipient knows or ought to know is confidential,

and includes to the extent that it is confidential:

(c) information comprised in or relating to any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID;

(d) information relating to the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;

(e) the Data; and

(f) personal information under the *Privacy Act 1988*;

but does not include information which:

(g) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality; or

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

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

2. **NON DISCLOSURE**

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

3. **RESTRICTION ON USE**

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

4. **DELIVERY UP OF DOCUMENTS**

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

5. **SURVIVAL OF OBLIGATIONS**

5.1 The obligations in this Deed are perpetual.

EXECUTED as a deed poll.

SIGNED, by the Recipient in the presence of:	))	…………………………………….. Signature of
…………………………………….. Signature of witness		…………………………………….. Name of witness ***(Print)***

SCHEDULE 4 – DEED OF NOVATION AND SUBSTITUTION

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

BETWEEN:

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

AND:

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

AND:

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

WHEREAS:

A. AusAID is concerned to ensure that the Services under the Contract are properly delivered.

B. The Subcontractor is a subcontractor to the Contractor for the Services.

C. The Subcontractor and Contractor have agreed with AusAID to novate the Subcontract to AusAID in the event that AusAID exercises its right under **Clause 31** and **32** of the Contract.

D. The Subcontractor agrees that AusAID may novate the Subcontract to another Contractor at its sole and absolute discretion in the event that AusAID has exercised its right under **Clause 31** and **32** of the Contract.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. **DEFINITIONS**

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

"**Commencement Date**" has the same meaning as in the Contract;

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

"**Deed**" means this Deed of Novation;

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

"**Party**" means AusAID, the Subcontractor or the Contractor;

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

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

2. APPLICATION OF DEED

2.1 The Contractor and the Subcontractor agree that:

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

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

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

3. NOVATION

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

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

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

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

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

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

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

4. RELEASE

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

5. FURTHER ASSURANCES

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

6. DISCHARGE

6.1 Neither the Subcontractor nor the Contractor are discharged or released or excused from this Deed by an arrangement made between the Contractor and the Subcontractor prior to the issue of a notice of substitution with, by any change to the Subcontract, or by any forbearance whether as to payment, time or otherwise.

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

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

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

7. NOTICES

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

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

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

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

7.2 Address of Party

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

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

Contractor
To:
Attention:
Address:
Facsimile:

Subcontractor
To:
Attention:
Address:
Facsimile:

8. LAWS

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

9. WARRANTY

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

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

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

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

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

10. **GENERAL**

10.1 Counterparts

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

10.2 Attorneys

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

10.3 Further Assurance

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

10.4 Assignment

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

EXECUTED as a Deed.

SIGNED, for and on behalf of the **COMMONWEALTH OF AUSTRALIA** in the presence of:	)))	…………………………………….. Signature
…………………………………….. Signature of witness		
…………………………………….. Name of witness ***(Print)***		

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

Director Name of Director ***(Print)***		Director/Secretary Name of Director/Secretary ***(Print)***
SIGNED for and on behalf of ***[Contractor]*** by:	)))	
……………………………………..		……………………………………..
Director Name of Director ***(Print)***		Director/Secretary Name of Director/Secretary ***(Print)***

SCHEDULE 5 – PERFORMANCE GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20

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

AND **[ ]** ABN **[ ]** (‘**Guarantor**’)

RECITALS

A. AusAID wishes to procure certain services.

B. **Contractor's Name** (‘**Contractor**’) has agreed to supply the services to AusAID under the annexed Contract (the ‘**Contract**’).

C. The Guarantor agrees to provide the guarantees and indemnities appearing in this Deed.

AGREEMENT

1. The Guarantor guarantees to AusAID the performance of the obligations undertaken by the Contractor under the Contract on the conditions set out in this Deed.

2. If the Contractor (unless relieved from the performance of the Contract by AusAID expressly or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its obligations under the Contract, the Guarantor shall, if required to do so by AusAID, complete or cause to be completed the obligations set out in, and in accordance with the conditions of, the Contract. If the Contractor commits any breach of its obligations, and such breach is not remedied by the Guarantor under this Deed and the Contract is then terminated for default, the Guarantor shall indemnify AusAID against losses, damages, costs and expenses directly incurred by reason of that default.

3. The Guarantor shall not be discharged or released or excused from this Deed by an arrangement made between the Contractor and AusAID with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise. The guarantee by the Guarantor in this Deed to assume the obligations of the Contractor shall continue in force and effect until completion of all the Contractor’s obligations under the Contract or until the completion of the undertakings under this Deed by the Guarantor.

4. The undertakings of the Guarantor under this Deed shall not exceed the obligations of the Contractor under the Contract. Any liability of the Guarantor shall be coextensive, but not in excess of any liability of the Contractor to AusAID under the Contract. The Guarantor shall be entitled to all rights, privileges and defences otherwise available, to the Contractor with respect to any such liability, including without limitation all provisions of the Contract relating to the limitation of liability and the resolution of disputes.

This Deed is subject to, and is to be construed in accordance with, the laws in force in the Australian Capital Territory and the parties agree that the courts of that Territory have

5. jurisdiction to entertain any action in respect of, or arising out of, this Deed and the parties submit themselves to the jurisdiction of those courts.

6. For the purpose of this Deed, where an obligation of the Contractor under the Contract has not been performed, the Contractor shall be taken to have failed to perform that obligation notwithstanding that the Contractor has been dissolved or is subject to external administration procedures under chapter 5 of the *Corporations Law* or any other law.

7. The guarantee in this Deed is a continuing guarantee to AusAID until the obligations and liabilities of the Contractor under the Contract have in all respects been performed, observed and discharged.

8. The following notice arrangements apply:

   (a) notice or other communication which may be given to or served on the Guarantor under this Deed shall be deemed to have been duly given or served if it is in writing, signed on behalf of AusAID and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Guarantor or its agent at any registered office of the Guarantor or posted to the Guarantor’s address set out above or such other address as is notified in writing to AusAID from time to time;

   (b) a notice or other communication which may be given to or served on AusAID under this Deed shall be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Guarantor and is either delivered by hand, posted or faxed or a copy transmitted electronically to AusAID at the address set out above or such other address as is notified in writing to the Guarantor from time to time;

   (c) a notice sent by post shall be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent; and

   (d) a notice sent by facsimile transmission or transmitted electronically shall be deemed to have been given when the machine on which the notice is sent reports that the notice has been transmitted satisfactorily.

SIGNED, for and on behalf of the **COMMONWEALTH OF AUSTRALIA** by:	)))	
In the presence of:		
…………………………………….. Signature of witness		…………………………………….. Name and Position ***(Print)***
…………………………………….. Name of witness (print)		
SIGNED, for and on behalf of ***[Guarantor]*** by:	)))	
…………………………………….. Director Name ***(Print)***		…………………………………….. Director/Secretary Name ***(Print)***