

draft

PERIOD OFFER DEED

BETWEEN

COMMONWEALTH OF AUSTRALIA

represented by the Australian Agency for International Development

ABN 62 921 558 838

and

FOR

AUDIT SERVICES STRATEGIC ALLIANCE PERIOD OFFER

AusAID AGREEMENT NO. XXXXX

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PERIOD OFFER DEED CONDITIONS

1. INTERPRETATION

1.1 Definitions

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

“Contract” means the periodic contract brought into existence on the issue of a Services Order contemplated by **Clause 4.2** (Formation of Periodic Contracts). Note this replaces the definition of “Contract” included in the Standard Conditions.

“Effective Control” means in relation to Partnerships:

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

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

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

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

“Party” means AusAID or the Contractor.

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

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

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

References in the Contract to **“Services”** are to the services described in the Services Order. Note this replaces the definition of “Services” included in the Standard Conditions.

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

“Specified Personnel” means those personnel listed in **Schedule 5** that are specified in the relevant Service Order to perform the Services.

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

1.2 General

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

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

1.3 Deed prevails

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

2. PURPOSE OF THIS DEED

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

3. TERM OF THE DEED

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

4. FORMATION OF PERIODIC CONTRACTS

- 4.1 At any time during the Offer Period AusAID may issue a Services Order to the Contractor containing the information specified in **Clause 4.4 below**. Prior to issuing a Services Order, AusAID will establish that the appropriately qualified Specified Personnel are available to undertake the task and reach agreement with the Contractor on the terms of reference, the duration and overall cost of the proposed Services.
- 4.2 The issue of a Services Order by AusAID shall immediately bring into existence a periodic contract for the provision of the Services described in the Services Order.
- 4.3 The Contract formed by the issue of a Services Order incorporates the terms and conditions described in Standard Conditions and any additional clauses in Part B, explicitly referred to as Project Specific Conditions.

- 4.4 The Services Order must be substantially in the form set out in **Schedule 4** and contain the following information:
- (a) a description of the Services to be provided and milestones to be achieved;
 - (b) the Specified Personnel;
 - (c) the date of commencement of the Services;
 - (d) if relevant, the term of the periodic contract being the period in which the Services must be provided;
 - (e) the total amount payable, including the Fees and reimbursable costs;
 - (f) if applicable, details of any reimbursable costs due and payable to the Contractor;
 - (g) any particular performance standards applicable to the Services Order in addition to those prescribed in the terms and conditions; and
 - (h) reports to be provided.
5. **NON-EXCLUSIVITY**
- 5.1 The Contractor acknowledges and agrees that nothing in this Deed shall operate to constitute the Contractor an exclusive provider of the Services to AusAID.
- 5.2 The Contractor must, within the Fees, cooperate with any other contractor appointed by AusAID to ensure the integrated and efficient provision of all Services and must provide reasonable assistance to other contractors as AusAID may request.
- 5.3 The Contractor acknowledges and agrees that AusAID may during the Offer Period make available to other interested and relevant third parties (including other government departments or agencies and other aid agencies and donors), personal information such as name, contact details, sectoral expertise and CVs but excluding agreed fee rates of Specified Personnel.
6. **DEED AMENDMENTS**
- 6.1 For the purposes of amending this Deed the procedures established in Standard Conditions **Clause 15.2** (Contract Amendment) will also apply.
7. **NOTICES**
- 7.1 For the purposes of serving notices with respect to this Deed, to either Party of this Deed, the following procedures shall apply. A notice required or permitted to be given by one Party to another under this Deed 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).

- 7.2 For the purposes of this Deed, the addresses of each of the Parties shall be as set out below or any other address of which that Party may from time to time give notice in writing to each other Party:

AusAID

To: Period Offer
Procurement and Agreement Services

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

Street Address: 255 London Cct
CANBERRA ACT 2601 AUSTRALIA

Facsimile:

Contractor:

To:
Attention:

Postal Address:

Street Address:

Facsimile:

8. SUBSTITUTION OF SPECIFIED PERSONNEL

- 8.1 The list of Specified Personnel contained in **Schedule 5** may, subject to AusAID's agreement, be amended from time to time during the Offer Period by a request from the Contractor. The request for substitution of personnel must be accompanied by each person's response to the Selection Criteria, Experience Data Sheets and certified CV as per the RFT for the Period Offer.
- 8.2 Personnel approved by AusAID must provide an electronic copy of their CV within 14 days of the written approval from AusAID.
- 8.3 An agreed change to the list of Specified Personnel shall be enacted in the form of a Deed of Amendment as described in Standard Conditions **Clause 15** (Contract Amendment).

9. ACQUIREMENT OF KNOWLEDGE

- 9.1 Specified Personnel are required to have a satisfactory knowledge of AusAID and its operations and interests.
- 9.2 The Contractor may not charge AusAID any fees for the acquisition of such knowledge.

9.3 AusAID will endeavour to keep the Contractor informed of significant developments within AusAID that are important to an understanding of AusAID.

10. **CHANGE IN OWNERSHIP OF THE CONTRACTOR**

10.1 The Contractor will be in default under the Deed if, without AusAID's prior written consent, Effective Control in the Contractor is changed by:

- (a) a change in ownership of the Contractor;
- (b) the creation of, or amendment to, the partnership structure under which the Contractor operates; or
- (c) by any other arrangement.

11. **EXCLUSIVITY**

11.1 The Contractor acknowledges that award of this Period Offer Deed was conditional upon it resigning from any other AusAID Panels that it may be on.

11.2 The Contractor undertakes to resign from any other AusAID Panel arrangements within 30 days of the date of this Deed.

11.3 The Contractor also warrants that for the term of this Period Offer Deed it will not enter into any other contractual arrangements with AusAID.

PART A – STANDARD CONTRACT CONDITIONS

12. INTERPRETATION

12.1 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).

"**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;
- (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; or
- (d) is Personal Information under the *Privacy Act 1988* (Cth);

but does not include this Contract or information which:

- (e) is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation; or
- (f) has been independently developed or acquired by the Contractor, as established by written evidence.

"**AusAID Eligibility Criteria**" means the criteria organisations wishing to tender for AusAID contracts must satisfy. Details are available at www.ausaid.gov.au/business.

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

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

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

"**Contract Conditions**" means the provisions contained in Part A "**Standard Conditions**" and Part B "**Project Specific 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 or engaged by the Contractor on a sub-contract basis or agents of the Contractor engaged in the provision of the Services.

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

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

"document" includes:

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

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

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

- (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, damage, liability, cost or expense including legal expenses on a solicitor and own client basis.

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

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

"**Partner Country**" means the country (other than Australia) in which the Services are to be delivered in whole or in part.

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

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

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

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

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

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

"**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.

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

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

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

12.2 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, except for this clause are for convenience only and shall not be taken into consideration in the interpretation or construction of the Contract;
- (c) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- (d) a word denoting the singular number includes the plural number and vice versa;
- (e) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;
- (f) a word denoting a gender includes all genders;
- (g) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this 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.

12.3 Counterparts of the Contract

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

12.4 Contract prevails

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

12.5 Inconsistency

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

13. **PROVISION OF SERVICES**

13.1 In providing the Services, the Contractor must:

- (a) perform the Services at minimum to a standard which would be expected of a competent, experienced and professional contractor in like position to that of the Contractor under this Contract;
- (b) accept and implement AusAID's reasonable directions in relation to the management of the Project;
- (c) conduct itself in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct*;
- (d) subject to any flexibility permitted in the Contract, ensure all timing obligations included in the Contract are fully met;
- (e) perform the Services in a manner which, as far as possible, establishes and maintains a harmonious, cooperative and effective working relationship with stakeholders and any personnel from the Partner Country involved in the Project;
- (f) not share information known as a result of their work on, or relationship to, the Project in a way that a reasonable person could foresee may be detrimental to the relationship between the Australian and Partner Governments;
- (g) provide adequate support resources to secure the aims and objectives of the Project; and
- (h) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity.

13.2 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.

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

14. **NON-EXCLUSIVITY**

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

14.2 The Contractor must cooperate with any other service provider appointed by AusAID to ensure the integrated and efficient carrying on of the Project and must provide such reasonable assistance to other service providers as AusAID may reasonably request.

15. **CONTRACT AMENDMENT**

- 15.1 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.
- 15.2 Changes to Contract Conditions or to the Services 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.

16. **EXTENSION OF TIME**

- 16.1 Subject to **Clause 16.5 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.
- 16.2 Where in the Contractor’s reasonable opinion there is likely to be a delay in the Contractor’s discharging an obligation under the Contract because of a Relevant Cause the Contractor must:
- (a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;
 - (b) give details of the likely effect on the Project and any Contractual implications;
 - (c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;
 - (d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances; and
 - (e) use its best endeavours to continue to perform its obligations under the Contract.
- 16.3 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.
- 16.4 If AusAID approves a request, AusAID will prepare a Deed of Amendment approving the request and any conditions imposed by AusAID, for signature by both Parties.
- 16.5 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.

16.6 A notice of suspension, deletion or termination of the Contract under **Clause 16.5 above** takes effect on the date that the notification is received by the Contractor.

16.7 In the event of suspension, deletion or termination of Services or the Contract under **Clause 16.5 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.

17. ACCOUNTS AND RECORDS

17.1 The Contractor must at all times maintain full, true, separate and up-to-date accounts and records in relation to the Fees, Supplies and the Services, including those involving foreign exchange transactions.

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

17.3 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.

18. REPORTS

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

18.2 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.

18.3 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.

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

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

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

- (a) during the hours of 9 am and 5 pm on a Business Day;
 - (b) except in the case of a breach of this Contract, subject to reasonable prior notice; and
 - (c) at no additional charge to AusAID.
- 19.3 In the case of documents or records stored on a medium other than in writing, the Contractor must make available on request such reasonable facilities as may be necessary to enable a legible reproduction to be created at no additional cost to AusAID.
- 19.4 This clause applies for the term of this Contract and for a period of seven (7) years from the date of its expiration or termination.
20. **PAYMENT**
- 20.1 AusAID must make payment of the Fees within 30 days of:
- (a) AusAID's acceptance of the satisfactory completion of the Services or relevant Payment Milestone as specified in **Schedule 2**; and
 - (b) receipt of a correctly rendered invoice.
- 20.2 It is AusAID corporate practice to inform Contractors as soon as reasonably possible, and in any case within 30 days of receipt of notice of the completion of an identified output or provision of a report whether or not that output or report is accepted.
- 20.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.
- 20.4 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.
- 20.5 Subject to the Contract AusAID shall pay Reimbursable Costs within 30 days of receipt of a correctly-rendered invoice.
- 20.6 An invoice is correctly rendered if:
- (a) the invoice details all Services provided against the Fees and records the amount payable in respect of each category of Services described in the Contract;
 - (b) the invoice is based upon the calculation of Fees referred to in **Schedule 2**; and
 - (c) a authorized representative of the Contractor, or their delegate has certified that the invoice:
 - (i) has been correctly calculated;
 - (ii) that the Services included in it have been performed in accordance with this Contract; and
 - (iii) in the case of Reimbursable Costs that these costs have been paid.
- 20.7 If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Contractor, as the case may be and, without limiting

recourse to other available remedies may be offset against any amount subsequently due from AusAID to the Contractor.

- 20.8 A payment by AusAID is not an admission of liability. In the event that AusAID makes a payment for the completion of a Payment Milestone or the procurement of Supplies or inputs that AusAID subsequently learns have not been completed to the quality or performance specifications required or provided as required, the payment shall be deemed an overpayment and recoverable from the Contractor. Without limiting recourse to other available remedies the overpayment may be offset against any amount subsequently due to the Contractor.
- 20.9 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.
- 20.10 AusAID need not pay any amount due to the Contractor until the Contractor delivers to AusAID a written statement which satisfies the requirements of section 127 of the *Industrial Relations Act 1996* (NSW) or the requirements of similar State or Territory legislation, in relation to the payment of employees or sub-contractors of the Contractor who were engaged in the performance of the Contract.
- 20.11 Except as otherwise specified in this Contract, the Fees are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Contractor in providing the Services.
- 20.12 If the Contractor does not have an Australian Business Number (ABN), AusAID, in accordance with the relevant provisions of the Pay as You Go (PAYG) legislation, shall be required to withhold a prescribed proportion of the amount payable to the Contractor under the Contract, unless the exceptions under Division 12 of the PAYG legislation apply.

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

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

21. **GOODS AND SERVICES TAX**

- 21.1 Except as provided by this clause, all taxes, duties and charges imposed or levied in Australia in connection with the performance of this Contract shall be borne by the Contractor or its sub-contractor(s), as the case requires.
- 21.2 The amount shown against each item in **Schedule 2** is the 'value' of the 'periodic supplies' to be made under this Contract, as these terms are used in the *A New Tax System Act 1999* (Cth).
- 21.3 The amount payable under the Contract for each supply listed in **Schedule 2** is the value of that supply plus any GST payable by the Contractor under the GST legislation. Payment by AusAID to the Contractor of the GST shall be subject to the Contractor providing AusAID

with a valid Tax Invoice issued in accordance with the relevant provisions of the GST legislation and regulations.

21.4 The total amount of GST payable by the Contractor, and for which the Contractor seeks payment from AusAID, in respect of any supply shall be shown as a separate item on the Tax Invoice.

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

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

22.1 If the Contractor fails to supply the Services in accordance with the Contract, the Fees shall be reduced to cover the reduced level of Services rendered to AusAID or loss or damage suffered by AusAID (as appropriate) because of that failure as is reasonably assessed by AusAID.

23. **INTELLECTUAL PROPERTY RIGHTS**

23.1 Subject to **Clause 23.2**, 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.

23.2 **Clause 23.1** 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 23.2** 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.

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

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

24. **CONFIDENTIALITY**

24.1 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.

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

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

25. **PRIVACY**

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

25.2 The Contractor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services:

- (a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;
- (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
- (d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to 10) where that section or NPP is applicable to the Contractor, unless:
 - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under 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 subcontractor;
- (h) not to transfer such information outside Australia, except to the Partner Country, or to allow parties outside Australia or the Partner Country to have access to it, without the prior approval of AusAID; and
- (i) to ensure that any employee of the Contractor who is required to deal with Personal Information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause.

25.3 The Contractor agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the

subcontractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to subcontracts.

25.4 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause, or a subcontractor under the subcontract provisions referred to in **Clause 25.3**.

25.5 In this clause, the terms ‘agency’, ‘Information Privacy Principles’ (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meaning as they have in section 6 of the *Privacy Act 1988*.

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

26. **AusAID USE OF CONTRACT INFORMATION**

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

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

27. **PUBLICITY**

27.1 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.

27.2 The Contractor is encouraged to identify and implement appropriate opportunities for publicising the Project.

27.3 The Contractor must acknowledge the Australian Government contribution in publicity of any form relating to the Project. The Contractor must only use the Australian Government/AusAID logo (in-line version) to denote association with Australia, the Australia Government or AusAID in any publicity or other project related materials. The Contractor must comply with the “AusAID Logo Guidelines for Managing Contractors” at all times, including when advertising for sub-contractors or personnel. The Guidelines are available from the AusAID Business website.

28. **TERMINATION FOR CONTRACTOR DEFAULT**

28.1 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 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;
- (l) is in breach of the warranty, regarding unsettled judicial decisions relating to employee entitlements, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (m) is in breach of the warranty, regarding listing on a World Bank List or Relevant List, given the Statutory Declaration submitted by the Contractor with its tender leading to this Contract; or
- (n) is, during the term of this Contract, listed on a World Bank List or Relevant List.

28.2 If this Contract is terminated under this Clause 28:

- (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 subcontracts).

29. TERMINATION FOR CONVENIENCE

29.1 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.

29.2 Where notice is given under **Clause 29.1** the Contractor must:

- (a) comply with all directions given by AusAID;
- (b) cease or reduce (as applicable) the performance of work under the Contract; and
- (c) immediately do everything possible to mitigate its Losses, and all other loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination (including those arising from affected subcontracts) arising in consequence of termination of this Contract under this **Clause 29**.

29.3 In the event of termination or reduction in scope under this **Clause 29**, subject to **Clause 29.4**, 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.

29.4 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 29**.

30. **INDEMNITY**

- 30.1 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.
- 30.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 30.1 above** for the benefit of each of such persons in the name of AusAID or of such persons.
- 30.3 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.
- 30.4 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.
- 30.5 This indemnity shall survive termination or expiration of this Contract.

31. **INSURANCE**

- 31.1 The Contractor must arrange and maintain for the duration of the Contract:
- (a) adequate medical and dental insurance for Contractor Personnel who are engaged to operate outside their country of permanent residence; and
 - (b) adequate insurance for medical evacuation and evacuation resulting from an insured event for all Contractor Personnel.
- 31.2 The Contractor must, within 14 days after a request by AusAID, provide for any insurance policy:
- (a) a certificate of currency;
 - (b) a list of exclusions; and
 - (c) the amount of excess payable.
- 31.3 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.
- 31.4 In the event of an insurance claim, any deductible/excess payable shall be the responsibility of the Contractor.

32. **CONFLICT OF INTEREST**

- 32.1 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.
- 32.2 The Contractor must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. Where a conflict of interest, or a potential conflict of interest,

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

33. FRAUD

- 33.1 For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means.
- 33.2 The Contractor and its subcontractors must not engage in any fraudulent activity.
- 33.3 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*.
- 33.4 The Contractor is responsible for preventing and detecting fraud including fraud within those functions outsourced / performed by a subcontractor or under any other arrangement established by the Contractor relating to the management or administration of AusAID provided funds. The Contractor is responsible for ensuring that its staff and its subcontractors' staff are responsible and accountable to the Contractor for preventing and reporting any fraud or suspected fraud as part of their routine responsibilities.
- 33.5 The Contractor must report in writing within 5 working days to AusAID any detected, suspected, or attempted fraudulent activity involving AusAID provided funds. Where a matter is reported in writing to AusAID by a Contractor, the advice must provide where known:
- (a) the name of the Project under which AusAID funding is being provided;
 - (b) name of any personnel or subcontractors involved;
 - (c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);
 - (d) the names of the suspected offender(s) (where known);
 - (e) details of witnesses;
 - (f) copies of relevant documents;
 - (g) references to any relevant legislation;
 - (h) a nominated contact officer;
 - (i) any other relevant information (eg, political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and
 - (j) the current status of any inquiries commenced by the Contractor.
- 33.6 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.

- 33.7 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.
- 33.8 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.
- 33.9 Following the conclusion of an investigation, where the investigation finds that a party other than the Contractor, an employee of the Contractor or a subcontractor of the Contractor, has acted in a fraudulent manner, the Contractor shall at the Contractor's cost:
- (a) make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, one or both of the following:
 - (i) taking recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country. Before commencing any recovery action, the Contractor may consult with AusAID regarding the proposed course of action and may request assistance from AusAID in meeting the costs of the recovery action. Provided that the Contractor has consulted with AusAID before commencing recovery action, AusAID may in its absolute discretion agree to meet some or all of those costs.
 - (ii) referring the matter to the relevant Partner Country police or other authorities responsible for prosecution of fraudulent activity.
 - (b) keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.
- 33.10 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.

33.11 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.

34. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

34.1 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.

34.2 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 34.1**.

34.3 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>.

34.4 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 34**.

34.5 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 28**.

34.6 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.

- 34.7 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) 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>.

35. INVESTIGATION BY THE OMBUDSMAN

- 35.1 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.
- 35.2 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.

- 35.3 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.
- 35.4 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.
- 35.5 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.
- 35.6 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.
- 35.7 This clause shall survive expiration or termination of this Contract.
36. **RESOLUTION OF DISPUTES**
- 36.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Agreement. Subject to **Clause 20.9** (Payment) and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Agreement.
37. **NOTICES**
- 37.1 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).

38. MISCELLANEOUS

38.1 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.

38.2 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.

38.3 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.

38.4 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.

38.5 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.

38.6 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.

38.7 Contra Proferentum

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.

38.8 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.

38.9 Anti-Corruption

The Contractor warrants that the Contractor shall not make or cause to be made, nor shall the Contractor receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt act, either directly or

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

PART B – PROJECT SPECIFIC CONDITIONS

39. SPECIFIED PERSONNEL

- 39.1 The Contractor must ensure that Specified Personnel are aware of, and use their best endeavours to ensure Specified Personnel comply with, the requirements of the Contract.
- 39.2 The Contractor must use their best endeavours to ensure that all Specified Personnel conduct themselves in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct*.
- 39.3 The Contractor must not employ a currently serving Commonwealth employee in any capacity in connection with the Services without the prior written approval of AusAID.
- 39.4 The Contractor must ensure the reasonable availability of all Specified Personnel during the term of the Contract.
- 39.5 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:
- (a) are of good fame and character;
 - (b) are properly qualified for the tasks they are to perform;
 - (c) act in a fit and proper manner while they are carrying out work or performing duties under the Contract.
- 39.6 AusAID may request additional personnel proposed by the Contractor to work in connection with this periodic contract, and who are acceptable to AusAID.

40. WORKING IN-COUNTRY

- 40.1 The Contractor is responsible for the security of all Contractor Personnel and for taking out and maintaining all appropriate insurances.
- 40.2 The Contractor must liaise and cooperate with AusAID, with the Project stakeholders, and the Australian Diplomatic Mission in or having responsibility for the Partner Country especially in relation to project security, personal safety and welfare matters.
- 40.3 The Contractor must use its best endeavours to ensure that all Contractor Personnel working in a Partner Country:
- (a) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner; and
 - (b) are adequately briefed and understand the environment and culture of the Partner Country.

- 40.4 The Contractor must use its best endeavours to ensure that no Contractor Personnel or their accompanying family members become involved in the political affairs or interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country).
- 40.5 AusAID may require Contractor Personnel to attend a meeting at the Australian Diplomatic Mission in or having responsibility for the Partner Country before the commencement of implementation.
41. **NOTICES**
- 41.1 For the purposes of serving notices with respect to the Contract, to either Party of the Contract, the following procedures shall apply. A notice required or permitted to be given by one Party to another under the Contract must be in writing and is treated as having been duly given and received:
- (a) when delivered (if left at that Party's address);
 - (b) on the third Business Day after posting (if sent by pre-paid mail); or
 - (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).
- 41.2 For the purposes of the Contract, the address of a Party for giving a notice in writing shall be as specified in the Contract.
42. **PROFESSIONAL INDEMNITY INSURANCE**
- 42.1 In addition to the Standard Conditions clause headed **Insurance**, the Contractor must arrange and maintain for the duration of the Contract, adequate professional indemnity insurance.
- 42.2 The Contractor must, within 14 days after a request by AusAID, provide written proof of the insurance and its currency to the satisfaction of AusAID.
43. **CHILD PROTECTION**
- 43.1 The Contractor must comply with AusAID's Child Protection Compliance Standards, which are specified in Attachment 1 of AusAID's *Child Protection Policy* (<http://www.aisaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>). AusAID may audit the Contractor's compliance with AusAID's *Child protection policy* and child protection compliance standards. The Contractor must participate cooperatively in any reviews conducted by AusAID.
- 43.2 If the Child Protection Officer finds that the Contractor has failed to comply with AusAID's Child Protection Compliance Standards, the Contractor must promptly, and at the cost of the Contractor, take such actions as are required to ensure compliance with the Compliance Standards.

SCHEDULE 1 – SCOPE OF SERVICES

AUDIT STRATEGIC SERVICES ALLIANCE PERIOD OFFER

As per Section 1, Part 2 of the RFT.

SCHEDULE 2 – DAILY FEE RATES AND REIMBURSABLE EXPENSES

AUDIT STRATEGIC SERVICES ALLIANCE PERIOD OFFER

As per Section 1, Part 3 of the RFT.

SCHEDULE 3 – DEED OF CONFIDENTIALITY

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

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

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

RECITALS

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

THE RECIPIENT DECLARES AS FOLLOWS:

1. INTERPRETATION

In this Deed:

"Confidential Information" means information that:

- (a) is designated by AusAID as confidential; or
- (b) the Recipient knows or ought to know is confidential,
and includes to the extent that it is confidential:
- (c) information comprised in or relating to any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID;

- (d) information relating to the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;
 - (e) the Data; and
 - (f) personal information under the *Privacy Act 1988*;
- but does not include information which:
- (g) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality; or
 - (h) has been independently developed or acquired by the Recipient as established by written evidence.

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

2. NON DISCLOSURE

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

3. RESTRICTION ON USE

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

4. DELIVERY UP OF DOCUMENTS

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

5. SURVIVAL OF OBLIGATIONS

- 5.1 The obligations in this Deed are perpetual.

EXECUTED as a deed poll.

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

.....
Signature of witness

.....
Name of witness

SCHEDULE 4 – FORM OF SERVICES ORDER

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

1. INTERPRETATION

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

2. COMMENCEMENT AND COMPLETION OF SERVICES

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

3. THE SERVICES

- 3.1 The Contractor shall provide the following Services:

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

4. REPORTING REQUIREMENTS

- 4.1 All reports must:

- (a) be provided in accordance with the specification under Standard Conditions clause headed **Reports**;
- (b) be accurate and not misleading in any respect;
- (c) be prepared as directed in writing by AusAID;
- (d) be provided in the format and on the media approved or requested by AusAID;
- (e) not incorporate either the AusAID or the Contractor’s logo;
- (f) be provided at the time specified in this Services Order; and
- (g) incorporate sufficient information which allows AusAID to monitor and assess the success of the Services in achieving the objectives of AusAID’s Gender and Development Policy.

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

(a)

(b)

(c)

5. SPECIFIED PERSONNEL

5.1 The Contractor shall provide the following Personnel:

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

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

6. TOTAL AMOUNT PAYABLE - FIXED LUMP SUM

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

6.2 The Fees shall be paid progressively as follows, within thirty (30) days of the satisfactory achievement of milestones or the acceptance by AusAID in writing of outputs, as the case requires:

AusAID may present this as a table, which explicitly links the payment milestone to the output detailed in the Scope of Services (eg: Services or Reporting Requirements) and “verifiable indicators” (the basis on which you will accept the satisfactory completion) eg:

Output Reference	Milestone No.	Milestone Description	Verifiable Indicators	Amount \$

OR

(a) ***The sum A\$Insert amount for the Milestone (explicitly cross-referencing to specifications detailed in relevant paragraph in Clause 3 (Services) or Clause 4 (Reporting Requirements));***

(b) ***The sum A\$Insert amount for the Milestone;***

(c) ***The sum A\$Insert amount for the Milestone; and***

(d) *The sum A\$Insert amount for the Milestone.*

6.3 Reimbursable Costs

AusAID shall pay the Contractor in arrears, subject to the receipt by AusAID of a correctly rendered invoice, for the following Reimbursable Costs up to a maximum amount of **A\$insert amount:**

- (a) *Specify item (e.g. Air Fares);*
- (b) *Specify item (e.g. Departure Taxes);*
- (c) *Specify item (e.g. Medical & Evacuation Insurance); and*
- (d) *Specify item (e.g. Travelling Allowances).*

7. TOTAL AMOUNT PAYABLE - FEES AND MILESTONES

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

7.2 The Fees shall be paid progressively as follows:

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

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

(as per Schedule 2 of Period Offer number Insert Period Offer number).					
PERSONNEL	DURATION		COST/RATE		TOTAL FEE (\$)
	(Days)		(\$)		
	Australia	Overseas	Australia	Overseas	

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

Explicitly link the payment milestone to the output detailed in the Scope of Services (eg: Services or Reporting Requirements) and “verifiable indicators” (the basis on which you will accept the satisfactory completion) eg:

Output Reference	Milestone No.	Milestone Description	Verifiable Indicators	Amount \$

7.3 The following Reimbursable Costs will be paid progressively on a **monthly** basis up to a maximum amount of **A\$insert amount**:

- (a) **Specify item (e.g. Air Fares);**
- (b) **Specify item (e.g. Departure Taxes);**
- (c) **Specify item (e.g. Medical & Evacuation Insurance); and**
- (d) **Specify item (e.g. Travelling Allowances)..**

8. TOTAL AMOUNT PAYABLE - FEES FOR INPUTS

- 8.1 The maximum amount payable by AusAID to the Contractor for the provision of the Services shall not exceed the sum of **A\$Amount** plus GST if any up to a maximum amount of **\$Insert 10 percent of the Agreement amount**. AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.
- 8.2 For the performance of the consultancy Services described in this Services Order AusAID shall pay the Contractor Fees and Reimbursable Costs in accordance with the rates and categories specified in the following schedules:

Schedule 1: Personnel costs

(as per Schedule 2 of Period Offer number Insert Period Offer number).

PERSONNEL	DURATION		COST/RATE		TOTAL FEE (\$)
	(Days)		(\$)		
	Australia	Overseas	Australia	Overseas	

Schedule 2: Other costs.

EXPENSE	TRIPS/DAYS (#)	COST/RATE (\$)	COST* (\$)
Domestic Airfares			
International Airfares			
Accommodation [†]			
Travel Related Costs [†]			
Total Upper Limit			

*Estimate or agreed cost.

[†] Costs paid at equivalent of Australian Public Service (non-SES) rates.

9. CLAIMS FOR PAYMENT

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

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

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

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

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

10. NOTICES

10.1 Notwithstanding clause headed '**Notices**' in the **Part B Project Specific Conditions** of the Period Offer Deed, for the purposes of this Services Order, the address of a Party shall be the address set out below or another address of which that Party may from time to time give notice in writing to each other Party:

AusAID

To: Activity Manager, Position/Section

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

Street Address: 255 London Cct
CANBERRA ACT 2601 AUSTRALIA

Facsimile:

Contractor:

To:

Attention:

Postal Address:

Street Address:

Facsimile:

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

Signature of FMA Act s44 Delegate

Name
(*Print*)

In the presence of:

Position

Signature of witness

Name of witness
(*Print*)

SCHEDULE 5 – SPECIFIED PERSONNEL

Period Offer Sub-Sectors		Specified Personnel
	<i>Note to user: This table is to list all sub-sectors for this Period Offer.</i>	

