



Australian Government

AusAID

21 November 2009

Request for Tender

Incentive Fund Phase III

REQUEST FOR TENDER

Incentive Fund Phase III

AusAID is seeking proposals from organisations interested in providing services for the Australia – Papua New Guinea Incentive Fund Phase III (the “**Program**”). If your organisation chooses to lodge a proposal (the “**Tender**”) it must be submitted on the terms of this document and the attached Parts (together referred to as the “**Request for Tender**” or “**RFT**”). The required services (the “**Services**”) are described in detail in Part 3 - Scope of Services.

STRUCTURE OF THE RFT

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

Section 1 details the Project Specific Tender Conditions (**Part 1**) 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 Program.

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

Tenderers are encouraged to fully inform themselves of the Contract Conditions (both 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>

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SECTION 1 – PROJECT SPECIFIC TENDER AND CONTRACT CONDITIONS

PART 1 – PROJECT SPECIFIC TENDER CONDITIONS

1. TENDER PARTICULARS

Closing Time:

(Clauses 1.11 and 1.14, Part 5)

2.00 pm local time in Canberra
Australian Capital Territory, **19 January 2010**

Mode of submission:

(Clause 1.1, Part 5)

either

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

or

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

Electronic Tender Lodgement

Address:

(Clause 1.11, Part 5)

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

Canberra Tender Box Address:

(Clause 1.14, Part 5)

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

Business Hours

for hard copy lodgement:

(Clause 1.15, Part 5)

Monday to Friday, 8.30 am to 5.00 pm
local time in Canberra, Australian Capital Territory
excluding Public holidays

File Format for Electronic Tenders:

(Clause 4.3, Annex C to Part 5)

PDF (Portable Document Format)

Number of Copies of Tender:

(Clause 1.6, Part 5)

For electronic tender lodgement:

Technical Proposal: One (1) electronic copy.

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

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

For hard copy tender lodgement:

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

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

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

Endorsement of hard copy Tenders:

(Clause 1.16, Part 5)

“Tender for the Incentive Fund Phase III”**Tender Validity Period:**

(Clause 1.8, Part 5)

180 days

Contact Person:

(Clause 2.1, Part 5)

Tamara Green

Fax: +61 2 6206 4885

Email address: IncentiveFund@ausaid.gov.au

Page limits:

(Clauses 7.15 and 7.17, Part 5)

Technical proposal: ten (10) pages plus annexes

Curriculum Vitae: four (4) pages each

Information:

The following documents are attached:

1. The Papua New Guinea-Australia Incentive Fund (Phase III) Program Design Document dated 1 September 2008 (PDD);
2. Independent Incentive Fund Review Report, 2007; and
3. Microsoft Word versions of the following:
 - Annex A – Past Experience Form
 - Tender Schedule B – Specified Personnel Table
 - Tender Schedule C – Financial Proposal Tables
 - Annex B – Tenderer Declaration

AusAID also directs bidders to the following documents:

1. Changing Lives: Stories from the Australia Papua New Guinea Incentive Fund. An AusAID Program 200-2008. Port Moresby, 2008, accessible at www.cidsharepoint.net/APNGIFund/

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

2. PRE-TENDER BRIEFING

- 2.1 AusAID intends to hold a pre-tender briefing at 9:00am, Monday 7th December 2009 in Deloitte Tower, Douglas Street, Port Moresby, Papua New Guinea.
- 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 and names of people planning to attend to Tamara Green at IncentiveFund@ausaid.gov.au, by 5.00 pm, Tuesday 1st December 2009.
- 2.3 AusAID will distribute all materials and relevant information provided at the pre-tender briefing to all Tenderers by way of an addendum to the RFT.

3. SCORE WEIGHTINGS AND TENDER ASSESSMENT

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

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

- 3.2 As part of the consideration of the technical merit of Tenders, AusAID will invite selected Tenderers' key personnel to interview. The following personnel will be required to attend: Program Manager, Administration Manager (Deputy Program Manager) and a Tenderer Company representative. Tenderers are required to attend the interview at their own cost. AusAID does not intend to interview personnel from any more than four (4) Tenderers, unless advantageous to AusAID. Tenderers not invited to interview will be notified that their bid will not be further considered.
- 3.3 Following the technical assessment, a like-for-like price assessment will be undertaken by AusAID of the proposals that are assessed by the Technical Assessment Panel (TAP) as technically suitable.
- 3.4 The like-for-like price assessment will represent **20%** of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

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

- 3.5 For the purpose of **Clause 3.4**, Part 1, the Tenderer's bid price will be the total amount submitted in the Tenderer's Financial Proposal in *Table 3: Summary of Financial Proposal*.
- 3.6 Following the final assessment and calculation of the final aggregate scores, confirmation of the Tenderer's financial capacity to meet the contractual obligations referred to in **Clause 7** 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, Part 1** taking into consideration “other factors” under **Clause 7.8, Part 5**; and
- (b) the required annexes included in **Clause 4.3, Part 1**.

4.2 **Selection Criteria**

Selection Criterion 1: Relevant Management Capacity (Weighting 20%)

Relevant experience and skills to manage the Incentive Fund Phase III demonstrated by:

- (a) successfully managing projects and activities based offshore of a similar size and complexity, preferably in PNG, working with a wide range of partners and to deliver contracted outcomes;
- (b) providing effective security and administrative and logistical support to an offshore based team and office, preferably in PNG;
- (c) providing cost effective management and support to short term technical assistance advisers engaged to support operations in an offshore country, preferably in PNG; and
- (d) developing and implementing equitable, inclusive and accountable systems in support of partnership principles, particularly management of grants, procurement and sub-contracting.

Selection Criterion 2: Understanding of the task and outcomes (Weighting 20%)

Understanding of the task and outcomes demonstrated by:

- (a) Analysis of the Program Design Document identifying strengths and weaknesses;
- (b) Analysis of the Scope of Services identifying opportunities for leveraging success and risks that need to be managed; and
- (c) Analysis of the operating environment in PNG and characteristics of likely partners.

Selection Criterion 3: Approach to delivering the services (Weighting 30%)

Ability to deliver the services and achieve outcomes demonstrated by:

- (a) Description of an effective, efficient and culturally sensitive approach proposed by the bidder to achieve successful outcomes;
- (b) Provision of an outline mobilisation plan; and
- (c) Provision of a Monitoring and Evaluation Framework.

Selection Criterion 4: Key Personnel, Team and Personnel Management (Weighting 30%)

- (a) Demonstrated appropriate skills, experience and team balance, including management strategies and recruitment strategies for engaging long term and short term national and international personnel including project office administration staff, technical advisers and coordinators.
- (b) Tenderers are required to nominate personnel and annex CVs for the following positions:
 - (i) Program Manager;
 - (ii) Administration Manager;
 - (iii) Development Specialist;
 - (iv) Development Specialist;
 - (v) Development Specialist; and
 - (vi) Financial Specialist.
- (c) Tenderers are to provide the staffing structure and position names for the Program Office.

4.3 Annexes

Annex 1 – Past Experience Form

Details of relevant activities or projects in which the Tenderer has been involved which demonstrate the Tenderer's ability to fulfil the objectives of the Program must be presented in the format outlined below. This annex must not contain more than five (5) 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 to 7.21, Part 5** of the RFT.

PAST EXPERIENCE FORM

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

Annex 2 – Work Plan

A detailed work plan for the first 12 months of the Program showing dependencies e.g. a Gantt Chart or Critical Path Method identifying resources, dependencies and milestones. Dates referring to commencement or mobilisation are indicative only and may be varied by AusAID. This annex must not exceed one (1) A3 page.

Annex 3 – Risk Management Plan

A detailed critique of the Risk Management Matrix provided in Annex I of the Project Design Document (PDD) that must identify:

- (a) all risks that can be reasonably anticipated;
- (b) the level of probability of the risk eventuating;
- (c) the impact on the Program if the risk eventuates along with possible options for ameliorating the risk;

- (d) the entity(s) responsible for managing the risk consistent with the PDD; and
- (e) the approach to be taken to mitigate any impact.

Annex 4 – Draft Mobilisation Plan

An outline of a Mobilisation Plan for the first three (3) months of the Program (see Selection Criteria 3(b)). The outline of the Mobilisation Plan must provide for:

- (a) establishment of communication channels with AusAID, the Australian Diplomatic Mission and Stakeholders;
- (b) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including but not limited to;
 - (i) establishment of report preparation and delivery mechanisms;
 - (ii) establishment of financial control procedures; and
 - (iii) establishment of all other management and administration requirements;
- (c) how the tenderer proposes to manage and process applications for IF III funding provided by AusAID during Program Mobilisation, including key actions and timelines, and roles and responsibilities of the tenderer's team and other key stakeholders to ensure a smooth transition process; and
- (d) any other matters specified in the Scope of Services, **Part 3** of this RFT.

Annex 5 – Letters of Association and other details of other proposed sub-contractors

Clause 9.2, Part 5 requires that AusAID is provided with assurance of the Associate's (if there are any) corporate commitment and involvement in the Program in the form of a single page Letter of Association.

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

Annex 6 – Commonwealth Government Policies Compliance

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

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 to 5.3** below;

- (b) a skills matrix providing a summary illustration of the skills of the proposed Program team as a whole (broken down by individual team members) in the key skill areas required for the Program'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 to 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 Program. 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 27, Part 6** particularly in relation to the availability of specified personnel. AusAID will consider as materially inaccurate, and may 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.

Specified Personnel Table

Position	Name	Total Inputs in person months		Referee Contact Details		Commitments
		Home Base	Overseas	#1	#2	
Program Manager	<i>specify</i>					
Administration Manager (Deputy Program Manager)	<i>specify</i>					
Development Specialists 1 (construction and procurement)	<i>specify</i>					
Development Specialists 2 (organisational)	<i>specify</i>					

development and performance management)				
Development Specialists 3 (monitoring and evaluation and research)	<i>specify</i>			
Financial Specialist	<i>specify</i>			

6. TENDER SCHEDULE C – FINANCIAL PROPOSAL

6.1 **Tender Schedule C – Financial Proposal** must contain the information required and in the format detailed in this clause.

6.2 It must:

- (a) be a fully costed fixed price based on the outputs and/or inputs as specified in the Scope of Services, including:
 - (i) escalation and any allowance for foreign exchange rate variations; and
 - (ii) necessary insurances required by the Contract Conditions and for the performance of the Services;
- (b) be expressed in Australian dollars;
- (c) include detailed information on assumptions used in preparing the pricing; and
- (d) be exclusive of GST.

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

6.4 Information provided in the tables will be used for any financial assessment and for the like-for-like price assessment.

6.5 Tenderers may insert under each table any assumptions they have made in their financial proposal.

Incentive Fund Program Office Costs

6.6 Tenderers must fill out *Table 1: Total Incentive Fund Program Office Costs* below in accordance with the following notes and instructions.

- 6.7 The Incentive Fund Program Office Costs need to be provided for the four (4) year duration of the Contract and will include:
- (a) Personnel Costs in accordance with *Table 1A: 1 to 5* below (which are drawn from Part 4 - Basis of Payment). These tables are:
 - (i) *Table 1A – 1: Incentive Fund Program Office Long Term Personnel Costs – International Staff*. This is the monthly salary for the staff and includes allowances for hardship and cost of living in country;
 - (ii) *Table 1A – 2: Allowances for Incentive Fund Program Office Long Term Personnel Costs – International Staff*. Allowances for Long Term International Staff are to be based on the personnel circumstances and family structure of the posted member;
 - (iii) *Table 1A – 3: Incentive Fund Program Office Long Term Personnel Costs – Local Staff*. For Long Term Local Staff, specified monthly rate is for all personnel costs associated with the position;
 - (iv) *Table 1A – 4: Incentive Fund Program Office Short Term Personnel Costs – International Staff*. Travel costs associated with the deployment of these staff are to be claimed in accordance with the Part 4, Clause 7. These monthly fees may be invoiced under Regular Payments for the Incentive Fund Program Office Costs; and
 - (v) *Table 1A – 5: Incentive Fund Program Office Short Term Personnel Costs – Local Staff*;
 - (b) Office Set-up Costs in accordance with *Table 1B: Incentive Fund Program Office Set-up Costs* below. These costs could include such things as office furniture, office equipment and vehicles; and
 - (c) Office Operational Costs in accordance with *Table 1C: Incentive Fund Program Office Operational Costs*. These costs could include such things as office rental, internet service provider, security services and vehicle operating costs.
- 6.8 The Total Incentive Fund Program Office Costs are inclusive of the following which apply to all cost categories identified in **Clause 1.4** of Part 4 (Basis of Payment):
- (a) Security costs for:
 - (i) the Incentive Fund Program Office;
 - (ii) all Incentive Fund Program Office international staff and their families; and
 - (iii) all Incentive Fund Program Office local staff when they are required to travel on Program work outside the area in which they normally reside;
 - (b) Health, medical evacuation, worker's compensation, liability and indemnity insurances for:
 - (i) all Incentive Fund Program Office international staff and their families; and

- (ii) all Incentive Fund Program Office local staff when they are required to travel on Program work outside the area in which they normally reside.

6.9 Leave accrued during the assignment by specified personnel (such as, but not limited to, the Facility Manager) shall be deemed to be taken in the year it falls due and cannot be accumulated or paid out.

Table 1: Total Incentive Fund Program Office Costs

Component	Total (A\$)
Personnel Costs (total from Tables 1A:1-5)	
Office Set-up Costs (total from Table 1B)	
Office Operational Costs (total from Table 1C)	
Total	

Table 1A-1: Incentive Fund Program Office Long Term Personnel Costs – International Staff

Position and Total Inputs	2010 - Inputs/ Monthly Rate A\$	2011 - Inputs/ Monthly Rate A\$	2012 - Inputs/ Monthly Rate A\$	2013 - Inputs/ Monthly Rate A\$	2014 - Inputs/ Monthly Rate A\$	Total – A\$	Comments
Program Manager (Full time)	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	6 months @ Amount per month		
Administration Manager (Deputy Program Manager) (Full time)	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	6 months @ Amount per month		
Development Specialist 1 (Full time)	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	6 months @ Amount per month		
Development Specialist 2 (Full time)	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	6 months @ Amount per month		
Development Specialist 3 (Full time)	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	6 months @ Amount per month		
Financial Specialist	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	6 months @ Amount per month		
Other Specify							
					Total		

Table 1A-2: Allowances for Incentive Fund Program Office Long Term Personnel Costs – International Staff

Position and Total Inputs	Family Type A Cost per family of 2 adults and 2 dependent children A\$	Family Type B Cost per family of 2 adults A\$	Type C Cost of individual ie 1 adult A\$	Indicative cost Total A\$	Comments
Mobilisation	Amount per family	Amount per family	Amount per person	Amount	Example: 2 Type A, 2 Type B, 1 Type C
Demobilisation	Amount per family	Amount per family	Amount per person	Amount	
Accommodation	Amount per month	Amount per month	Amount per month	Amount	
Education Allowance	Amount per month	Amount per month	Amount per month	Amount	
Other Specify	Amount per ?	Amount per ?	Amount per ?	Amount	
			Total		

Table 1A-3: Incentive Fund Program Office Long Term Personnel Costs – Local Staff

Position and Total Inputs	2010 - Inputs/ Monthly Rate A\$	2011 - Inputs/ Monthly Rate A\$	2012 - Inputs/ Monthly Rate A\$	2013 - Inputs/ Monthly Rate A\$	2014 - Inputs/ Monthly Rate A\$	Total – A\$	Comments
Specify							
Specify							
					Total		

Table 1A-4: Incentive Fund Program Office Short Term Personnel Costs – International Staff

Position and Total Inputs	2010 - Inputs/ Monthly Rate A\$	2011 - Inputs/ Monthly Rate A\$	2012 - Inputs/ Monthly Rate A\$	2013 - Inputs/ Monthly Rate A\$	2014 - Inputs/ Monthly Rate A\$	Total – A\$	Comments
Other Specify							
					Total		

Table 1A-5: Incentive Fund Program Office Short Term Personnel Costs – Local Staff

Position and Total Inputs	2010 - Inputs/ Monthly Rate A\$	2011 - Inputs/ Monthly Rate A\$	2012 - Inputs/ Monthly Rate A\$	2013 - Inputs/ Monthly Rate A\$	2014 - Inputs/ Monthly Rate A\$	Total – A\$	Comments
Specify							
Specify							
Specify							
					Total		

Table 1B: Incentive Fund Office Set-up Costs

Item	Number of items	Cost per item (A\$)	Total (A\$)
<i>Specify (e.g. computer)</i>			
<i>Specify</i>			
<i>Specify</i>			
Total			

Table 1C: Incentive Fund Office Operational Costs

Item	Inputs (months)	Rate 2010 (A\$/month)	Rate 2011 (A\$/month)	Rate 2012 (A\$/month)	Rate 2013 (A\$/month)	Rate 2014 (A\$/month)	Total (A\$)
<i>Specify (e.g. utilities)</i>							
<i>Specify</i>							
<i>Specify</i>							
					Total		

Fixed Management Fee (FMF)

6.10 Tenderers must fill out *Table 2: Total Fixed Management Fee* below, in accordance with the following notes and instructions:

- (a) The FMF is inclusive of the following:
- (i) All aspects of profit, including commercial margins for all personnel;
 - (ii) All overheads;
 - (iii) Routine travel costs incurred by the Contractor for administration and management of the Contract;
 - (iv) Financial management costs and financing costs, if any;
 - (v) All management support costs for all nominated personnel;
 - (vi) Cost of any Contractor administrative and head office staff;

- (vii) Security costs for all Contractor personnel not covered under **Clause 6.8** (above);
- (viii) Insurance, as required in accordance with **Clauses 33** and **34** of Part 6 (Standard Contract Conditions) of the Contract;
- (ix) Taxation, as applicable;
- (x) Health, medical evacuation, worker's compensation, liability and indemnity insurances for all Contractor personnel not covered under **Clause 6.8** (above);
- (xi) Management costs associated with marketing the PNG Incentive Fund such as developing and maintaining:
 - (A) An up to date PNG Incentive Fund Information Kit;
 - (B) A PNG Incentive Fund website; and
 - (C) An inquiry system;
- (xii) Management costs associated with records management and reporting for the PNG Incentive Fund such as developing and maintaining:
 - (A) A PNG Incentive Fund database;
 - (B) Notify successful organisations and preparation of Incentive Fund Agreements analysis of project applications for compliance;
 - (C) Submitting proposals for initial screening by relevant departments;
 - (D) Investigating and appraising proposals;
 - (E) Organising Organisational Assessments of agencies submitting proposals; and
 - (F) Notifying successful organisations and prepare Incentive Fund Agreements.
- (xiii) Management costs associated with monitoring and recording the implementation of activities funded by the PNG Incentive Fund such as:
 - (A) Monitoring projects and enter monitoring reports to the database;
 - (B) Conducting field visits/analyses, review project audit reports and analyses of project reports undertaken in order to validate project progress; and

(C) Management costs associated with the provision of support to, coordination of, and secretariat services to the PNG Incentive Fund committees such as the Incentive Fund Management Group and the Management Group Sub Committee. This excludes costs covered under Reimbursable Costs (**Clause 6**); and

(xiv) Management costs associated with mobilising and managing the Unallocated Short Term Technical Assistance.

Table 2: Total Fixed Management Fee

Year	Total (A\$)
2010 (assume 9 months)	
2011	
2012	
2013	
2014 (6 months)	
Total	

6.11 Tenderers must fill out *Table 3: Summary of Financial Proposal*, in accordance with the following notes and instructions:

Table 3: Summary of Financial Proposal

Item	Amount (A\$)
Extract of Table 1 - Personnel Costs	
Extract of Table 1B - Office Set-up Costs	
Extract of Table 1C - Office Operational Costs	
Extract of Table 2 - 2010 Fixed Management Fee	
Extract of Table 2 - 2011 Fixed Management Fee	
Extract of Table 2 - 2012 Fixed Management Fee	
Extract of Table 2 - 2013 Fixed Management Fee	
Extract of Table 2 - 2014 Fixed Management Fee	
Reimbursable Costs	800,000
Unallocated Short Term Technical Assistance	1,000,000
Payments for an Imprest Account for Incentive Fund Grants (indicative amount only)	60,000,000
Total	

7. TENDER SCHEDULE D – FINANCIAL ASSESSMENT

- 7.1 No Contract will be entered into unless AusAID has satisfied itself of the financial capacity of the Tenderer to undertake the contractual obligations. In this regard, AusAID requires that each Tenderer provide information on its financial status at Tender Schedule D. Two options are available.
- 7.2 A Tenderer must respond to either Option 1 or Option 2 to satisfy the requirements of this Tender.
- 7.3 Tenderers should be aware that AusAID may wish to contact the nominated financial accountant to obtain further information to assess the financial capacity of the Tenderer to undertake the Contract. AusAID reserves the right to engage appropriate external expertise to assist with the analysis of the financial information. A report on the financial capacity of the Tenderer to undertake the Contract may be provided to either the delegate or the TAP. The financial information of Tenderers will be treated confidentially.
- 7.4 Where a Tenderer considers itself exempt from the need to provide the full financial information (Option 1) and chooses instead to supply with the information in Option 2 AusAID reserves the right to subsequently require the Tenderer to provide the information required in Option 1.

Option 1

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

Option 2

7.7 This option may be considered by a Tenderer where:

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

7.8 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.

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**.

PART A – PROJECT SPECIFIC CONTRACT CONDITIONS

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

“Advisor” means those persons engaged by the Contractor under sub-contract arrangements in accordance with **Clause 14** of this Contract and **Clause 10** of the Scope of Services, and includes Short Term TA Personnel and Medium Term TA Personnel.

“Asset” means supplies purchased for the facility that will remain with the facility for the duration of the facility. At the completion of the facility, or at such time as the assets are no longer required by the facility, the assets will be disposed of in a manner directed by AusAID.

“AusAID” means the Australian Agency for International Development of the Department of Foreign Affairs and Trade.

“Australian Managing Contractor” or **“AMC”** means the Contractor

“Bi-monthly” means every second month, it does not mean twice monthly.

“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.

“Expenditure” means cash disbursement for the period.

“Expenses” means disbursement for the period, for services delivered in that period, in-keeping with the principles of Accrual Accounting.

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

“Medium Term TA Personnel” means Advisors engaged by the Contractor under the Facility for continuous period from four to twenty four months.

“Mobilisation Date” is the date indicated in clause 2.2 by which the Contractor must commence providing the Services in the Partner Country. *[The actual date will be agreed during contract negotiations].*

“Partner Country” means Papua New Guinea.

"Payment Milestone" means a milestone identified in **Table D - 1 of Schedule 2** (Milestone Payments Table) and for which the Contractor is entitled to receive a payment in accordance with the Contract.

"Program" means the Incentive Fund Phase III, project details of which are described in the Scope of Services (**Schedule 1**).

"Program Manager" means the person nominated in Table 1 of **Clause 16.3** of the Scope of Services.

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

"Services" means the services described in the Scope of Services (Schedule 1), which are required to be performed for the Program.

"Short Term TA Personnel" means Advisers working on the Program for less than six months continuously.

"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 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.

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 [**insert Services Start Date**] (Mobilisation Date) and must complete the Services by 30 June 2014.

3. ACCOUNTS AND RECORDS

3.1 The statement of Program expenditure referred to in Standard Conditions **Clause 36.1(e)** (Accounts and Records) must be provided on a three monthly basis and must indicate:

- (a) total expenditure of the Program to date;
- (b) disaggregated expenditure for the Program to date identifying all categories of expenditure including the Fees component and Reimbursable items;
- (c) total expenditure for the period of three (3) months;
- (d) forward expenditure and expenses by category for the period of three (3) months; and
- (e) a brief statement of the performance of the Program (up to 2 pages) over the previous three (3) month period outlining key issues and problems, if any.

4. NOTICES

- 4.1 For the purposes of Standard Conditions **Clause 61** (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: First Secretary
Program Coordination and Private Sector Development

Postal Address: Australian High Commission
Locked Bag 129
Waigani NCD
Papua New Guinea

Street Address: Godwit Road
WAIGANI NCD
Papua New Guinea

Facsimile: 675 3259 405

Contractor:

To:
Attention:

Postal Address:

Street Address:

Facsimile:

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. The briefings must cover issues including security, medical/health situation, cultural environment, detail on Program objectives and relevant contract obligations;
- (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 Program; and
- (e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID.

6. SUB-CONTRACTING

6.1 In addition to the Standard Conditions **Clause 32** (Sub-Contracting) the following conditions apply to sub-contracts entered into by the Contractor:

- (a) the Contractor must obtain the prior written approval of AusAID to sub-contracts with any party, except Specified Personnel, to the value of A\$100,000 or more. In granting its approval AusAID may impose such conditions, in AusAID's opinion are appropriate, in relation to a proposed sub-contract; and
- (b) if AusAID objects to the Contractor's recommended sub-contractor, or AusAID nominates a particular sub-contractor, the Contractor must enter into an agreement with such other sub-contractor as directed by AusAID on the basis of remuneration approved by AusAID and provide AusAID with a copy of the executed sub-contract.

6.2 Standard Conditions **Clauses 32.1 (d) and (e)** (with respect to Deeds of Novation and Substitution) will only apply to sub-contracts valued at \$100,000 or more.

7. GOVERNMENT TAXES, DUTIES AND CHARGES

7.1 Except to the extent referred to in this clause and Standard Conditions **Clause 42** (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.

- 7.2 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.
- 7.3 The Contractor must bear and is responsible for all stamp duty and other fees, whether levied in Australia or in the Partner Country, on or in respect of:
- (a) the Contract, the Program, and any sub-contracts entered into for the performance of the Services;
 - (b) the sale, purchase, lease, assignment, licence or transfer of any property under the Contract;
 - (c) the obtaining of any approvals, consents or authorisations in respect of the Program; and
 - (d) any instrument or transaction contemplated by or necessary to give effect to the Contract.
- 7.4 Subject to **Clause 7.8** 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.
- 7.5 An increase in the Fees under **Clause 7.4 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.

- 7.6 A decrease in Fees under **Clause 7.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.
- 7.7 The Contractor may claim a Changed Tax adjustment only once in respect of any change.
- 7.8 **Clause 7.4 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.

8. PUBLICITY

- 8.1 The Contractor must identify and implement appropriate opportunities for publicising the Program.
- 8.2 The Contractor shall, if appropriate, erect a sign at each Program site that acknowledges the contributions of the Australian and Partner Governments. Such signs shall in all cases be discussed and agreed between AusAID and the Partner Government. Signs should use the kangaroo motif and the words “Australia”, “Australian Government” or “Australian Government AusAID initiative” as space permits. The AusAID logo (with the words Australian Agency for International Development) may also be used but only where AusAID deems such usage appropriate. Country specific emblems may also be used on signs where AusAID overseas posts have developed such emblems or logos, and must be used in conjunction with the Kangaroo motif. Contractor signs may also be displayed, but not in greater number or prominence than acknowledgments to either the Australian or Partner Governments.
- 8.3 The Contractor agrees to abide by the AusAID guidelines, “AusAID Logo: Guidelines for Australian Managing Contractors” which is available at <http://www.aisaid.gov.au/business/publications.cfm>

9. INSURANCES

- 9.1 In addition to the Contractor’s obligations regarding insurance detailed in Standard Conditions **Clause 55 (Insurance)** the Contractor must ensure that:
 - (a) AusAID is notified immediately the Contractor becomes aware of any actual, threatened or likely claims under all of the insurances required by this Contract or any act or omission by the Contractor which could materially reduce the available limit of indemnity;
 - (b) AusAID is notified in writing whenever the insurer gives the Contractor a notice of cancellation of Program-related insurances;
 - (c) in respect of public liability insurance and property insurance that:

- (i) all insurance agreements and endorsements (with the exception of limits of liability) name, and operate as if there was a separate policy of insurance covering, AusAID, the Contractor and sub-contractors; and
 - (ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;
 - (d) where AusAID is a joint insured under an insurance policy, the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against AusAID; and
 - (e) all premiums are promptly paid.
- 9.2 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.
- 9.3 In respect of the public liability insurance, Standard Conditions **Clause 55.1(a)** is amended as follows: the Contractor must ensure that the limit for each and every claim is \$20 million.
- 10. CONFLICT OF INTEREST**
- 10.1 In addition to the Standard Conditions **Clause 56** (Conflict of Interest) the Contractor warrants:
- (a) that the Contractor shall not make or cause to be made any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Contract. Any such practice shall be grounds for immediate termination of this Contract under Standard Conditions **Clause 52** (Termination for Contractor Default) by notice from AusAID;
 - (b) that it has not received and shall not accept from any sub-contractor any payment as inducement or reward relating to the selection and engagement of a sub-contractor; and
 - (c) that it acknowledges that it is aware of the provisions of section 141.1 of the Commonwealth Criminal Code in relation to the bribery of Commonwealth public officials.
- 10.2 The Contractor must not enter into any contract for the procurement of any Supplies or services from any Related Bodies Corporate without AusAID's prior approval.
- 11. PERSONNEL SECURITY**
- 11.1 In addition to the Contractor's obligations under Standard Conditions **Clause 28.6** (Contractor Personnel), the Contractor will be responsible for the

immediate development and implementation of a Security Plan to ensure the safety and security of all Contractor personnel, including Technical Assistance Personnel. The Security Plan should incorporate prevention strategies and response plans, including evacuation plans where appropriate. The Contractor will submit a copy of the security plan to AusAID prior to mobilisation in the Partner Country.

- 11.2 The Contractor acknowledges and confirms that, notwithstanding any other provision of the Contract:
- (a) it is not the function or responsibility of AusAID or any person acting on behalf of AusAID, to approve the Contractor's Security Plans;
 - (b) AusAID does not accept responsibility, and will not be liable at common law (including actions for negligence) for the safety or security of the Contractor, its officers, employees or agents in foreign countries; and
 - (c) the Contractor has not entered the Contract based on any representation, statement or assurance by AusAID or any person acting on behalf of AusAID, in respect of the safety or security of the Contractor, or any person acting on behalf of the Contractor, in any overseas location.

12. PLANS AND REPORTS

- 12.1 The Contractor must submit plans and reports as required and in accordance with the Scope of Services (**Schedule 1**).
- 12.2 All plans and reports must be provided:
- (a) at the time specified in the Scope of Services (Schedule 1);
 - (b) in a manner that allows AusAID to properly assess progress under the Contract;
 - (c) in the format requested by AusAID;
 - (d) must not incorporate the AusAID logo or any other representation or mark which may indicate that the Contractor is in any way related to or connected with AusAID.
- 12.3 AusAID may reject any report by the Contractor that does not conform to the requirements of this contract and withhold payment of Fees until the Contractor rectifies the report.
- 12.4 The Contractor is responsible for any extra costs occasioned by any 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.

- 12.5 The Contractor must provide additional information as reasonably requested by AusAID on reports provided in accordance with this Contract, at no additional cost to AusAID.

13. **INDEPENDENT REVIEW TEAM**

- 13.1 AusAID will establish an Independent Review Team (the “IRT”) whose purpose is to provide AusAID with independent technical and other advice on any aspects of the Program and to assist AusAID to assess the performance of the Services.

- 13.2 The Contractor must:

- (a) attend and participate in those IRT meetings which AusAID directs it in writing to attend;
- (b) when required by AusAID, consult with the IRT on matters related to the Program including, but not limited to:
 - (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's government, AusAID or the IRT and suggest actions to avoid or counteract any adverse effects on the relationships;
 - (iii) any matters, circumstances or events which may affect the Program 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 IRT in the performance of its monitoring and review;
- (d) co-operate with and assist the IRT 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 IRT copies of all reports, notices, information or other Program material which the IRT 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.

14. ADVISERS

Engagement of Advisers

- 14.1 The Contractor shall enter into a formal contract with each Adviser for those positions approved by the Management Group in accordance with the Scope of Services (**Schedule 1**) of this Contract.

Procedure

- 14.2 The Contractor shall seek the concurrence of the host PNG Agency as to the preferred persons who in the opinion of the Contractor have the necessary suitability, reliability, and expertise for appointment as Advisers.
- 14.3 If the Agency does not object to the Contractor's recommended Adviser, the Contractor must promptly enter into a properly documented and executed agreement with the Adviser.
- 14.4 If the Agency rejects the Contractor's recommended Adviser, the Contractor must:
- (a) put forward an alternative candidate in accordance with the Scope of Services (**Schedule 1**);
 - (b) where directed by AusAID to appoint a particular individual or member of a particular Commonwealth, State or Territory Department, Agency or Authority, liaise with the source institution and arrange and manage the recruitment, mobilisation and in-country management of that Adviser.

Co-ordination of Advisers

- 14.5 The Contractor must provide:
- (a) oversight and manage the work activities of Advisers;
 - (b) monitor the performance of Advisers;
 - (c) liaise with PNG agencies once Advisers are deployed; and
 - (d) consult as appropriate with agencies with respect to the performance of Advisers.

Advisers' Contract

- 14.6 If required by AusAID, the Contractor must, within 14 days of approval for the entering into a contract with an Adviser, procure the Adviser to execute an Advisers' contract (duly completed with all relevant particulars under Australian law). The Contractor shall be responsible for all costs associated with the preparation and execution of such contracts.

Responsibility for Advisers

14.7 By engaging Advisers, the Contractor will:

- (a) not be relieved from any of its liabilities or obligations under the Contract; and
- (b) remain vicariously responsible for all Advisers and any other Sub-contractors and for all work which is or may be performed by them.

Direction to Reject Nominated Adviser

14.8 The Commonwealth may, without being obliged to give reasons, in writing direct the Contractor to reject a nominated Adviser prior to engagement.

Direction to Terminate

14.9 The Commonwealth may, without being obliged to give reasons, in writing direct the Contractor to terminate the engagement of an Adviser. The Contractor must within 30 days of receiving such direction terminate the engagement of the relevant Adviser. The terms of the Advisers' agreement with the Contractor must provide for this contingency.

Increase or Decrease in Adviser Placements

14.10 AusAID reserves the right to increase, decrease, or suspend Adviser placements at any time.

15. ANNUAL PLAN

15.1 The Contractor must provide to AusAID in each year of the Program, an Annual Plan which, before it is implemented, must be approved by AusAID. See requirements in the Scope of Services **Clause 14**

15.2 An indicative Annual Plan must be submitted to the Governments of Australia and PNG each year six months before the Annual Plan is due, from the second year of Program implementation, for consideration and further consultation.

15.3 The Annual Plan must be prepared in accordance with directions provided in writing by AusAID, must be consistent with this Contract and must include the following matters:

- (a) the Contractor's plan for performance of the Services required for the period of the Annual Plan;
- (b) the Contractor's proposed strategy for coordinating any third party issues and for providing the Services in a flexible manner as is appropriate;
- (c) Interpret results and outcomes so they are clear and measurable for each activity;

- (d) Detail a responsive Implementation Plan using all Australian Government resources available in the sector, including EPSP, the *Strongim Gavman* Program and Twinning activities; and
 - (e) a detailed budget for the period of the Annual Plan.
- 15.4 The Contractor must make amendments to the Annual Plan as reasonably requested by AusAID.
- 15.5 Within 30 days of receipt of the Annual Plan in accordance with **Clause 15.1 above**, AusAID shall notify the Contractor in writing when a decision is likely to be made to reject or accept the Annual Plan. If such Annual Plan has not been approved or rejected within the stated period of 30 days AusAID shall give fair and reasonable consideration to granting an extension of time to the Contractor in respect of the performance of the Services.
- 15.6 Acceptance by AusAID of the Annual Plan does not represent a change to the Contract. The Contract may only be varied in accordance with the Standard Conditions **Clause 33** (Contract Amendments).
- 16. **PERFORMANCE REVIEWS**
- 16.1 The Contractor must cooperate fully in performance reviews of this Contract at the frequency and in relation to the matters specified by AusAID including on an ad hoc basis if requested by AusAID, for the purpose of ensuring that this Contract is being properly performed and may consider all aspects of the Contractor's performance including user satisfaction and the accuracy of reports and invoices. AusAID may appoint an independent person to assist in the performance of, or to perform, the reviews.
- 16.2 The Contractor must participate cooperatively in any reviews conducted by AusAID or by its nominees. In addition, the Contractor must respond in writing to any draft performance review report within 28 Business Days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.
- 16.3 Reviews may be conducted of:
 - (a) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services under this Contract and ensuring value for money for the Commonwealth;
 - (b) the accuracy of the Contractor's invoices and reports in relation to the provision of the Services under this Contract;
 - (c) the Contractor's compliance with its personnel, confidentiality and privacy obligations; or
 - (d) any other matters relevant to the performance of any Services in accordance with this Contract.
- 16.4 Each party must bear its own costs of any reviews.

- 16.5 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.

17. **PROGRAM CO-ORDINATION**

- 17.1 The Contractor shall designate the Program Manager to be its sole senior representative responsible for the overall management and direction of its performance of the Services. The Program Manager shall be responsible for the day-to-day on-site management of the Program.

18. **PROCUREMENT**

- 18.1 The Contractor must, in its procurement of goods and services, comply with the Commonwealth's Procurement Guidelines and will ensure that:
- (a) the goods to be procured are of a satisfactory quality;
 - (b) the goods will be delivered or completed in good order and condition and in accordance with the Program timetable;
 - (c) the price paid for items procured represent value for money;
 - (d) there is open and effective competition in the purchasing process to the extent practicable;
 - (e) a professional approach be reflected in the purchasing process including ethical behaviour and fair dealing;
 - (f) specifications are in writing and do not exclude Australian and New Zealand products which are suitable or reasonably adaptable to the requirement on hand;
 - (g) procurement is planned including but not limited to early consultation with industry; and
 - (h) due consideration is given in procurement to maximise participation by Australian and New Zealand suppliers where practicable in accordance with Commonwealth Procurement Guidelines Number 12. The Contractor may obtain information about manufacturers from the Industrial Supplies Offices in each capital city.
- 18.2 The Contractor shall undertake all procurement in its own name, not in the Commonwealth's name or as the Commonwealth's agent.
- 18.3 All assets procured under **Clause 3.2(b)** of the Basis of Payments (Schedule 2) will become the property of the Commonwealth immediately following reimbursement of the actual cost of that asset.
- 18.4 The Contractor should be aware of and conform with Australian Government purchasing policies in regard to any country as the Government may determine from time to time.

- 18.5 The Contractor must maintain procurement records which will record its efforts to implement these requirements and its procurement records will be deemed to be financial records.

19. CONTROL OF PROGRAM SUPPLIES

- 19.1 The Contractor will be responsible for the reasonable care of all assets procured for the Program.
- 19.2 The Contractor carries all risk for Program assets until such time as they are handed over to AusAID or the Partner Country's government at AusAID's direction.
- 19.3 The Contractor must ensure that effective internal controls exist in relation to assets (including consumable items) prior to their issue for use.
- 19.4 The Contractor must maintain a Register of Assets (RoA) under its administrative control within the Partner Country's government. The RoA must record non-consumable items funded or supplied to the Program and having a value of A\$1,000 or more. In addition non-consumable items of a portable and attractive nature with a value of less than A\$1,000 are also to be recorded. The following is an indicative, but not exhaustive list of items that may include:
- (a) computer hardware and software;
 - (b) photographic equipment; and
 - (c) office furniture and equipment.
- 19.5 The RoA must show the date of receipt of the asset at the Program site, the cost, the purchase/payment document date and reference number, a description and identification number, and the location of the asset. Subsequent disposal action as agreed to in writing by AusAID such as replacement, write-off, or transfer to the Partner Country's counterpart agency shall also be recorded. The RoA and other relevant documents such as import papers and manufacturers' warranties relating to the assets shall be available for audit as required by AusAID.
- 19.6 Payment for the purchase of assets required to be placed on the RoA pursuant to **Clause 19.5** should not be approved by the Contractor unless the payment document carries the corresponding RoA reference/asset number.
- 19.7 The Program Manager must ensure that the RoA is maintained in an accurate and current state, and must exercise administrative control on behalf of the Commonwealth over the assets recorded in the RoA. The Program Manager will be responsible for the safe-keeping and maintenance of the assets in the RoA until directed by AusAID to transfer them to the Partner Country's counterpart agency or otherwise dispose of them.

20. IMPREST ACCOUNT

- 20.1 The Contractor shall establish an imprest account in accordance with this **Clause 20.**
- 20.2 The Contractor must undertake a selection process in order to recommend a commercial banking institution which represents value for money for AusAID approval, with which to establish the separate imprest account.
- 20.3 The imprest account will be titled the “Incentive Fund Phase III Imprest Account” (the “Imprest Account”). In correspondence with AusAID, the Imprest Account will be referred to by this title.
- 20.4 Money in the Imprest Account is the money of the Contractor and is not held by the Contractor on trust for AusAID or as agent for AusAID.
- 20.5 The Contractor agrees that the money in the Imprest Account is to be used for the purpose of funding approved Program activities. Money paid into the Imprest Account, or paid to the Contractor for the purposes of the Imprest Account, must not be intermingled with the Contractor’s other money.
- 20.6 The Contractor is responsible for the management of (including scheduling, acquittal and disbursement) and reporting on the Imprest Account.
- 20.7 Within one month of the Mobilisation Date, the Contractor must produce and submit to AusAID an Operations Procedures Manual for approval which details the management arrangements and operational procedures for the Imprest Account. Where appropriate, the Operations Procedures Manual must be developed in consultation with counterparts using counterpart systems, forms and processes as much as possible.
- 20.8 The Contractor, in consultation with the Partner Government (Department of National Planning and Monitoring), where appropriate, will appoint two Specified Personnel as principal signatories to the Imprest Account. Both appointed personnel are to sign withdrawals. In circumstances where one of the principal signatories is absent from the Program, a third approved nominee may act as an alternative signatory to the Imprest Account. All principal and alternative signatories will be named in the Operations Procedures Manual for the Imprest Account and approved by AusAID.
- 20.9 The funds held in the Imprest Account shall be used solely for the purpose of funding approved activities which are developed under Incentive Fund Phase III but are not eligible for other funding, such as under the Capacity Development Fund.
- 20.10 Bank charges relating to the Imprest Account must be paid with money from the Imprest Account and acquitted in the same way other expenditure is acquitted.
- 20.11 Interest earned on the Imprest Account must remain in the Imprest Account and must be used for Program purposes and acquitted to AusAID as such.

- 20.12 Subject to **Clause 20.13** and **20.14** below, money for the Imprest Account will be paid by AusAID to the Contractor on a three (3) month basis.
- 20.13 The first payment is payable following AusAID approval of the Operations Procedures Manual and each subsequent payment is payable following AusAID approval of the Contractor's:
- (a) acquittal of a minimum of 80% the immediately previous payment and 100% of all earlier payments; and
 - (b) cashflow projection of funds required for each subsequent payment, over the next twelve month period.
- 20.14 Amounts payable in accordance with **Clause 20.12** above will be paid within 10 days of notification received by AusAID's Finance Section.
- 20.15 The balance of the Imprest Account must be reported as at 31 March, 30 June, 30 September and 31 December each year, within 10 days of the end of each period, to the AusAID officer specified for the purposes of Standard Conditions **Clause 61** (Notices), with a copy of the balance provided to AusAID's Chief Finance Officer by:

Email (Preferably): accountsprocessing@ausaid.gov.au

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

- 20.16 On every anniversary of the Commencement Date, an audit of the Imprest Account and all documentation relating to the Imprest Account for the previous twelve months must be conducted by an independent external auditor. The audit must be completed within 28 days of each anniversary of the Commencement Date and three copies of each audit report sent to AusAID within 7 days of the Contractor's receipt of the audit report. One copy must be sent to the relevant AusAID officer specified for the purposes of Standard Conditions **Clause 61** (Notices), one copy must be sent to the Director, Audit and the third copy sent to the Chief Finance Officer at the following address:

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

- 20.17 A final independent audit of the Imprest Account and all documentation relating to the Imprest Account must be provided with the Program Completion Report for the period since the last independent audit provided in accordance with **Clause 20.16** above.

- 20.18 The cost of an audit conducted in accordance with **Clauses 20.16** and **20.17** is included in the fees payable to the Contractor, and the cost of any corrections or remedial work required to the Imprest Account pursuant to audit findings is to be borne by the Contractor.
- 20.19 The Imprest Account and all documentation relating to the Imprest Account, including documentation related to the use of the Imprest Account funds may be subject to audit by or on behalf of AusAID at any time and from time to time.
- 20.20 If, upon the premature termination of the Contract or at the end of the Contract, money remains in the Imprest Account, the Contractor must pay to AusAID an amount equal to the total amount of money (including any accrued interest) remaining in the Imprest Account.
- 20.21 This clause shall survive expiration or termination of this Contract.

21. **RIGHT OF AusAID TO RECOVER MONEY**

- 21.1 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.
- 21.2 AusAID may review any payments made to the Contractor at any time and:
- (a) if the total of the amount paid to the Contractor is greater than AusAID determines by review to be payable under the Contract, then AusAID must notify the Contractor in writing of the amount of refund it has determined to be repayable;
 - (b) the Contractor must within 28 days after receipt of AusAID's notification:
 - (i) refund the excess to AusAID; or
 - (ii) provide AusAID with evidence supporting the Contractor's opinion concerning the amount of the refund;
 - (c) failure by the Contractor to provide evidence as required in **Clause 21.2(b) above** will, in the absence of payment in full of the refund claimed, be deemed to be evidence of the Contractor's acceptance that the amount of refund is correct and payable to AusAID on demand or deductible from subsequent payments due under the Contract; and
 - (d) AusAID must, within 28 days of receipt after the Contractor's evidence supporting its opinion concerning the amount of the refund, consider the Contractor's evidence and give the Contractor written notice either:
 - (i) calling for payment within 28 days of the refund determined by AusAID's review;

- (ii) calling for payment within 28 days of the refund as re-determined following its consideration of the Contractor's evidence; or
 - (iii) of AusAID's agreement that there is no refund payable.
- 21.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 21.2**, 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.
- 21.4 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.

AusAID may require the following clauses be included in the Contract:

22. UNCONDITIONAL FINANCIAL UNDERTAKING

- 22.1 The Contractor must, on or before the Mobilisation Date, provide to AusAID a performance security in respect of the Services in the form of an unconditional and irrevocable financial undertaking from a financial institution authorised to carry on banking business under the *Banking Act 1959* (Cth) in Australia and approved by AusAID.
- 22.2 The performance security provided must be in the form appearing in Schedule 5 and must be provided at the Contractor's cost, for the maximum aggregate sum of A\$2,500,000 and be available for the term of the Contract.
- 22.3 AusAID is not obliged to make any payments under the Contract, whether or not such payments are due, prior to receipt of the performance security duly executed and, where applicable, stamped, in accordance with **Clause 22.1** above.
- 22.4 If AusAID becomes entitled to exercise all or any of its rights to recover moneys under or in relation to the Contract, AusAID may exercise all or any of its rights under the performance security.

23. PERFORMANCE GUARANTEE

- 23.1 The Contractor must, at its expense, provide to AusAID; within 10 Business Days of the Mobilisation 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 6**.

PART 3 - SCOPE OF SERVICES

Note to Tenderers: Although the Scope of Services is presented as Part 3 of this RFT, it will appear as Schedule 1 in the consolidated Contract.

SCHEDULE 1 – SCOPE OF SERVICES

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SCHEDULE 1 – SCOPE OF SERVICES

Incentive Fund Phase III

1. BACKGROUND

- 1.1 The Incentive Fund commenced in August 2000 and ended in 2008 when activities approved in 2006 were finalised. It worked over two phases: Phase I from August 2000 to 2003, and Phase II from 2003 to December 2007. Phase II included a wind down phase covering the period 1 January 2008 to 28 February 2009. The Incentive Fund has funded A\$113 million across 39 projects, the last of which was completed in 2008.
- 1.2 The ‘incentive’ is in the opportunity for Papua New Guinea (PNG) service delivery organisations to ‘lift their game’, to expand their ability to ‘do their job’ and then become eligible to access the significant resources available under the Incentive Fund. The ‘incentive’ is the encouragement and the reward factor for well performing organisations and those with capabilities that seriously aspire to do better. Only organisations that are already capable and can demonstrate that they have the capacity to expand their development impact are eligible.
- 1.3 The Incentive Fund Phase III (IF III) seeks to support activities that reflect the development priorities of both the Government of Papua New Guinea (GoPNG) and the Government of Australia.
- 1.4 The Incentive Fund is generally well regarded having worked with organisations with a good track record and which value and care for the resources available to them, thus increasing the sustainability of the supported activities. IF III builds on this sound foundation and incorporates recommendations of the 2007 Incentive Fund Review and lessons learned in previous phases.
- 1.5 The Incentive Fund is demand driven. Its focus will be on good PNG organisations which are delivering services of value to people, and on further building their capacity. IF III will build on the gender equality work started within Phase II and strengthen approaches to sustainability and monitoring and evaluation.
- 1.6 The Incentive Fund will provide a pool of funding allocated by competitive selection for those organisations that are able to demonstrate that they are accountable, well managed organisations with a track record of effective service delivery.
- 1.7 IF III will develop close linkages with and complement other aid activities, including GoPNG’s Provincial Performance Improvement Initiative (PPII), AusAID’s Sub National Strategy (SNS) and AusAID Democratic Governance Program, in particular the *Strongim Pipol Strongim Nesen* (SPSN) Program that builds on the strengths of the Democratic Governance Transition Program, formerly the Community Development Scheme.
- 1.8 IF III has a strong focus on capacity and capacity development. IF III will further build the capacity of PNG organisations and improve their ability to target the needs and priorities of Papua New Guineans. This is consistent with the two AusAID programs most closely related to the Incentive Fund, SNS and the new demographic governance program, *Strongim Pipol Strongim Nesen*. It is also consistent with GoPNG’s PNG Commitment on Aid Effectiveness¹.

- 1.9 To build capacity of organisations, the Contractor will work closely with applicant organisations. This includes the provision of organisational capacity building supported through the Joint Organisation Assessment (JOA) process and supporting applicants to build their capacity in non-core capabilities such as project management and those areas that are needed to sustain the project (i.e., maintenance and asset management).

Key Documents

- 1.10 The following key documents are relevant to IF III:
- (a) The Papua New Guinea-Australia Incentive Fund (Phase III) Program Design Document of 1 September 2008 (PDD);
 - (b) Changing Lives: Stories from the Australia Papua New Guinea Incentive Fund. An AusAID Program 2000-2008. Port Moresby, 2008. Available at www.cidsharepoint.net/APNGIFund/
along with other relevant background information about earlier phases of the Incentive Fund; and
 - (c) Australian PNG Incentive Fund Review Report.

IF III Program Design Document

- 1.11 This Scope of Services outlines the role of the Contractor in supporting the implementation of IF III. The PDD describes IF III including application processing, monitoring and evaluation, the management framework, financial arrangements and risks. The PDD is the primary reference document to gain an understanding of the context, scope and principles of IF III. In instances where there is a discrepancy between the Contract and the PDD, the Contract will take precedence.

2. GOAL OF IF III

- 2.1 The goal of IF III is “to deliver significant and immediately tangible economic and/or social development outcomes for men, women and children”.
- 2.2 Its purpose is to strengthen and reward performing PNG organisations capable of delivering and maintaining high impact development activities that benefit men, women and children.

3. DURATION

- 3.1 The duration of these services is from (date) 2010 to (date) 2014.
- 3.2 The Program Mobilisation Date is (agreed during Contract negotiation).
- 3.3 The Contractor must commence mobilising the IF III in PNG by the Program Mobilisation Date.

4. LOCATION AND GUIDANCE ON FUNDS AVAILABLE FOR ACTIVITIES

- 4.1 Projects will be implemented throughout PNG. The Contractor shall mobilise a program office in Port Moresby.
- 4.2 Around A\$15 million will be contributed annually to IF III from the Government of Australia. AusAID will advise the funding allocation each year. There is scope for additional funding for IF III from other development partners including the GoPNG. Additional funding could add to the overall IF III pipeline of activities or it could be tagged for specific activities.

5. VISION OF A SUCCESSFUL IF III

- 5.1 A successful IF III would see participation by strong PNG organisations in the delivery of activities. The goal and objectives of each grant would be achieved and these would contribute to delivering significant and immediately tangible economic and/or social development outcomes for men, women and children. It would also see an effective communications strategy resulting in suitable PNG organisations being aware of the IF III and its goal and purpose. These organisations would know and understand the application process and would submit sound and relevant proposals for funding. Decision making committees associated with the IF III would be successful in their role and responsibilities. Utilisation of the funds would be efficient and agencies receiving the funding would have proficient monitoring and evaluation of the outcomes. Reporting on the use of the funds would be timely and comprehensive.

6. MANAGEMENT ARRANGEMENTS

Department of National Planning and Monitoring (DNPM)

- 6.1 DNPM will identify a key contact for all aspects of the Incentive Fund who will be the counterpart to the AusAID Incentive Fund Program Manager. This person will coordinate DNPM's inputs to meet the following responsibilities:
 - (a) effective and efficient communication with AusAID and the Contractor;
 - (b) joint appointment with AusAID of members of the Incentive Fund Management Group;
 - (c) internal DNPM and central agency coordination and reporting;
 - (d) seek advice on any concept proposals submitted to the Contractor from relevant GoPNG sectors including national departments, provinces and agencies, or assist the Contractor to obtain it;
 - (e) screen concept proposals submitted by the Contractor to the Incentive Fund Management Group, and determine, in consultation with other members of the Incentive Fund Management Group, which project proposals are eligible for funding;
 - (f) ensure DNPM's regular participation as a standing member of the Incentive Fund Management Group; and

- (g) act on recommendations from the Incentive Fund Management Group.
- 6.2 DNPM will provide statistics or data (where it exists) to assist in the development of baseline data against which project progress can be measured. DNPM will also participate in joint monitoring and evaluation exercises.
- 6.3 DNPM will also be part of the Imprest Account management process by providing suitable delegates as a counter-signatory for issuing cheques.

AusAID

- 6.4 AusAID will provide oversight to IF III, to ensure program milestones are reached and Contract requirements are met. AusAID will also monitor progress and ensure AusAID's quality assurance and mandatory reporting requirements are met. AusAID's Activity Manager will be responsible for day-to-day operations and communications with the Contractor regarding the management of IF III.
- 6.5 AusAID's Activity Manager (in Port Moresby) will coordinate AusAID's inputs to meet the following responsibilities:
 - (a) effective and efficient communication with AusAID and the Contractor;
 - (b) joint appointment with DNPM of the members of the Incentive Fund Management Group;
 - (c) internal AusAID coordination and reporting and financial management, including advice on annual allocations;
 - (d) seek advice on concept proposals submitted to the Contractor from AusAID sectors and sectoral programs, or assist the Contractor to obtain it;
 - (e) ensure AusAID's participation as a standing member of the Incentive Fund Management Group;
 - (f) monitor and report on the performance of the Contractor and the Independent Review Team;
 - (g) act on recommendations from the Incentive Fund Management Group; and
 - (h) manage the contracts with the Contractor and the Independent Review Team.

Incentive Fund Management Group

- 6.6 The Incentive Fund Management Group (Management Group) will provide strategic direction to IF III. It will prioritise and select activities for approval.
- 6.7 The five-member Management Group will consist of:
 - (a) three appointed members nominated by AusAID and DNPM to serve terms of three years duration. These appointments are renewable. The three appointed members will consist of at least three PNG nationals (jointly appointed by consensus by the GoPNG's Department of National Planning and Monitoring

(DNPM) and AusAID) representing experience in community, faith-based and private sector organisations; and

- (b) two standing members, being one representative each from DNPM and AusAID.

For the first 18 months of the implementation of the IF III, the Management Group from the previous phase (IF II) will be appointed for reasons of continuity.

- 6.8 The Management Group will be responsible for the policy, strategic direction and implementation oversight for IF III including reviewing progress and endorsing Annual Plans. The role of the Management Group is discussed in detail in the PDD at Section 3 and this may be revised during the period of IF III.
- 6.9 The Management Group will meet on a quarterly basis. Special meetings of the Management Group can occur at other times, depending on the urgency of issues to be discussed.
- 6.10 The Contractor is to provide secretariat support for the Management Group. This includes:
 - (a) Organising and meeting costs for the logistical support for meetings such as:
 - (i) Venue and equipment bookings; and
 - (ii) Travel and accommodation for members;
 - (b) Provision of administrative support for meetings such as:
 - (iii) Facilitating preliminary workshops or sessions to assist the Management Group members to effectively fulfil their roles;
 - (iv) Coordinating and advising the agenda and working papers for meetings;
 - (v) Distribution of documentation; and
 - (vi) Recording and obtaining approval of meeting minutes; and
 - (c) Payment of stipends and allowances where agreed by AusAID to Management Group members.

Management Group Sub-committee

- 6.11 The Management Group Sub-committee (AusAID, DNPM and one other member) will assess the recommendations of the Contractor on Organisational Assessments (OA) – see Clause 3.5 of Annex 3. This can be completed as a desktop exercise with either a teleconference or meeting required to resolve any questions or disagreements. An application for funding from the IF III will only proceed if all sub-committee members endorse the OA as satisfactory.
- 6.12 The Contractor is to provide secretariat support for the Management Group Sub-committee.

Independent Review Team (IRT)

- 6.13 An IRT will be contracted by AusAID to undertake a comprehensive systems and financial audit and performance assessment of the IF III at the end of years 1, 3 and 4.
- 6.14 The IRT will consist of up to three people with skills in accounting/audit, capacity development, performance measurement and project management at a senior level.
- 6.15 The IRT will review the quality of IF III's systems and procedures, the effectiveness of the Management Group and the performance of the Contractor and will then make recommendations to the Management Group and AusAID. Annex 2 (IRT Tasks) provides additional information on the IRT Tasks).
- 6.16 The Contractor is to cooperate with and coordinate with the IRT to facilitate the IRT achieving its tasks. Further, the Contractor is to provide assistance and support to the IRT including office space, access to personnel, data and documentation and logistical support.

7. SERVICES

Overview of Services

- 7.1 The Contractor shall provide a holistic suite of services to manage the IF III and to facilitate its implementation. This will involve recruiting staff and establishing an office in Port Moresby. The Contractor will disseminate information about the IF III in PNG. This will require establishing and maintaining a stand alone website, conducting workshops and the development of information about IF III in a variety of media. The Contractor will advise and assist agencies to prepare proposals for funding and manage records to enable monitoring and comprehensive reporting on the proposals and their success. The Contractor will establish and maintain systems for IF III administration, communication, financial management, procurement processes for grants, and monitoring and evaluation, which support IF III implementation and reporting. In addition, the Contractor will provide secretariat services to key committees such as the Management Group involved in management of the IF III. The Contractor will manage an imprest account and disburse funds and will provide advice and reporting to the GoPNG and AusAID.
- 7.2 The Contractor will provide the Services in accordance with GoPNG and Government of Australia development policies, ensuring that IF III activities address key issues in delivering development activities, including gender equity, HIV AIDS, child protection, disability and sustainability. It will be the responsibility of the Contractor to ensure systems and procedures are in place to manage and ensure the effective and efficient implementation of IF III, building on the strong foundation of previous phases. The Contractor will be guided by and support the Management Group. A key focus will be on capturing outcomes through an effective monitoring and evaluation framework.
- 7.3 In implementing IF III, the Contractor shall:
 - (a) manage the IF III according to AusAID's developmental and contractual requirements;
 - (b) establish and maintain an office and facilities in Port Moresby;

- (c) recruit and manage staff necessary to deliver the services of the Contract including their performance management and provision of necessary logistical support;
- (d) procure goods and services;
- (e) provide secretariat support to the Management Group and other committees;
- (f) prepare a plan and market IF III to potential participating organisations;
- (g) prepare and maintain and keep up-to-date an information kit and a website promoting IF III;
- (h) design an enquiry response system, train staff in this system and implement the system;
- (i) establish a database and maintain records on enquiries, registrations, concepts and full applications, and project monitoring and evaluation processes;
- (j) process applications provided by AusAID during Program Mobilisation (see clause 9);
- (k) conduct analysis of project applications for compliance with the 'gateway' criteria advising applicants the outcomes;
- (l) submit proposals for initial screening by relevant departments and sectors with feedback to be included in the package of material for consideration by the Management Group;
- (m) investigate and appraise proposals according to the IF III selection criteria and submit appraisal reports to the Management Group;
- (n) design an approach to and organise the Organisational Assessments of agencies submitting proposals for funding and submit these to the Management Group;
- (o) notify successful organisations and prepare Incentive Fund Agreements (IFAs) with project-specific Scopes of Services and Basis of Payment and sign the IFA (as the agent of the Commonwealth);
- (p) monitor projects and enter monitoring reports to the database and design and implement a comprehensive monitoring and evaluation arrangement for the IF III as a whole;
- (q) conduct field visits/analyses, review project audit reports and analyses of project reports undertaken in order to validate project progress;
- (r) design and implement a communications strategy;
- (s) design and manage the IF III imprest account mechanisms including the central funding account and project sub-accounts;

- (t) prepare, Annual Plans, Quarterly Progress Reports and a IF III Completion Report and submit these reports to AusAID; and
- (u) provide information, support and coordination to the IRT.

8. COMPONENTS

8.1 IF III has three components:

- (a) Component 1: Program implementation;
- (b) Component 2: Monitoring and evaluation; and
- (c) Component 3: Program management.

Component 1: Program implementation

- 8.2 IF III will provide two funding rounds annually. Thus there will be two opportunities each year for eligible PNG organisations to access funding. The funding threshold for each project will be K500,000. The upper limit of K10,000,000 is currently set for IF III. However, this decision could be revised during the period of the Contract.
- 8.3 A wide range of PNG organisations that meet the ‘gateway’ entry criteria are eligible to apply to for funding including provincial and local level governments and statutory non-commercial bodies. A key focus of IF III is to work with selected organisations to strengthen capabilities. The OA is the primary tool for identifying required capabilities and assessing applicants. Sound development activities promoted by capable organisations should not be discarded because the applicant lacks a particular non-core capability to implement or sustain the project and subsequent activity.
- 8.4 In Component 1, the Contractor will establish and maintain operational mechanisms for the implementation of IF III grants. Application assessment and processing is outlined in Annex 3 to this Scope of Services.
- 8.5 Key tasks and outputs for the Contractor in this Component 1 include, but are not limited to:
 - (a) Establishing and maintain grant operational mechanisms;
 - (b) Managing the four stages of grant applications;
 - (c) Providing appropriate levels of support for the organisation assessment and selection of activities;
 - (d) Assessing whether it is useful to conduct a Joint Organisational Assessment for the purpose of strengthening the capacity of the applicant organisation;
 - (e) Developing and implementing an IF III communications strategy targeting key stakeholders, and providing information about accessing funds and the progress of IF III.

- (f) identifying opportunities to promote the results of the IF III in conjunction with AusAID Public Affairs in PNG;
- (g) Publicising the IF III throughout PNG to ensure widespread awareness of the IF III. This will include conducting workshops in major centres twice a year to advertise IF III (See Annex 4 Workshop Program).
- (h) Developing and issuing IF III Guidelines and Procedures including updating the Incentive Fund information booklet to reflect current procedures and policy;
- (i) Developing an easily accessible up-to-date and functioning website for IF III that contains IF III background materials, guidance information, contact details and a brief description of the IF III pipeline of approved Funding Proposals (after gateway and OA stages) and activities;
- (j) Undertaking relationship management such as supporting AusAID and GoPNG to maintain and strengthen relationships with key partners including project beneficiary organisations and other relevant stakeholders;
- (k) Ensuring that all funded activities and Contractor management personnel adhere to GoPNG and GoA policies in including mainstreaming and monitoring of disability, gender equality, child protection and HIV and AIDS strategies;
- (l) Establishing and maintaining a database, which provides all information necessary to ensure the transparency, proper management and reporting of all activities carried out in connection with IF III (See Annex 5 to this Scope of Services);
- (m) Providing secretariat and logistical services to the Management Group and the Management Group Sub-Committee for their meetings and to support their role in IF III;
- (n) Providing high quality advice to the GoPNG, AusAID and the Management Group at each stage of the selection process and during implementation of IF III;
- (o) Identifying risks to the implementation of the IF III and undertake risk management; and
- (p) Providing reports to the GoPNG and AusAID (see Clause 14).

Component 2: Monitoring and Evaluation

- 8.6 The Contractor will develop a monitoring and evaluation approach that will enable measurement of progress at individual and program wide levels against the IF III goal and purpose.
- 8.7 Key outputs in this Component include:
 - (a) Within three months of the Program Mobilization Date, the Contractor will deliver to the Management Group and AusAID a draft Monitoring and Evaluation Framework. This is to be consistent with the guidance and philosophy discussed in the PDD Annex H.

- (b) The Contractor will design, facilitate and oversee an integrated M&E arrangement that, at:
 - (i) **activity level:** works with the recipient organisations to deliver a judgment about impact of their activities for all as well as about outputs;
 - (ii) **IF III project level:** addresses the broader questions relating to differential development impact of the IF III as a whole, and particularly the contribution of IF III through the individual projects; and
 - (iii) **implementation and management level:** contributes to an assessment of the Contractor's performance in managing IF III.
- (c) Monitoring and evaluation should be a standing agenda item for Management Group meetings and the Contractor shall provide a report for Management Group consideration at these meetings.
- (d) The Contractor shall revise and update the Monitoring and Evaluation Framework each year and provide it as an annex to the Annual Plan to reflect lessons learned in implementation.
- (e) The Contractor will facilitate an integrated monitoring and evaluation arrangement with the recipient organisations that delivers a judgement about outcomes as well as about outputs and the quality of inputs and processes.

Research and Lessons Learned

- (f) The Contractor is to commission and manage a small program-wide research activity. Drawing on eight years of previous operations of the Incentive Fund, the initial investigation will centre on what has been learned to date about the impact of the Incentive Fund as a whole. The research should include analysis of sustainability, capacity development, gender issues and development outcomes. The research activity should be developed in consultation with and agreed by the Management Group.

Component 3: Program Management

- 8.8 The Contractor is to provide a suite of management services to:
 - (a) ensure its actions contribute towards achieving the IF III goal and purpose;
 - (b) ensure effective and efficient administration of the IF III;
 - (c) manage allocated funds and resources including an imprest account;
 - (d) ensure its obligations to AusAID under the Contract are met; and
 - (e) ensure reporting is timely and comprehensive.
- 8.9 The Contractor will establish and manage an office and office systems in Port Moresby that will facilitate the efficient and effective delivery of IF III. The Contractor is to

procure goods and services to establish, furnish, equip, provide utilities for, secure and service the office.

8.10 The Contractor is to recruit, logistically support and performance manage staff for the following personnel:

- (a) Specified Personnel;
- (b) Office administrative staff to support the IF III office; and
- (c) Technical Assistance (TA) personnel for short term inputs to the IF III, including establishment of a Consultant Pool.

8.11 More generally, the Contractor is to:

- (a) undertake procurement of goods and services in an approach consistent with the Commonwealth Procurement Guidelines;
- (b) manage risks to the IF III, including fraud;
- (c) provide security for staff and IF III Program facilities;
- (d) provide reports as per **Clause 14** (Reporting);
- (e) provide assistance and support to the IRT including office space, access to personnel, data and documentation and logistical support; and
- (f) instigate a quality and continuous improvement program to assess and report to AusAID on lessons and where improvements and efficiencies have been introduced to IF III.

9. **PROGRAM MOBILISATION**

9.1 Prior to the Contractor commencing implementation of the IF III, AusAID will have undertaken some transition activities. Transition activities will include the launch of the IF III, advertising the IF III, inviting concept proposals for grant funding under the IF III, convening Management Group meetings, fielding enquiries about funding opportunities under IF III and preparation of interim guidelines for organisations applying for funding. As a result, there will be a suite of proposals available for the Contractor to manage from or soon after the Mobilisation Date. These proposals are the entry point to the IF III pipeline. During the transition, AusAID will manage the daily correspondence including telephone enquiries about IF III until the Contractor is mobilised. However, assessment of concepts will be conducted by the Contractor after the Mobilisation Date.

9.2 The sole purpose of these transition arrangements is to start up the funding application process with a first call for proposals. Apart from this first call for proposals, the Contractor will deliver the services as described in this Scope of Services.

10. TECHNICAL ASSISTANCE (TA) PERSONNEL

- 10.1 Where utilisation of TA personnel is required and agreed by the Management Group Sub-committee, the Contractor is to recruit, mobilise, demobilise, support and manage all TA personnel in accordance with this Scope of Services.
- 10.2 TA personnel will report to the Program Office and also to the GoPNG agency or agencies with whom they are working. Specific reporting relationships will be specified in individual position descriptions or terms of reference.
- 10.3 The Contractor's services in the management of TA personnel include the following:
 - (a) Performance management of TA personnel;
 - (b) Ensuring there are workplans for TA personnel; and
 - (c) Providing ongoing logistical and other support for TA personnel.
- 10.4 In addition to the Specified Personnel, the Contractor will also ensure access to additional short-term TA as required. This short-term TA will relate only to items identified in the Annual Plan, the need for which the Contractor could not reasonably foresee at the time of Tender.
- 10.5 The decision to approve additional short term inputs, not specified in the Annual Plan resides solely with AusAID. Prior to engaging any individual for additional short term input, the Contractor must submit the proposed individual's terms of reference and current curriculum vitae to AusAID for written approval.
- 10.6 The Specified Personnel will be supported by a team of short term TA personnel drawn from a Contractor Consultant Pool, with Terms of Reference prepared by the Contractor for Management Group endorsement.
- 10.7 In each Annual Plan, the Contractor will propose the short term positions and inputs required from the Consultant Pool or, if required, institute a selection process for short term TA consultants.

11. IMPREST ACCOUNTS

- 11.1 The Contractor is to manage and acquit funds and resources provided under the Contract for IF III. As noted earlier, DNPM will also be part of the Imprest Account management process by providing suitable delegates as a counter-signatory for issuing cheques.
- 11.2 Each year, AusAID will provide advice to the Contractor on the funds and resources to be allocated in order to facilitate the development of the Annual Plan.
- 11.3 Funding provided for grants under the IF III shall be managed by the Contractor under an imprest account established in accordance with Part A Project Specific Conditions Clause 20 – Imprest Account.
- 11.4 Replenishment of the imprest account is to be in accordance with Schedule 2 – Basis of Payment.

- 11.5 The Imprest Account Manual is to be submitted to AusAID for approval by its Finance Policy Section within one month of the Program Mobilisation Date.

12. OUTPUTS AND REPORTS

- 12.1 Key outputs and reports are specified in Table 1 – Outputs and Reports:

Table 1 – Outputs and Reports

Outputs	Indicative Due Date
Mobilisation plan	One month after contract signature
Office and staff mobilised	One month after contract signature
OA procedures established	To be specified in Annual Plan
IF Database established	To be specified in Annual Plan
IF Website	To be specified in Annual Plan
Quarterly reports	See Clause 13 Table 2
Annual Reports	See Clause 13 Table 2
Annual Plans (first plan will cover period to 31 December 2009)	Within three months of Mobilisation date
Imprest account manual	Within one month of Mobilisation Date
Communications strategy	Within three months of Mobilisation date
IF III Information Kit	Within three months of Mobilisation date
Workshops held	To be specified in Annual Plan
Draft Integrated M and E framework including approach to research	Within three months of Mobilisation date
IF III Policies and procedures manual and project handbook	Within three months of Mobilisation date
Financial Management Handbook	Within three months of Mobilisation date
Management Group operating guidelines (Management Group Charter)	Within three months of Mobilisation date
Management Group workshop/ training	To be specified in Annual Plan
Completion Report	To be advised

13. MILESTONES

- 13.1 Milestones are specified in Table 2 – Milestones. These are strategic outputs against which payments will be made as specified in Schedule 2 (Basis of Payments).

Table 2 - Milestones

Period	Number	Description	Due date
YEAR 1	1	Mobilisation Plan OR Incentive Fund Office established and staff recruited	1 April 2010
YEAR 1	2	April 2010-end June 2011 Annual Plan accepted by Management Group (MG)	1 May 2010
YEAR 1	3	Six monthly report accepted by MG	1 Dec 2010
YEAR 1	4	Quarterly report accepted by MG	15 March 2011
YEAR 1	5	Annual report accepted by MG	1 June 2011
YEAR 2	6	Annual Plan accepted by MG	15 June 2011
YEAR 2	7	Quarterly report accepted by MG	1 Oct 2011
YEAR 2	8	Six monthly report accepted by MG	1 Jan 2012
YEAR 2	9	Quarterly report accepted by MG	1 May 2012
YEAR 2	10	Annual report accepted by MG	1 June 2012
YEAR 3	11	Annual Plan accepted by MG	15 June 2012
YEAR 3	12	Quarterly report accepted by MG	1 Oct 2012
YEAR 3	13	Six monthly report accepted by MG	1 Jan 2013
YEAR 3	14	Quarterly report accepted by MG	1 May 2013
YEAR 3	15	Annual report accepted by MG	1 June 2013
YEAR 4	16	Annual Plan accepted by MG	15 June 2013
YEAR 4	17	Quarterly report accepted by MG	1 Oct 2013
YEAR 4	18	Six monthly report accepted by MG	1 Jan 2014
YEAR 4	19	Quarterly report accepted by MG	1 May 2014
YEAR 4	20	Completion report accepted by MG	1 June 2014

Comment: Due dates will be confirmed during Contract negotiations.
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14. REPORTING

14.1 The Contractor will provide the following documents and reports for IF III, based upon a review of existing documentation, with the draft to be submitted to AusAID and the MG within three months of the Mobilisation Date unless otherwise specified:

- (a) Annual Plan for Year One (to 31 December 2009);

- (b) IF III Policies and Procedures Manual and Project Handbook, including a Quality and Continuous Improvement Plan;
- (c) Monitoring and Evaluation Framework (see clause 8.7);
- (d) IF III Information Kit;
- (e) IF III Communication Strategy;
- (f) Management Group Operating Guidelines (“Charter”); and
- (g) Financial Management Handbook, including a Project Fraud Control Plan which addresses fraud management issues in accordance with AusAID’s Fraud Control Policy;

Guidance for the IF III Policies and Procedures Manual and Project Handbook

14.2 Specific items that shall be included in the *Policies and Procedures Manual and Project Handbook* include:

- (a) a Quality and Continuous Improvement Plan which will include strategies and approaches for building capacity of individuals and organisations associated with IF III including the Management Group, applicants, funded organisations and the Contractor’s staff;
- (b) The format for Concept Proposals (CPs);
- (c) Guidelines for preparing an Organisational Profile (OP);
- (d) Guidelines for when a Joint Organisations Assessment may be required and how Joint Organisational Assessments will be conducted;
- (e) Overall funding proposal format;
- (f) Guidelines for providing support for proposal development;
- (g) Appraisal and Screening Guidelines;
- (h) Assessment and selection criteria for the Contractor and Management Group;
- (i) Stage one screening summary sheets;
- (j) Unsuccessful CP and OP feedback sheets;
- (k) AusAID sector CP and OP commentary and feedback sheets;
- (l) a cross-cutting issues training plan for IF III and the Management Group;
- (m) OA procedures;
- (n) Tender for services to conduct the OAs;
- (o) Stage three draft IF III activity plan;

- (p) Draft IFA;
- (q) IFA management and reporting procedures;
- (r) Arrangements to gain access to PNG standards and technical specifications; and
- (s) Arrangements to gain access to standard tender and contract documentation.

Guidance for the Mobilisation Plan

14.3 The Contractor will develop a Mobilisation Plan that includes:

- (a) Details of schedules for staffing and selection of development specialists as described in the PDD;
- (b) An office establishment plan, including the establishment of systems to support IF III processes; and
- (c) Procurements.

14.4 The Mobilisation Plan must be based on the draft Mobilisation Plan submitted by the Contractor in their Tender.

14.5 The Scope of Services does not limit the content of the Mobilisation Plan. The Contractor may seek to ensure all major activities and major deliverables are included in the plan together with a commentary on risks and impediments that it foresees to successful mobilization. New and addition activities may be recommended. Appropriate remedial strategies shall be included.

14.6 AusAID may, in its absolute discretion, arrange for the Mobilization Plan to be considered at a Management Group meeting.

Guidance for the Annual Plan

14.7 In consultation with the Management Group and AusAID, the Contractor will prepare an Annual Project Plan to cover the period from the Mobilization Date until 31 July 2010, and annually thereafter.

14.8 The Annual Project Plan will incorporate a work plan for the Program and Annual Implementation Plans for each of the activities funded under the IF III. The Annual Project Plan will assess progress and outline outputs and actions for the ongoing projects and related activities to be implemented by the Contractor. All amendments to the Annual Plan and the on-going projects' work plans shall be subject to Management Group and AusAID written approval.

14.9 The Contractor must update the Annual Plan after 6 months and formally issue AusAID with an updated Six-Month Work Plan for the ongoing projects and related activities. This must include all GST-related matters and risk management plan(s).

14.10 The Contractor must submit two hard copies and one electronic copy to the AusAID Activity Manager specified in the Project Specific Contract Conditions.

Other Manuals, Documents and Reports

14.11 The Contractor will provide the following documents and reports for IF III:

- (a) **Monitoring and Evaluation Framework.** See **Clause 8.7**;
- (b) **Risk management plan**;
- (c) **Communications strategy** to explain and promote the Incentive Fund to potential users and identify opportunities to promote the results of the IF with AusAID Public Affairs in PNG;
- (d) **Quarterly progress reports between Annual and six-monthly reports.** Two hard copies and one electronic copy submitted by the Program Manager to the AusAID Activity Manager as specified in the Project Specific Contract conditions;
- (e) **Six monthly progress reports to include reporting against Annual Plan.** Two hard copies and one electronic copy submitted by the Program Manager to the AusAID Activity Manager as specified in the Project Specific Contract conditions;
- (f) **Management Group and Management Group sub-committee minutes submitted within seven days of the meeting.** Two hard copies and one electronic copy submitted by the Program Manager to the AusAID Activity Manager;
- (g) **Imprest account manual.** One hard copy and one electronic copy submitted by the Program Manager to the AusAID Activity Manager within one month of the Mobilisation Date;
- (h) **Completion Report:** Upon completion of the Contract, the Contractor must provide AusAID with five (5) hard copies and one (1) electronic copy of a Completion Report; and
- (i) Other reports as requested by AusAID in writing to meet corporate reporting requirements.

14.12 All reports must be provided in accordance with the specification under Standard Condition **Clause 7** (Reports) and must be:

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

15. **IF III MOBILISATION**

15.1 The Contractor must establish an office in Port Moresby by the Mobilisation Date.

16. **PERSONNEL**

16.1 Terms of Reference for Specified Personnel are detailed in **Annex 6** (Specified Personnel Position Descriptions).

16.2 Three Development Specialists will be appointed to cover three required skill areas within the team. These skill areas are:

- (a) construction and procurement;
- (b) organisational development and performance management;
- (c) monitoring and evaluation and research.

Table 1 – Specified Personnel

Position	Name
Program Manager	Name (as per proposal of successful bidder)
Administration Manager (Deputy Program Manager)	Name
Three Development Specialists that as a team will cover the following skill areas: • construction and procurement • organisational development and performance management • monitoring and evaluation and research	• Name • Name • Name
Financial Specialist	Name

16.3 Specified Personnel shall be based in Port Moresby for the duration of the IF III and be available on a full-time basis subject to AusAID's agreement.

16.4 Contractor Personnel are not expected to be required to travel within PNG for Program-related purposes unless detailed in the Contractor's approved Annual Plan or subject to prior written approval from AusAID.

16.5 The Contractor shall maintain an appropriate balance between international and local personnel for full time in-country positions. The Contractor will also ensure that there is an appropriate gender balance, particularly in management positions.

16.6 The Contractor will provide and maintain a full complement of staff necessary to undertake the tasks of IF III, in accordance with Schedule 2 - Basis of Payment.

- 16.7 The Contractor must employ local administrative, logistics and other support staff necessary for the efficient and effective management and administration of IF III.
- 16.8 The Contractor must ensure that all staff for IF III have Terms of Reference with the minimum requirements to be similar to the Position Descriptions (as provided at Annex 6) and that an appropriate staff development, performance planning and review program is in place to ensure the professional development of locally engaged staff.

Annexes:

1. Definitions and Acronyms
2. Draft IRT Tasks
3. Application Assessment and Processing
4. Workshop Program
5. Database
6. Specified Personnel Position Descriptions

ANNEX 1 – ACRONYMS AND DEFINITIONS

In this Scope of Services:

2. **Appraisal and Screening Guidelines** means guidelines prepared by the Contractor for appraising, evaluating and screening Funding Proposals
3. **Concept Proposal** means a proposal submitted by an eligible organisation for funding from IF III;
4. **Contractor's Personnel** means those personnel employed by the Contractor, and include the Specified Personnel;
5. **DNPM** means Department of National Planning and Monitoring;
6. **Funding Proposal** means a proposal submitted by an organisation for funding under IF III and includes a Funding Proposal and an Organisational Proposal;
7. **GoPNG** means Government of Papua New Guinea;
8. **IF III** means the Incentive Fund Phase III;
9. **IF III Activity Plan** means a plan to develop the applicant organisation's activity. This is developed by an applicant organisation following submission and approval of the Concept Proposal by the Management Group;
10. **IFA** means Incentive Fund Agreement;
11. **Incentive Fund Agreement** means an agreement for funding between a successful organisation and the Contractor for funding under IF III, details of which are set out in **Clause 34 of Annex 3**.
12. **IRT** means Independent Review Team, as defined in **Clauses 6.12 to 6.16**;
13. **MG** means the Incentive Fund Management Group as defined in **Clauses 6.5 to 6.11**;
14. **MG Charter** means the Management Group Operating Guidelines;
15. **OA** means an Organisational Assessment to be conducted in accordance with **Clause 3.5 of Annex 3**;
16. **OP** or **Organisational Proposal** means an Organisational Proposal describing the capability and capacity of an applicant organisation;
17. **PDD** means the Papua New Guinea-Australia Incentive Fund (Phase III) Program Design Document of 1 September 2008;
18. **PM** means Program Manager;
19. **Position Description** means the position descriptions provided at Annex 5 for the Contractor's Personnel;

- 20. **PPII** means GoPNG's Provincial Performance Improvement Initiative;
- 21. **Preparation Guidelines** means the preparation guidelines set out in **Annex 3**.
- 22. **Program Mobilisation Date** means the date that is 6 weeks from the Contract Start Date, as set out in **Clause 3.3 of Schedule 1**;
- 23. **Proposing Organisation** means an organisation submitting a Funding Proposal;
- 24. **SNS** means AusAID's Sub National Strategy;
- 25. **Specified Personnel** means the personnel and positions named at Table 1, **Clause 16.2**
- 26. **SPSN** means *Strongim Pipol Strongim Nesen* and is an AusAID program closely related to this Program, which builds on the strengths of the Democratic Governance Transition Program, formerly the Community Development Scheme; and
- 27. **TA Personnel** means technical assistance personnel, as defined in **Clause 10**.

ANNEX 2 - DRAFT IRT TASKS**1. DRAFT IRT TASKS**

- 1.1 As requested by the MG, and/or AusAID, the IRT will
 - (a) assess:
 - (i) Incentive Fund selection criteria and operating guidelines, including recommendations from the Contractor and the MG;
 - (ii) performance of the MG and the Contractor;
 - (iii) the impact of the sectoral, geographic and organisational outcome of the Incentive Fund:
 - (A) on the Australian aid program to PNG, and
 - (B) for the GoPNG;
 - (b) examine the methodology being supported by the Contractor at the level of individual grants, and operated by the Contractor at the level of the Incentive Fund, and the associated results, and provide independent advice on the basis of the evidence on the likelihood of achieving the goal and purpose of IF(III) and on the performance of ongoing or recently completed projects
 - (c) present findings and recommendations on the above to the MG, and/or AusAID as appropriate; and
 - (d) review specific items as requested, and develop recommendations.
- 1.2 The MG, AusAID or DNPM may direct the IRT to focus on particular issues or examine particular projects or activities in more detail.
- 1.3 The composition of the IRT, specific terms of reference and duration of in-country visits will be decided by AusAID in consultation with DNPM and the MG. Contractor performance elements are at AusAID's sole discretion.
- 1.4 The IRT will review the Contractor's annual plan and IF III performance reporting. It will also have input into AusAID's assessment of Contractor performance, and levels of staffing and resourcing.
- 1.5 AusAID will manage the IRT and will provide the Secretariat support (i.e. setting the agenda, calling meetings, taking and producing the final draft of the meeting minutes).
- 1.6 The Contractor will provide assistance to the IRT, including administrative and other logistical support as requested by AusAID.

ANNEX 3 - APPLICATION ASSESSMENT AND PREPARATION GUIDELINES

28. FOUR STAGES

- 28.1 The Contractor will manage the processes involved in providing two opportunities annually for PNG organisations to access funding. The minimum project will be K500,000, or at a level that enables a progression from AusAID *Strongim Pipol Kirapim Nesen* program. The maximum funding available will be K10 million.
- 28.2 **Stage One:** IF III will commence with an applicant submitting an Incentive Fund (Phase III) Funding Proposal (Funding Proposal) which is in two parts - a Concept Proposal (CP) describing the development activity and an Organisational Proposal (OP) describing the capability and capacity of the applicant.
- 28.3 The Contractor will undertake:
- (a) the initial assessment against a set of core gateway or entry criteria, and
 - (b) a deeper assessment of the development proposal and the applicant's organisational capabilities and capacity.

These steps are designed to lower application costs, eliminate wasted applicant effort and help manage expectations, especially for unsuccessful applicants.

- 28.4 Initially, the Funding Proposal will be assessed by the Contractor against a set of basic governance and development activity criteria (the 'gateway criteria'). Approved Funding Proposals that meet the gateway criteria will be further screened by the Contractor for development soundness and organisational capacity. Cross-cutting issues will be addressed at this stage. Capability weakness will be assessed at this stage.
- 28.5 The Contractor will then make recommendations on each Funding Proposal to the Management Group. This initial screening is a desktop exercise with strong Contractor involvement and guidance, conducted largely on the contents of the documents. A decision to approve or reject the proposal will be made by the MG.
- 28.6 **Stage Two:** Once the initial concept has been approved by the MG, and the activity Funding Proposal is in the pipeline, the specific organisational capability and weaknesses (e.g. project management) of the applicant will be identified. The primary tool for identifying required capabilities and assessing the applicant against will be an Organisational Assessment (OA) using the organisational proposal as the review template. Sound development activities promoted by capable organisations should not be discarded because the applicant lacks a particular non-core capability to implement or sustain the project and subsequent activity.
- 28.7 Competitive filtering and assessment of all approved Funding Proposals that achieve an acceptable OA will now take place. Acting on advice from the Contractor, the Management Group will prepare, agree and manage the IF III pipeline of activities. Approval at this stage authorises the applicant to proceed to develop the fully costed activity plan. Approval at Stage Two is a significant event and a non-binding but strong commitment by IF III to the activity.

- 28.8 **Stage Three:** approved Funding Proposals will then be developed by the applicant into a full application for final consideration by the Management Group under the processes and with the detail described in the PDD.
- 28.9 Assistance may be approved by the Management Group, to assist in developing specialist technical aspects of the Concept Proposal (i.e., gaining an accurate estimate of costs or an assessment of engineering risk). The applicant organisation is expected to have a core capacity and resources to develop the activity to project plan stage. The completed documentation at this stage is called the “Draft IF III Activity Plan”.
- 28.10 **Stage Four:** The completed Draft IF III Activity Plan will then be considered by the Management Group, with advice of the Contractor. The Management Group will either approve or reject the Draft IF III Activity Plan and the associated Incentive Fund Agreement. The Management Group can refer the Draft IF III Activity Plan back to the applicant and the Contractor for further information.

29. **FUNDING STREAMS**

- 29.1 IF III will initially have one funding stream from AusAID.
- 29.2 The PDD provides that after IF III commences the Government of Papua New Guinea (GoPNG), through DNPM, or other development partners, may contribute funds to be used through the IF III mechanism. No decision has been made on this aspect but the Contractor shall anticipate that this is a possibility in its planning and the design of systems and processes. For example, the Database and the imprest account system should be designed to accommodate GoPNG or other funding contributions.
- 29.3 AusAID will annually advise DNPM, the MG and the Contractor of the funds available for each year, and any other information necessary for the Contractor to administer the IF III Funding Stream.
- 29.4 The Contractor must be proactive in monitoring the effectiveness of IF III in achieving the goal and purpose of the IF III. To that end, the Contractor may at any time suggest to AusAID that the details of IF III be revised or a new Funding Stream be introduced.
- 29.5 Whether or not it has received such a suggestion, AusAID may at any time issue a request to the Contractor for advice in relation to revising the details, scope and purpose of IF III or introducing a new Funding Stream.

30. **ELIGIBILITY, PROCESSING AND APPROVAL**

- (a) Funding Proposals which do not:
- (i) satisfy the applicable gateway entry criteria and initial Organisation Assessment; or
 - (ii) do not achieve a satisfactory Organisational Assessment; or
 - (iii) which are declined at any stage by the MG;
- are not eligible to be supported by the IF III.

- (b) The Contractor must verify the eligibility of each Funding Proposal it receives against the applicable criteria.
- (c) If the Contractor receives an ineligible Funding Proposal, at Stage One, it must notify the proponent of the ineligible Funding Proposal of this fact and of the reasons for the ineligibility, after obtaining the endorsement from the Management Group or its duly appointed delegate or sub-committee.

30.2 Incomplete or Inadequate Funding Proposals

- (a) If the Contractor receives a Funding Proposal which is incomplete or which in the Contractor's opinion provides inadequate information for the appraisal, screening and Management Group approval processes to be effective, the Contractor must issue a written request for further information, including a brief description of the further information required, to the proponent of the Funding Proposal.
- (b) All requests for further information in relation to incomplete or inadequate Funding Proposals should be provided in unambiguous language and in sufficient detail to allow the organisation to respond appropriately. Furthermore, the correspondence should contain a timeframe indicating the final date for the information to be returned to the Contractor. The time should be reasonable and give reference to the next Management Group meeting and provide details of the remaining appraisal/screening that needs to be undertaken. It should be made clear that failure to provide the information in time will not make the IF III Proposal ineligible but merely mean that it is unlikely that it would be considered by the Management Group for funding in the period.

30.3 Submission to Management Group

As soon as is reasonably possible after receiving a set of completed Funding Proposals at Stage One, the Contractor must submit them to the Management Group with a recommendation for them to be:

- (a) Rejected; or
- (b) Approved for the purpose of proceeding to an Organisation Assessment, with or without conditions.

30.4 Screening of Funding Proposals by Management Group – Stage One

- (a) The Management Group will screen all Funding Proposals they receive according to the applicable Appraisal and Screening Guidelines which will be developed by the Contractor.
- (b) If, after receiving the Funding Proposals any member of the Management Group, including the AusAID representative or the DNPM representative, has serious reservations about the recommendation by the Contractor for any Funding Proposal the member will advise the Contractor in writing of those objections. The Contractor will investigate the matter so as to be in a position to advise the Management Group as to how to proceed when it meets.

- (c) The Management Group is not obliged to give reasons for not permitting a particular Funding Proposal to proceed to the next stage. The Contractor must convey any reasons given in writing to the proponent of a rejected Funding Proposal.

30.5 Organisation Assessment – Stage Two

- (a) The Contractor will arrange for all Funding Proposals approved by the Management Group at Stage One to receive an Organisation Assessment.
- (b) Using its own resources, and additional ad hoc specialist resources contracted under **Clause 13.7**, the assessment will take place as described in the Appraisal and Screening Guidelines to be drafted by the Contractor based upon the concept in the PDD.
- (c) The MG will screen all Funding Proposals that receive a satisfactory Organisational Assessment, and acting with the advice of the Contractor, will undertake a competitive screening, filtering and ranking of Funding Proposals to create the IF III pipeline of funding activities. Not all Funding proposals that receive a satisfactory Organisational Assessment will be funded. Those that are to be approved to go to Stage Three and the preparation of the draft IF III Activity Plan will be chosen at the sole discretion of the Management Group.
- (d) At Stage Two a Funding Proposal could be:
 - (i) Approved for immediate inclusion in the IF III pipeline, subject to completion of a satisfactory Draft IF III Activity Plan and the negotiation of an Incentive Fund Agreement; or
 - (ii) Deferred for a later funding round; or
 - (iii) Rejected.
- (e) The MG is not obliged to give reasons for not permitting a particular Funding Proposal to proceed to Stage Three. The Contractor must convey any such reasons in writing to the proponent of a rejected Funding Proposal.
- (f) At Stage Two approval the Management Group may approve funding for an applicant to obtain technical advice on a specific aspect of the Funding Proposal that is not normally expected to be within the capability of the applicant. The Contractor will either assist the applicant to contract such services or contract it on behalf of the applicant under the provisions of clause 13.7.

30.6 Submission to Management Group

- (a) The Contractor must, 7 days before a Management Group Meeting (or the duly delegated Management Group Sub-Committee), submit to each member of the Management Group copies of the Proforma for all Funding Proposals at Stages One or Two together with relevant additional supporting documentation that the Contractor deems necessary to enable the Management Group to make informed and fair decisions in relation to the approval or non-approval of Funding Proposals.

- (b) The Contractor must, 7 days before a Management Group Meeting, submit to each member of the Management Group copies of the Proforma for all Draft IF III Activity Plans at Stage Four together with relevant additional supporting documentation that the Contractor deems necessary to enable the Management Group to make informed and fair decisions in relation to the approval or non-approval of Funding Proposals.
- (c) The Contractor will provide a background paper for the Management Group when it considers Funding Proposals to enable it to make an informed development decision. The paper will discuss and advise on:
 - (i) The overall mix of activities in the IF III portfolio;
 - (ii) The overall sectoral balance in the IF portfolio;
 - (iii) Current GoPNG and or AusAID policy imperatives and their application to the applications under consideration;
 - (iv) The likely future IF III activities portfolio based upon enquiries and known applications in development.
- (d) Management Group members shall be given access to all Funding Proposal files, at the Contractor's office, prior to any meeting of the Management Group, if requested.

30.7 **Final approval or rejection by the Management Group – Stage Three**

- (a) All approved Funding Proposals from Stage Two will then be developed by the applicant into a Draft IF III Activity Plan in accordance with the Appraisal and Screening Guidelines. The Contractor will submit the Draft IF III Activity Plan and draft Incentive Fund Agreement to the Management Group with a recommendation for approval (with or without conditions) or rejection.
- (b) If after receiving the documentation at this Stage Three any member of the Management Group, including the AusAID representative or the DNPM representative, who has reservations about the recommendation by the Contractor or any aspect of the documentation, will advise the Contractor in writing of those reservations. The Contractor will investigate the matter so as to be in a position to advise the Management Group as to how to proceed when it meets.
- (c) At Stage Three a Draft IF III Activity Plan could be:
 - (i) Approved for immediate inclusion in the IF III pipeline, without or without conditions; or
 - (ii) Deferred for a later funding round; or
 - (iii) Rejected.
- (d) The Management Group is not obliged to give reasons for not permitting a particular Draft IF III Activity Plan to proceed to completion. The Contractor must

convey any reasons given in writing to the proponent of a rejected Funding Proposal.

30.8 Reasons for Non-Approval

The Contractor must, no later than 7 days after receiving notice from the Management Group of the non-approval of a Funding Proposal or draft IF III activity plan, convey to the proponent of that Funding Proposal any reasons given by the Management Group for its non-approval.

31. APPRAISAL

31.1 Appraisal of Funding Proposals

- (a) The Contractor must appraise each eligible Funding Proposal and Draft IF III Activity Plan prepared by the applicant organisation. The Contractor's appraisals will then be presented to the Management Group. The Contractor must ensure that the Management Group receives the best possible guidance, advice and recommendations upon which to make their decisions.
- (b) In so doing, the Contractor must:
 - (i) exercise high levels of due care and diligence in appraising all documentation for completeness, accuracy and validity;
 - (ii) be proactive and seek opportunities to establish the "track record" and financial viability of an applicant Organisation, including talking with accounting firms, the PNG Auditor General's Department, the community in which Funded Activities are proposed to be implemented and other means to verify that the organisation is capable of undertaking activities of the nature and scale of those proposed; and
 - (iii) look at all aspects of the proposed IF III activity and appraise and analyse the need, feasibility, sustainability, risk profile, and the financing and resource requirements associated with it.

31.2 Ad hoc Specialists

- (a) For the purposes of:
 - (i) appraising each Funding Proposal and/or the Draft IF III Activity Plan; or
 - (ii) providing technical advice on a specialist subject to an applicant at Stage Three as approved by the Management Group

the Contractor may engage an expert in the relevant sector to assist. This "ad hoc specialist" must have practical experience in the relevant field and have project development and appraisal experience, preferably in PNG. The Contractor must, unless otherwise instructed by AusAID's Representative, seek approval from the Management Group to engage an ad hoc specialist.

- (b) If necessary, the ad hoc specialist should travel either to the location of the proposed Funded Activities or to the Proposing Organisation's office to assess the quality of previous work undertaken by the organisation, discuss the proposed Funded Activities with members of the community or visit the organisation itself to ascertain more details of the Funding Proposal. The findings of the ad hoc specialist are to be incorporated into the Contractor's recommendation to the Management Group, and a summary of findings included in their report. The findings of the ad hoc specialist must also be contained in the Database.

32. REPORTING AND APPLICATION PROFORMA

32.1 Report

The Contractor must produce a detailed report on each Funding Proposal, and again for each Draft IF III Activity Plan, incorporating the findings of the ad hoc specialist which includes comments and analysis on the following aspects:

- (a) The Concept Proposal and the Organisational Proposal as submitted by the applicant
- (b) technical merits of the proposal;
- (c) the financial aspects of the proposal;
- (d) the human and other resource requirements;
- (e) the Organisational Assessment – at Stage Two;
- (f) the feasibility of proposed timing of the proposed Funded Activities;
- (g) the strategy for ensuring cross-cutting development issues are addressed;
- (h) the appropriateness of the proposed monitoring indicators;
- (i) the proposed evaluation criteria for Funded Activities;
- (j) the adequacy of the risk analysis and proposed management techniques for dealing with these risks; and
- (k) the overall technical and development feasibility of the Draft IF III Activity Plan.

32.2 Proforma

- (a) The Contractor must develop a simple proforma, which will be provided to the Management Group with each Funding Proposal at Stages One and Two. This proforma will be uniform for all Funding Proposals and will provide the following information:
 - (i) a summary of the proposal, including statement of objectives;
 - (ii) details of the Proposing Organisation;

- (iii) at Stage Two the result of the Organisational Assessment
- (iv) proposed financial costs;
- (v) timeframe;
- (vi) expected outcomes/outputs;
- (vii) evaluation criteria; and
- (viii) the Contractor's recommendations including:
 - (A) the summary of the findings of the ad hoc specialist;
 - (B) the results of consultations and/or review by AusAID sectors and GoPNG departments; and
 - (C) an overall recommendation.
- (b) The proforma should include an "action by" date to inform Management Group members of the timing for receipt of screening to be provided to the Contractor for the proposal to be considered at the next Management Group Meeting. All information must be provided in a non-biased manner, allowing the Management Group to make an independent and informed decision.

33. INCENTIVE FUND AGREEMENTS FOR APPROVED PROPOSALS

33.1 Development and Finalisation of Incentive Fund Agreements

- (a) Upon approval of a Funding Proposal by the Management Group, the Contractor must approach the proponent of the Funding Proposal with a view to:
 - (i) agreeing the timetable for the completion of the Draft IF III Activity Plan; and
 - (ii) settling the terms of an Incentive Fund Agreement. The Contractor is responsible for any drafting of the Incentive Fund Agreement but must do so strictly in accordance with the applicable IFA Proforma.
- (b) As part of finalising an Incentive Fund Agreement in connection with each approved Funding Proposal, the Contractor must:
 - (i) prepare a draft proposal-specific Incentive Fund Agreement based on the information contained in the approved Funding Proposal; and
 - (ii) organise a meeting with the applicant to discuss the draft Incentive Fund Agreement, and discuss with the Organisation the detail of each particular clause relating to the IFA emphasising the Organisation's obligations under the IFA with a view to addressing any potential impediments in the design of the activity and timely finalisation the IF.

33.2 No Payments until documents and process completed

- (a) No payments are to be made to approved organisations until:
 - (i) a final Incentive Fund Agreement is executed; and
 - (ii) all Stage Four processes are completed; and
 - (iii) all conditions imposed by the Management Group are met
- (b) No changes to the IFA Proforma or the detail in the approved Funding Proposal are to be made without the prior approval from the Management Group.

34. INCENTIVE FUND AGREEMENTS

34.1 AusAID Approval of Incentive Fund Agreement

- (a) The Contractor must finalise the pro-forma Incentive Fund Agreements for Management Group approval.
- (b) The Contractor must, before executing any Incentive Fund Agreement submit to the Management Group for its approval a copy of the terms of the Incentive Fund Agreement which the Contractor proposes to execute, together with all schedules and annexures and all other documentation which the Management Group will require in order to approve the proposed Incentive Fund Agreement.
- (c) The Contractor's obligations under this **Clause 34.1** must be satisfied by a positively appraised and approved Funding Proposal (Stage Two) and draft IF III Activity Plan and other documentation at Stage Four by the Management Group in accordance with **Clause 12**; or

34.2 Approval, Rejection or Amendment

The Management Group may approve, reject or request amendments to, a proposed Incentive Fund Agreement submitted to the Management Group.

34.3 Authority to Execute Incentive Fund Agreement

The Contractor is hereby authorised to execute any Incentive Fund Agreement if, and only if, such Incentive Fund Agreement is in precisely the same terms (subject to the correction of clerical errors) as a draft Incentive Fund Agreement approved by the Management Group in accordance with **Clause 34.2**. These Incentive Fund Agreements will be entered into between the Contractor and the approved agency or organisation making the bid for the grant.

34.4 Statutory and Regulatory Procedures

The Contractor is responsible to ensure that, and notwithstanding **Clause 34.3** it is not authorised to execute any Incentive Fund Agreement unless, all statutory, regulatory and other requirements necessary to execute the Incentive Fund Agreement have been fulfilled.

34.5 Contractor Acknowledgement

The Contractor acknowledges that, notwithstanding any purported approval of a draft Incentive Fund Agreement by any AusAID officer, any member of the Management Group, any GOPNG officer or any other Stakeholder, only the Management Group as a whole may approve a draft Incentive Fund Agreement for execution by the Contractor in accordance with clause 14.3.

34.6 Copy of Incentive Fund Agreement

The Contractor must, immediately upon executing an Incentive Fund Agreement, forward to AusAID:

- (a) a copy of the executed Incentive Fund Agreement; and
- (b) a close-out report of no more than one A4 page detailing:
 - (i) the IF III Funding Proposal to which the Incentive Fund Agreement relates; and
 - (ii) any special circumstances or special risks which in the Contractor's opinion the Management Group should know of or monitor.

35. PERIODIC REVIEW

35.1 The Contractor must periodically review:

- (a) the appropriateness of all documentation, including the proforma as they are submitted the Management Group. Consultation must be undertaken with these stakeholders and approved recommendations implemented accordingly; and
- (b) the appropriateness of the Preparation Guidelines and the Appraisal and Screening Guidelines, which should be included in the IF Information Kit. The Contractor should have consideration to the nature of the Funding Proposals which are not being appraised positively, whether particular sectors, or organisation types appear disadvantaged and common problems experienced in implemented Funded Activities.

ANNEX 4 - WORKSHOP PROGRAM

2. Workshops at key regional centres will be conducted on a regular basis to facilitate proposal preparation
3. The Contractor must:
 - 3.1 Develop a strategy, in consultation with stakeholders and the approval of the Management Group, for the management and delivery of a workshop program to assist potential organisations prepare Funding Proposals. The number and location of Workshops will be agreed with the Management Group annually based upon the demand for access to the IF III. The Workshop program should focus on the Information Kit, clarify definitions and help organisations articulate their own strengths and weaknesses. The Workshops should also focus on explaining the objectives, components, roles of the Management Group, other key Stakeholders and scheduling of IF III initiatives. The contents of the Workshops should not be prescriptive, but respond to needs raised by queries received prior to each Workshop and on specific questions raised during Workshops. The Workshop should not result in advisers writing proposals for organisations but rather give ideas for how organisations can best word and develop their ideas into a Funding Application.
 - 3.2 **Workshop Materials:** Develop a package of Workshop materials to complement the Information Kit and application form, and include relevant training support material e.g. Trainers' Guide, evaluation forms and samples of good and not-so-good examples of applications etc. The Contractor must submit the Workshop Materials to the Management Group for approval as part of the Communications strategy.
 - (a) **Standard of Workshop Materials:** Ensure that the Workshop Materials:
 - (i) meet industry and/or professional standards required for such materials in Australia, while still being relevant to the PNG environment;
 - (ii) are simple to understand, specifically for people whose first language is not English;
 - (iii) are functional so that they can be used in both self-instructional and group training modes;
 - (iv) address relevant gender considerations; and
 - (v) are of durable quality, professionally printed and fully bound;
 - (b) **sufficient amount:** Produce a sufficient amount of Workshop Materials for all Workshop participants.
 - 3.3 **Ad hoc Specialists/ Technical Assistance:** Identify the need for, and subject to this Contract, engage ad hoc specialists to participate in Workshops to provide specific

advice on aspects of preparing Funding Proposals for different sectors, and provide the relevant ad hoc specialists to participate in the delivery of the Workshops.

- 3.4 **Venue:** Identify and make arrangements for hiring an appropriately sized venue that is equipped with Workshop equipment to conduct the Workshops on a specified date.
- 3.5 **Reports:** Prepare brief post-Workshop reports for each workshop undertaken over the life of the IF III including the following details:
- (a) location;
 - (b) duration;
 - (c) total cost;
 - (d) presenters;
 - (e) numbers and profiles of participants (e.g. organisation, position, gender);
 - (f) summary of results from participant evaluations;
- 3.6 **Review:** Review the actual number of Workshops and participants and suitable locations for Workshops, having regard to the Workshop participant evaluations, and more specifically, the numbers and locations of potential participants. If the take up rate for workshops seems to be lower than that anticipated, the Contractor must consider whether there are other options for communicating to workshop participants would be effective and whether they might provide better value for money. The Contractor must provide recommendations in the Activity Implementation Document on this basis.

ANNEX 5 - IF III DATABASE

4. IF III DATABASE

- 4.1 The Contractor must establish and maintain a database which provides all information necessary to ensure the transparency, proper management and reporting of all activities carried out in connection with Fund.
- 4.2 The Contractor will be provided with databases from the previous phases of the Incentive Fund. These are in Microsoft Excel format.
- 4.3 The Database requirements described in this clause are the minimum requirements. The Contractor should ensure that the Database is used dynamically for the purposes of sound IF III management, and the capture of key monitoring and reporting information.
- 4.4 The database shall be the property of AusAID and at the completion of the Contract is to be handover as directed by AusAID and arrangements for handover shall be specified in a handover plan.

5. INFORMATION TO BE PROVIDED IN DATABASE

- 5.1 The Database must, but will not be limited to providing the following information in relation to each enquiry (by phone, internet or written) which the Contractor received in connection with the IF III, to the extent possible in the circumstances:
- 5.2 the name of the enquiring party and a summary of the nature of the organisation;
- 5.3 records of all telephone and other enquiries the organisation has made to the Contractor;
- 5.4 records of any Information Kits or other materials requested by and/or sent to the organisation;
- 5.5 records of all Workshops attended by a representative of the organisation; and
- 5.6 records of all Funding Proposals received from the organisation; in relation to each Funding Proposal (i.e. a Concept Proposal and an Organisational Proposal) received:
 - (a) a summary of the nature of the Funding Proposal;
 - (b) an electronic copy of the Funding Proposal
 - (c) a record of the time taken for each step in the process of preparing, appraising, screening and approving the Funding Proposal, or advising an applicant that they were not successful;
 - (d) a summary of the reasons any Funding Proposal was rejected
 - (e) a copy of the Organisational Assessment, if the Funding Proposal proceeded to that stage

- (f) a record of any requests for additional information made by the Contractor;
 - (g) a complete record of comments and decisions made by the Contractor, AusAID, DNPM and the Management Group in the appraisal, screening and approval processes; and
 - (h) a record of any field visits undertaken in connection with the appraisal process;
- 5.7 records of each Incentive Fund Agreement and information as to the status of each Incentive Fund Agreement, including:
- (a) scheduled outputs;
 - (b) scheduled finances;
 - (c) milestones (i.e. activity outputs) achieved;
 - (d) activity reports provided;
 - (e) performance data on agreed key activity indicators
 - (f) finances disbursed;
 - (g) forecast finances for the remainder of the IF III Funded Activities;
 - (h) issues that have arisen;
 - (i) proposed action; and
 - (j) monitoring undertaken by the Contractor.

6. **PRE-IMPLEMENTATION DATABASE**

In developing the Database, the Contractor may use all or any part of the previous Database developed by the Incentive Fund Phase II contractor, but no such use of the Database will affect the Contractor's responsibility for the Database meeting the standards imposed by this Contract.

7. **MAINTENANCE OF DATABASE**

The Contractor must keep the Database up to date at all times, and in particular will ensure that up to date information is available from the Database for the purposes of any reports required to be provided in accordance with this Contract.

8. **ACCESS TO DATABASE**

The Contractor must, on request, grant AusAID, DNPM, the Independent Review Team, or the Management Group access to the Database and produce any reports requested by AusAID.

ANNEX 6 - SPECIFIED PERSONNEL POSITION DESCRIPTIONS

Position:	Program Manager	Duration:	Full time in Port Moresby
Works with:	AusAID, the Management Group, GoPNG including the Department of National Planning and Monitoring, IF III applicant organisations, and, as required, national government agencies, civil society and provincial and local levels of government.		
Location:	Port Moresby with travel to provinces as required	Reports To:	Program Director
Qualifications and Experience:	• Proven ability to lead and manage a large multi-disciplinary team in a complex project management environment. • Proven ability to manage complex change management processes in a multi-cultural (preferably developing country) multi-agency environment. • Significant experience in strengthening organisational-level strategic planning, accountability and performance management processes. • An understanding of and experience in public sector management and reform. • Experience in development assistance, preferably the Pacific and PNG, and operating within AusAID policy and practice. • Executive-level management experience in implementing a major development activity is highly desirable. • Demonstrated understanding and experience of the performance management cycle of planning, implementation, monitoring and reporting. • Demonstrated understanding and experience of capacity development approaches and the ability to utilise a range of techniques to increase the confidence, skills and action of colleagues and team members. • An understanding of gender inequalities, child protection, disability, HIV&AIDS and fraud and corruption issues and a preparedness to mainstream these into development activities. • Ability to assess and work sensitively in a cross cultural context. • Excellent interpersonal skills.		
Key Responsibilities:	The Program Manager (PM) plays the lead role in managing the implementation of the IF III in accordance with the Program Design Documentation.		

	The PM's key tasks: • Lead and manage the IF III team in Papua New Guinea to ensure the program progresses according to the design and annual plans, on schedule, within budget, in line with AusAID and GoPNG policies, with excellent communications and problems being solved. • Manage all IF III technical inputs and resources, personnel, program assets and the in-country office. • Mentor and guide the Management Group as they seek to implement the IF III portfolio of activities. • In collaboration with the Management group and the IF III team to ensure all assistance is planned and delivered in a manner consistent with the Program Design Document, approved operating procedures and the Contract. • Provide strategic and technical inputs to the in-country team to ensure consistency with the IF III purpose and objectives and the mainstreaming of gender and HIV and AIDS. • Support and implement IF III Monitoring and Evaluation including regular monitoring and reporting of activities and inputs, making adjustments as necessary, to ensure objectives are met. • Identify and schedule IF III inputs, activities and required tasks in a timely manner. • Manage liaison and effective communication with AusAID Port Moresby, Management Group, IRT and key stakeholders. • Prepare: – Annual Program Plans; – Quarterly and Six Monthly Reports, including agreed financial statements; – Documents and information requests from AusAID; and – Program Completion Report.
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Position:	Administration Manager (Deputy Program Manager)	Duration:	Full time in Port Moresby
Works with:	Management Group, IF III applicant organisations, and, as required, national government agencies, civil society and provincial and local levels of government.		
Location:	Port Moresby with travel to provinces as required	Reports To:	Program Manager
Qualifications and Experience:	• Demonstrated experience in managing the procurement and mobilisation of quality inputs into a major development project. • Demonstrated experience in the recruitment and management of development specialists or similar senior technical personnel. • Extensive managerial experience in establishing and managing processes and systems that demonstrates the ability to manage the IF III in its engagement with multiple stakeholders, the tracking of documentation and contacts, the processing of funding applications, the checking of compliance and the overall imposition of quality control into the IF III project cycle. • Experience in development assistance, preferably the Pacific and PNG, and operating within AusAID policy and practice. • Executive-level management experience in implementing a major development activity is highly desirable. • Demonstrated understanding and experience of the performance management cycle of planning, implementation, monitoring and reporting. • Demonstrated understanding and experience of capacity development approaches and the ability to utilise a range of techniques to increase the confidence, skills and action of colleagues and team members. • An understanding of gender inequalities, child protection, disability, HIV & AIDS and fraud and corruption issues and a preparedness to mainstream these into development activities. • Ability to assess and work sensitively in a cross cultural context. • Excellent interpersonal skills.		
Key	• Contribute effective and efficient administration of the IF III, its processes and systems and the quality of its communications with stakeholders. • Establish, manage and monitor, with the Program Manager and		

	Administration Manager, IF III's proposal and project tracking and management system. • Contribute to the organisational assessment of applicants (i.e. governance and corporate systems and their health) that pass the approval of the Concept Proposal and gateway criteria. • Prepare capacity development strategies to support successful applicants in enhancing their administrative and personnel administration systems and processes to strengthen project management and implementation of their activities. • Mentor, support, facilitate and monitor successful applicants in the administrative and personnel management of their activities according the approved project plan and financing approval. • Mentor and provide accurate and timely information to the Management Group, on the procurement of quality inputs for the program as a whole. • In collaboration with the Management Group and the IF III team ensure all assistance is planned and delivered in a manner consistent with the Program Design Document, approved operating procedures and the Contract. • Provide financial and audit inputs to the team to ensure consistency with the IF III purpose and objectives. • Identify and schedule the IF III inputs, activities and required tasks in a timely manner. • Maintain effective communication with AusAID Port Moresby, Management Group, IRT, applicants and key stakeholders. • Participate in the marketing of the IF III . • Contribute to the preparation of: – Annual Program Plans. – Quarterly and Six Monthly Reports, including agreed financial statements. – Documents and information requests from AusAID. – Program Completion Report.
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Position:	Development Specialists (three positions)	Duration:	Full time in Port Moresby
Works with:	Management Group, IF III applicant organisations, and, as required, national government agencies, civil society and provincial and local levels of government.		
Location:	Port Moresby with travel to provinces as required	Reports To:	Program Manager
Qualifications and Experience:	• Proven ability to work in a large multi-disciplinary team in a complex project management environment. • Proven ability to manage complex change management processes in a multi-cultural (preferably developing country) multi-agency environment. • Significant experience in strengthening organisational-level strategic planning, accountability and performance management processes. • An understanding of and experience in public sector management and reform. • Experience in development assistance, preferably the Pacific and PNG, and operating within AusAID policy and practice. • Executive-level management experience in implementing a major development activity is highly desirable. • Demonstrated understanding and experience of the performance management cycle of planning, implementation, monitoring and reporting. • Demonstrated understanding and experience of capacity development approaches and the ability to utilise a range of techniques to increase the confidence, skills and action of colleagues and team members. • An understanding of gender inequalities, child protection, disability, HIV & AIDS and fraud and corruption issues and a preparedness to mainstream these into development activities. • Ability to assess and work sensitively in a cross cultural context. • Excellent interpersonal skills. These positions cover three required skill areas that have to be covered within this team of three persons: <u>Construction and procurement</u> • Solid on site experience in infrastructure development,		

	especially civil construction, facilities management, construction and maintenance programs, and major building and civil refurbishing and maintenance projects; a sound knowledge of the tendering and awarding of major contracts; and, comprehensive planning, scheduling and implementation of facilities works programs. • The ability to advise on, evaluate and supervise the design, contracting, management and implementation of construction activities funded by IF III within the framework of development projects and PNG systems and processes. • Civil construction and facilities works experience and good knowledge of Papua New Guinea Public Service procedures highly desirable. <u>Organisational Development</u> • Extensive experience in directing, supporting and assessing the effectiveness of planning, organisational and risk management processes particularly in smaller single purpose organisations. • Demonstrated capacity to critically evaluate proposals, propose appropriate solutions and assist in implementation of change and capacity building strategies to address weaknesses and minimise risks. • Proven managerial ability, with the ability to assist in the design and implementation of activities. • Influencing, networking and strategic skills of a high order. • Senior management in a community based organisation or social services delivery organisation will be an advantage. <u>Performance management, M&E and research</u> • Experience in the design and implementation of inclusive performance monitoring and evaluation systems including identifying key performance indicators and data collection required. • Experience in analysing data, both qualitative and quantitative, to provide reports of performance and impacts and advice for future activities. • Direct experience in setting up on-going research activities aimed at measuring outcomes in a developing country environment will be an advantage. • Ability to quickly become familiar with data collection constraints and the capacities of PNG organisations.
Key Responsibilities:	The Development Specialists, working with short term specialist technical advisers contracted on an as required basis will: • Contribute technical skills, advice and capacity building

	approaches in their particular areas of expertise. • Manage the assessment and evaluation of all proposals received by the IF III. • Organise and contribute to the organisational assessment of applications that pass the approval of the Concept Proposal and gateway criteria. • Prepare capacity development strategies to support successful applicants in strengthening project management and implementation of their activities. • Mentor support and facilitate successful applicants in the project management of their activities according the approved project plan and financing approval. • Design and implement the IF III monitoring and evaluation framework. • Mentor and provide advice to the Management Group as required. • In collaboration with the Management Group and the IF III team to ensure all assistance is planned and delivered in a manner consistent with the Program Design Document, approved operating procedures and the Contract. • Provide strategic and technical inputs to each other to ensure consistency with the IF III purpose and objectives. • Identify and schedule IF III inputs, activities and required tasks in a timely manner. • Maintain effective communication with AusAID Port Moresby, Management Group, IRT, applicants and key stakeholders. • Participate in the marketing of IF III. • Contribute to the preparation of: – Annual Program Plans. – Quarterly and Six Monthly Reports, including agreed financial statements. – Documents and information requests from AusAID. – Program Completion Report.
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Position:	Financial Specialist	Duration:	Full time in Port Moresby
Works with:	Management Group, IF III applicant organisation, and as required national government agencies, civil society and provincial and local levels of government.		
Location:	Port Moresby with travel to provinces as required	Reports To:	Program Manager
Qualifications and Experience:	• Demonstrated knowledge of PNG public sector financial systems. • Demonstrated experience of accounting principles, reconciliations, financial, compliance and efficiency/effectiveness audits, financial monitoring and risk management. • Tertiary qualifications in accounting, and experience in the development and implementation of financial systems. • Extensive accounting, financial management and auditing skills and experience - preferably in both public and private sector environments. • Experience in organisational development and change management. • Experience in development assistance, preferably the Pacific and PNG, and operating within AusAID policy and practice. • Executive-level management experience in implementing a major development activity is highly desirable. • Demonstrated understanding and experience of the performance management cycle of planning, implementation, monitoring and reporting. • Demonstrated understanding and experience of capacity development approaches and the ability to utilise a range of techniques to increase the confidence, skills and action of colleagues and team members. • An understanding of gender inequalities, child protection, disability, HIV & AIDS and fraud and corruption issues and a preparedness to mainstream these into development activities. • Ability to assess and work sensitively in a cross cultural context. • Excellent interpersonal skills.		
Key	• Contribute financial, accounting and audit expertise to the competent implementation of IF III.		

Responsibilities:	• Establish, manage and monitor, with the Program Manager and Administration Manager, IF III's financial management systems including the imprest account mechanism and individual project account mechanisms for approved activities. • Contribute to the organisational assessment of applicants (i.e. financial systems and health and audit compliance record) that pass the approval of the Concept Proposal and gateway criteria. • Prepare capacity development strategies to support successful applicants in enhancing their financial systems and processes to strengthen project management and implementation of their activities. • Mentor, support, facilitate and monitor successful applicants in the financial management of their activities according to the approved project plan and financing approval. • Mentor and provide accurate and timely financial reports and advice to the Management Group, on the program as a whole and individual activities. • In collaboration with the Management Group and the IF III team to ensure all assistance is planned and delivered in a manner consistent with the Program Design Document, approved operating procedures and the Contract. • Provide financial and audit inputs to the team to ensure consistency with the IF III purpose and objectives. • Identify and schedule IF III inputs, activities and required tasks in a timely manner. • Maintain effective communication with AusAID Port Moresby, Management Group, IRT, applicants and key stakeholders. • Participate in the marketing of IF III. • Contribute to the preparation of: – Annual Program Plans. – Quarterly and Six Monthly Reports, including agreed financial statements. – Documents and information requests from AusAID. – Program Completion Report.
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PART 4 – BASIS OF PAYMENT

Note to Tenderers: This Part 4 will form Schedule 2 to the consolidated Contract.

PART 4 – BASIS OF PAYMENT

Incentive Fund Phase III

1. TOTAL AMOUNT

- 1.1 The total amount payable by AusAID to the Contractor shall not exceed the sum of **A\$xxx,xxx** plus GST if any up to a maximum amount of **A\$xxx,xxx**.
- 1.2 AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.

2. PAYMENT STREAMS

- 2.1 For the performance of the Services described in the Contract, AusAID shall pay the Contractor as follows:
 - (a) **Incentive Fund Program Office Costs** in accordance with **Clause 3** of this Part 4 and paid as Regular Payments up to a maximum total amount of **A\$xxx,xxx** plus GST if any up to a maximum amount of **A\$xxx,xxx**;
 - (b) **Fixed Management Fee (FMF)** in accordance with **Clause 4** of this Part 4 and paid as Milestone Payments in accordance with **Clause 5** of this Part 4, up to a maximum total amount of **A\$xxx,xxx** plus GST if any up to a maximum amount of **A\$xxx,xxx**;
 - (c) **Reimbursable Costs** in accordance with **Clause 6** of this Part 4, up to a maximum total amount of **A\$800,000** plus GST if any up to a maximum amount of **A\$80,000**;
 - (d) **Unallocated Short Term Technical Assistance** in accordance with **Clause 7** of this Part 4, up to a maximum total amount of **A\$1,000,000** plus GST if any up to a maximum amount of **A\$100,000**; and .
 - (e) **Payments for an Imprest Account for Incentive Fund Grants** in accordance with **Clause 8** of this Part 4, up to a maximum total amount of **A\$60,000,000** (indicative for tender) plus GST if any up to a maximum amount of **A\$6,000,000**.

3. INCENTIVE FUND PROGRAM OFFICE COSTS

- 3.1 The Incentive Fund Program Office Costs are those incurred at cost by the Contractor to staff, set up and operate the Incentive Fund Program Office in PNG. These are to be paid at cost and invoice quarterly in arrears.
- 3.2 The Incentive Fund Program Office Costs includes all:
 - (a) Personnel Costs in accordance with this Part 4 Annex A and its **Tables 1A – 1 to 1A - 5**;

- (b) Office Set-up Costs in accordance with this Part 4 Annex B and its **Table 1B - 2**; and
- (c) Office Operational Costs in accordance with this Part 4 Annex C and its **Table 1C - 3**;

for the four (4) year and three months duration of the Contract.

- 3.3 The total and indicative component amounts for the Incentive Fund Program Office Costs are summarised in **Table 1** below.
- 3.4 The Incentive Fund Program Office Costs are inclusive of the following which apply to all cost categories identified in **Clause 3.2** above:
- (a) Security costs for:
 - (i) the Incentive Fund Program Office;
 - (ii) all Incentive Fund Program Office international staff and their families; and
 - (iii) all Incentive Fund Program Office local staff when they are required to travel on Program work outside the area in which they normally reside;
 - (b) Health, medical evacuation, worker's compensation, liability and indemnity insurances for:
 - (i) all Incentive Fund Program Office international staff and their families; and
 - (ii) all Incentive Fund Program Office local staff when they are required to travel on Program work outside the area in which they normally reside.
- 3.5 Leave accrued during the assignment by specified personnel (such as, but not limited to, the Facility Manager) shall be deemed to be taken in the year it falls due and cannot be accumulated or paid out.

Table 1: Total Incentive Fund Program Office Costs

Component	Total (A\$)
Personnel Costs (total from Annex A and Attachments)	
Office Set-up Costs (total from Annex B)	
Office Operational Costs (total from Annex C)	
Total	

4. **FIXED MANAGEMENT FEE (FMF)**

- 4.1 The total FMF for the duration of the Contract is summarised in **Table 2** below.
- 4.2 The FMF is inclusive of the following:
- (a) All aspects of profit, including commercial margins for all personnel;
 - (b) All overheads;
 - (c) Routine travel costs incurred by the Contractor for administration and management of the Contract;
 - (d) Financial management costs and financing costs, if any;
 - (e) All management support costs for all nominated personnel;
 - (f) Cost of any Contractor administrative and head office staff;
 - (g) Security costs for all Contractor personnel not covered under **Clause 3.4** (above);
 - (h) Insurance, as required in accordance with **Clauses 33 and 34** of Part 6 (Standard Contract Conditions) of the Contract;
 - (i) Taxation, as applicable;
 - (j) Health, medical evacuation, worker's compensation, liability and indemnity insurances for all Contractor personnel not covered under **Clause 3.4** (above);
 - (k) Management costs associated with marketing the PNG Incentive Fund such as developing and maintaining:
 - (i) An up to date PNG Incentive Fund Information Kit;
 - (ii) A PNG Incentive Fund website; and
 - (iii) An inquiry system;
 - (l) Management costs associated with records management and reporting for the PNG Incentive Fund such as developing and maintaining:
 - (i) A PNG Incentive Fund database;
 - (ii) Notify successful organisations and preparation of Incentive Fund Agreements analysis of project applications for compliance;
 - (iii) Submitting proposals for initial screening by relevant departments;

- (iv) Investigating and appraising proposals;
 - (v) Organising Organisational Assessments of agencies submitting proposals; and
 - (vi) Notifying successful organisations and prepare Incentive Fund Agreements;
- (m) Management costs associated with monitoring and recording the implementation of activities funded by the PNG Incentive Fund such as:
- (i) Monitoring projects and enter monitoring reports to the database; and
 - (ii) Conducting field visits/analyses, review project audit reports and analyses of project reports undertaken in order to validate project progress;
- (n) Management costs associated with the provision of support to, coordination of, and secretariat services to the PNG Incentive Fund committees such as the Incentive Fund Management Group and the Management Group Sub Committee. This excludes costs covered under Reimbursable Costs (Clause 6); and
- (o) Management costs associated with mobilising and managing the Unallocated Short Term Technical Assistance.
- 4.3 The FMF is specified the term of this Contract and will be billed to AusAID on satisfactory achievement of Milestones as per **Clause 5** to this Part 4.

Table 2: Total Fixed Management Fee

Year	Total (A\$)
2010 (x months eg 9 months)	
2011	
2012	
2013	
2014 (y months eg 6 months)	
Total	

5. MILESTONES

- 5.1 AusAID shall pay the Contractor the FMF in instalments known as Milestone Payments. The Milestone Payments payable by AusAID to the Contractor shall not exceed the sum of **A\$xxx,xxx** plus GST if any up to a maximum amount of **A\$xxx,xxx**.

- 5.2 Where a Milestone is a report, AusAID shall not make payment until all of the outputs to be achieved by the Contractor in the period covered by the report have been achieved.
- 5.3 The Milestone Payments will be payable to the Contractor progressively within thirty (30) days of AusAID acceptance of the satisfactory achievement of the Milestones specified in **Annex D Table D - 1** and subject to the provisions of **Clause 41** of Part 6.
6. **REIMBURSABLE COSTS**
- 6.1 AusAID shall pay the Contractor for agreed Reimbursable Costs. The Reimbursable Costs payable by AusAID to the Contractor shall not exceed the sum of **A\$800,000** plus GST if any up to a maximum amount of **A\$80,000**.
- 6.2 Reimbursable Costs shall consist of the following components:
- (a) Secretariat Services Costs up to **A\$200,000** plus GST if any up to a maximum amount of **A\$20,000**;
 - (b) Workshop Costs **A\$300,000** plus GST if any up to a maximum amount of **A\$30,000**;
 - (c) Marketing Costs **A\$200,000** plus GST if any up to a maximum amount of **A\$20,000**;
 - (d) Travel Costs up to **A\$100,000** plus GST if any up to a maximum amount of **A\$10,000**.

Secretariat Services Costs

- 6.3 Secretariat Services Costs are those primarily associated with support for the Incentive Fund Management Group and the Management Group Sub-committee but may be applied to other significant meetings if agreed by AusAID in writing prior to the meeting. AusAID shall reimburse the Contractor on a quarterly basis in arrears, for eligible Secretariat Services Costs in accordance with **Clause 6.4** below.
- 6.4 The following costs are eligible:
- (a) Venue hire costs for meetings;
 - (b) Equipment hired to facilitate the conduct of meetings;
 - (c) Travel costs for attendees including:
 - (i) Transport costs;
 - (ii) Accommodation costs;
 - (iii) Stipends if agreed by AusAID;

- (iv) Per diems;
 - (v) Meal allowances; and
- (d) Communication costs such as telephone and internet service provider costs.

Workshop Costs

- 6.5 AusAID shall reimburse the Contractor on a quarterly basis in arrears, for eligible Workshop Costs in accordance with **Clause 6.6** below.
- 6.6 For marketing meetings and workshops, the following costs are eligible:
- (a) Venue hire costs for meetings/ workshops;
 - (b) Equipment hired to facilitate the conduct of meetings/ workshops;
 - (c) Travel costs for facilitation team including:
 - (i) Transport costs;
 - (ii) Accommodation costs;
 - (iii) Stipends if agreed by AusAID;
 - (iv) Per diems;
 - (v) Meal allowances; and
 - (d) Communication costs such as telephone and internet service provider costs.

Marketing Costs

- 6.7 AusAID shall reimburse the Contractor on a quarterly basis in arrears, for eligible Marketing Costs in accordance with **Clause 6.8** below.
- 6.8 For marketing, the following costs are eligible:
- (a) Advertisements in the media (radio and print) for the Incentive Fund;
 - (b) Advertisements in the media (radio and print) advising details of planned meetings/ workshops; and
 - (c) Production of brochures and flyers to inform the public about the Incentive Fund.

Travel

- 6.9 AusAID shall reimburse the Contractor on a quarterly basis in arrears, for eligible Travel Costs in accordance with **Clause 6.10 to 6.11** below.

6.10 Eligible travel costs payable under this **Clause 6** are:

- (a) All travel related costs for travel undertaken by Contractor Personnel to attend Incentive Fund meetings or coordination meetings with AusAID;
- (b) All travel related costs for international travel undertaken by Contractor Personnel for the purposes of:
 - (i) Consulting with stakeholders or service providers; and
 - (ii) Other travel undertaken by Contractor Personnel with the prior written agreement of AusAID;
- (c) Any other travel costs proposed by the Contractor for which AusAID provides prior written agreement, except those specifically excluded under **Clause 6.10** below.

6.11 The following travel related costs are not eligible for reimbursement under this **Clause 6**:

- (a) Mobilisation, demobilisation and leave entitlements, as these costs are included in the Incentive Fund Program Office Costs;
- (b) Travel associated with Secretariat Services and Marketing and Workshops, as the travel costs are already covered under this Clause 6;
- (c) Routine travel associated with the administration of the Contract, as these costs are included in the FMF; and
- (d) Travel associated with providing Technical Assistance as these travel costs are to be included in the budget for each activity associated with the Technical Assistance.

7. UNALLOCATED SHORT TERM TECHNICAL ASSISTANCE

7.1 Funding for Unallocated Short Term Technical Assistance shall not exceed the sum of **A\$1,000,000** plus GST if any up to a maximum amount of **A\$100,000**.

7.2 When the Contractor does not have the resources within its Program Office staff to provide necessary technical inputs, it may propose to utilise the Unallocated Short Term Technical Assistance. Typically, these will be to respond to the requirements of an Incentive Fund Management Group request as a proposal is developed through the four stages of application and approval.

7.3 The Contractor is to submit proposals to utilise the Unallocated Short Term Technical Assistance to the Management Group Sub Committee for approval. The format for such a proposal is to be agreed by the Management Group. The proposal is to include:

- (a) The terms of reference for the Technical Assistance;

- (b) The skills and experience required;
 - (c) The duration of the task;
 - (d) The outputs and milestones;
 - (e) The supervisor that the consultant will report to;
 - (f) Relevant logistic and administrative arrangements;
 - (g) A detailed analysis of costs including fees at cost and management fee to be applied by the Contractor; and
 - (h) The proposed payment events for the task if it planned to have other than one payment in arrears.
- 7.4 AusAID shall reimburse the Contractor in arrears, for Unallocated Short Term Technical Assistance. These costs will be reimbursed at cost. The management fee to be applied to mobilising and managing Unallocated Short Term Technical Assistance is paid as part of the Fixed Management Fee.
8. **INCENTIVE FUND GRANTS AND THE IMPREST ACCOUNT**
- 8.1 The total amount payable by AusAID to the Contractor for Incentive Fund Grants shall not exceed the sum of **A\$60,000,000** plus GST if any up to **A\$6,000,000** and is based on an indicative annual budget of **A\$15,000,000** plus GST if any. Funding for the grants is subject to appropriation of money by GoA.
- 8.2 The Contractor shall establish the Incentive Fund Phase III Imprest Account in accordance with **Clause 20** of Part 2 and consistent with procedures for the previous Phases and provided for in the Development Treaty between Australia and Papua New Guinea. Funds in the Imprest Account can only be used for the purposes described in the Imprest Account Manual and this **Clause 8**. The funds will not be reallocated for any other purpose under this Part 4 of the RFT.
- 8.3 The Incentive Fund Phase III Fund Imprest Account is for funding grants and is not to be used for activities where the costs are covered under **Clauses 3, 4, 5, 6 and 7** above.
- 8.4 The Contractor shall invoice AusAID quarterly for a pre-payment for approved Incentive Based Grants and these funds are to be held in the Incentive Fund Phase III Imprest Account. The Contractor is to make Grant payments to nominated agencies for approved Grants, as directed by the Management Group. The Contractor is to acquit expenditure on Incentive-Based Grants before applying for the next payment. Acquittal is to be for 80% of the most recent payment and 100% for all previous payments.
- 8.5 At the conclusion of the Contract, the Contractor is to acquit all expenditure for Incentive Based Grants and return to AusAID any unspent funds unless directions to do otherwise are provided by AusAID in writing.

9. CLAIMS FOR PAYMENT

- 9.1 The Contractor's tax invoice must be submitted when due pursuant to this **Part** in a form identifiable with the Services.
- 9.2 All tax invoices must include a certification by a Company director of the Contractor, or their delegate:
- (a) that the invoice has been correctly calculated; and
 - (b) that the Services included in it have been performed in accordance with the Contract.
- 9.3 All claims for payment must be **made out to:**
- Chief Finance Officer**
Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601
- 9.4 Tax invoices should be sent to the above address. Alternatively, AusAID will accept electronic tax invoices. These can be sent to accountsprocessing@ausaid.gov.au
- 9.5 Invalid invoices will be returned to contractors. Information on what constitutes a valid tax invoice can be found at <http://www.ato.gov.au/businesses/content.asp?doc=/content/50913.htm>

Comment: A format for an invoice will be agreed upon during contract negotiations.

Annexes:

- A. Incentive Fund Program Office Personnel Costs
- B. Incentive Fund Program Office Set Up Costs
- C. Incentive Fund Program Office Operational Costs
- D. Milestones
- E. Indicative Information in a Quarterly Invoice

Incentive Fund Program Office Personnel Costs

Attachments:

1. Incentive Fund Program Office Long Term Personnel Costs – International Staff
2. Incentive Fund Program Office Long Term Personnel Costs – Local Staff
3. Incentive Fund Program Office Short Term Personnel Costs – International Staff
4. Incentive Fund Program Office Short Term Personnel Costs – Local Staff

Incentive Fund Program Office Long Term Personnel Costs – International Staff

Table 1A - 1

Position and Total Inputs	2010 - Inputs/ Monthly Rate A\$	2011 - Inputs/ Monthly Rate A\$	2012 - Inputs/ Monthly Rate A\$	2013 - Inputs/ Monthly Rate A\$	2014 - Inputs/ Monthly Rate A\$	Total – A\$	Comments
Program Manager (Full time)	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	6 months @ Amount per month		
Administration Manager (Deputy Program Manager) (Full time)	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	6 months @ Amount per month		
Development Specialist 1 (Full time)	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	6 months @ Amount per month		
Development Specialist 2 (Full time)	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	6 months @ Amount per month		
Development Specialist 3 (Full time)	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	6 months @ Amount per month		
Financial Specialist	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	6 months @ Amount per month		
Other Specify							
					Total		

Notes:

1. This is the monthly salary for the staff and includes allowances for hardship and cost of living in country.
2. This may be invoiced under Regular Payments for the Incentive Fund Program Office Costs.

Allowances for Incentive Fund Program Office Long Term Personnel Costs – International Staff

Table 1A – 2

Position and Total Inputs	Family Type A Cost per family of 2 adults and 2 dependent children A\$	Family Type B Cost per family of 2 adults A\$	Type C Cost of individual ie 1 adult	Indicative cost Total – A\$	Comments
Mobilisation	Amount per family	Amount per family	Amount per person	Amount	Example: 2 Type A, 2 Type B, 1 Type C
Demobilisation	Amount per family	Amount per family	Amount per person	Amount	
Accommodation	Amount per month	Amount per month	Amount per month	Amount	
Education Allowance	Amount per month	Amount per month	Amount per month	Amount	
Other Specify	Amount per ?	Amount per ?	Amount per ?	Amount	
			Total		

Notes:

1. Allowances for Long Term International Staff are to be based on the personnel circumstances and family structure of the posted member.
2. This may be invoiced under Regular Payments for the Incentive Fund Program Office Costs.

Incentive Fund Program Office Long Term Personnel Costs – Local Staff

Table 1A - 3

Position and Total Inputs	2010 - Inputs/ Monthly Rate A\$	2011 - Inputs/ Monthly Rate A\$	2012 - Inputs/ Monthly Rate A\$	2013 - Inputs/ Monthly Rate A\$	2014 - Inputs/ Monthly Rate A\$	Total – A\$	Comments
Specify							
Specify							
					Total		

Notes:

1. For Long Term Local Staff, specified monthly rate is for all personnel costs associated with the position.
2. This may be invoiced under Regular Payments for the Incentive Fund Program Office Costs.

Incentive Fund Program Office Short Term Personnel Costs – International Staff

Table 1A - 4

Position and Total Inputs	2010 - Inputs/ Monthly Rate A\$	2011 - Inputs/ Monthly Rate A\$	2012 - Inputs/ Monthly Rate A\$	2013 - Inputs/ Monthly Rate A\$	2014 - Inputs/ Monthly Rate A\$	Total – A\$	Comments
Other Specify							
					Total		

Notes:

1. These monthly fees may be invoiced under Regular Payments for the Incentive Fund Program Office Costs.
2. Travel costs associated with the deployment of these staff are to be claimed in accordance with the Part 4 **Clause 7**.

Incentive Fund Program Office Short Term Personnel Costs – Local Staff

Table 1A - 4

Position and Total Inputs	2010 - Inputs/ Monthly Rate A\$	2011 - Inputs/ Monthly Rate A\$	2012 - Inputs/ Monthly Rate A\$	2013 - Inputs/ Monthly Rate A\$	2014 - Inputs/ Monthly Rate A\$	Total – A\$	Comments
Specify							
Specify							
Specify							
					Total		

Notes:

1. These fees may be invoiced under Regular Payments for the Incentive Fund Program Office Costs.

Incentive Fund Office Set-up Costs**Table 1B - 1**

Item	Number of items	Cost per item (A\$)	Total (A\$)
<i>Specify (e.g. computer)</i>			
<i>Specify</i>			
<i>Specify</i>			
Total			

1. This may be invoiced under Regular Payments for the Incentive Fund Program Office Costs.
2. These costs could include such things as office furniture, office equipment, vehicles.

Incentive Fund Office Operational Costs

Table 1C - 3

Item	Inputs (months)	Rate 2010 (A\$/month)	Rate 2011 (A\$/month)	Rate 2012 (A\$/month)	Rate 2013 (A\$/month)	Rate 2014 (A\$/month)	Total (A\$)
<i>Specify (e.g. utilities)</i>							
<i>Specify</i>							
<i>Specify</i>							
						Total	

1. This may be invoiced under Regular Payments for the Incentive Fund Program Office Costs.
2. These costs could include such things as office rental, internet service provider, security services, vehicle operating costs.

MILESTONES

Table D – 1 (See Clause 13 of Scope of Services)

Number	Description and Verification	Due date	Amount	Comment
1	Mobilisation Plan OR Incentive Fund Office established and staff recruited accepted by AusAID	1 April 2010	5%	
2	April 2010-end June 2011 Annual Plan accepted by Management Group (MG)	1 May 2010	10%	
3	Six monthly report accepted by MG	1 Dec 2010	5%	2010/ 20%
4	Quarterly report accepted by MG	15 March 2011	5%	
5	Annual report accepted by MG	1 June 2011	3%	
6	Annual Plan accepted by MG	15 June 2011	7%	
7	Quarterly report accepted by MG	1 Oct 2011	5%	2011/ 20%
8	Six monthly report accepted by MG	1 Jan 2012	5%	
9	Quarterly report accepted by MG	1 May 2012	3%	
10	Annual report accepted by MG	1 June 2012	3%	
11	Annual Plan accepted by MG	15 June 2012	7%	
12	Quarterly report accepted by MG	1 Oct 2012	3%	2012/ 21%
13	Six monthly report accepted by MG	1 Jan 2013	5%	

14	Quarterly report accepted by MG	1 May 2013	3%	
15	Annual report accepted by MG	1 June 2013	3%	
16	Annual Plan accepted by MG	15 June 2013	7%	
17	Quarterly report accepted by MG	1 Oct 2013	3%	2013/ 21%
18	Six monthly report accepted by MG	1 Jan 2014	5%	
19	Quarterly report accepted by MG	1 May 2014	3%	
20	Completion report accepted by MG	1 June 2014	10%	2014/ 18%
		Total	100.00%	

INDICATIVE INFORMATION IN A QUARTERLY INVOICE

1. A quarterly invoice could contain the following:
 - a. Requested Pre-payment for the Incentive Fund Grants;
 - b. Program Office Costs (Regular Payments);
 - c. Milestones if any due;
 - d. Reimbursables by component; and
 - e. Technical Assistance.
2. Supporting documentation would be provided as necessary eg:
 - a. Acquittals for Incentive Fund Grants; and
 - b. Expenditure to date in the various components of the Contract.

SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

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PART 5 – STANDARD TENDER CONDITIONS

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

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

- (a) Electronically, via AusTender at <https://tenders.gov.au> before the **Closing Time** and in accordance with the tender lodgement procedures set out in **Annex C to this Part** and on AusTender; or
- (b) Physically, by depositing by hand in the 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 5**.

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 (**Clause 1, Part 1**). 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 (**Clause 1, Part 1**).
- 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 5**).
- 1.10 AusAID may extend the **Closing Time** at its sole and absolute discretion, and will issue an Addendum notifying any decision to extend.

Conditions Applying to Electronic Tender Lodgement

- 1.11 Electronic tenders must be lodged electronically via the Australian Government Tender System, AusTender, at <https://www.tenders.gov.au> before the **Closing Time** and in accordance with the tender lodgement procedures set out in **Annex C of this Part 5** 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 Program and marked: "Tender Box: Attention **Contact Person**." The Tenderer's postal address and fax number should be provided on the outside of the Tender.

2. TENDERER ENQUIRIES

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

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

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

- 2.3 AusAID will respond to any Tenderer enquiries no later than 7 days prior to the **Closing Time**.
- 2.4 AusAID reserves the right to issue or publish answers to any Tenderer enquiries to all Tenderers.

3. **LATE TENDERS**

Conditions Applying to Tenders Lodged Electronically

- 3.1 A Tender lodged electronically is a **Late Tender** in accordance with the conditions specified in **Clause 6, Annex C of this Part 5**. Late tenders that have been lodged electronically will be excluded from evaluation.
- 3.2 For tenders submitted electronically, the time displayed on AusTender is deemed to be the correct time and will be the means by which AusAID will determine whether Tenders lodged electronically have been lodged by the **Closing Time**.
- 3.3 The judgement of AusAID as to the time a Tender has been lodged electronically will be final.

Conditions Applying to Tenders Lodged in Hard Copy

- 3.4 A hard copy Tender lodged after the **Closing Time** is a late Tender.
- 3.5 AusAID will admit to evaluation a Tender that was received late solely due to AusAID mishandling. AusAID mishandling does not include mishandling by a courier or mail service provider engaged by a Tenderer to deliver their Tender. It is the responsibility of tenderers to ensure that their Tender is dispatched in sufficient time for it to be received by AusAID by the **Closing Time**.
- 3.6 Late Tenders that are rejected by AusAID will be returned to tenderers unopened, except in cases where a Tender must be opened to identify the return address of the Tenderer or to establish which tender process the Tender was for.
- 3.7 If a Tender is taken to be late, the Tenderer may be asked to provide explanatory evidence in an appropriate form to the **Contact Person** specified in the Tender Particulars.

4. **NON-CONFORMING TENDERS**

- 4.1 Subject to **Clause 3 (Late Tenders) of this Part 5**, 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 5**.

4.3 Subject to **Clause 3 (Late Tenders) of this Part 5**, 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, Part 5** 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, respond to a scenario, and be interviewed by the TAP. Specified Personnel,

such as the proposed in-country Program Director, a contractor representative and others outlined in RFT Part 1 Clause 3.2 will be required to attend at the presentation/ interview. AusAID's expectation is that all will attend. If Specified Personnel are unable to attend due to extraordinary circumstances, AusAID at its sole discretion may agree to alternative arrangements such as participation by teleconference. Specified Personnel will be required to participate in the set scenarios and answer any questions asked by the TAP. The TAP will be convened in Canberra (but may be convened in Port Moresby) 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, if AusAID agrees, 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 5**.
- 7.8 In making its assessment the TAP or AusAID may have regard to other factors relevant to the suitability, capacity and qualifications of a Tenderer including but not limited to:
 - (a) the Tenderer's ability to comply with AusAID policies referred to in this RFT and the Tenderer's ability to comply with the **Contract Conditions**;
 - (b) the resourcing of Tenders;
 - (c) information obtained from any source which is relevant to the capacity of the Tenderer or any proposed personnel to perform the Services and achieve the Program goals and objectives. Such information may be the result of inquiries made by AusAID; and
 - (d) the Tenderer's demonstrated understanding of the cultural environment of the Program.

These other factors have not been allocated any specific weightings.

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

Goods and Services Tax

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

Insurances

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

Program Vehicles

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

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

Technical proposal format

7.15 The technical proposal must:

- (a) indicate the Tenderer's nominated contact person and contact details on the cover page;
- (b) be in a type font of no less than 12 point on A4 paper;
- (c) have left and right page margins of no less than 2.5 cm, and top and bottom page margins of no less than 3 cm, excluding headers, footers and page numbers;
- (d) not have the AusAID logo or any other representation or mark which may indicate that the Tenderer is in any way related to or connected with AusAID; and
- (e) be no longer than the page limit detailed in the Tender Particulars (inclusive of tables, diagrams or graphs), but exclusive of required annexes.

Curricula vitae

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

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

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

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

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

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

Referees

- 7.18 Tenderers must nominate at least two (2) referees who can provide an objective assessment of the quality of relevant and recent work performed by the organisation (if the Annex titled Past Experience Forms is used) or the proposed team member (regarding Tender Schedule B). Referees who can supply character references only are not sufficient.
- 7.19 Tenderers must ensure that nominated referees do not have an actual or potential conflict of interest when acting as a referee. In particular, Tenderers must ensure that referees:
- (a) are not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with, the Tenderer or a subsidiary organisation of the Tenderer;
 - (b) are not included in the Tender as proposed team members; and
 - (c) are not AusAID employees.
- 7.20 Tenderers must further ensure that nominated referees:
- (a) are available to be contacted in the 3 week period after the **Closing Time**; and
 - (b) are able to provide comments in English.
- 7.21 AusAID reserves the right to check with nominated referees and with other persons as AusAID chooses, the accuracy of the information and quality of work performed.

8. JOINT VENTURES AND CONSORTIUMS

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

9. ASSOCIATES AND OTHER SUB-CONTRACTORS

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

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

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

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

10. **OWNERSHIP OF TENDERS AND RFT**

- 10.1 All Tenders become the property of AusAID on lodgement.
- 10.2 Such intellectual property rights as may exist in the information contained in each Tender will remain the property of the Tenderer.
- 10.3 The Tenderer authorises AusAID to copy, adapt, amend, disclose, including to AusAID contractors and advisers, or do anything else necessary, in AusAID's sole discretion, to all materials including that which contains intellectual property rights of the Tenderer or other parties contained in the Tender.
- 10.4 Copyright in the RFT is reserved to AusAID.

11. **CONFLICT OF INTEREST**

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

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

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

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

12. TENDERING CONDUCT

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

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

13. INELIGIBILITY TO TENDER

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

13.2 Tenderers warrant by submitting a tender that the Tenderer, and any subcontractor of the Tenderer, are not listed on a World Bank List. Tenderers must also state in their tender whether the Tenderer or any subcontractor of the Tenderer is listed on any similar list maintained by any other donor of development funding (“**Relevant List**”) or are subject to any proceedings which could lead to listing on a World Bank List or listing on any Relevant List. Tenderers must also immediately notify AusAID where the Tenderer or any of their subcontractors becomes listed on a World Bank List or Relevant List, or subject to proceedings which may lead to such a listing, after the tender is submitted to AusAID.

13.3 AusAID will exclude any tender where the Tenderer is in breach of the warranty, or does not disclose any circumstance required under **Clause 13.2**. AusAID also reserves the right to exclude any tender, where the Tenderer or a subcontractor of the Tenderer becomes listed on a World Bank List or Relevant List, or is subject to proceedings which could lead to such a listing.

13.4 Tenderers should note that if they tender in breach of this **Clause 13**, or are subsequently listed on a World Bank List or Relevant List, AusAID may terminate any contract subsequently entered into with that Tenderer.

13.5 For the purpose of this **Clause 13**, a reference to a Tenderer or a subcontractor of a Tenderer, includes any company in the same group as the Tenderer or the subcontractor (including but not limited to, related bodies corporate of the Tenderer or subcontractor within the meaning of the *Corporations Act 2001*) and parties with whom the Tenderer or subcontractor is associated in respect of this Tender.

14. **AusAID's RIGHTS**

14.1 As a Commonwealth Government agency, all AusAID procurement is subject to the Commonwealth Procurement Guidelines. The core principle of Commonwealth procurement is to achieve value for money. AusAID is also bound to conduct its procurement in an ethical, accountable, transparent, efficient and effective manner.

14.2 AusAID reserves the right to:

- (a) seek Tenders from any organisation;
- (b) accept or reject any Tender;
- (c) terminate, extend or vary its procurement process for the Services;
- (d) request clarification in relation to a Tender;
- (e) seek information or negotiate with any organisation that has not been invited to submit a Tender;
- (f) terminate negotiations with the preferred Tenderer and commence negotiations with any other Tenderer;
- (g) evaluate Tenders as AusAID sees appropriate; and
- (h) negotiate with any one or more Tenderers.

15. **TENDERER'S ACKNOWLEDGEMENT**

15.1 A Tender is submitted on the following basis:

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

16. **DEBRIEFING OF TENDERERS**

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

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

17. AUSTRALIAN GOVERNMENT AND AUSAID LAWS AND POLICIES

17.1 Freedom of Information

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

17.2 Privacy

- (a) The *Privacy Act 1988* establishes a national scheme providing, through codes of practice adopted by private sector organisations and the National Privacy Principles, for the appropriate collection, holding, use, correction, disclosure and transfer of personal information by private sector organisations.
- (b) The Draft Contract provides that the Contractor will comply with the *Privacy Act 1988*, including the Information Privacy Principles and the National Privacy Principles whether or not the Contractor is an organisation subject to the *Privacy Act 1988*.
- (c) The Contractor acknowledges that the Privacy Act 1988 reflects the principles of the International Covenant on Civil and Political Rights and OECD Guidelines, in particular, the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.
- (d) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Privacy Act 1988* on their participation in this RFT process and any subsequent contract.

17.3 Access by Australian National Audit Office

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

- (c) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997* on their participation in the RFT process and any subsequent contract.

17.4 Access by Ombudsman

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

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

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

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

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

17.7 Other Australian Government and AusAID Policies

- (a) Tenderers should familiarise themselves with AusAID policies including:
 - (i) the policy *Gender Equality in Australia's Aid Program – Why and How* (March 2007). This document is available on AusAID's website at <http://www.ausaid.gov.au/publications/default.cfm>;

- (ii) AusAID's policy on the environment as set out in the *Environmental Management Guide for Australia's Aid Program*. This document is available on AusAID's website at <http://www.ausaid.gov.au/keyaid/envt.cfm>.
- (iii) AusAID's *Child protection policy*, in particular the child protection compliance standards at Attachment 1 to the policy. This document is available on AusAID's website at <http://www.ausaid.gov.au/publications/default.cfm>.
- (iv) any other policies published from time to time on <http://www.ausaid.gov.au> or as otherwise notified to Tenderers.

18. FURTHER REQUIREMENTS

- 18.1 Tenderers should be aware that current employees of AusAID cannot be included in Tenders for AusAID programs. Former AusAID employees may be included in Tenders if doing so does not represent a breach of conflict of interest. See AusAID's Frequently Asked Questions website for further information:
www.ausaid.gov.au/business/frequent.cfm.
- 18.2 Tenderers should note that the Commonwealth Procurement Guidelines require that Commonwealth agencies must not enter into agreements with suppliers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not paid the claim. AusAID will reject submissions from tenderers in this position.
- 18.3 Tenderers must keep any discussions or contact with AusAID in connection with the Tender, the RFT and any contract negotiations confidential. Any unauthorised approach by a Tenderer to an AusAID officer or discussion of matters pertaining to the procurement process will be considered a breach of confidentiality.

19. CONTRACT NEGOTIATIONS

- 19.1 AusAID may select, as preferred Tenderer, the Tenderer(s) who best meet the requirements of the RFT on the basis of the tender assessment process.
- 19.2 The preferred Tenderer(s) must within 14 days of written notification from AusAID that it has been selected as preferred Tenderer, provide AusAID with originals of Police Clearance Certificates for all Personnel nominated in their Tender in positions specified in the Specified Personnel Table (**Clause 5, Part 1**) as working with children.
 - (a) Police Clearance Certificates must be provided for each country in which the individual has lived for 12 months or longer over the last five years, and for the individual's country of citizenship;
 - (b) Police Clearance Certificates must be dated no earlier than 12 months before the Tender Closing Time;
 - (c) If any required Police Clearance Certificates are not provided to AusAID in accordance with **Clause 18.2** above, AusAID may exercise its right, specified at **Clause 14.2** above, to terminate negotiations with the preferred Tenderer and commence negotiation with any other Tenderer. AusAID recognises that in limited

instances it may prove impossible to obtain a reliable Criminal Record Check, and will take non-provision of a Criminal Record Check into account upon request;

- (d) AusAID reserves the right to require the preferred Tenderer(s) to replace any Personnel whose Police Clearance Certificate shows conviction of criminal offences of, or relating to, child abuse where AusAID, in its absolute discretion, considers that the Personnel poses an unacceptable risk to children's safety or well-being. Nominated replacement Personnel must have qualifications and experience equal to or better than those of the personnel being replaced, and must be acceptable to AusAID.

19.3 It is AusAID's intention to contract on the basis of the Contract Conditions contained in this RFT. Following the selection of a preferred Tenderer AusAID may enter into negotiations with the preferred Tenderer in respect of the Scope of Services and the Basis of Payments of the contract. Such negotiations will be strictly limited to matters of detail rather than substance.

19.4 If the Scope of Services is reduced as a result of constraints imposed on AusAID before or after the **Closing Time**, AusAID and the preferred Tenderer must negotiate, in good faith, a proportionate reduction, if necessary, to the fixed price quote.

19.5 Enhancements to the Scope of Services included in the Tender in accordance with the selection criteria should be costed into the fixed price quote for the purposes of the like-for-like price assessment. Where AusAID has instructed that the like-for-like price assessment is to be based on indicative values, the Tenderer must clearly specify all cost implications of enhancements proposed in the Tenderer's technical proposal.

20. **CONTRACT PLANS**

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

21. **APPLICABLE LAW**

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

ANNEX A – AUSAID USE OF PERFORMANCE INFORMATION

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

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

ANNEX B – TENDERER DECLARATION

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

1. DEFINITIONS

1.1 In this declaration:

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

“**Services**” means Services to be performed by the Contractor in the Incentive Fund Phase III;

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

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

2. BASIS OF DECLARATION

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

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

3. THE OFFER

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

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

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

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

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

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

- 3.16 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.
- 3.17 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**.
- 3.18 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.
- 3.19 The Tenderer is genuinely competing for the Contract and its Tender is not a “cover bid”.
- 3.20 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.
- 3.21 I acknowledge that each party constituting the Tenderer is bound jointly and severally by this Tender.

4. ADDENDA TO TENDER DOCUMENTS

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

Number _____ Dated _____ Number _____ Dated _____

Number	Dated	Number	Dated
--------	-------	--------	-------

5. ADDRESS OF TENDERER

Address or Registered Office of Tenderer

Address for service of notices (NOT PO. BOX)

Telephone Number: Fax Number:

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

insert name and title

Signature

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

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

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

2. REGISTERED TENDERERS AND NOTICES

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

3. AUSTENDER HELP DESK

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

AusTender Help Desk
Telephone: 1300 651 698
Email: tenders@finance.gov.au

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

4. PREPARING TO LODGE A TENDER ELECTRONICALLY

Virus Checking

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

Tender File Formats, Naming Conventions and Sizes

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

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

Scanned or Imaged Material, including Statutory Declarations

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

5. ELECTRONIC LODGEMENT PROCESS

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

AusTender Help Desk (**Clause 3.1** above) prior to the **Closing Time**. Failure to do so will exclude a tender from consideration.

6. LATE TENDERS, INCOMPLETE TENDERS AND CORRUPTED FILES

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

7. PROOF OF LODGEMENT

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

8. AUSTENDER SECURITY

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

PART 6 – STANDARD CONTRACT CONDITIONS

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

PART B – STANDARD CONTRACT CONDITIONS

22. INTERPRETATION

22.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

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

"AusAID Confidential Information" means information that:

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

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

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

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

"**Commonwealth Procurement Guidelines**" means the guidelines issued by the Minister for Finance and 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.

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

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

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

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

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

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

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

"**Document**" includes:

- (a) any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and

- (b) a disc, tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device.

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

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

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

- (c) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (d) acts of war (whether declared or not), invasion, acts of foreign enemies, mobilisation, requisition, or embargo;
- (e) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution, or military usurped power, or civil war; and
- (f) 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.

"Mobilisation 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.

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

"NAA" means National Archives of Australia.

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

"Party" means AusAID or the Contractor.

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

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

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

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

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

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

"Project Specific Conditions" means Contract Conditions in Part A of 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 Program Supplies and Program Administration and Equipment purchased by the Contractor for use in this Program.

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

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

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

22.2 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.

22.3 **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.

22.4 **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.

23. **SCOPE OF CONTRACT**

- 23.1 The Contract sets out the terms and conditions on which the Contractor agrees to secure the aims and objectives of the Program supplying, or procuring the supply of, the provision of the Services.
- 23.2 The activities to be performed and responsibilities assumed by the Contractor are detailed in **Schedule 1**.
- 23.3 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.

24. **AUSAID'S OBLIGATIONS**

24.1 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.

25. **NON-EXCLUSIVITY**

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

26. **PROVISION OF SERVICES**

- 26.1 In providing the Services, the Contractor must:
 - (a) perform the Services as described in **Schedule 1** for the term of the Contract, unless the Contract is terminated earlier;
 - (b) accept and implement AusAID's reasonable directions in relation to the management of the Program;
 - (c) use its best endeavours to ensure the spirit and intent of the Program are fully met by the Services, including acting within the spirit and intent of the Treaty, MOU or Subsidiary Arrangement;
 - (d) liaise and cooperate with AusAID and the Australian Diplomatic Mission in or having responsibility for the Partner Country especially in relation to security, personal safety and welfare matters;
 - (e) subject to any flexibility permitted in the Contract, ensure all timing obligations included in the Contract are fully met;
 - (f) within the term of the Contract assist AusAID in the maintenance and ongoing implementation of the Services, including monitoring and evaluating the Services to ensure results accord with the aims of the Program, and provide necessary handover assistance to any subsequent service provider and to the Partner Country;
 - (g) ensure that the Services are provided to a standard which shall promote Australia's international reputation and standing as a source of skill and expertise in the provision of international assistance;
 - (h) perform the Services in a manner which, as far as possible, establishes and maintains a harmonious, cooperative and effective working relationship with any personnel from the Partner Country involved in the Program;

- (i) if a Risk Management Plan for the Program has not been prepared prior to the Mobilisation Date, the Contractor must prepare a Risk Management Plan within 30 days after the Mobilisation 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 Mobilisation Date (for example, as part of the Contractor's tender for the Program 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 Program risks and includes risk-minimisation strategies. The Contractor must promptly advise AusAID of any significant risks in accordance with **Clause 27 below**. The Contractor must also ensure the Risk Management Plan contains provisions for advance notification of AusAID of risks that may lead to disruption or delay of the Program;
 - (k) liaise with, and obtain all necessary consents, approvals and authorisations from any public and other authorities in the Partner Country;
 - (l) provide adequate support resources to secure the aims and objectives of the Program;
 - (m) be responsive to the changing needs and environment of the Partner Country; and
 - (n) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity.
- 26.2 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.
- 26.3 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.
- 27. EARLY NOTIFICATION**
- 27.1 The Contractor must report immediately, and in any event within seven (7) days, to AusAID on any actual, perceived or anticipated problems or risks that may have a significant effect on the achievement of the aims and objectives of the Program, on the cost to AusAID or on the delivery or operation of the Services. If the report is first given orally, the Contractor must promptly confirm the report in writing to AusAID. The Contractor must recommend to AusAID options to prevent or mitigate the impact of problems on the Program.

28. CONTRACTOR PERSONNEL

- 28.1 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.
- 28.2 The Contractor must use its best endeavours to ensure that all Contractor Personnel conduct themselves in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct*.
- 28.3 The Contractor must use its best endeavours to ensure that no Contractor Personnel or their accompanying family members:
- (a) become involved in the political affairs of the Partner Country (unless citizens of the Partner Country);
 - (b) interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country); or
 - (c) share information known as a result of their work on, or relationship to, the Program,
- in a way that a reasonable person could foresee may be detrimental to the relationship between the Australian and Partner Governments.
- 28.4 The Contractor must not employ a currently serving Commonwealth employee in any capacity in connection with the Services without the prior written approval of AusAID.
- 28.5 The Contractor must ensure that media advertisements placed by the Contractor for personnel to fill a Program position acknowledge that the Program is funded by AusAID as part of the Australian Government's official overseas aid program.
- 28.6 AusAID may give notice to the Contractor requiring the Contractor to remove any Contractor Personnel from work in respect of the Services. The Contractor must promptly arrange for the removal of such Contractor Personnel from work in respect of the Services and their replacement (if required) with Contractor Personnel acceptable to AusAID.
- 28.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Contractor Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.
- 28.8 The Contractor must advise AusAID immediately in writing if any Contractor Personnel is arrested for, or convicted of, criminal offences relating to child abuse, or for accessing or possessing child pornography. AusAID may require Contractor Personnel under formal investigation in relation to such criminal offences to be suspended from duty or transferred to other duties during the investigation.

- 28.9 AusAID may give notice to the Contractor requiring the Contractor to temporarily suspend from duty, or transfer to other duties, any Contractor Personnel who are under criminal or internal investigation in relation to child abuse or accessing or possessing child pornography. The Contractor must comply promptly with any such notice.
29. **SPECIFIED PERSONNEL**
- 29.1 The Contractor must provide all Specified Personnel for the Program and for the minimum periods specified in **Schedule 1**.
- 29.2 During the minimum periods specified in **Schedule 1**, the Long Term Advisers included in the Specified Personnel must be exclusively dedicated to the Program and only perform the duties required under this Contract unless otherwise agreed in writing by AusAID.
- 29.3 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:
- (a) are of good fame and character;
 - (b) are properly qualified for the tasks they are to perform;
 - (c) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner;
 - (d) are adequately briefed and understand the environment and culture of the Partner Country; and
 - (e) act in a fit and proper manner while they are carrying out work or performing duties under the Contract.
- 29.4 The Contractor must use its best endeavours to secure the availability of Specified Personnel for the term of the Contract. If a change to Specified Personnel is required the Contractor must provide AusAID with not less than 3 months prior written notice of such change except where circumstances beyond the reasonable control of the Contractor make the giving of such notice impracticable. Any proposed change to the Specified Personnel must only be made after written consent from AusAID and in accordance with the procedure set out in **Clause 29.8 below**.
- 29.5 Subject to **Clause 29.4 above**, Specified Personnel may be temporarily absent from the Program. Where Specified Personnel are unavailable for work in respect of the Contract, for any period in excess of 2 weeks, the Contractor must notify AusAID in writing immediately and, if requested, must provide replacement personnel acceptable to AusAID and the Partner Government at no additional charge and at the earliest opportunity and for the duration of the absence.

- 29.6 The costs incurred by the Contractors in providing temporary substitute personnel due to the absence of Specified Personnel are the responsibility of the Contractor.
- 29.7 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.
- 29.8 Before appointing Specified Personnel to the Program, the Contractor must obtain AusAID's written approval. In seeking approval of proposed Specified Personnel the Contractor must provide to AusAID:
- (a) the full names, dates of birth, and nationalities of proposed personnel and their accompanying dependants;
 - (b) a statement demonstrating that the proposed personnel has the demonstrated skills and capacity to undertake the job specification of the position and duration of the proposed appointment;
 - (c) a copy of the proposed person's curriculum vitae certified as accurate by the person and showing recent and relevant experience and formal qualifications including dates of award; and
 - (d) assurances that the nominated personnel has no existing commitments (defined in relation to the commitments of the position and not the individual's commitment to a particular organisation), to other AusAID projects that will suffer detriment if accepted on this Program. If this is not the case AusAID may require further information before assessing the individual's suitability.
- 29.9 If the Contractor is unable to provide acceptable replacement Specified Personnel with equivalent qualifications and experience AusAID may seek a reduction in fees.
- 29.10 This clause is a fundamental term of the Contract, such that breach shall entitle AusAID to terminate the Contract in accordance with **Clause 52** and sue for damages.

30. **PROGRAM VEHICLE CONTRIBUTION**

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

- 30.2 In consideration of the Contractor being entitled to use Program Vehicles for non-program use the Contractor must contribute \$250.00 for each Program Vehicle for each month of the Program. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor's invoices.
- 30.3 The Contractor must abide by the following requirements with regards to Program Vehicles:
- (a) Program demands must always take precedence over private use;
 - (b) the Contractor must ensure that any persons driving the Program Vehicle must have a current valid international or Partner Country drivers license for the class of Program Vehicle;
 - (c) the Contractor is responsible for ensuring Program Vehicles are appropriately insured;
 - (d) the Contractor is responsible for ensuring that seat belts are fitted and must make every effort to ensure that they are worn at all times by drivers and all passengers;
 - (e) the Contractor is responsible for any costs incurred in the event of an accident while the Program Vehicle is being privately used; and
 - (f) the Contractor must ensure that Program Vehicles are serviced in accordance with manufacturer's requirements.

31. **PROCUREMENT SERVICES**

- 31.1 In procuring all Supplies, the Contractor must:
- (a) determine what Supplies are required for proper implementation of the Services and advise AusAID;
 - (b) keep AusAID informed of ongoing requirements for Supplies in connection with the Program;
 - (c) implement procedures so that procurement is undertaken in a manner that is consistent with the Commonwealth Procurement Guidelines, in particular, observing the Core Principle of achieving value for money and the supporting principles;
 - (d) maintain complete and accurate records documenting the procedures followed in procuring, and the particulars of Supplies; and
 - (e) use its best endeavours to ensure Supplies are maintained including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed.
- 31.2 The Contractor shall bear the loss or damage in respect of Supplies until handover of Supplies to the Partner Government.

- 31.3 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.
- 31.4 The Contractor shall establish and maintain a Register of Assets which shall record any non-consumable Supplies valued at \$2,000 or more, which at a minimum contains the following information: reference identification number (which may be for example, a serial number, engine number or chassis number); description of the asset; date of procurement; cost; location; current status; and disposal or handover details.
- 31.5 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.
- 31.6 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.

32. SUB-CONTRACTING

- 32.1 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 36** (Accounts and Records), **39** (Audits), **40** (Access to Premises), **47** (Privacy), and **56.4** (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 48** (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.

32.2 The obligations of **Clause 32.1 above** apply equally to Associates.

32.3 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.

33. **CONTRACT AMENDMENT**

33.1 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.

- 33.2 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”.
- 33.3 AusAID or the Contractor may propose an amendment to the manner of providing the Services or changes to the Program, at any time for the purpose of improving the delivery of the Services or, the efficiency, cost-effectiveness and development impact of the Services.
- 33.4 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.
- 33.5 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.
- 33.6 AusAID may, at its sole discretion, accept or reject the Amendment Proposal submitted by the Contractor.

34. **EXTENSION OF TIME**

- 34.1 Subject to **Clause 34.6 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.
- 34.2 Where in the Contractor’s reasonable opinion there is likely to be a delay in the Contractor’s discharging an obligation under the Contract because of a Relevant Cause the Contractor must:
- (a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;
 - (b) give details of the likely effect on the Program and any Contractual implications;

- (c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;
 - (d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances in the form of an Amendment Proposal in accordance with **Clause 33.5 above**; and
 - (e) use its best endeavours to continue to perform its obligations under the Contract.
- 34.3 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.
- 34.4 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.
- 34.5 Even if the Contractor has not given notice under **Clause 34.2 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.
- 34.6 Where AusAID has determined that a Relevant Cause has occurred, and the Contractor's inability to perform its obligations due to a Relevant Cause exceeds 45 Business Days, AusAID may:
- (a) notify the Contractor that the Contract is suspended for a specified period of time; or
 - (b) delete part of the Services; or
 - (c) immediately or thereafter terminate the Contract in whole or in part by providing notice in writing to the Contractor.
- 34.7 A notice of suspension, deletion or termination of the Contract under **Clause 34.6 above** takes effect on the date that the notification is received by the Contractor.
- 34.8 In the event of suspension, deletion or termination of Services or the Contract under **Clause 34.6 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.

35. **HANDOVER**

- 35.1 The Contractor must within 12 months of the Program Start Date draft a Handover Plan which includes all the functions to be performed to hand over the Program to the Partner Country in a manner which ensures the Partner Country is able to continue the Program and in particular to manage ongoing maintenance requirements as well as any other matters specified in **Schedule 1** and provide a copy to AusAID.
- 35.2 The Contractor must make changes to the Handover Plan as reasonably requested by AusAID and update the Handover Plan as necessary during the Program but at least annually and 6 months before the end of the Contract.
- 35.3 The Contractor must ensure that a finalised Handover Plan is provided to AusAID within seven (7) days of any early termination of the Program, or one month prior to the expected completion of the Program.
- 35.4 The Contractor must provide all reasonable assistance and cooperation necessary to, on expiration or termination of the Contract, facilitate the provision of the Services by AusAID or an alternative service provider. In particular the Contractor must:
 - (a) deliver to AusAID or its nominee complete copies of all the Data, in a form and on a media approved by AusAID, and any other AusAID property including the Supplies held or used by the Contractor;
 - (b) either destroy or deliver to AusAID all copies of AusAID Confidential Information as required by AusAID;
 - (c) if requested by the Partner Country, facilitate the assignment to the Partner Country of sub-contracts relating to Supplies, including for licensing and support of information technology and any construction work maintenance;
 - (d) vacate the Program Office where this has been supplied by AusAID or the Partner Country;
 - (e) co-operate with AusAID and, if requested, AusAID's nominee, and provide reasonable assistance relating to the transfer of any contracts to AusAID, its nominee or the Partner Country;
 - (f) provide all information necessary for an alternative service provider to assume provision of the Services;
 - (g) continue the provision of the Services for as long as reasonably requested by AusAID on the terms and conditions of the Contract;

- (h) cooperate with AusAID and any other service provider in the ongoing provision of services similar to the Services; and
- (i) allow AusAID to audit compliance with this clause.

36. ACCOUNTS AND RECORDS

- 36.1 The Contractor must at all times maintain full, true, separate and up-to-date accounts and records in relation to the Fees, Supplies and the Services. Such accounts and records must:
- (a) record all receipts and expenses in relation to the Supplies and Services, including those involving foreign exchange transactions;
 - (b) be kept in a manner that permits them to be conveniently and properly audited;
 - (c) enable the extraction of all information relevant to this Contract;
 - (d) contain details of the disposition of Supplies as agreed to by AusAID such as replacement, write-off or transfer to the Partner Country; and
 - (e) the Contractor shall provide to AusAID a statement of Program expenditure on a regular basis for the duration of the Program. The details of the timing and content of the statement of expenditure are defined in Part A Project Specific Contract Conditions.
- 36.2 Accounts and records must be provided for inspection by AusAID immediately upon the request of AusAID.
- 36.3 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.

37. REPORTS

- 37.1 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.
- 37.2 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.
- 37.3 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.

38. REVIEWS

- 38.1 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.
- 38.2 The Contractor must participate cooperatively in any reviews conducted by AusAID or its nominees. In addition the Contractor must respond in writing to any draft review report within 28 days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.
- 38.3 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.
- 38.4 Each Party must bear its own costs of any such reviews conducted by or on behalf of AusAID.
- 38.5 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.

39. AUDITS

- 39.1 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.
- 39.2 The Contractor must respond to any notice received under **Clause 39.1 above** within 14 days.
- 39.3 Where the Contractor does not respond within 14 days, or the response does not alleviate AusAID's concern, AusAID reserves the right, if it has not already done so, to direct the Contractor to provide AusAID with certification from an independent auditor as described in **Clause 39.1(c) above**.
- 39.4 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.
40. **ACCESS TO THE CONTRACTOR'S PREMISES, DATA AND RECORDS**
- 40.1 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.
- 40.2 Such access must be available to AusAID and its nominees:
- (a) during the hours of 9 am and 5 pm on a Business Day;
 - (b) except in the case of a breach of this Contract, subject to reasonable prior notice; and

- (c) at no additional charge to AusAID.
- 40.3 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.
- 40.4 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.
- 41. **PAYMENT**
- 41.1 AusAID must make payment of the Fees within 30 days of:
 - (a) AusAID's acceptance of the satisfactory completion of the Services or relevant Payment Milestone as specified in **Schedule 2**; and
 - (b) receipt of a correctly rendered invoice.
- 41.2 It is AusAID corporate practice to inform Contractors as soon as reasonably possible, and in any case within 30 days of receipt of notice of the completion of an identified output or provision of a report whether or not that output or report is accepted.
- 41.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.
- 41.4 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 36.1** (Accounts and Records) and may be audited by AusAID in accordance with Standard Conditions **Clause 38** (Reviews).
- 41.5 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.
- 41.6 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.
- 41.7 Subject to the Contract AusAID shall pay Reimbursable Costs within 30 days of receipt of a correctly-rendered invoice.
- 41.8 An invoice is correctly rendered if:
 - (a) the invoice details all Services provided against the Fees and records the amount payable in respect of each category of Services described in the Contract;

- (b) the invoice details the Contractor's monthly contribution toward Program Vehicles in accordance with **Clause 30.2**;
 - (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.
- 41.9 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.
- 41.10 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.
- 41.11 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.
- 41.12 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.
- 41.13 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.
- 41.14 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.

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

42. GOODS AND SERVICES TAX

- 42.1 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.
- 42.2 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).
- 42.3 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.
- 42.4 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.
- 42.5 AusAID shall not pay to the Contractor any amount referable to GST, except as provided in this clause.

43. INTELLECTUAL PROPERTY RIGHTS

- 43.1 Subject to **Clause 43.2**, 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.
- 43.2 **Clause 43.1** 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 43.2** 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.
- 43.3 The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.

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

44. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 44.1 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.

45. MORAL RIGHTS

- 45.1 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.

46. CONFIDENTIALITY

- 46.1 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.
- 46.2 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.
- 46.3 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.
- 46.4 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.

- 46.5 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.
- 46.6 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.
- 46.7 This clause shall survive expiration or termination of this Contract.

47. **PRIVACY**

- 47.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services.
- 47.2 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*.
- 47.3 The Contractor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services:
 - (a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;
 - (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
 - (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
 - (d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
 - (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to 10) where that section or NPP is applicable to the Contractor, unless:

- (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or
 - (ii) in the case of a NPP – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorized by this Contract is inconsistent with the NPP;
 - (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with a NPP binding a party to this Contract;
 - (g) to immediately notify AusAID if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any sub-contractor;
 - (h) not to transfer such information outside Australia, except to the Partner Country, or to allow parties outside Australia or the Partner Country to have access to it, without the prior approval of AusAID; and
 - (i) to ensure that any employee of the Contractor who is required to deal with Personal Information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause.
- 47.4 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.
- 47.5 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 47.4 above**.
- 47.6 This clause shall survive expiration or termination of this Contract.
- 48. AusAID USE OF CONTRACT INFORMATION**
- 48.1 AusAID may disclose matters relating to the Contract, including the Contract and the names of sub-contractors as specified in **Clause 32.1(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.

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

49. **PUBLICITY**

49.1 The Contractor must identify and implement appropriate opportunities for publicising the Program.

49.2 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.

49.3 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.

49.4 The Contractor shall, if appropriate, erect a sign at each Program site that acknowledges the contributions of the Australian and Partner Governments. Such signs shall in all cases be discussed and agreed between AusAID and the Partner Government. Signs should use the Australian Government/AusAID logo (in-line version). No independent 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.

50. **WARRANTIES**

50.1 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.

50.2 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.

- 50.3 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.

51. **PERSONNEL SECURITY**

- 51.1 The Contractor is responsible for the security of Contractor Personnel and for taking out and maintaining appropriate insurances in respect of Contractor Personnel.
- 51.2 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.
- 51.3 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
- 51.4 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.

52. **TERMINATION FOR CONTRACTOR DEFAULT**

- 52.1 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; or
- (p) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, child abuse, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract.

52.2 If this Contract is terminated under this **Clause 52**:

- (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).

53. **TERMINATION FOR CONVENIENCE**

- 53.1 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.

53.2 Where notice is given under **Clause 53.1** 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 53**.

53.3 In the event of termination or reduction in scope under this **Clause 53**, subject to **Clause 53.4**, 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.

53.4 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 53**.

54. **INDEMNITY**

54.1 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.

54.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 54.1 above** for the benefit of each of such persons in the name of AusAID or of such persons.

- 54.3 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.
- 54.4 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.
- 54.5 This indemnity shall survive termination or expiration of this Contract.

55. **INSURANCE**

- 55.1 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.
- 55.2 The Contractor must, within 14 days after a request by AusAID, provide for any insurance policy: a certificate of currency, a list of exclusions; and the amount of excess payable.
- 55.3 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.
- 55.4 In the event of an insurance claim any deductible/excess payable shall be the responsibility of the Contractor.
56. **CONFLICT OF INTEREST**

Conflict of Interest

- 56.1 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.
- 56.2 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 56.3 below**, that may result in a conflict of interest arising or continuing.
- 56.3 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

- 56.4 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 52** (Termination for Contractor Default) by notice from AusAID.

57. FRAUD

- 57.1 For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means.
- 57.2 The Contractor and its sub-contractors must not engage in any fraudulent activity.
- 57.3 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*.
- 57.4 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.
- 57.5 The Contractor must report in writing within 5 working days to AusAID any detected, suspected, or attempted fraudulent activity involving AusAID provided funds. Where a matter is reported in writing to AusAID by a Contractor, the advice must provide where known:
- (a) the name of the Program under which AusAID funding is being provided;
 - (b) name of any personnel or subcontractors involved;
 - (c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);
 - (d) the names of the suspected offender(s) (where known);
 - (e) details of witnesses;
 - (f) copies of relevant documents;
 - (g) references to any relevant legislation;

- (h) a nominated contact officer;
 - (i) any other relevant information (eg, political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and
 - (j) the current status of any inquiries commenced by the Contractor.
- 57.6 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.
- 57.7 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.
- 57.8 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.
- 57.9 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; and
 - (ii) referring the matter to the relevant Partner Country police or other authorities responsible for prosecution of fraudulent activity; and
- (b) keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.

57.10 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.

57.11 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.

57.12 **Clauses 57.6, 57.7, 57.8, 57.9 and 57.10** 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 57.6** before that date,

- (b) any investigation commenced by the Contractor under **Clause 57.6**, but not completed, before the date of expiry of this Contract, and
- (c) any investigation commenced by AusAID under **Clause 57.7**, but not completed, before the date of expiry of this Contract.

58. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

58.1 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.

58.2 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 58.1**.

58.3 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>.

58.4 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 58**.

58.5 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 52**.

58.6 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.

58.7 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.aisaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;
- (c) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child protection policy*;
- (d) Environment. AusAID is bound by the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:
 - (i) ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;
 - (ii) comply with AusAID's Environmental Management System outlined in the *Environmental Management Guide for Australia's Aid Program*, including:
 - A. assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;
 - B. report regularly on any such impacts as required by the Scope of Services; and
 - (iii) comply with all relevant environmental laws and regulations of the Partner Country.

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

59. INVESTIGATION BY THE OMBUDSMAN

- 59.1 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.
- 59.2 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.

- 59.3 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.
- 59.4 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.
- 59.5 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.
- 59.6 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.
- 59.7 This clause shall survive expiration or termination of this Contract.

60. RESOLUTION OF DISPUTES

- 60.1 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 41.11** (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.
- 60.2 A Party may give the other Party a notice of dispute ("**dispute notice**") in connection with this Contract. Following the giving of a dispute notice, the dispute must be referred to a senior officer of AusAID and a senior officer of the Contractor, who must use reasonable endeavours to resolve the dispute within 20 Business Days or such other period as is agreed by the Parties.
- 60.3 If the Parties have not been able to resolve the dispute in accordance with **Clause 60.2 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.

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

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

61. **NOTICES**

61.1 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).

62. **MISCELLANEOUS**

62.1 **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.

62.2 **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.

62.3 **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.

62.4 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.

62.5 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.

62.6 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.

62.7 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.

62.8 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.

Schedule 4

- 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 - UNCONDITIONAL FINANCIAL UNDERTAKING

THIS DEED POLL made

20

BY:

[]
 (the “**Guarantor**”)

FOR THE BENEFIT OF:

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

RECITALS:

- A. AusAID and *[to be inserted]* (hereinafter called the “**Contractor**”) have agreed to enter into a contract for the provision of services in Papua New Guinea (“the Contract”).
- B. The Contractor has agreed to provide to AusAID prior to execution of the Contract a performance security in respect of the services to be performed by the Contractor in accordance with the executed Contract.
- C. The Contractor has agreed that the performance security shall be in the form of an unconditional and irrevocable financial undertaking of A\$2,500,000 for the period of [to be inserted] (“the Undertaking”).
- D. The Guarantor has signed this Deed Poll at the request of the Contractor and in consideration of AusAID accepting the Undertaking.
- E. AusAID shall enter into the Contract with the Contractor on condition that the Contractor provides the Undertaking and the Guarantor signs this Deed Poll.

THE GUARANTOR DECLARES as follows:

- 1. The Guarantor unconditionally undertakes and covenants to pay to AusAID on demand without reference to the Contractor and notwithstanding any notice given by the Contractor to the Guarantor not to pay same, any sum or sums which may from time to time be demanded in writing by AusAID to a maximum aggregate sum of \$2,500,000.
- 2. The Guarantor’s liability under this Undertaking shall be a continuing liability and shall continue until payment is made under this Undertaking of the said maximum aggregate sum or AusAID notifies the Guarantor that this Undertaking is no longer required.
- 3. This Undertaking shall be governed by and construed in accordance with the laws for the time being in force in the Australian Capital Territory.
- 4. The Guarantor may at any time pay to AusAID the maximum aggregate sum or such lesser sum remaining after any part payment or payments, which payment shall discharge this Undertaking.

EXECUTED as a deed poll.

SIGNED, for and on behalf **of the**
GUARANTOR, **by:**

Signature of Director

Signature of Director/Secretary

Name of Director
(Print)

Name of Director/Secretary
(Print)

OR

SIGNED, for and on behalf of **the**
GUARANTOR **under power of attorney in**
the presence of:

Signature of attorney

Name of attorney
(Print)

Signature of witness

Date of power of attorney

Name of witness
(Print)

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

AND [] ABN []
(‘Guarantor’)

- 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.

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

5. This Deed is subject to, and is to be construed in accordance with, the laws in force in the Australian Capital Territory and the parties agree that the courts of that Territory have jurisdiction to entertain any action in respect of, or arising out of, this Deed and the parties submit themselves to the jurisdiction of those courts.
6. For the purpose of this Deed, where an obligation of the Contractor under the Contract has not been performed, the Contractor shall be taken to have failed to perform that obligation notwithstanding that the Contractor has been dissolved or is subject to external administration procedures under chapter 5 of the *Corporations Law* or any other law.
7. The guarantee in this Deed is a continuing guarantee to AusAID until the obligations and liabilities of the Contractor under the Contract have in all respects been performed, observed and discharged.
8. The following notice arrangements apply:
 - (a) notice or other communication which may be given to or served on the Guarantor under this Deed shall be deemed to have been duly given or served if it is in writing, signed on behalf of AusAID and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Guarantor or its agent at any registered office of the Guarantor or posted to the Guarantor's address set out above or such other address as is notified in writing to AusAID from time to time;
 - (b) a notice or other communication which may be given to or served on AusAID under this Deed shall be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Guarantor and is either delivered by hand, posted or faxed or a copy transmitted electronically to AusAID at the address set out above or such other address as is notified in writing to the Guarantor from time to time;
 - (c) a notice sent by post shall be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent; and
 - (d) a notice sent by facsimile transmission or transmitted electronically shall be deemed to have been given when the machine on which the notice is sent reports that the notice has been transmitted satisfactorily.

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

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

.....
Name of witness (print)

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

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