Australian Government

AusAID

10 July 2010

Request for Tender

Kiribati Technical Vocational Education and Training Sector Strengthening Program (TVETSSP)

REQUEST FOR TENDER

Kiribati Technical Vocational Education and Training Sector Strengthening Program (TVETSSP)

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

STRUCTURE OF THE RFT

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

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

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

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

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

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

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

AusAID Contracts Charter

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

SECTION 1 – PROJECT SPECIFIC TENDER AND CONTRACT CONDITIONS

PART 1 – PROJECT SPECIFIC TENDER CONDITIONS

1. TENDER PARTICULARS

Closing Time:
(Clauses 1.11 and 1.15, Part 5)

2.00 pm local time in Canberra
Australian Capital Territory, **Wednesday 25 August 2010.**

Mode of submission:
(Clause 1.1, Part 5)

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

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

Electronic Tender Lodgement Address:
(Clause 1.11, Part 5)

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

Canberra Tender Box Address:
(Clause 1.15, Part 5)

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

Business Hours for hard copy lodgement:
(Clause 1.15, Part 5)

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

File Format for Electronic Tenders:
(Clause 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

Tender Schedule A - Technical Proposal: One (1) electronic copy.
Tender Schedule B – Specified Personnel: One (1) electronic copy.
Tender Part 5, Annex B – Tenderer Declaration One (1) electronic copy.
Tender Part 5, Annex C - Tenderer's Submission Checklist: One (1) electronic copy.
Tender Schedule C - Financial Proposal: One (1) electronic copy in a separate file.
Tender Schedule D - Financial Assessment material: One (1) electronic copy in a separate file.

.	**<u>For hard copy tender lodgement</u>** **Tender Schedule A - Technical Proposal:** One (1) printed Original. **Tender Schedule B – Specified Personnel:** One (1) printed Original. **Tender Part 5, Annex B – Tenderer Declaration** One (1) printed original. **Tender Part 5, Annex C - Tenderer's Submission Checklist:** One (1) printed original. **Tender Schedule C - Financial Proposal:** One (1) printed Original, in a separate, sealed envelope. **Tender Schedule D - Financial Assessment material**: One (1) printed Original in a separate sealed envelope. **One (1) CD** containing an electronic version of all material submitted.
Endorsement of hard copy Tenders: (Clause 1.17, Part 5)	"**Tender for the Kiribati TVETSSP**"
Tender Validity Period: (Clause 1.8, Part 5)	180 days
Contact: (Clause 2.1, Part 5)	Email address: TVETSSP@ausaid.gov.au
Page limits: (Clauses 7.15 and 7.17, Part 5)	Technical proposal - 12 pages plus annexes Curriculum Vitae - 3 pages each Annex 1 - Past Experience Forms - no more than 5 examples of 1 page each Annex 2 - Draft Mobilisation Plan - 10 pages Annex 3 – Draft Transition and Recruitment Strategy – 10 pages
Information:	The following documents are attached: 1. Project Design Document; 2. Excel version of Financial Tables; 3. Word version of Tenderer Declaration; and 4. Word version of Tenderer submission checklist.

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 on Wednesday, 21 July 2010 at 10.00am in Canberra at 255 London Circuit, Canberra City, ACT Australia.

2.2 Tenderers planning to attend the pre-tender briefing are requested to send advanced notification by email, indicating the name of the organisation and the number of people planning to attend, to TVETSSP@ausaid.gov.au, by COB **Friday, 16 July 2010.**

3. SCORE WEIGHTINGS

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

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

3.2 Following consideration of the technical merit of Tenders, AusAID will invite selected tenderers' key personnel to an interview. The following personnel will be required to attend: the proposed Senior TVET Planning Officer and TVET Coordinator, a Tenderer representative and one other representative nominated by the Tenderer. 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 Tender will not be further considered.

3.3 Following consideration of the technical merit of Tenders, a like-for-like price assessment will be undertaken by AusAID of the "Tenders" that are assessed by the Technical Assessment Panel (TAP) as technically suitable.

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

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

3.5 Following the final assessment and calculation of the final aggregate scores, confirmation of the Tenderer's financial capacity to meet the contractual obligations referred to in **Clause 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 of this Part** taking into consideration "other factors" under **Clause 7.8, Part 5**; and

(b) the required annexes included in **Clause 4.3 of this Part**.

4.2 **Selection Criteria**

(A) Management and Administrative Capability 30%

Demonstrated management and administrative capability to deliver an education program in a challenging environment, particularly regarding:

financial management; planning; procurement of goods and services (including staff recruitment); administration; logistics; communications; staff management; and cross-cultural relations.

(B) Strategic Understanding of the Program Design Document 20%

Demonstrated understanding of the goals and objectives of the Kiribati TVETSSP; and of the strengths and weaknesses of the proposed approaches, particularly regarding:

(a) Relationship management and partnership development;

(b) Local capacity development and capacity supplementation; and

(c) Working in and through partner government systems.

(C) Approach to Program Implementation 20%

Demonstrated ability to adopt a practical yet strategic approach to achieving the project objectives within the specified timeframe and resources available for project implementation, particularly regarding:

(a) Monitoring and Evaluation;

(b) Risk Management; and

(c) Roles and responsibilities of all main parties.

(D) Appropriateness of Team Composition to Implement the Program 30%

(a) Demonstrated skills and experience of the TVET Coordinator in accordance with the position description (Section 1, Part 3, Annex 1). *(15%)*

(b) Demonstrated skills, experience, balance and integration of other key team members as required for implementation. *(15%)*

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 Project 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 – 7.21**, **Part 5** of the RFT.

PAST EXPERIENCE FORM

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

Annex 2 – Draft Mobilisation Plan (10 pages)

A draft Mobilisation Plan for the first **three (3) months** of the Project limited to ten (10) pages. The Mobilisation Plan must include provision for:

(a) Mobilisation of key personnel;

(b) establishment of communication channels with AusAID, the Australian Diplomatic Mission, Government of Kiribati (GoK) counterparts and stakeholders;

(c) 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; establishment of Monitoring and Evaluation and Risk Management preparation and delivery mechanisms;

(ii) establishment of financial control procedures; and

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

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

Annex 3 – Draft Transition and Recruitment Strategy (10 pages)

A draft Transition and Recruitment Strategy for the first **12 months** of the Project is required, up to a maximum of ten (10) pages. The draft Transition and Recruitment Strategy must include provision for:

(a) the preferred method of moving the current staff from Pacific Technical Assistance Mechanism (PACTAM) to the Contractor;

(b) a description of how the Contractor will integrate, and support the transition of, current staff into the management structure of the Management Unit described in the TVETSSP Design Document;

(c) a description of how the Contractor will use the availability and experience of current staff to progressively build up the resources of the Management Unit;

(d) a description of how the Contractor will develop additional capacity for the Management Unit; and

(e) a mechanism to replace personnel that leave.

Annex 4 – Conflict of Interest

The Tenderer must indicate whether it has any contractual or other relationship with any Australian training provider eligible to receive Australian scholarship awardees.

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

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

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

Annex 6 – Commonwealth Government Policies Compliance

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

Clause 17.6, Part 5 refers to the World Bank List and similar lists maintained by other donors of development funding. **Clause 13.4, Part 5** requires each Tenderer to disclose, in its Tender, the information specified in that clause regarding investigations, proceedings, informal processes, temporary suspension and listing by the World Bank or any other donor of development funding. Tenderers must disclose any relevant information in this annex.Tenderers must 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 (**Clause 5.7**) (in landscape format) provided and in accordance with the instructions included in **Clauses 5.2-5.3** below;

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

(c) a curriculum vitae (CV) for each team member listed below, that conforms with the requirements outlined in **Clauses 7.16 and 7.17, Part 5** (a **three (3) page CV**):

(i) TVET Coordinator;

(ii) Senior TVET Planning Officer;

(iii) Program Manager; and

(iv) Resource Coordinator.

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

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

5.4 Tenderers are reminded of the requirements of **Clause 8, Part 6** particularly in relation to the availability of Specified Personnel. AusAID will consider as materially inaccurate, and

will therefore reject, any Tender which does not disclose the fact that a proposed team member has an existing and continuing commitment to another AusAID project.

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

5.6 Tenderers are reminded of the requirements of **Clause 19.2, Part 5** particularly in relation to providing police clearance certificates for all Project Personnel nominated in the Specified Personnel table for positions specified as working with children.

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

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

5.7 For the purpose of this RFT, "Specified Personnel" means all positions listed in the table below.

SPECIFIED PERSONNEL

	Position	**Name**	**Total Inputs in person months**		**Referee Contact Details**		**Commitments**
			Home Base	**O/s**	**#1**	**#2**	
1	Program Manager	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
2	Resource Coordinator	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
3	TVET Coordinator	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*
4	Senior Planning Officer	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*	*Specify*

* CVs to be provided for listed personnel as set out in Clause 5.1(c) above

6. **TENDER SCHEDULE C - FINANCIAL PROPOSAL** (Attachment 1)

6.1 **Tender Schedule C** (the financial proposal) must contain the information required and in the format detailed in this Clause 6.

6.2 It must:

(a) be in the format of Tables A to D in Section 1, Attachment 1;

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

(i) necessary insurances required by the Contract Conditions and for the performance of the Services;

(c) preferably be in Australian Dollars, however other currencies will be converted to AUD on the date of the Closing Time; and

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

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 Project 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 The Draft Basis of Payment at Part 4 outlines the payment regime in detail. The Contract will include four (4) categories of payments:

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

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

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

(d) **Reimbursable Administration, Equipment and Operational Costs**, in accordance with **Clause 7** of this **Schedule 2**, up to a maximum total amount of **AUD223,000**.

Personnel Costs

6.6 Tenderers must detail in the financial proposal **Table C2** (Section 1, Attachment 1) the entitlements of nominated Specified Personnel. Where annual recreation leave entitlements exceed 2 trips or a total of 4 weeks per 12 month period, a justification must also be provided along with a narrative description of how the Tenderer will ensure, during Specified Personnel absences, the continued quality of Services. Tenderers should note that leave entitlements and the management strategy may be assessed by the TAP or AusAID as part of the technical assessment process. AusAID reserves the right to negotiate leave entitlements should AusAID consider them excessive.

Administration, Equipment and Operational Costs

6.7 Tenderers should note that "Administration, Equipment and Operational Costs" means the actual cost incurred by the Contractor for:

(a) Project Administration and Equipment; and

(b) The Operational Costs specified as reimbursable item and listed in **Table 5** at **Clause 7.9 of Section 1, Part 4**.

6.8 Note that the Contract will include the following definition: "Project Administration and Equipment means goods and services, such as office furniture, computers, vehicles, communications, utilities and office rent required by the Contractor for the day-to-day administration of the Project". The purchase of these goods and services will not attract a procurement fee.

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 (2) options are available.

Option 1

This option is mandatory for:

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

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

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

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

1. the name of the tendering entity and its ultimate owner(s).

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

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

   a) a balance sheet;

   b) a profit and loss statement; and

   c) a cashflow statement

each prepared on an accrual accounting basis. An auditor's statement of financial viability or short form financial statements are not acceptable.

4. contact name and telephone number of the Tenderer's financial accountant.

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

Option 2

This option may be considered by a Tenderer where:

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

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

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

1. the date of its most recent financial assessment and the name of the tender for which this assessment was undertaken;

2. an explanation of why a Tenderer believes a further financial assessment is not warranted; and

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

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.

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

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.

ATTACHMENT 1 – TENDER SCHEDULE C FINANCIAL TABLES

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

	Initial Contract Period (18 mths)	Option Period (4 years)				
	Year 1 (1 December 2010 to 31 May 2012) (18 mths)	**Year 2 (1 June 2012 to 31 May 2013) (12 mths)**	**Year 3 (1 June 2013 to 31 May 2014) (12 mths)**	**Year 4 (1 June 2014 to 31 May 2015) (12 mths)**	**Year 5 (1 June 2015 to 31 May 2016) (12 mths)**	**Total Cost (AUD)**
Table B (TMF)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Table C1 (LTP)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Table D (STP)	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*
Reimbursables (Administration, equipment and operational costs)	223,000	*AusAID to determine*	*AusAID to determine*	*AusAID to determine*	*AusAID to determine*	**223,000**
Total	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*

Table B – Total Management Fee (TMF) (in AUD)

	Initial Contract Period (18 mths)	Option Period (4 years)				
	Year 1 (1 December 2010 to 31 May 2012) (18 mths)	**Year 2 (1 June 2012 to 31 May 2013) (12 mths)**	**Year 3 (1 June 2013 to 31 May 2014) (12 mths)**	**Year 4 (1 June 2014 to 31 May 2015) (12 mths)**	**Year 5 (1 June 2015 to 31 May 2016) (12 mths)**	**Total Cost (AUD)**
Total Management Fee	18 x monthly fee	12 x monthly fee x escalator	12 x monthly fee x escalator applied to year 2 amount	12 x montly fee x escalator applied to year 3 amount	12 x monthly fee x escalator applied to year 4 amount	
	specify	*specify*	*specify*	*specify*	*specify*	*specify*
TOTAL	*specify*	*specify*	*specify*	*specify*	*specify*	*specify*

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

Table C1 – Long Term Personnel Costs (LTP) (in AUD)

These figures are derived from the figures in Table C2

			Initial Contract Period - 18 months (PHASE 1)				Extension Period - 4 Years (PHASE 2)								
	Positions	**Name**	**Inputs for Phase 1 (months)**	**Total Cost for initial contract period (18 months)**	**Mobilisation**	**Demobilisation**	**Inputs for Year 2 (months)**	**Year 2 (1 June 2012 to 31 May 2013 (12 mths)**	**Inputs for Year 3 (months)**	**Year 3 (1 June 2012 to 31 May 2013 (12 mths)**	**Inputs for Year 4 (months)**	**Year 4 (1 June 2013 to 31 May 2014) (12 mths)**	**Inputs for Year 5 (months)**	**Year 5 (1 June 2015 to 31 May 2015) (12 mths)**	**Total Cost (AUD)**
	International														
1	* **KIT Principal**	*to be advised by AusAID*	18	301,875	*N/A*	*specify*	6	*specify*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*	***specify***
2	* **KIT Operations Manager**	*to be advised by AusAID*	18	294,437	*N/A*	*specify*	6	*specify*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*	***specify***
3	* **KIT Senior Manager, English (International)**	*to be advised by AusAID*	18	232,875	*N/A*	*specify*	12	*specify*	6	*specify*	*N/A*	*N/A*	*N/A*	*N/A*	***specify***
4	**Program Manager** (not in-country)	*specify*	18	*specify*	*N/A*	*N/A*	6	*specify*	6	*specify*	6	*specify*	6	*specify*	***specify***
5	**Resource Coordinator** (not in-country)	*specify*	18	*specify*	*N/A*	*N/A*	12	*specify*	12	*specify*	12	*specify*	12	*specify*	***specify***
6	**Senior TVET Planning Officer**	*specify*	18	*specify*	*specify*	*specify*	6	*specify*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*	***specify***
7	**TVET Coordinator** (in country)	*specify*	18	*specify*	*specify*	*specify*	TBA	#	TBA	#	TBA	#	TBA	#	***specify***
	National														
8	**KIT Senior Lecturer, English** (National)	*To be recruited*	0				0		6	*specify*	12	*specify*	12	*specify*	***specify***
9	**Planning Officer (Program Office)** (National)	*To be recruited*	18	*specify*			12	*specify*	12	*specify*	12	*specify*	12	*specify*	***specify***
10	**Administration Officer** (Program Office - National)	*To be recruited*	18	*specify*			12	*specify*	12	*specify*	12	*specify*	12	*specify*	***specify***
11	> **Finance and Procurment Officer** (Program Office)	*> GoK to recruit*	18				12		12		12		12		***specify***
12	> **Communications Officer** (Program Office)	*> GoK to recruit*	18				12		12		12		12		***specify***
	TOTAL (AUD)			***specify***				***specify***		***specify***		***specify***		***specify***	***specify***

* The resonsibility for these positions will be transferred to the Contractor
> These positions will be seconded from GoK salary payments will be the responsibility of GoK
The input for this position in Years 2-5 is undefined. Should the position be required, the annual cost will be derived from the Year 1 cost and the escalator used in Table C2

Table C2 – Long Term Personnel (LTP) Costs – Breakdown of Monthly Rates (in AUD)

			Monthly Fee							
	Position	**Name**	**(A) Salary**	**(B) Allowances**	**(C) Support Costs**	**Total Monthly Rate Yr 1 A+B+C (AUD)**	**Total Monthly Rate Yr 2 (AUD)**	**Total Monthly Rate Yr 3 (AUD)**	**Total Monthly Rate Yr 4 (AUD)**	**Total Monthly Rate Yr 5 (AUD)**
1	* **KIT Principal**	*to be advised by AusAID*	*TBA*	*TBA*	*TBA*	16,770	^ *specify*			
2	* **KIT Operations Manager**	*to be advised by AusAID*	*TBA*	*TBA*	*TBA*	16,357	^ *specify*			
3	* **KIT Senior Manager, English (International)**	*to be advised by AusAID*	*TBA*	*TBA*	*TBA*	12,937	^ *specify*			
4	**Program Manager** (not in-country)	*specify*	*specify*	*specify*	*specify*	*specify*	^ *specify*	^ *specify*		
5	**Resource Coordinator** (not in-country)	*specify*	*specify*	*specify*	*specify*	*specify*	^ *specify*	^ *specify*	^ *specify*	^ *specify*
6	**Senior TVET Planning Officer**	*specify*	*specify*	*specify*	*specify*	*specify*	^ *specify*			
7	**TVET Coordinator** (in country)	*specify*	*specify*	*specify*	*specify*	*specify*	*TBA*	*TBA*	*TBA*	*TBA*
	National									
8	**KIT Senior Lecturer, English** (National)	*to be recruited*	*specify*	*specify*	*specify*			^ *specify*	^ *specify*	^ *specify*
9	**Planning Officer (Program Office)** (National)	*to be recruited*	*specify*	*specify*	*specify*	*specify*	^ *specify*	^ *specify*	^ *specify*	^ *specify*
10	**Administration Officer** (Program Office - National)	*to be recruited*	*specify*	*specify*	*specify*	*specify*	^ *specify*	^ *specify*	^ *specify*	^ *specify*
11	# **Finance and Procurment Officer** (Program Office)	*to be nominated by GoK*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*
12	# **Communications Officer** (Program Office)	*to be nominated by GoK*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*	*N/A*

* The responsibility for these positions will be transferred to the Contractor
# These positions will be seconded from GoK
^ an average escalation factor of **X** (from Table E below) has been applied to the Total Monthly Rate for years 2, 3, 4 and 5

NOTES:

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

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

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

Do not include GST in any of these amounts.

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

Table D – Short Term Personnel Costs (STP) (in AUD)

			Initial Contract Period - 18 months (PHASE 1)	
	Positions	**Daily Fee**	*** Inputs for Year 1 (months)**	**Total Cost for initial contract period (18 months)**
	National			
1	**TVET Policy Adviser**	*specify*	4	*specify*
2	**TVET Finance/other Advisers**	*specify*	6	*specify*
3	**Trainer - Business Services**	*specify*	6	*specify*
4	**Trainer - Construction Trades**	*specify*	6	*specify*
5	**Trainer - Electrical Trades**	*specify*	6	*specify*
6	**Trainer - New Course 1**	*specify*	12	*specify*
7	**Trainer - Automotive Trades**	*specify*	6	*specify*
8	**Trainer - New Course 2**	*specify*	6	*specify*
9	**Trainer - Mechanical Trades**	*specify*		
10	**Trainer - New Course 3**	*specify*		
11	**Local TVET Trainers**	*specify*	15	*specify*
12	**Reimbursables (lump sum)**			*TBA*
	TOTAL (AUD)			***specify***

* Based on a 30 day month

Table E: Escalation Factor for Extension Period (%)

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

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**.

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PART A – PROJECT SPECIFIC CONTRACT CONDITIONS

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

"**Partner Country**" means Kiribati.

"**Payment Milestone**" means a milestone identified in **Table 2, Part 4 (Milestone Payments Table)** and for which the Contractor is entitled to receive a payment in accordance with the Contract.

"Project" means the Kiribati Technical Vocational Educational and Training Strengthening Program

"**Resource Coordinator**" means the specified person nominated in **Clause 5.7, Section 1** ***(Specified Personnel).***

"**Related Corporation**" has the meaning given by Section 50 of the *Corporations Act 2001*.

"**Schedule of Rates**" means Table 3 and Table 4, Section 1, Part 4 (Draft Basis of Payment).

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

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

"**TVET Coordinator**" means the specified person nominated in **Clause 5.7, Section 1** ***(Specified Personnel).***

"**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 the Contractor, AusAID or the Australian Diplomatic Mission in or having responsibility for the Partner Country.

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 on [***insert Services Start Date***] and must complete the Services by [***insert Services End Date***] unless the option in **Clause 2.3** below of this **Part A** of this Contract is exercised by AusAID.

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

3. ACCOUNTS AND RECORDS

3.1 The statement of Project expenditure referred to in Standard Conditions **Clause 15.1(e)** (Accounts and Records) must be provided on a **three** (**3) monthly** basis and must indicate:

(a) total expenditure of the Project to date;

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

(c) total expenditure for the period of **three** (**3) months**; and

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

4. NOTICES

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

AusAID

To:	TVET Sector Strengthening Program
Attention:	Senior Program Officer
Postal Address:	Australian Agency for International Development PO Box 77 Bairiki, Tarawa Kiribati
Street Address:	Australian High Commission Bairiki, Tarawa Kiribati
Facsimile:	+686 21 440

Contractor

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

5. MANAGEMENT SERVICES

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

(a) provide pre-mobilisation briefings to Contractor Personnel covering security, medical/health situation, cultural environment, detail on project objectives, relevant contract obligations and AusAID's Gender, Disability and Child Protection Policies;

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

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

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

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

6. MOBILISATION OF SERVICES

6.1 The Contractor must supply a detailed Mobilisation Plan for the first three (3) months of the Project within 28 days of the Project Start Date, in a form agreed with AusAID and for written approval by AusAID.

6.2 The Mobilisation Plan is subject to AusAID approval. It must include provision for:

(a) the establishment of communication channels with AusAID, the Australian Diplomatic Mission and Stakeholders;

(b) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including without limitation:

(i) the supply and deployment of Long and Short Term Advisers and overall approach to their assignments;

(ii) the establishment of procedures relevant to the Procurement Services; and

(iii) a planned approach to coordination of all aspects of implementation of the Services including identification of Supplies, mobilisation of personnel and obtaining necessary approvals;

(c) the establishment of report preparation and delivery mechanisms;

(d) the establishment of financial control procedures;

(e) the establishment of all other management and administration requirements; and

(f) any other matters specified in **Schedule 1**.

6.3 The Contractor must make changes to the Mobilisation Plan as requested by AusAID. Both Parties shall give fair and reasonable consideration to changes in costs necessarily incurred by either Party as a consequence of such changes to the Mobilisation Plan.

6.4 Once approved in writing by AusAID the Mobilisation Plan will be deemed to be annexed to this Contract. Changes to the Mobilisation Plan will be subject to a Deed of Amendment as described in Standard Contract Conditions **Clause 12** (Contract Amendment).

7. ANNUAL PLAN

7.1 The Contractor must provide to AusAID, within **three** (**3)** months of the Project Start Date, and by 30 November in each following year of the Project, an Annual Plan which, before it is implemented, must be approved by AusAID. The first Annual Plan will cover the first 18 months of the project.

7.2 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; and

(c) a detailed budget for the period of the Annual Plan.

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

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

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

8. SUB-CONTRACTING

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

(a) the Contractor must obtain the prior written approval of AusAID to sub-contracts with any party, except Specified Personnel, to the value of 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.

8.2 Standard Contract Conditions **Clauses 11.1** (Sub-contracting) **(d)** and **(e)** *(with respect to Deeds of Novation and Substitution)* will only apply to sub-contracts valued at A$100,000 or more.

8.3 The Contractor must not enter into any contract for the procurement of any Supplies or services from any Related Corporation without AusAID's prior approval.

9. MEETINGS

9.1 The Program Manager must attend meetings in Canberra at times determined by AusAID, to review or discuss the Contract including the following matters:

(a) the general progress of the Project;

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

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

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

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

(f) Contract performance matters;

(g) the accuracy of invoices; and

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

9.2 AusAID may require an implementation briefing in Canberra prior to mobilisation. The Program Manager, Senior Planning Officer and the TVET Coordinator who are included in the Specified Personnel must attend this meeting. AusAID may also require the Senior Planning Officer, TVET Coordinator and other Specified Personnel to attend a meeting at the Australian Diplomatic Mission in or having responsibility for the Partner Country before commencement of implementation.

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

10. RIGHT OF AusAID TO RECOVER MONEY

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

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

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

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

(i) refund the excess to AusAID; or

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

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

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

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

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

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

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

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

11. GOVERNMENT TAXES, DUTIES AND CHARGES

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

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

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

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

must be paid by the Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. INSURANCES

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

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

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

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

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

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

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

(e) all premiums are promptly paid.

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

12.3 In respect of the public liability insurance, Standard Contract Conditions **Clause 34.1(a)** is amended as follows: the Contractor must ensure that the limit for each and every claim is A$20 million.

AusAID may require the following clauses be inserted:

13. PERFORMANCE GUARANTEE

13.1 The Contractor must, at its expense, provide to AusAID, within 10 Business Days of the Project Start Date, a performance guarantee executed by a guarantor acceptable 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**.

14. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

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

(a) complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;

(b) informing AusAID of any adverse court of tribunal decision for a breach of workplace relations law, occupational health and safety laws, or workers' compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;

(c) providing AusAID any information AusAID reasonably requires to confirm that the Contractor (and any subcontractor) is complying with the Fair Work Principles;

(d) participate in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.

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

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

14.4 As far as practicable, the Contractor must:

(a) not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and

(b) ensure that all subcontractors impose obligations on subcontractors equivalent to the obligations under **Clauses 14.1** to **14.4** in this **Part 2** of this RFT.

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

PART 3 – DRAFT SCOPE OF SERVICES

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

DRAFT SCHEDULE 1 – SCOPE OF SERVICES

1. BACKGROUND

1.1 The goal of the Kiribati Technical and Vocational Education and Training Sector Strengthening Program (TVETSSP) is to support the Government of Kiribati's (GoK) vision for an internationally respected national technical and vocational education (TVET) sector which plays a valued role in improving national economic growth and increasing the employability of the people of Kiribati at home and abroad, especially its young women and men.

1.2 The TVETSSP is expected to contribute directly and measurably to three sectoral results, to:

a) increase the proportion of I-Kiribati aged 16-24 years completing TVET courses that lead to decent work or further study;

b) increase the number of I-Kiribati with recognised TVET qualifications accessing employment opportunities abroad; and

c) increase public and private sector productivity that can be attributed to TVET skills.

1.3 The Republic of Kiribati faces major demographic, economic, social and environmental challenges and an uncertain future. The TVETSSP represents the first substantial step in Australia's partnership with Kiribati in the TVET sector. It responds to the large and urgent need in Kiribati for workforce skills development - one of three high-level outcomes to be achieved under the Australia-Kiribati Partnership for Development.

1.4 The GoK is well aware of the shortcomings of current post-school training provision. These shortcomings are especially evident in the quality, quantity, scope, equity and efficiency of vocational training provided by the Kiribati Institute of Technology (KIT), and in the organisational capacity in the TVET sector generally and in the Ministry of Labour and Human Resource Development (MLHRD) specifically. The GoK has already taken action to address some of them, including the establishment of a TVET Advisory Board and appointment of an Australian TVET specialist as Principal of KIT. The GoK Cabinet has approved the adoption of Australian competency standards as the basis for future competency-based training at KIT.

1.5 The TVETSSP will support the development of an integrated and accountable TVET sector which responds to demand from employers and individual women and men for quality-assured training that increases workplace productivity, broadens work opportunities for I-Kiribati at home and abroad and contributes to economic growth and social equity.

1.6 While a 15-20 year period of support is envisaged, the TVETSSP is structured into two phases (Phase 1 of 18 months, Phase 2 of four years) to align the program fully with the GoK national planning cycle. The TVETSSP will build on interim support provided by AusAID to the Kiribati TVET sector in 2009 (funding for the expatriate

KIT Principal) and an interim support program during 2010, up until TVETSSP commencement. This planned support includes to reduce the most severe Occupational Safety and Health risks at KIT; capitalise on the GoK Cabinet decision to move KIT provision to a competency-based system using Australian competency standards; implement a basic student and course database records system; ensure current KIT computer equipment and systems are performing at maximum capacity; undertake independent assessment and recognition of the current competence of KIT trainers against the Australian competency standards; commence English language training for KIT trainers; recruitment of an international TVET Operations Manager to KIT to strengthen senior management capability to both manage TVETSSP activities at KIT and to provide intensive coaching to all KIT senior staff but particularly to a new I-Kiribati Deputy Principal currently being recruited by MLHRD.

1.7 The TVETSSP has two (2) components in Phases 1 and 2. Component 1 focuses on strengthening the organisational capacity of the MLHRD headquarters (the central Ministry divisions of Labour and Administration) to strengthen its capacity to provide policy, planning, coordination, and oversight services to the TVET sector, consistent with its mandated functions and budget. Under this component, MLHRD will be assisted to focus and strengthen its role as the lead Ministry responsible for developing the TVET sector in Kiribati (including oversight not only of KIT but also the Marine Training Centre and the Fisheries Training Centre) in partnership with the private sector, civil society and other Ministries, and for overseeing the performance of TVET institutions under its direction and control.

1.8 Component 2 focuses on increasing the quality, quantity, scope and equity of training delivery by Kiribati Institute of Technology. KIT will be assisted to deliver relevant TVET to an Australian Certificate II standard (or equivalent) and increase access to it. This will require investment in new facilities and equipment and in maintenance. To improve pathways to accessing Certificate III courses at the Australia-Pacific Technical College (APTC) and other regional institutions, the TVETSSP will provide support for in-country training at Australian Certificate I and II in I-Kiribati. The TVETSSP also includes development of a vocational preparation course for Year 4 and 5 school leavers and will assist those I-Kiribati with relevant technical skills/work experience but who have not been able to be accepted into the APTC due to insufficient English language literacy and numeracy skills.

1.9 The first phase of the TVETSSP is tightly specified in terms of what is to be done and the results to be achieved in order to make expectations very clear. In Phase 2 the TVETSSP will move to a rolling plan model based on MLHRD's annual planning processes. This approach involves:

a) working through and strengthening the existing formal GoK/MLHRD system for allocating responsibility and authority for the management and delivery of TVET in Kiribati, taking into account informal systems of decision-making;

b) maximising government ownership and leadership of the TVETSSP through the MLHRD, existing advisory arrangements and other key central and line agencies;

c) early and full alignment of TVETSSP with GoK's Kiribati Development Plan (KDP) and associated planning, monitoring and accountability systems;

d) supporting the development of the GoK's TVET system in ways which will allow integration of support from donors other than Australia;

e) identifying opportunities for the TVET sector to achieve a more integrated approach to youth transitions from school education to further training and employment; and

f) reinforcing throughout the design mutual responsibility and mutual accountability for program performance, based on rigorous and independent annual performance assessments.

Current TVETSSP Staff Arrangements

1.10 It is intended that three (3) staff (Institute of Technology Principal, English as a Second Language (ESL) Manager - TVET and Operations Manager) from the Pacific Technical Assistance Mechanism (PACTAM) will become part of the Contractor's Unit. In order to facilitate this transfer, the following information has been provided:

a) the Terms of Reference for each of the positions held by current staff are found at Annex 1 to Part 3 of the RFT; and

b) the total current yearly cost of all positions is found in Table C1 of Section 1 of the RFT;

1.11 It is a condition of participation in this RFT that the Tenderer provide a guarantee that each staff member transferring to the Contractor will not be disadvantaged by moving to the Contractor arrangements identified in Clause 1.10 above.

1.12 Staff identified in Clause 1.10 above will not be able to participate in the TVETSSP TAP interviews.

1.13 The Tenderer will need to review arrangements in place for staff in Clause 1.10 and decide whether to replace the current staff's previous arrangements with a new contract with the Contractor, in association with AusAID.

1.14 The negotiation of the new agreements with the staff is expected to occur simultaneously with the negotiation between the successful tenderer and AusAID for the management of TVETSSP as part of the contract negotiations.

2. MANAGEMENT AND COORDINATION ARRANGEMENTS

Program Oversight Committee

2.1 The Kiribati TVETSSP management will be overseen by a Program Oversight Committee (POC), providing leadership and overall strategic direction. The POC comprises ten (10) members until the TVET Advisory Board and the Apprenticeship Advisory Board merge, then it will reduced to nine (9) members. The POC members are: four (4) senior representatives of four (4) GoK; one (1) member from AusAID; one (1) member from NZAID; two (2) NGO representatives; one (1) TVET Advisory Board member and one (1) Apprenticeship Board member. The detailed Terms of Reference (ToR) for the POC will be jointly developed by the GoK and AusAID in order to ensure that each of the Partners' views and priorities are incorporated into the operation of the Committee and to the benefit of the Kiribati TVET Sector Strengthening Program and Kiribati.

2.2 The POC will oversee program implementation by reviewing and approving performance and financial reports from the MLHRD Senior Management Team (SMT), approving new or changed program inputs for Phase 1, approving the Annual Program Plans for Phase 2 and tracking progress towards the targets specified. It will also approve ToR for the Annual TVETSSP Performance Assessment, approve membership of the Performance Assessment Team (PAT), consider its findings and approve adjustments to program implementation as required.

2.3 POC meetings will be convened by the Secretary of MLHRD, supported by the Program Office. It will meet quarterly in Phase 1, and in Phase 2 at least three (3) times each year.

2.4 The POC I-Kiribati membership will comprise senior representatives of four (4) government agencies that are directly involved in the implementation of the program.

a) MLHRD (as the lead agency executing TVETSSP), Ministry of Education (to ensure education sector coordination, especially in the area of youth transitions);

b) Public Service Office (as the agency that will need to support, guide and facilitate structural and regulatory change that will be required to revitalise KIT and strengthen MLHRD);

c) Ministry of Finance and Economic Development (as the agency responsible for developing and monitoring the Kiribati Development Plan/Ministry Operating Plans, controlling recurrent budget allocations and expenditures, and accountable for acquittal of donor funding and the GoK's Development Fund).

d) AusAID will be represented on the POC by the AusAID First Secretary in Tarawa;

e) There will also be two (2) representatives of the private sector;

(i) One (1) Non Government Organisation (NGO) representative, drawn from the membership of the TVET Advisory Board and the Apprenticeship Advisory Board; and

(ii) NZAID should be invited to join this Committee given its long-standing support to MTC and the tertiary sector more broadly.

2.5 The POC will have both male and female members, and be chaired by the Secretary of MLHRD.

2.6 The Contractor will provide timely reports, briefings and proposals to support the work of the POC and implement the Program in accordance with the agreed Annual Plans and the POC decisions.

Performance Assessment Team

2.7 Appointed by and reporting to the Program Oversight Committee, the Performance Assessment Team (PAT) will undertake independent assessments of TVETSSP

performance. This will be annually for Phases 1 and 2 and will provide the basis for the Joint Annual Review of the TVETSSP by GoK and GoA. In addition to providing technical advice on TVETSSP performance, the PAT will assess the effectiveness of the aid investment through TVETSSP. It will do so through five (5) enabling themes:

a) mutual accountability;

b) working within GoK systems;

c) organisational capacity development;

d) gender equality and social equity; and

e) HIV/AIDs mainstreaming.

Kiribati TVET Sector Strengthening Program Design Document

2.8 This Scope of Services outlines the role of the Contractor in supporting the implementation of the TVETSSP. In developing and implementing the Services identified in this Contract, the Contractor should refer to both the Program Design Documents (PDD) and to the Annex of this Scope of Services. In particular the PDD sets out the context, scope, objectives and principles of Kiribati TVETSSP and are the primary reference documents to gain an understanding of the program to be implemented. In instances where there is a discrepancy between the PDD and the Contract, the Contract (including Annexes) will take precedence.

3. COMPONENT, OUTPUT AND TARGET DESCRIPTION

3.1 The program has two (2) components which will be the primary focus of Australian support to the TVET sector throughout Phases 1 and 2. Only those outputs to be achieved by the end of Phase 1 (December 2011) are specified. The scope and nature of Phase 2 support will take account of the extent to which Phase 1 outputs and targets have been achieved. Phase 2 outputs that will contribute to the two component outcomes will be identified in the consultation and planning process leading to the next Kiribati Development Plan (KDP) (2012-2015) and specified in the MLHRD Strategic Plan for 2012-2015 as outputs to be achieved with TVETSSP support, although indicative outputs are provided in the PDD.

3.2 The outcome of Component 1-TVET sector policy, planning and oversight is: MLHRD has increased organisational capacity to provide policy, planning, coordination, and oversight services to the TVET sector, consistent with its mandated functions and budget. Under this component, MLHRD will be assisted to focus and strengthen its role as the lead Ministry responsible for developing the TVET sector in Kiribati in partnership with the private sector, civil society and other Ministries, and for overseeing the performance of TVET institutions under its direction and control.

3.3 **Component 1 Outputs are:**

Output 1.1: Policy framework and strategy for the TVET sector established and implementation started

Output 1.2: Apprenticeship & trade testing systems modernised to align with the TVET strategy

Output 1.3: MLHRD receiving and analysing performance information from its TVET institutions
Output 1.4: TVET advisory mechanisms strengthened
Output 1.5: Labour mobility strategies for TVET sector identified and approved
Output 1.6: MLHRD Strategic Plan 2012-2015 completed and includes measurable targets, performance indicators and budget projections

3.4 The outcome of Component 2 - KIT Training Delivery is: The quality, quantity, scope and equity of training delivery by Kiribati Institute of Technology are increased measurably. Under this component, KIT will be assisted to deliver relevant TVET to an Australian Certificate II standard (or equivalent) and increase access to it. This will require investment in new facilities and equipment and in maintenance.

3.5 **Component 2 Outputs are:**

Output 2.1: Competence of KIT trainers and support staff enhanced
Output 2.2: KIT facilities and equipment upgraded
Output 2.3: Transition to competency-based training that meets Australian standards, including in English language, is underway
Output 2.4: Additional enrolments of young men and women in existing and new TVET courses in demand
Output 2.5: Additional enrolments in short courses to meet demand from private sector employers, Ministries, State-Owned Enterprises, Non Government Organisations, existing workers and young job seekers, including English for Specific Purposes
Output 2.6: Efficiency and effectiveness of KIT management and administration increased

4. **SERVICES**

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

Service 1: TVETSSP Planning, Management and Reporting Functions

A) PLANNING

The TVETSSP Annual Plan

4.2 Each year the Contractor will be required to work with the MLHRD to develop an Annual Plan for approval by the POC and AusAID. The Annual Plan will include all strategies, detailed staffing and resource allocations and the anticipated outcomes for the following year, in relation to both the POC guidance and the M&E framework. The Annual Plan will also integrate the approaches and strategies to be applied for gender equity, disability, HIV and AIDS approaches and the security and health of all staff and (as appropriate) external stakeholders.

4.3 The Annual Plan will align with agreed GoK and AusAID policies and requirements. It will meet the quality and format requirements of AusAID and will include the information, data, analysis and available options required for evidence-based decision making.

4.4 The initial Annual Plan will be due three (3) months after commencement of this Contract and will detail the first 18 months of TVETSSP (i.e. Phase 1). The Annual Plan will also be flexible enough to progressively incorporate and integrate new ideas and processes that arise from implementation.

4.5 The Contractor will facilitate the collaborative development of a rolling plan approach to Phase 2 implementation, based on MLHRD's annual plans and taking account of budget availability, and planning and expenditure capability.

B) MANAGEMENT

4.6 The management and governance arrangements for TVETSSP are collaborative, and integrated with MLHRD and national planning and budget processes to enable effective management of the aid investment, while taking account of existing capacity. The Contractor will not set up separate or parallel systems contrary to GoA's commitment to use and support GoK systems wherever possible. The Contractor will be flexible and responsive to GoK and GoA needs and priorities as they emerge over the life of the TVETSSP, with clear and agreed processes for implementing changes to agreed plans or priorities.

TVETSSP Operations and Procedures Handbook

4.7 The Contractor shall prepare an Operations and Procedures Handbook containing key management and operational mechanisms for TVETSSP. This will be submitted to AusAID/POC for endorsement within three (3) months of the Project Start Date. The Handbook must reflect the flexibility embodied in this Scope of Services and clearly indicate how the TVETSSP will be managed. The Handbook will be a key element in maintaining both service levels and quality. It is a living document that should be continually reviewed to reflect lessons learned and improvements in TVETSSP processes and methods and revised as conditions affecting the Program change. It is subject to change through the Annual Joint Review process.

4.8 The Operations and Procedures Handbook will include (but not be limited to) the following:

a) **Standard TVETSSP management operating procedures** outlining the key program activities, responsibilities and time-frames. This document shall be presented in a way that is simple, clear and unambiguous and suitable for referral by all TVETSSP staff;

b) **Financial management procedures** to manage the TVETSSP financial systems and accounts, the arrangements for financial acquittals, the reporting templates and measures to be applied for fraud protection (including for regular internal and external system and financial records auditing);

c) **Quality Assurance procedures and the approaches** and methods that will be put in place to ensure that there is ongoing reflection and quality improvement across all elements and practices of the TVETSSP;

d) **Communication Plan** and methods that will be put in place to ensure that there is effective communication between all TVETSSP stakeholders;

e) **The Risk Management Plan** that addresses the risks associated with TVETSSP operations; health and safety (including HIV and AIDS); medical emergencies and evacuation; briefings and guidelines for all staff; and emergency communication arrangements and protocols. The Risk Management Plan will clearly outline the processes and staff responsible for ensuring that there is no corruption in relation to any aspects of the TVETSSP processes;

f) **Templates** for the TVETSSP planning and reporting requirements; and

g) **A Code of Conduct** for signing by all long and short-term staff and any external consultants.

All TVETSSP documentation, including contract reporting required by AusAID, is to be in clear, succinct and plain English.

Management Functions

4.9 **Systems and Procedures:** including ensuring business and planning processes (financial, reporting, administrative and M&E) are consistent with and build on existing GoK systems and procedures wherever possible. This also includes the streamlining of processes and formats for planning, funding, reporting, M&E, procurement, proposals, human resource management and administration of grants and sub-contracts.

4.10 **Continuous improvement and learning:** the Contractor will contribute to a process of continuous learning over the life of the TVETSSP, in conjunction with AusAID. This includes the Contractor sharing examples of good practice and lessons learnt with AusAID, including other AusAID programs in Kiribati.

4.11 **Implementation of Disability, Gender and HIV & AIDS and other policies:** including mainstreaming and monitoring of disability, gender equality, child protection and HIV & AIDS strategies. This includes all aspects of awareness raising, training and on-going mentoring as part of integrating and modelling good practice.

4.12 **Subcontractors:** manage the performance of all TVETSSP subcontractors and service providers to ensure the agreed outcomes are achieved.

4.13 **Financial management:** including management, monitoring and reporting of budget and expenditure of program operational funds; management, monitoring and reporting of budget and expenditure of TVETSSP funds in the designated GoK account (Kiribati Government Number 4 (Development Fund)); and maintaining an audit regime.

4.14 **Agreement and Contract administration:** negotiating contracts and agreements with organisations and facilitating agreements as required for the broader aid program.

4.15 **Risk Management:** Identify and manage emerging risks associated with TVETSSP operations, including in relation to the performance of TVETSSP personnel and Contractor staff.

Support for POC

4.16 The Contractor shall support the MLHRD in its role as POC Secretariat in carrying out its governance and policy setting responsibilities including:

a) providing administrative and logistical support as requested;

b) providing regular reports on the TVETSSP progress. Such reports should be, succinct, factually correct and its recommendations realistic and based on robust analysis;

c) attending the POC meetings as required; and

d) administering the funding for the POC, including funding for logistical arrangements and per diem for members (if required).

Communication and Relationship Management

4.17 The role of the Contractor is to establish and maintain open, collegial and professional communication with MLHRD and AusAID based on agreed communication protocols.

4.18 The Contractor's TVET Coordinator shall act as the ultimate contact point between the Contractor and AusAID. Where, at an operational level, AusAID officers are in contact with the in-country TVETSSP staff, the TVET Coordinator shall be copied into such correspondence or be made aware of such meetings prior to their taking place.

4.19 The Contractor will effectively communicate and manage relationships with local and international stakeholders to facilitate the implementation of Kiribati TVETSSP activities. These stakeholders include a wide range of GoK agencies, the TVET Advisory and Apprenticeships Board, private sector employers, development partners, AusAID staff and other TVET institutions in Kiribati, other Pacific countries and in Australia.

4.20 The Contractor will ensure strong relationships with relevant stakeholders and ensure that TVETSSP communication protocols are clarified. The Contractor will ensure relationships are fostered at appropriate levels, with boundaries and communication protocols made clear. Any Contractor staff visits to GoK agencies and associations will be for the sole purpose of advocating and managing the TVETSSP. Any discussions with GoK agencies will not be used to promote or advocate the Contractor's capacities or services for commercial purposes.

4.21 The GoK MLHRD will be the point of contact for GoK partners and the Contractor. The TVETSSP will facilitate effective communication with stakeholders through appointing an I-Kiribati Communications Officer to lead internal program and external communications and long and short-term personnel with excellent communication skills and high levels of interpersonal and intrapersonal skills.

Recruitment and Management of Personnel

4.22 The Contractor's TVET Coordinator will take overall leadership and responsibility for the Contractor's contractual and activity management and will act as the single point

of contact for the two (2) components. The person will be highly professional, well qualified, readily available, appropriately skilled and an excellent communicator. This person will have skills obtained from working in a developing country setting with sensitivities to the broader development issues such as HIV and AIDS risks and vulnerabilities, gender equality and principles of transparency and equity.

4.23 The Contractor will provide the services of a management team comprising suitably qualified staff to manage and support the Program Office in Tarawa and provide other TVETSSP long-term and short-term technical assistance. The Contractor's management team will be responsible for the Contractor meeting its responsibilities under the contract with AusAID including the provision of Services. In addition to extensive expertise in establishing and supporting TVET programs, the Contractor's management team will have expertise in the areas of good practice capacity development, working through government systems, change management, financial management and procurement, human resource management, and a sound understanding of and experience with the collection and analysis of both qualitative and quantitative Monitoring and Evaluation (M&E) data.

4.24 The Contractor will provide timely procurement of suitable highly experienced and qualified long and short-term personnel inputs (national and international), to support achievement of TVETSSP outcomes. This will include the joint preparation with MLHRD and AusAID of Job Descriptions/ Terms of Reference, joint recruitment and selection of TA personnel, contracting, induction and mobilisation, provision of ongoing professional guidance to contracted personnel and for establishing joint systems for performance management of them, to ensure consistency with aid effectiveness principles. The Contractor will make all reasonable efforts to model good gender balance across its staff.

4.25 The Contractor shall facilitate recruitment and manage international and local personnel for in-country positions. The staffing tables in **Annex 1** provide an overview of the indicative responsibilities for the full time personnel in-country positions.

4.26 The Contractor will recruit, deploy and manage the Short Term Personnel (STP) as required to undertake the Program and approved by the POC. An STA is someone engaged by the Contractor for a continuous period of less than six (6) months.

4.27 The Contractor's Long Term Personnel and Short Term Personnel will demonstrate skills or experience that can be applied successfully within the dynamics of Kiribati's TVET sector context. There will be an emphasis on continuous improvement, innovation through the analysis of lessons learned and data, participatory decision-making, effective planning, concise and accurate reporting, and strong M&E for measuring the impact of development initiatives (particularly the outcomes of the TVET training courses).

Procurement and Management of TVETSSP Program Office facilities

4.28 The Contractor will establish and provide strategic and operational support to a TVETSSP Program Office within the MLHRD headquarters.

4.29 The TVETSSP Program Office must be established within one (1) month of the Project Start Date. The TVETSSP office will be located in MLHRD premises in Tarawa. Office space will also be provided for TVETSSP staff located at KIT. The GoK will provide for utilities, local communication costs and internet access at the TVETSSP office to support the management of the program. The office will enable the secure storage of records, data and confidential information.

4.30 The Contractor shall manage the contracting arrangements for any capital works and associated equipment at KIT that may be approved for the Program.

4.31 The Contractor shall procure other goods and services required to support achievement of TVETSSP outcomes, using GoK procurement systems wherever feasible.

C) REPORTING

Monthly, Quarterly, Annual and Exception Reports

4.32 The Contractor will collect and record data required to submit TVETSSP Progress Reports on a monthly basis by the TVETSSP Senior Planning Officer to the MLHRD Senior Management Team (SMT) in Phase 1. During Phase 2, the monthly reporting will be in the form of Exception Reports provided to the SMT.

4.33 The Contractor will submit reports on a **quarterly** basis to the Program Oversight Committee. The quarterly reports will provide data on TVET sector performance and detail TVETSSP progress to date (achievements, milestones, progress towards TVETSSP target results, issues and problems encountered and solutions proposed, lessons learned) and forward recommendations that will improve performance in the next quarter.

4.34 The **Annual** Reports will include (as a minimum) the type of data and information as included in the Performance Assessment Framework in the Program Design Document. These Reports will be concise and analytical rather than simply descriptive, providing the POC/GoK/AusAID with strategic and operational information required for them to make informed decisions on the best way to plan and implement the TVETSSP and to inform the Contractor's development of the next year's agreed Annual Plan.

4.35 In addition to the Quarterly Reports, and on an ongoing basis, the Contractor will use **Exception Reporting** to communicate any urgent information or constraints that require consideration and decisions from the MLHRD, POC or AusAID.

Annual Performance Assessments

4.36 The independent Performance Assessment Team (PAT) will undertake annual assessments of TVETSSP performance. In addition to providing technical advice on TVETSSP performance, the PAT will also recommend, as required, desirable

improvements in the efficiency and effectiveness of Contractor's processes or management. The PAT will also assess the effectiveness of the aid investment through TVETSSP. It will do so through five (5) enabling themes: mutual accountability, working within GoK systems, organisational capacity development, gender equality and social equity and HIV/AIDs mainstreaming.

4.37 Given there are Annual Performance Assessments, a Mid-Term Review (MTR) will only be requested by the GoA and/or the GoK should the December 2011 Annual Performance Assessment report significant lack of progress in achieving the intended Program results, performance issues with the Contractor or significant changes to the assumptions on which the Program design was based.

4.38 An independent Strategic Review will be conducted at least one (1) year before the end of Phase 2. The purpose of the review is to evaluate the effectiveness of the TVETSSP in achieving the intended goals and sector results, and to highlight Program achievements, key issues that have affected Program implementation and lessons learned. The Review will also be used as a guide towards the design of the subsequent phases of AusAID assistance to the TVET sector after 2015.

4.39 The Annual Performance Assessment, any MTR and the Strategic Review will be managed and funded by AusAID, outside the funding scope of this Contract. The Contractor will make TVETSSP staff, systems and documentation available to review teams (at no additional charge) so they are able to undertake the review missions.

Information for AusAID's Annual Corporate Reporting

4.40 The Contractor will be required to provide specific input and data to AusAID's annual internal Quality at Implementation reporting on the TVETSSP (indicatively February each year). This will provide an assessment of implementation of the program against the following criteria:

a) Implementation progress;

b) Achieving objectives;

c) Monitoring and evaluation;

d) Sustainability;

e) Risk management; and

f) Gender equality and other overarching issues.

Program Completion Report

4.41 The Contractor will also be directly responsible for developing a Final Program Report, which is due three (3) months prior to the contract end date.

Database

4.42 The Contractor shall assist KIT to develop and maintain a sustainable student database able to track I-Kiribati students through the various stages of preparation, TVET studies, work attachments and post training. The database will build on the

simple computerised record system likely to be developed under the Interim Program of support. The database application and contents will be the property of the GoK.

4.43 The student database should be able to extract and transfer data that informs KIT MLHRD, TVETSSP and AusAID M&E and corporate reporting responsibilities, disaggregating data by course, gender, age profile, island group, disability and highest school year completed and should where appropriate collect data on other cross cutting issues such as HIV and AIDS. Where Australian qualifications are issued under agreed auspicing arrangements with the Contractor, the database will also include data required under the Australian Quality Training Framework.

4.44 The Contractor should also assist KIT to develop a simple and sustainable staff database recording staff data (name, age, gender, qualifications, experience etc).

Monitoring and Evaluation

4.45 The Performance Assessment Framework (PAF) within the PDD is indicative of the Outcome and Output indicators required under the Services and the suggested collection methodologies. Within three (3) months of the Project Start Date the Contractor will submit for approval by the POC and AusAID a comprehensive and sustainable Monitoring & Evaluation (M&E) Framework and Plan based on the design's indicative framework, which the Contractor will be responsible for establishing, implementing and reviewing annually.

4.46 The M&E framework will track the TVETSSP performance at all levels and must at a minimum collect realistic and reasonable indicators that report outputs against KIT training programs (including types of training undertaken, gender balance, completion rates) and outcomes of development impact in Kiribati attributable to the TVETSSP (which should directly address the TVETSSP objectives, including productivity). The framework must, at a minimum, disaggregate data by institution, course, gender, age profiles, island group, disability and highest school year completed and should where appropriate collect data on other cross cutting issues such as HIV and AIDS.

4.47 The M&E Framework must be a useful tool to assess and refine the TVETSSP (and stakeholder) performance on an annual basis and to inform AusAID annual corporate reporting requirement and, in a longer term context, program mid term and completion reviews and program evaluation.

4.48 Where possible, the data and information used for the M&E Framework will be sourced through the existing Kiribati systems and reporting regimes. The Contractor will assist the MLHRD to collect and collate baseline data and performance information routinely from TVET institutions and to provide input to MLHRD KDP and MOP reporting. Other M&E tools such as Staff and Student Satisfaction Surveys, Student Tracer Surveys and Employer Satisfaction surveys should also be undertaken.

4.49 The Contractor shall establish a TVETSSP M&E working group and encourage and assist the MLHRD, KIT and other GoK stakeholders to strengthen their data collection and analysis capacity and thereby their own M&E capacity.

D) INTERIM PROGRAM OF SUPPORT

4.50 AusAID has already commenced support to the KIT through a number of mechanisms. AusAID has funded the appointment of an expatriate KIT Principal through the Pacific Technical Assistance Mechanism (PACTAM) for up to three years to mid 2012. AusAID has also funded an Occupational Health and Workplace Safety Audit by the APTC in June 2009, and for the APTC to commence delivery of Certificate IV in Training and Assessment to KIT trainers between May to October 2009.

4.51 Given the scope and urgency of the needs, the PDD recommended that AusAID provide an interim program of support to the Kiribati TVET sector. Subject to availability of GoK and Australian resources, seven (7) actions were recommended to be undertaken immediately to harness existing commitment to change, overcome major constraints on TVETSSP start-up and smooth program implementation. These were to:

1. Reduce Occupational Safety and Health risks at KIT;
2. Cabinet approval to change to a standards-based TVET system;
3. Implement reliable basic student records system at KIT;
4. Make operational KIT computer equipment and systems;
5. Independent assessment and recognition of the vocational competencies of each KIT trainer against the Australian competency standard;
6. Commencement of English language training for KIT trainers; and
7. Recruit an international TVET Operations Manager to KIT for a period of two years to the end of 2011.

4.52 The Contractor will develop a Program Implementation Plan which will incorporate the draft Mobilisation Plan and the draft Transition and Recruitment Strategy and be provided within the first month of commencement. This will ensure a smooth transition into the TVETSSP from the interim support program arrangements including:

a) Agreeing with AusAID/PACTAM to take over the contract and management of the KIT Principal, KIT Operations Manager and KIT Senior ESL Manager;

b) Modifying/extending existing data and databases to meet the TVETSSP needs;

c) Developing a plan to ensure a seamless transition for the initial two (2) months of the TVETSSP;

d) Developing a plan for advocacy and providing information to key stakeholders;

e) Informing stakeholders of the new arrangements during the first four (4) months of the TVETSSP through implementing the agreed Communications Plan;

f) Managing funding and providing continued support to ongoing activities; and accepting the novation of, and subsequently managing contracts and agreements that continue under TVETSSP.

Service 2: TVETSSP Component 1 (Phase 1)

4.53 The following broadly outlines the Services to be delivered by the Contractor with respect to Component 1 in Phase 1. The Contractor should refer to the PDD for details on the timing, intent and expected outcomes of these Services, including more details on AusAID expectations in developing and implementing these Services.

4.54 To increase the organisational capacity of the MLHRD to provide policy, planning, coordination, and oversight services to the TVET sector, consistent with its mandated functions and budget, the TVETSSP Program Office will provide advice, technical assistance and support to the MLHRD to:

a) Conduct National TVET Workshops;

b) Undertake Outer Island consultations;

c) Develop policy papers on legislative and regulatory reform; TVET governance; and management; gender access and equity; TVET financing and fees;

d) Develop a labour mobility strategy for the TVET sector;

e) Develop a TVET Strategy;

f) Review the Apprenticeship and Trade Testing systems and TVET Advisory/Apprenticeships Board;

g) Organise staff training/work attachments/ TVET study tour(s) for Senior MLHRD staff and for selected Advisory/Apprenticeships Board members to Australian/regional institutions and workplaces;

h) Assist the TVET institutions to provide performance information for analysis by MLHRD;

i) Prepare the annual Ministry Operating Plan with respect to the TVET sector;

j) Develop the MLHRD Strategic Plan 2012-2015 with respect to the TVET sector;

k) Provide input to the 2012-2015 Kiribati Development Plan;

l) Arrange short course computer training for senior MLHRD staff; and

m) Procure independent audits of KIT against the Australian Quality Training Framework 2007 Essential Standards for Registration relating to training and assessment, client services and management systems.

4.55 In doing so, the Contractor will adopt a planned and structured approach to developing the capacity of MLHRD to undertake such work itself in the future.

Service 3: TVETSSP Component 2 (Phase 1)

4.56 The following broadly outlines the Services to be delivered by the Contractor with respect to Component 2 in Phase 1. The Contractor should refer to the PDD for details on the timing, intent and expected outcomes of these Services, including more details on AusAID expectations in developing and implementing these Services.

4.57 To increase the quality, quantity, scope and equity of training delivery by KIT, the TVETSSP LTA and STA to KIT and the Program Office will provide advice, technical assistance and support to KIT to:

a) Conduct English Language training and arrange IELTS testing of KIT staff and students;

b) Develop and commence implementation of Professional Development Plans for KIT trainers and support staff;

c) Organise staff training/work attachments/ TVET study tour(s) for KIT senior staff to Australian/regional institutions and workplaces;

d) Arrange with the GoK for secondment/transfer of four (4) trainers for the two (2) new courses;

e) Facilitate selected KIT trainers to undertake Certificate III training in their area of expertise/teaching (through external scholarship);

f) Arrange for new KIT trainers to undertake the Certificate IV Training and Assessment;

g) Facilitate selected KIT trainers to undertake Diploma Training and Assessment (through external scholarship);

h) Arrange for KIT to be an IELTS (or equivalent) test centre;

i) Develop an Asset Management Plan for KIT;

j) Conduct Occupational Health and Safety (OHS) audit and organise OHS repairs;

k) Procure protective uniforms for trade course trainees;

l) Procure and install new student computers;

m) Arrange and manage a tender for new KIT multipurpose building;

n) Procure and customise suitable gender-neutral teaching and learning materials to support the delivery of competency-based training at KIT, and make copyright arrangements for the use by KIT of internationally recognised training courses and materials;

o) Procure small equipment, train KIT trainers, deliver upgraded training for the Business Services, Construction trades, Electrical trades, Automotive, Mechanical and the two (2) new courses;

p) Establish a Vocational Preparatory Course;

q) Review KIT student entrance testing;

r) Approve funding of additional "Apprenticeship" allowance;

s) Establish a scholarships program for Outer Island students;

t) Review the KIT short course profile and customise new short courses for delivery by KIT trainers;

u) Upgrade the KIT student database;

v) Arrange a computer maintenance contract for KIT; and

w) Support the development of an internal quality audit regime for KIT, and provide support for continuous improvement at KIT.

4.58 In doing so, the Contractor will adopt a planned and structured approach to developing the capacity of MLHRD to undertake such work itself in the future.

DRAFT SCOPE OF SERVICES – ANNEX 1

Indicative Staff Profiles

Table 1: Indicative Table of Long Term International Staffing Requirement

Components 1 and 2	**Key Responsibilities**
Principal , KIT (Appointed by MLHRD/AusAID for up to three years)	• Assist MLHRD to re-establish efficient and effective strategic planning, management and administrative systems at KIT. • Undertake efficient and effective human resource management and development of all KIT staff. • Prepare, control and monitor KIT's budget and financial reporting. • Manage the selection of deputy level KIT managers and develop and implement a leadership development and mentoring program for these managers with a view to one of these candidates eventually filling the Principal position (program to be endorsed by the Secretary of MLHRD). • Oversee short-term technical assistance to KIT for teacher training and development and continuous improvement in the quality of training delivery and oversee implementation of improved training programs and course outcomes. • Manage existing infrastructure and oversee procurement of building materials for repair and basic refurbishment of KIT classrooms (work to be done by trade students). • Provide support to the KIT Advisory Committee and policy advice on TVET to MLHRD. • Support and establish new and existing partnerships with other TVET institutions, such as Australia Pacific Technical College, from which KIT will be able to draw on technical expertise. • Establish foundations and program feasibility data for developing and implementing a long-term program of assistance to KIT designed to achieve the above objectives. • Provide the necessary support for AusAID's long-term program of assistance to KIT, including overseeing the design process and contributing to the development of strategies to improve KIT curriculum and courses, in close consultation with the Secretary of Labour and the AusAID Senior TVET Adviser. • Undertake other tasks that may be decided from time to time by the Secretary of Labour.

KIT Operations Manager	• Line management of KIT Departments as determined by the KIT Principal. • Supporting the Principal in the implementation of an intensive change program at KIT. • Establishing and implementing a Professional Development Plan for KIT trainers which will ensure that agreed targets for staff competence in their industry field, training and assessment and in English are achieved, and monitoring progress against the plans. • Providing structured and intentional coaching and mentoring to Heads of Department and KIT trainers to ensure that new skills developed with TVETSSP support are consistently applied in classrooms and workshops. • Support KIT trainers in the use of standards-based practices and strategies related to planning, implementing and managing instruction. • Providing ongoing support and technical advice to KIT trainers on competency based training and assessment methodologies, curriculum development and customisation and developing partnerships with clients. • Providing advice to the Principal on educational strategies for improving student completion rates at KIT and student satisfaction. • Ensuring that KIT systems identify students in need of additional learning support. • Planning for and managing the introduction of new full-time Australian-standard courses at KIT, a Vocational Preparation Course, an English course and improvement in the educational standards of existing courses. • Assisting the Principal in the development and implementation of systems for monitoring and reporting on the quality of teaching and learning at KIT, consistent with the performance reporting requirements of the MLHRD. • Fostering a training culture that is agile and flexible and encourages creative thinking and personal initiative. • Informing the TVET Coordinator (through the Principal) to provide the required training inputs (short term advisers and other personnel) and monitoring the quality of those inputs to ensure they are meeting the needs of KIT.

KIT, Senior English as a Second Language Manager - TVET	• Supporting the KIT English Department to: o Arrange IELTS testing of staff and students o Provide professional advice to KIT management on the inclusion of minimum standard for English language in KIT entrance testing o Use standards-based practices and strategies related to planning, o Implementing, and managing English language instruction o Develop and regularly use systems for tracking progress in increasing the ESL proficiency of KIT staff and students o Assist other Departments to develop curriculum that support students' language and literacy development as well as content-area achievement o Develop, adopt and adapt international teaching and student learning resources o Develop a new Vocational Preparatory Course and the ESL subject within it. • Supporting the Public Service Office (PSO) to: • Deliver IELTS test to In-Service awardees as advised by PSO Secretary o Provide IELTS results for In-Service awardees to PSO Secretary and Director o Assist the PSO in developing a IELTS testing system so as PSO can be self sufficient towards the future. • Modelling and disseminating good practice ESL teaching and assessment practice • Teaching ESL to KIT students and staff as agreed with the English Department and the Operations Manager • Undertaking other initiatives as agreed with the English Department and the Operations Manager that will support the further development of ESL at KIT to meet the needs of its students and clients and allow it to operate as an English language only institution

TVET Coordinator, TVETSSP Program Office	• Overall management of the TVETSSP program in-country including: planning and implementation of program activities in partnership with the MLHRD, program reporting, personnel management, financial management, monitoring and evaluation (M&E), liaising with partners and stakeholders. • Maintain open and effective communications with the governments of Kiribati and Australia in accordance with agreed communication protocols. • Establish, lead and manage a high performing Program Office that supports the Secretary and the MLHRD senior management team to implement the TVETSSP and provide the strategic and operational services assigned to it. • Recruit and supervise the performance of individual Program Office staff and foster a work culture within the Office that is agile and flexible and encourages diverse thinking and personal initiative. • Liaise with the MLHRD senior management team to identify short term technical assistance required and, on their behalf, liaise with the MC Resource Coordinator to recruit the required technical assistance (TA) inputs, in collaboration with the MLHRD. • Provide induction, guidance and support to all TA inputs provided through the TVETSSP, particularly those working within the Ministry headquarters and ensure that contracted personnel work collaboratively with stakeholders and with each other, and ensure that their performance is effectively managed. • Ensure quality assurance principles guide the timely preparation and submission of TVETSSP progress and financial reporting to the Secretary and MLHRD SMT, and to the Program Oversight Committee; and guide and facilitate a credible and participatory annual planning process for the TVETSSP, to be led by the MLHRD. • Contribute to the integration of program activities to create coherent, quality and complimentary programming. • Ensure appropriate M&E activities are carried out regularly across the TVETSSP (including data collection and analysis, monitoring program progress against established workplans, monitoring established indicators and utilisation of results to inform program design). • Identify and resolve emerging risks associated with TVETSSP operations, including in relation to the performance of TVETSSP TA personnel and staff in Kiribati. *Capacity development responsibilities* • Support the Secretary of MLHRD and the Ministry's senior management team to implement an intensive organisational change program across the whole TVET sector.

	• Support the Secretary and senior MLHRD staff in leading policy dialogue and policy framework development in all aspects of TVET provision, including its links with basic education and consultations with stakeholders. • Provide structured and intentional coaching and mentoring and other capacity development opportunities in-country and overseas to the national staff of the Program Office to assist national staff to assume full responsibility for in-country management of the Office at or before the end of the assignment.
Senior TVET Planning Officer, TVETSSP Program Office	• Strengthen MLHRD organisational capacity and the capacity of individual MLHRD staff to provide affordable planning, coordination and oversight services to the TVET sector, consistent with the Ministry's mandated functions and budget. • Provide structured and intentional coaching and mentoring and other capacity development opportunities for the Senior Labour Officer and the Labour Officer responsible for TVET so that they may assume responsibility for leading TVET planning and M&E at or before the end of the two-year assignment. • Ensure quality assurance principles guide the timely collection, preparation and submission of TVET sector performance data to the Secretary and MLHRD Senior Management Team, to the TVET and Apprenticeship Advisory Boards and to the Team Leader. • Strengthen the capacity of the MLHRD and the Ministry's TVET and Apprenticeship Advisory Boards to monitor, evaluate and report on the performance of the TVET sector, including its quality, efficiency, effectiveness and equity. This will include supporting all post-school TVET training providers to provide comprehensive, accurate and timely data, and familiarising internal and external stakeholders including industry with M&E concepts and their use in improving training delivery. • Assist the Secretary and senior MLHRD staff to plan and prepare all documentation necessary for GoK budget, operational and strategic planning and reporting. • Assist the short-term Policy Adviser in the development of the TVET strategy and related policy papers and assist MLHRD to implement agreed policies and strategies.

	Program Office Management responsibilities • Establishing, leading and managing a high performing Program Office that supports the MLHRD senior management team to implement the TVET Sector Support Program (TVETSSP) and provides the strategic and operational services assigned to it. • Supervising the performance of individual Program Office staff and developing their individual and team capacities to assume full responsibility for management of the Program Office at the end of the assignment. • Liaising with the MLHRD senior management team to identify short term technical assistance required and, on their behalf, liaising with the Contractor's Resource Coordinator to recruit the required technical assistance (TA) inputs, in collaboration with the MLHRD. • Provide induction, guidance and support to all TA inputs provided through the TVETSSP, particularly those working within the Ministry headquarters and ensure that contracted personnel work collaboratively with stakeholders and with each other, and ensure that their performance is effectively managed. • Ensure quality assurance principles guide the timely preparation and submission of TVET sector performance data, TVETSSP progress and financial reporting to the Secretary and MLHRD SMT, and to the Program Oversight Committee. • Identify and resolve emerging risks associated with TVETSSP operations, including in relation to the performance of TVETSSP TA personnel and staff in Kiribati. • Fostering a work culture within the Program Office that is agile and flexible and encourages diverse thinking and personal initiative.

Table 2: Indicative Table of Long Term National Staffing Requirement

Components 1 and 2 (in *TVETSSP Program Office)*	**Key Responsibilities -** Responsible to the Senior Planning Officer
Planning Officer	To assist the Senior Planning Officer to manage the Program Office and strengthen MLHRD planning capacity; guide, support, coordinate and induct technical assistance (TA) personnel, especially those related to Component 1; assist MLHRD as needed with preparation of reports on program performance; and act as Senior Planning Officer in the absence of the Senior Planning Officer.
Administrative Officer	Responsible for the provision of administrative support to the Program Office
*Finance and Procurement Officer**	Responsible to serve as the in-country manager for the procurement of inputs and in-country tracking of TVETSSP expenditures, in collaboration with the Senior Accountant, MLHRD and MFED.
*Communications Officer**	Responsible for developing suitable communication strategies and implementing them when approved by the POC.

* National positions seconded from within the GoK approved by MLHRD and funded by GoK

Part 4 – Basis of Payment

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

SCHEDULE 2 – DRAFT BASIS OF PAYMENT

1. TOTAL AMOUNT

1.1 The total amount payable by AusAID to the Contractor for the provision of the Services shall not exceed the sum of AUDxxx plus GST, if any up to a maximum amount of AUDxxx.

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) The fixed **Total Management Fee (TMF)** in accordance with **Clause 3** of this Schedule 2 and paid as Milestone Payments in accordance with **Clause 4** of this Schedule 2, up to a maximum total amount of **AUDxxx**;

(b) **Reimbursable Long Term Personnel Costs**, in accordance with **Clause 5** of this Schedule 2, up to a maximum total amount of **AUDxxx**;

(c) **Reimbursable Short Term Personnel Costs** in accordance with **Clause 6** of this Schedule 2, up to a maximum total amount of **AUDxxx**; and

(d) **Reimbursable Administration, Equipment and Operational Costs**, in accordance with **Clause 7** of this Schedule 2, up to a maximum total amount of **AUD223,000.**

3. TOTAL MANAGEMENT FEE (TMF)

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

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

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

(c) Communications and telecommunications costs;

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

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

(f) Cost of Contractor head office staff;

(g) Security costs for all personnel;

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

(i) Taxation, as applicable;

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

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

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

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

(n) Costs, including domestic and international travel, accommodation, per diems, and local transport costs where required for all Contractor Head Office personnel (*other* than those listed as Long Term Personnel costs at Clause 5 and those listed as Short Term Personnel costs at Clause 6 of this Schedule 2);

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

(p) Allowances for risks and contingencies.

3.2 The Annual TMF, for year one (1) (18 months) of this Contract, is **AUDxxx**, as follows in Table 1.

Table 1: Total Management Fee (in AUD)

	Year 1 (18 months)	**Total (AUD)**
Total Management Fee	***TBA***	***TBA***

3.3 The Annual TMF is fixed for the first 18 months (1.5 years) of this Contract and will be billed to AusAID on satisfactory achievement of Milestones as per **Clause 4** of this Schedule 2.

4. MILESTONE PAYMENTS

4.1 AusAID shall pay the Contractor the TMF in instalments known as Milestone Payments. The Milestone Payments payable by the Commonwealth to the Contractor shall not exceed the sum of **AUDxxx**, plus GST, if any, up to a maximum of **AUDxxx**.

4.2 The Milestone Payments will be payable to the Contractor progressively.

4.3 The Contractor may submit an invoice upon receipt of written acceptance from AusAID of satisfactory achievement of the Milestones specified in **Table 2** below.

Payment will then be made within thirty (30) days of a correctly rendered invoice and subject to the provisions of Clause 20 of the Standard Conditions.

Table 2A: Milestone Payments (Year 1) (18 months)

No.	Description	Due Date	Verifiable Indicator	Amount (AUD)
1	Program Implementation Plan	1 month from Project Start Date	Acceptance in writing by AusAID	*TBA*
2	1st Annual Plan and Operations and Procedures Handbook	3 months from Project Start Date	Acceptance in writing by AusAID	*TBA*
3	Six Monthly Report	March 2011	Acceptance in writing by AusAID	*TBA*
4	2nd Annual Plan	November 2011	Acceptance in writing by AusAID	*TBA*
5	Six Monthly Report	May 2012	Acceptance in writing by AusAID	*TBA*

Table 2B: Milestone Payments (Years 2 to 5)

No.	Description	Due Date	Verifiable Indicator	Amount (AUD)
1	3rd Annual Plan	November 2012	Acceptance in writing by AusAID	*TBA*
2	Six Monthly Report	May 2013	Acceptance in writing by AusAID	*TBA*
3	4th Annual Plan	November 2013	Acceptance in writing by AusAID	*TBA*
4	Six Monthly Report	May 2014	Acceptance in writing by AusAID	*TBA*
5	5th Annual Plan	November 2014	Acceptance in writing by AusAID	*TBA*
6	Six Monthly Report	May 2015	Acceptance in writing by AusAID	*TBA*
7	Program Completion Report and Final Handover Plan	3 months prior to the contract end date	Acceptance in writing by AusAID	*TBA*
			TOTAL	***TBA***

4.4 AusAID's assessment of the Contractor's achievement of Milestones may be informed by consultation with the TSSP Project Oversight Committee, the TSSP Performance Assessment Team, other stakeholders and any other independent review in accordance with Clause 17 of the Standard Conditions.

5. REIMBURSABLE PAYMENTS: LONG TERM PERSONNEL COSTS

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

5.2 For each identified **Long Term Personnel**, AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears, Monthly Fees up to the maximum amounts specified in **Table 3** below. Mobilisation and Demobilisation costs will be reimbursed at cost up to the maximum one-off amounts, in Table 3 below, which apply to each position.

Table 3: Long Term Personnel Costs (in AUD)

			Initial Contract Period - 18 months (PHASE 1)			
	Positions	**Name**	**Inputs for Phase 1 (months)**	**Total Cost for initial contract period (18 months)**	**Mobilisation**	**Demobilisation**
	International					
1	* **KIT Principal**	*to be advised by AusAID*	18	301,875		*TBA*
2	* **KIT Operations Manager**	*to be advised by AusAID*	18	294,437		*TBA*
3	* **KIT Senior Manager, English (International)**	*to be advised by AusAID*	18	232,875		*TBA*
4	**Program Manager** (not in-country)	*TBA*	18	*TBA*		
5	**Resource Coordinator** (not in-country)	*TBA*	18	*TBA*		
6	**Senior TVET Planning Officer**	*TBA*	18	*TBA*	*TBA*	*TBA*
7	**TVET Coordinator** (in country)	*TBA*	18	*TBA*	*TBA*	*TBA*
	National					
8	**KIT Senior Lecturer, English** (National)	*To be recruited*	0			
9	**Planning Officer (Program Office)** (National)	*To be recruited*	18	*TBA*		
10	**Administration Officer** (Program Office - National)	*To be recruited*	18	*TBA*		
11	> **Finance and Procurment Officer** (Program Office)	*> GoK to recruit*	18			
12	> **Communications Officer** (Program Office)	*> GoK to recruit*	18			
	TOTAL (AUD)			***TBA***		

* The responsibility for these positions will be transferred to the Managing Contractor.

> These positions will be seconded from GoK salary payments will be the responsibility of GoK.

Note: Long Term Personnel means personnel engaged continuously for more than six (6) months over the life of this Contract.

5.3 The Monthly Fee is:

(a) ***Inclusive*** of all personnel-related taxes and levies incurred in Kiribati and Australia, with the exception of GST for Services performed in Australia in accordance with **Clause 21** of Part 6 (Goods and Services Tax);

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

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

(d) ***Inclusive*** of up to fourteen (14) public holidays per annum as determined by the Australian High Commission in Tarawa, which are based on the Government of Kiribati designated holidays;

(e) ***Inclusive*** of living allowances, accommodation, utilities and private transport costs;

(f) ***Inclusive*** of all escalators for the first eighteen (18) months of the Program; but

(g) ***Exclusive*** of mobilisation/demobilisation costs (including airfares, in accordance with **Clause 5.7 below**), which will be reimbursed at cost (subject to reasonableness in arrears); and

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

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

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

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

5.7 The Contractor shall be reimbursed airfares at economy class for each flight sector of four (4) hours or less and business class for each flight sector greater than four (4) hours duration. Any travel undertaken at cheaper rates (e.g. discount fares) does not entitle the Contractor to reimbursement of the cost of any higher class of travel.

Travel must be via the most direct and cost effective route. A 'flight sector' means from any one flight departure point to any one flight landing point.

6. REIMBURSABLE: SHORT TERM PERSONNEL COSTS

6.1 The Contractor is entitled to claim for Short Term Personnel costs actually incurred up to a maximum amount of **AUDxxx.**

Table 4: Short Term Personnel Costs (in AUD)

			Initial Contract Period - 18 months (PHASE 1)	
	Positions	**Daily Fee (AUD)**	*** Inputs for Year 1 (months)**	**Total Cost for initial contract period (18 months) (AUD)**
	National			
1	**TVET Policy Adviser**	*TBA*	4	*TBA*
2	**TVET Finance/other Advisers**	*TBA*	6	*TBA*
3	**Trainer - Business Services**	*TBA*	6	*TBA*
4	**Trainer - Construction Trades**	*TBA*	6	*TBA*
5	**Trainer - Electrical Trades**	*TBA*	6	*TBA*
6	**Trainer - New Course 1**	*TBA*	12	*TBA*
7	**Trainer - Automotive Trades**	*TBA*	6	*TBA*
8	**Trainer - New Course 2**	*TBA*	6	*TBA*
9	**Trainer - Mechanical Trades**	*TBA*		
10	**Trainer - New Course 3**	*TBA*		
11	**Local TVET Trainers**	*TBA*	15	*TBA*
12	**Reimbursables (lump sum)**			*TBA*
	TOTAL (AUD)			***TBA***

6.2 Short Term Personnel are personnel engaged under the Contract for a period less than six (6) consecutive months.

6.3 Short Term Personnel inputs must be identified and approved as part of the relevant Annual Plan, or otherwise endorsed by MLHRD and approved in writing by AusAID. Costs for approved Short Term Personnel shall draw down on the Short Term Personnel funding allocation in **Clause 6.1**. The Contractor must maintain a record of Short Term Personnel costs incurred over the life of the Program and report on expenditure and remaining funding allocations in the Quarterly Financial Reports.

6.4 AusAID shall reimburse the Contractor for Short Term Personnel costs on a monthly basis in arrears. Reimbursement shall be made for actual inputs (including travel and per-diems) at rates agreed in accordance with Clause 6.6 below and paid directly to or on behalf of the Short Term Personnel. This may also include escalators, superannuation and personnel-related taxes where applicable.

6.5 The Daily Fee for Short Term Personnel, is:

(a) Based on a five (5) day working week for home country inputs and a seven (7) day working week for in-Kiribati inputs of one month or less and a five (5) day working week for in-Kiribati inputs of more than one month;

(b) ***Inclusive*** of all personnel-related taxes and levies incurred in Kiribati and Australia, with the exception of GST for Services performed in Australia [refer to **Clause 21** of the Standard Contract Conditions (Goods and Services Tax)];

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

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

(e) ***Exclusive*** of mobilisation/demobilisation costs (including per-diems and airfares in accordance with **Clause 6.6 below**); and

(f) **Exclusive** of any profit, overheads, administration or management fee, or management fee or any other mark-up on the part of the Contractor. The Contractor must provide evidence to support this if requested by AusAID (e.g. copies of employment contracts, payslips, etc).

6.6 In addition to the items listed under Clause 6.5 above, the following items only will be reimbursed at cost (subject to reasonableness) in arrears up to a maximum of **AUDxxx.**

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

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

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

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

7. REIMBURSABLE PAYMENTS: ADMINISTRATION, EQUIPMENT AND OPERATIONAL COSTS

7.1 AusAID shall reimburse the Contractor up to a maximum total of **AUD223,000** for Administration, Equipment and Operational Costs.

7.2 Administration and Equipment means "Project Administration and Equipment" as defined in the Standard Conditions. Operational Costs are specified reimbursable items as listed in **Table 5** below. The purchase of these goods or services shall not attract a procurement fee.

7.3 The Contractor will be reimbursed on the basis of the actual cost incurred for items identified as reimbursable, up to the maximum amounts specified in **Table 5 below**. The actual cost will be exclusive of any costs that are included in the TMF in accordance with **Clause 3** of this Part.

7.4 In accordance with **Clause 7.1** above, the Contractor will be entitled to reimbursement for reasonable expenses incurred in respect of Reimbursable Administration, Equipment and Operational Costs, subject to:

(a) Details of the items purchased or expenses incurred contained in a quarterly payment invoice prepared in accordance with **Clause 11 of Part B**; and

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

7.5 When expenditure reaches 80% of the limits specified in **Table 5 below**, the Contractor must advise AusAID of the remaining commitments and must ensure that the upper limits are not exceeded.

7.6 The Contractor may vary the sums assigned against individual line items in Table 5, within the overall financial limitation of this payment stream and subject to AusAID's written approval. Changes to the value of individual line items will not require a variation to this Contract.

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

7.8 The Contractor must maintain a Register of Assets in accordance with **Clause 10** of the Standard Conditions in the format described in Annex 1 to this Schedule 2.

7.9 If AusAID exercises its rights, under Clause 2.3 of the Project Specific Conditions to extend the term of this Contract, the Reimbursable Administration, Equipment and Operational Costs applying to the Contract extension will be subject to agreement between AusAID and the Contractor.

Table 5: Administration, Equipment and Operational Costs (in AUD)

Item	Unit	No. of Units	Cost per Unit (AUD)	Financial Limitation (AUD)
Program office set-up, IT, consumables and international communications	Phases 1			$ 65,000
Project vehicle	Phases 1			$ 42,000
Support for additional KIT supplies and communications	Phases 1			$ 36,000
KIT senior staff professional development	Phases 1			$ 22,000
IELTS testing costs	Phases 1			$ 36,000
Overseas study tours	Phases 1			$ 22,000
			TOTAL	**$ 223,000**

8. PAYMENTS THROUGH THE GOVERNMENT OF KIRIBATI

8.1 The TSSP Program Office will be located in premises provided by the MLHRD in Tarawa. Office space will also be provided for TSSP staff located at KIT. The GoK will provide for utilities, local communication costs and internet access at the TSSP office to support the management of the program.

8.2 The GoK will also meet the salary and related costs for the secondment of a Finance and Procurement Officer and a Communications Officer to the TSSP Program Office and four seconded trainers to KIT.

8.3 AusAID will make direct payments to the GoK Development Fund for the funding of a KIT multipurpose building, additional apprenticeship allowances, Outer Island scholarships, KIT Occupational Health and Safety maintenance, KIT computer upgrading and maintenance, travel and associated costs for the TVET workshops, travel and associated costs for Outer Island Consultations and POC costs.

8.4 Any incentive payments to the MLHRD will be made directly by AusAID to the GoK Recurrent Budget.

9. RATES FOR OPTION PERIOD

9.1 If AusAID exercises its rights, under **Clause 2.3** of the Project Specific Conditions to extend the term of this Contract, the TMF, Long Term Personnel Monthly Fee Rates applying to the Contract extension will be increased in accordance with the escalation rates specified in Table 6.

Table 6: Escalation Rates for Option Period

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

***** AusAID will apply the escalation percentage to the final costs agreed for Year 1 (18months).

10. CLAIMS FOR PAYMENT

10.1 The Contractor's claims for payment shall be submitted when due pursuant to this Part 4 in accordance with the Standard Conditions clause headed Payment, and shall be submitted in a form identifiable with the Services.

10.2 Claims for payment must include reference to the relevant Payment Event Number that will be issued by AusAID.

10.3 Invoices involving foreign exchange transactions must be made in the equivalent Australian dollar amount, converted at an exchange rate which is calculated in accordance with appropriate accounting standards and as entered by the Contractor in their general ledger.

10.4 All claims for payment shall be made to:

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

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

10.6 A copy (electronic or hard copy) of the invoice must also be forwarded to the Activity Manager.

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

Annex 1: Kiribati TVET Sector Strengthening Project – Assets Register

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

SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

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PART 5 – STANDARD TENDER CONDITIONS

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

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

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

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

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

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

(a) the technical proposal which includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

Conditions Applying to Electronic Tender Lodgement

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

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

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

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

Conditions Applying to Hard Copy Tender Lodgement

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

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

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

2. TENDERER ENQUIRIES

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

2.2 If a Tenderer:

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

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

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

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

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

3. LATE TENDERS

Conditions Applying to Tenders Lodged Electronically

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

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

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

Conditions Applying to Tenders Lodged in Hard Copy

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

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

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

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

4. NON-CONFORMING TENDERS

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

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

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

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

5. CLARIFICATION OF TENDERS

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

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

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

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

5.2 Clarifications are provided on the terms of the RFT.

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

6. AMENDMENT OF THE RFT

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

7. ASSESSMENT OF TENDERS

7.1 Tenders will be assessed on the following basis:

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

(b) financial

to achieve the best value for money outcome.

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

Technical Assessment

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

7.4 AusAID may invite a Tenderer (shortlisted or otherwise) to give AusAID a short presentation and be interviewed by the TAP. The following personnel will be required to attend: the proposed Senior TVET Planning Officer and TVET Coordinator, a Tenderer representative and one other representative nominated by the Tenderer. If one or more of those personnel are unable to attend, a teleconference presentation may be arranged. The personnel will be required to answer any questions asked by the TAP. The TAP will be convened in one of several locations in Australia, Fiji or New Zealand and the costs of the Tenderer's (and its personnel's) attendance must be borne by the Tenderer.

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

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

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

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

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

(b) the resourcing of Tenders;

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

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

These other factors have not been allocated any specific weightings.

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

Goods and Services Tax

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

Insurances

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

Technical proposal format

7.12 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

7.13 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.

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

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

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

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

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

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

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

Referees

7.15 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.

7.16 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.

7.17 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.

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

8. JOINT VENTURES AND CONSORTIUMS

8.1 AusAID intends to contract with a single legal entity.

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

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

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

9. ASSOCIATES AND OTHER SUB-CONTRACTORS

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

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

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

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

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

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

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

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

10. OWNERSHIP OF TENDERS AND RFT

10.1 All Tenders become the property of AusAID on lodgement.

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

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

10.4 Copyright in the RFT is reserved to AusAID.

11. CONFLICT OF INTEREST

11.1 Tenderers must:

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

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

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

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

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

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

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

12. TENDERING CONDUCT

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

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

13. INELIGIBILITY TO TENDER

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

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

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

(i) a Proposed Subcontractor;

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

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

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

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

(d) "**World Bank List**" means the World Bank's "Listing of Ineligible Firms" or the "Listing of Firms Letters of Reprimand" posted at www.worldbank.org.

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

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

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

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

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

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

(d) is temporarily suspended from tendering by a donor of development funding other than the World Bank; or

(e) is the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.

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

13.6 AusAID will exclude any Tender from evaluation if the Tenderer is in breach of the warranty in **Clause 13.3**, or does not disclose any circumstance required under **Clause 13.4** or **13.5**.

13.7 AusAID reserves the right to exclude any Tender from evaluation if the Tenderer or a Related Entity:

(a) becomes listed on a World Bank List or Relevant List, or is subject to proceedings or an informal process which could lead to such a listing;

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

(c) is or becomes temporarily suspended from tendering by a donor of development funding other than the World Bank.

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

14. AusAID's RIGHTS

14.1 As a Commonwealth Government agency, all AusAID procurement is subject to the Commonwealth Procurement Guidelines. The core principle of Commonwealth

procurement is to achieve value for money. AusAID is also bound to conduct its procurement in an ethical, accountable, transparent, efficient and effective manner.

14.2 AusAID reserves the right to:

(a) seek Tenders from any organisation;

(b) accept or reject any Tender;

(c) terminate, extend or vary its procurement process for the Services;

(d) request clarification in relation to a Tender;

(e) seek information or negotiate with any organisation that has not been invited to submit a Tender;

(f) terminate negotiations with the preferred Tenderer and commence negotiations with any other Tenderer;

(g) evaluate Tenders as AusAID sees appropriate; and

(h) negotiate with any one or more Tenderers.

15. TENDERER'S ACKNOWLEDGEMENT

15.1 A Tender is submitted on the following basis:

(a) no legal obligation or agreement whatsoever is intended to be or is created between AusAID and any Tenderer by virtue of the tender process (including but not limited to statements contained in this RFT) unless and until contract negotiations are completed and a formal written agreement acceptable to AusAID is entered into and executed by an authorised officer of AusAID and by the successful Tenderer, if any;

(b) the Tenderer acknowledges and agrees that AusAID, its employees, agents and advisers are not, and will not be responsible, or liable for the accuracy or completeness of any information contained in this RFT; and

(c) the Tenderer is responsible for all costs of and incidental to the preparation and delivery of the Tender, including obtaining this RFT, or any subsequent stage of the procurement process, including answering any queries and providing any further information sought by AusAID.

16. DEBRIEFING OF TENDERERS

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

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

17. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

17.1 Freedom of Information

(a) The *Freedom of Information Act 1982* gives members of the public rights of access to official documents of the Australian Government and its agencies. The *Freedom of Information Act 1982* extends, as far as possible, the right of the Australian community to access information (generally documents) in the possession of the Australian Government, limited only by considerations of the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.

(b) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Freedom of Information Act 1982* on their participation in this RFT process and any subsequent contract.

17.2 Privacy

(a) The *Privacy Act 1988* establishes a national scheme providing, through codes of practice adopted by private sector organisations and the National Privacy Principles, for the appropriate collection, holding, use, correction, disclosure and transfer of personal information by private sector organisations.

(b) The Draft Contract provides that the Contractor will comply with the *Privacy Act 1988*, including the Information Privacy Principles and the National Privacy Principles whether or not the Contractor is an organisation subject to the *Privacy Act 1988*.

(c) The Tenderers acknowledge that the *Privacy Act 1988* reflects the principles of the International Covenant on Civil and Political Rights and OECD Guidelines, in particular, the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.

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

17.3 Access by Australian National Audit Office

(a) Attention of Tenderers is drawn to the *Auditor-General Act 1997* which provides the Auditor-General, or an authorised person, with a right to have, at all reasonable times, access to information, documents and records.

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

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

17.4 Access by Ombudsman

(a) Attention of Tenderers is drawn to the *Ombudsman Act 1976* which gives Australians access to a government officer, known as an ombudsman, who investigates complaints from the public about government agencies and their operations and decisions, and reports on ways in which they may be resolved.

(b) In addition to the ombudsman's powers under the *Ombudsman Act 1976*, the Draft Contract provides that the Contractor will provide the ombudsman, access to information, documents, records and agency assets, including those on the Contractor's premises. Such access will apply for the term of the contract and for a period of seven years from the date of expiration or termination.

(c) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Ombudsman Act 1976* on their participation in the RFT process and any subsequent contract.

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

(a) Australian Government policy prevents AusAID from entering into contracts with suppliers who are currently named as non compliant under the *Equal Employment Opportunity for Women in the Workplace Act 1999* (EEO Act).

(b) AusAID will exclude from consideration any Tender from a Tenderer who is named or whose subcontractor is named as not complying with the EEO Act.

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

(a) AusAID will exclude from consideration any Tender from a Tenderer who is listed:

(i) by the Minister for Foreign Affairs under the *Charter of the United Nations Act 1945* and/or listed in regulations made under Division 102 of the *Criminal Code Act 1995* (Cth). Further information about listed persons and entities is available from the Department of Foreign Affairs and Trade website at www.dfat.gov.au/icat/UNSC_financial_sanctions.html and from http://www.nationalsecurity.gov.au/

(ii) by the World Bank on its "Listing of Ineligible Firms" or "Listing of Firms Letters of Reprimand" posted at www.worldbank.org (the "World Bank List"); or

(iii) by any other donor of development funding on a list similar to the World Bank List.

17.7 Other Australian Government and AusAID Policies

(a) Tenderers should familiarise themselves with AusAID policies including:

(i) the policy *Gender Equality in Australia's Aid Program – Why and How* (March 2007). This document is available on AusAID's website at http://www.ausaid.gov.au/publications/default.cfm;

(ii) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014', and in particular the strategy's six guiding principles, located at

http://www.ausaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;

(iii) AusAID's policy on the environment as set out in the *Environmental Management Guide for Australia's Aid Program*. This document is available on AusAID's website at http://www.ausaid.gov.au/keyaid/envt.cfm.

(iv) AusAID's *Child Protection Policy*, in particular the child protection compliance standards at Attachment 1 to the policy. This document is available on AusAID's website at http://www.ausaid.gov.au/publications/default.cfm;

(v) *Family Planning and the Aid Program: Guiding Principles* (August 2009). This document is available on AusAID's website at: http://www.ausaid.gov.au/keyaid/health.cfm; and

(vi) any other policies published from time to time on http://www.ausaid.gov.au or as otherwise notified to Tenderers.

18. FURTHER REQUIREMENTS

18.1 Tenderers should be aware that current employees of AusAID cannot be included in Tenders for AusAID projects. Former AusAID employees may be included in Tenders if doing so does not represent a breach of conflict of interest.

18.2 Tenderers should note that the Commonwealth Procurement Guidelines require that Commonwealth agencies must not enter into agreements with suppliers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not paid the claim. AusAID will reject submissions from Tenderers in this position.

18.3 Tenderers must keep any discussions or contact with AusAID in connection with the Tender, the RFT and any contract negotiations confidential. Any unauthorised approach by a Tenderer to an AusAID officer or discussion of matters pertaining to the procurement process will be considered a breach of confidentiality.

19. CONTRACT NEGOTIATIONS

19.1 AusAID may select, as preferred Tenderer, the Tenderer(s) who best meet the requirements of the RFT on the basis of the tender assessment process.

19.2 The preferred Tenderer(s) must within 14 days of written notification from AusAID that it has been selected as preferred Tenderer, provide AusAID with originals of Police Clearance Certificates for all Personnel nominated in their Tender in positions specified in the Specified Personnel Table (**Clause 7, Part 1**) as working with children.

(a) Police Clearance Certificates must be provided for each country in which the individual has lived for 12 months or longer over the last five years, and for the individual's country of citizenship;

(b) Police Clearance Certificates must be dated no earlier than 12 months before the Tender Closing Time;

(c) If any required Police Clearance Certificates are not provided to AusAID in accordance with **Clause 18.2** above, AusAID may exercise its right, specified at **Clause 14.2** above, to terminate negotiations with the preferred Tenderer and commence negotiation with any other Tenderer. AusAID recognises that in limited instances it may prove impossible to obtain a reliable Criminal Record Check, and will take non-provision of a Criminal Record Check into account upon request;

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

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

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

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

20. CONTRACT PLANS

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

21. APPLICABLE LAW

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

ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION

1. AusAID reserves the right to take into account in the assessment of this Tender the past performance, in previous AusAID and non-AusAID activities, or activities of:

   (a) any Tenderer; and

   (b) any member of the proposed personnel,

   in its capacity as:

   (c) contractor, consultant or sub-contractor;

   (d) an associate or employee of a contractor, consultant or sub-contractor; or

   (e) a joint venture partner.

2. AusAID may:

   (a) include in the assessment any contractor performance information contained in any internal AusAID contractor performance reporting systems in relation to performance of the Tenderer or proposed management, administrative and Project personnel on previous AusAID activities, providing the contractor has seen the report and has had reasonable opportunity to comment; and

   (b) take into account relevant performance information provided by external referees in relation to a Tenderer or proposed personnel member obtained by AusAID as a result of inquiries made within the previous 12 months.

3. AusAID reserves the right to use any relevant information obtained in relation to a Tenderer or proposed personnel member obtained either during the Tender period or within the previous 12 month period by providing it to the Technical Assessment Panel (TAP) or to any other relevant person for the purposes of Tender assessment, and such information may be taken into account in the course of assessment of the Tender by the TAP and AusAID. Where information has been received in accordance with paragraph 2 (a) above, this may also be introduced into the TAP process.

4. AusAID may, at any time, make independent inquiries of:

   (a) any person or entity which it reasonably believes to have actual knowledge of the performance of the Tenderer or proposed personnel member/s on a previous project or activity, whether or not that person or entity is nominated in the Tender as a referee for the Tenderer or proposed personnel member; and

   (b) any Commonwealth Government department, agency or other government entity in Australia whether Commonwealth or State, or any other country, including law enforcement agencies in relation to a person who is proposed for inclusion in a Tender or a Tenderer.

5. AusAID may request a Tenderer to provide additional or clarifying information in relation to information obtained during the assessment process following the **Closing Time** for the purpose of assessment of the Tender.

6. Information obtained as a result of inquiries made by AusAID in relation to performance on previous activities will be sought on a confidential basis and AusAID shall not be obliged to disclose the content or source of prior performance information about a Tenderer or individual to any person.

7. AusAID shall not be liable upon any claim, demand, proceeding suit or action by any Tenderer or any proposed personnel member in relation to any matter, thing or issue arising out of or in any way in relation to the collection of information from any source or the use of any information collected pursuant to this Annex in the Tender assessment process.

ANNEX B – TENDERER DECLARATION

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

1. DEFINITIONS

1.1 In this declaration:

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

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

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

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

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

2. BASIS OF DECLARATION

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

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

3. THE OFFER

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

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

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

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

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

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

3.7 I agree:

(a) that the Tenderer will be bound by this Tender for the Tender Validity Period of 180 days after the **Closing Time**; and

(b) that this Tender may be accepted by AusAID at any time before the expiration of that period or any additional period to which we may agree.

3.8 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.

3.9 I understand that AusAID is not bound to accept the lowest priced or any Tender.

3.10 I warrant that in preparing the Tender for the Services the Tenderer did not act in any way which did or could have had the effect of reducing the competitiveness of the tender process for the Services. In particular I warrant that the Tenderer did not engage in:

(a) any discussion or correspondence with other tenderers concerning the amount of the Tender;

(b) any collusive tendering or other anti-competitive practices with any of the other Tenderers or any other person; or

(c) any conduct or have any arrangement or arrive at any understanding with any of the other Tenderers.

3.11 **[This clause applies to government owned Tenderers only.]** I warrant that in preparing the Tender, the Tenderer has complied with the principles of competitive neutrality.

3.12 I warrant that the Tenderer and its Related Entities are not:

(a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of the RFT; or

(b) listed on a Relevant List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of the RFT.

3.13 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not subject to any proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List. ***OR*** **[Option B:]** I acknowledge that the Tenderer or a Related Entity is subject to proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List. I warrant that the Tenderer has included information regarding the proceedings in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).

3.14 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process, or temporarily suspended from tendering by a donor of development funding other than the World Bank. ***OR*** **[Option B:]** I acknowledge that the Tenderer or a Related Entity has been temporarily suspended from tendering by either the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the temporary suspension in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).

3.15 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding. ***OR*** **[Option B:]** I acknowledge that the Tenderer or a Related Entity is the subject of a formal or informal investigation by the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the investigation in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).

3.16 I undertake that, if the Tenderer becomes aware of a circumstance referred to in **Clause 13.4** (Ineligibility to Tender) of **Part 5** of the RFT after it has submitted its Tender, I will immediately notify AusAID in writing.

3.17 Neither the Tenderer nor any of its employees, agents or contractors have been convicted of an offence of, or relating to bribery of a public official, nor are they subject to any proceedings which could lead to such a conviction.

3.18 I undertake that the Tenderer will not permit any of its employees, agents or contractors, to work with children if they pose an unacceptable risk to children's safety or well being.

3.19 No employees of the Tenderer, or its agents or contractors, who have been nominated in Project positions that involve working with children, have been convicted of a criminal offence relating to child abuse, nor are they subject to any proceedings which could lead to such a conviction.

3.20 Neither the Tenderer nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.

3.21 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.

3.22 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**.

3.23 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.

3.24 The Tenderer is genuinely competing for the Contract and its Tender is not a "cover bid".

3.25 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.

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

4. ADDENDA TO TENDER DOCUMENTS

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

Number _____ Dated _____ Number _____ Dated ____

Number _____ Dated ____ Number _____ Dated ____

5. ADDRESS OF TENDERER

Address or Registered Office of Tenderer

Address for service of notices (NOT PO. BOX)

Telephone Number: ..... Fax Number: .....

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

_____ _____

insert name and title *Signature*

ANNEX C – TENDERER'S SUBMISSION CHECKLIST

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

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

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

	Checked
Are both the Technical Proposal and annexes: a) in a type font of no less than 12 point on A4 paper? b) formatted with left and right page margins no less than 2.5cm and top and bottom page margins no less than 3cm, excluding headers, footers and page numbers? c) absent of AusAID's logo or any representation or mark which indicates that the Tenderer is in any way related to or connected with AusAID?	
For electronic lodgement, has one (1) electronic copy containing all parts and annexes been provided?	
For hard copy lodgement, has one (1) printed original containing all parts and annexes been provided?	
Tender Schedule B: Specified Personnel	
Are the CV's within the specified page limit and certified and signed by the nominated personnel?	
Do the CV's include the name and personal contact details of the nominated personnel?	
Do the CV's include the nationality and, if relevant, permanent residency status of the nominated personnel?	
Do the CV's include details of the professional qualifications of nominated personnel (if relevant), including institution and date of award?	
Do the CV's include details of recent relevant professional and development work experience, including the duration and extent of inputs?	
Have at least two (2) referees been nominated on each of the CV's and has it been confirmed that they are: a) not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with the Tenderer or a subsidiary of the Tenderer b) not included in the Tender as proposed team members? c) not AusAID employees?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed original been provided?	
Tender Schedule C: Financial Proposal	

	Checked
Is the financial proposal in the required format?	
Is the financial proposal a fully costed schedule of rates and based on the inputs as specified in the Scope of Services, including: (a) escalation? (b) necessary insurances required by the Contract Conditions and for the performance of the Services? (c) detailed information on assumptions used in preparing the pricing?	
For electronic lodgement has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement has one (1) printed original been provided in a separate, sealed envelope?	
Tender Schedule D: Financial Proposal **(Option 1 or 2 is to be selected by Tenderers in accordance with the terms detailed in the RFT)**	
Option 1	
Have the names of the tendering entity and its ultimate owners been provided?	
Have the names and financial relationships between the tendering entity, its parent entity (if relevant) and other related entities within the group been provided?	
Have the previous three (3) years annual financial statements for the tendering entity been provided including: (a) a balance sheet? (b) a profit and loss statement? (c) a cashflow statement? (d) contact name and telephone number of the Tenderer's financial accountant? (e) a statement detailing any other tendering opportunities being pursued by the tendering entity or the group and the likely impact of such tendering opportunities on the financial capacity of the Tenderer to discharge its potential contractual obligations to AusAID under this RFT ?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	

	Checked
For hard copy lodgement, has one (1) printed copy been provided in a separate sealed envelope?	
Option 2	
Has the date of the most recent financial assessment and the name of the Tender for which this assessment was undertaken been provided?	
Has an explanation of why the Tenderer believes a further financial assessment is not necessary been provided?	
Has a statutory declaration declaring that the Tenderer's financial position has not altered materially since the date of the previous assessment been provided?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed copy been provided in a separate sealed envelope?	

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

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

1.1 AusTender is the online tendering system for Australian Government Agencies. AusTender allows tenderers to download tender documentation and upload tender responses. Tenderers must first register with AusTender at https://www.tenders.gov.au.

1.2 Access to and use of AusTender is subject to terms and conditions. Tenderers must agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender.

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

1.4 Tenderers must inform themselves concerning all security measures and other aspects of the AusTender technical environment. Tenderers must make their own assessment of the AusTender system prior to using it for any matter related to this RFT and no responsibility will be accepted by AusAID arising in respect of any use or attempted use by any party of AusTender.

2. REGISTERED TENDERERS AND NOTICES

2.1 In the event that AusAID elects to vary or supplement this RFT or change the conditions of tender, it will make reasonable efforts to inform tenderers in accordance with this **Clause 2**.

2.2 Tenderers may be informed by notices and other information issued as addenda posted on the webpage for this RFT on AusTender.

2.3 Tenderers who have registered and downloaded the tender documentation will be notified by AusTender via email of any addenda issuance. It is in the interest of tenderers to ensure they have correctly recorded their contact details prior to downloading tender documentation. If tenderers have not recorded their details correctly, they should amend their details and download the tender documentation again.

2.4 Tenderers are required to log in to AusTender and collect addenda as notified.

2.5 The Commonwealth will accept no responsibility if a tenderer fails to become aware of any addendum notice which would have been apparent from a visit to the AusTender page for this RFT.

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

3. AUSTENDER HELP DESK

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

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

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

4. PREPARING TO LODGE A TENDER ELECTRONICALLY

Virus Checking

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

Tender File Formats, Naming Conventions and Sizes

4.2 Tenderers must lodge their tender in accordance with the requirements set out in this **Clause 4** for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the tender not uploading successfully and/or may eliminate the bid from consideration.

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

4.4 The tender file name/s must:

(a) incorporate the tenderer's company name

(b) reflect the various parts of the bid they represent, where the tender comprises multiple files;

(c) not contain \ / : * ? " < > | characters. Check your files and re-name them if necessary; and

(d) not exceed 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 of Part 1**) or the

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

6. LATE TENDERS, INCOMPLETE TENDERS AND CORRUPTED FILES

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

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

6.3 Where a tender lodgement consists of multiple uploads, due to the number and/or size of the files, tenderers must ensure that transmission of all files is completed and receipted before the **Closing Time** and **Clause 6.2** above will only apply to the final upload.

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

7. PROOF OF LODGEMENT

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

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

8. AUSTENDER SECURITY

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

8.2 Tenderers acknowledge that:

(a) lodgement of their tender on time and in accordance with these conditions of tender is entirely their responsibility; and

(b) AusAID will not be liable for any loss, damage, costs or expenses incurred by tenderers or any other person if, for any reason, a tender or any other material or communication relevant to this RFT, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

PART 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 6 – STANDARD CONTRACT CONDITIONS

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PART 6 – STANDARD CONTRACT CONDITIONS

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

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

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

(a) is designated by AusAID as confidential; or

(b) the Contractor knows or ought to know is confidential;

(c) is comprised in or relating to the Contract Material, the Data, any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID, or the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;

(d) is personal information under the *Privacy Act 1988*, but does not include this Contract or information which:

(e) is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation; or

(f) has been independently developed or acquired by the Contractor, as established by written evidence.

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

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

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

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

departments. Details are available at:
http://www.finance.gov.au/procurement/procurement_guidelines.html.

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

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

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

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

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

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

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

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

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

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

"**Document**" includes:

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

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

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

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

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

(a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;

(b) acts of war (whether declared or not), invasion, acts of foreign enemies, mobilisation, requisition, or embargo;

(c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution, or military usurped power, or civil war; and

(d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosion, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

General

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

(a) the contractual obligations of the Parties must be interpreted and performed in accordance with the Contract as a whole;

(b) Contract clause headings are for convenience only and shall not be taken into consideration in the interpretation or construction of the Contract;

(c) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;

(d) a word denoting the singular number includes the plural number and vice versa;

(e) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;

(f) a word denoting a gender includes all genders;

(g) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Contract;

(h) where used in the Contract the words “including” or “includes” will be read as “including, without limitation” or “includes, without limitation” (as the case may be);

(i) a reference to any contract or document is to that contract or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;

(j) “shall” and “must” denote an equivalent positive obligation;

(k) a reference to any Party to this Contract, or any other document or arrangement, includes that Party's executors, administrators, substitutes, successors and permitted assigns; and

(l) a reference to "dollars" or "$" is to an amount in Australian currency.

1.2 **Counterparts of the Contract**

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

1.3 **Contract prevails**

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

1.4 **Inconsistency**

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

2. SCOPE OF CONTRACT

2.1 The Contract sets out the terms and conditions on which the Contractor agrees to secure the aims and objectives of the Project supplying, or procuring the supply of, the provision of the Services.

2.2 The activities to be performed and responsibilities assumed by the Contractor are detailed in **Schedule 1**.

2.3 Neither the Contractor, nor Contractor Personnel or Associates, shall by virtue of this Contract be, or for any purpose be deemed to be, and must not represent themselves as being, an employee, partner or agent of AusAID.

3. AUSAID'S OBLIGATIONS

3.1 AusAID must:

(a) make payments to the Contractor in accordance with the Contract; and

(b) perform, fulfill, comply with, submit to and observe the terms and conditions of the Contract, which are to be performed, fulfilled, complied with, submitted to or observed by AusAID.

4. NON-EXCLUSIVITY

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

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

5. PROVISION OF SERVICES

5.1 In providing the Services, the Contractor must:

(a) perform the Services as described in **Schedule 1** for the term of the Contract, unless the Contract is terminated earlier;

(b) accept and implement AusAID's reasonable directions in relation to the management of the Project;

(c) use its best endeavours to ensure the spirit and intent of the Project are fully met by the Services, including acting within the spirit and intent of the Treaty, MOU or Subsidiary Arrangement;

(d) liaise and cooperate with AusAID, with the stakeholders, and the Australian Diplomatic Mission in or having responsibility for the Partner Country especially in relation to security, personal safety and welfare matters;

(e) subject to any flexibility permitted in the Contract, ensure all timing obligations included in the Contract are fully met;

(f) within the term of the Contract assist AusAID in the maintenance and ongoing implementation of the Services, including monitoring and evaluating the Services to ensure results accord with the aims of the Project, and provide necessary handover assistance to any subsequent service provider and to the Partner Country;

(g) ensure that the Services are provided to a standard which shall promote Australia's international reputation and standing as a source of skill and expertise in the provision of international assistance;

(h) perform the Services in a manner which, as far as possible, establishes and maintains a harmonious, cooperative and effective working relationship with stakeholders and any personnel from the Partner Country involved in the Project;

(i) if a Risk Management Plan for the Project has not been prepared prior to the Project Start Date, the Contractor must prepare a Risk Management Plan as part of the Operations and Procedures Handbook within three (3) months after the Project Start Date;

(j) the Contractor must maintain and update the Risk Management Plan, as necessary, to ensure that at all times it adequately reflects Project risks and includes risk-minimisation strategies. The Contractor must promptly advise AusAID of any significant risks in accordance with **Clause 6 below**. The Contractor must also ensure the Risk Management Plan contains provisions for advance notification of AusAID of risks that may lead to disruption or delay of the Project;

(k) liaise with, and obtain all necessary consents, approvals and authorisations from any public and other authorities in the Partner Country;

(l) provide adequate support resources to secure the aims and objectives of the Project;

(m) be responsive to the changing needs and environment of the Partner Country; and

(n) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity.

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

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

6. EARLY NOTIFICATION

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

7. CONTRACTOR PERSONNEL

7.1 The Contractor must ensure that Contractor Personnel are aware of, and must use its best endeavours to ensure Contractor Personnel comply with, the requirements of the Contract.

7.2 The Contractor must use its best endeavours to ensure that all Contractor Personnel are of good fame and character.

7.3 The Contractor must use its best endeavours to ensure that all Contractor Personnel conduct themselves in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct.*

7.4 The Contractor must use its best endeavours to ensure that all Contractor Personnel and their accompanying family members while in-country:

(a) are aware of local laws, culture and customs in the Partner Country; and

(b) act in a fit and proper manner.

7.5 The Contractor must use its best endeavours to ensure that no Contractor Personnel or their accompanying family members:

(a) become involved in the political affairs of the Partner Country (unless citizens of the Partner Country);

(b) interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country); or

(c) share information known as a result of their work on, or relationship to, the Project,

in a way that a reasonable person could foresee may be detrimental to the relationship between the Australian and Partner Governments.

7.6 The Contractor must not employ a currently serving Commonwealth employee in any capacity in connection with the Services without the prior written approval of AusAID.

7.7 The Contractor must ensure that media advertisements placed by the Contractor for personnel to fill a Project position acknowledge that the Project is funded by AusAID as part of the Australian Government's official overseas aid program.

7.8 AusAID may give notice to the Contractor requiring the Contractor to remove any Contractor Personnel from work in respect of the Services. The Contractor must promptly arrange for the removal of such Contractor Personnel from work in respect of the Services and their replacement (if required) with Contractor Personnel acceptable to AusAID.

7.9 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Contractor Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.

7.10 The Contractor must advise AusAID immediately in writing if any Contractor Personnel is arrested for, or convicted of, criminal offences relating to child abuse, or for accessing or possessing child pornography. AusAID may require Contractor Personnel under formal investigation in relation to such criminal offences to be suspended from duty or transferred to other duties during the investigation.

7.11 AusAID may give notice to the Contractor requiring the Contractor to temporarily suspend from duty, or transfer to other duties, any Contractor Personnel who are under criminal or internal investigation in relation to child abuse or accessing or possessing child pornography. The Contractor must comply promptly with any such notice.

8. SPECIFIED PERSONNEL

8.1 The Contractor must provide all Specified Personnel for the Project and for the minimum periods specified in **Schedule 1**.

8.2 During the minimum periods specified in **Schedule 1**, the Long Term Advisers included in the Specified Personnel must be exclusively dedicated to the Project and only perform the duties required under this Contract unless otherwise agreed in writing by AusAID.

8.3 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:

(a) are properly qualified for the tasks they are to perform;

(b) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner; and

(c) are adequately briefed and understand the environment and culture of the Partner Country.

8.4 The Contractor must use its best endeavours to secure the availability of Specified Personnel for the term of the Contract. If a change to Specified Personnel is required the Contractor must provide AusAID with not less than 3 months prior written notice of such change except where circumstances beyond the reasonable control of the Contractor make the giving of such notice impracticable. Any proposed change to the Specified Personnel must only be made after written consent from AusAID and in accordance with the procedure set out in **Clause 8.8 below**.

8.5 Subject to **Clause 8.4 above**, Specified Personnel may be temporarily absent from the Project. Where Specified Personnel are unavailable for work in respect of the Contract, for any period in excess of 2 weeks, the Contractor must notify AusAID in writing immediately and, if requested, must provide replacement personnel acceptable to AusAID and the Partner Government at no additional charge and at the earliest opportunity and for the duration of the absence.

8.6 The costs incurred by the Contractors in providing temporary substitute personnel due to the absence of Specified Personnel are the responsibility of the Contractor.

8.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Specified Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.

8.8 Before appointing Specified Personnel to the Project, the Contractor must obtain AusAID's written approval. In seeking approval of proposed Specified Personnel the Contractor must provide to AusAID:

(a) the full names, dates of birth, and nationalities of proposed personnel and their accompanying dependants;

(b) a statement demonstrating that the proposed personnel has the demonstrated skills and capacity to undertake the job specification of the position and duration of the proposed appointment;

(c) a copy of the proposed person's curriculum vitae certified as accurate by the person and showing recent and relevant experience and formal qualifications including dates of award; and

(d) assurances that the nominated personnel has no existing commitments (defined in relation to the commitments of the position and not the individual's commitment to a particular organisation), to other AusAID projects that will suffer detriment if accepted on this Project. If this is not the case AusAID may require further information before assessing the individual's suitability.

8.9 If the Contractor is unable to provide acceptable replacement Specified Personnel with equivalent qualifications and experience AusAID may seek a reduction in fees.

8.10 This clause is a fundamental term of the Contract, such that breach shall entitle AusAID to terminate the Contract in accordance with **Clause 31** and sue for damages.

9. PROJECT VEHICLE CONTRIBUTION

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

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

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

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

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

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

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

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

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

10. PROCUREMENT SERVICES

10.1 In procuring all Supplies, the Contractor must:

(a) determine what Supplies are required for proper implementation of the Services and advise AusAID;

(b) keep AusAID informed of ongoing requirements for Supplies in connection with the Project;

(c) implement procedures so that procurement is undertaken in a manner that is consistent with the Commonwealth Procurement Guidelines, in particular, observing the Core Principle of achieving value for money and the supporting principles;

(d) maintain complete and accurate records documenting the procedures followed in procuring, and the particulars of Supplies; and

(e) use its best endeavours to ensure Supplies are maintained including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed.

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

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

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

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

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

11. SUB-CONTRACTING

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

(a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;

(b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;

(c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:

(i) comply with relevant and applicable laws, regulations and development policies, including AusAID's *Child protection policy* (http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments) and child protection compliance standards (Attachment 1 to the policy), both in Australia and in the Partner Country, and also *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (http://www.ausaid.gov.au/keyaid/health.cfm);

(ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;

(iii) be bound by the same obligations regarding **Clauses 15** (Accounts and Records), **18** (Audits), **19** (Access to Premises), **26** (Privacy), and **35.4** (Anti-corruption) **below** and as required by Project Specific Conditions **Clause 3** (Accounts and Records) as the Contractor; and

(iv) be bound by appropriate obligations in relation to ongoing software licensing, computer maintenance requirements and handover arrangements to the Partner Country;

(d) if requested by AusAID, the Contractor must provide to AusAID an executed Deed of Novation and Substitution in the form at **Schedule 4** (Deed of Novation), contemporaneously with or within 10 Business Days of execution of the sub-contract by the Contractor;

(e) the sub-contract must include the right of AusAID, in the event of AusAID issuing a notice of substitution under the Deed of Novation at **Schedule 4** (Deed of Novation), to further novate the sub-contract to another contractor;

(f) the Contractor must maintain up-to-date records of the names of all sub-contractors engaged by the Contractor to perform part of the Services. If requested by AusAID, the Contractor must, within five (5) working days, provide to AusAID a copy of the records of sub-contractors' names, in the format specified by AusAID. The sub-contract must include the right of AusAID to disclose the name of the sub-contractor, in accordance with **Clause 27 (AusAID Use of Contract Information) below**;

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

(h) if requested by AusAID, the Contractor must provide to AusAID a copy of any proposed or executed sub-contract.

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

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

12. CONTRACT AMENDMENT

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

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

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

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

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

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

13. EXTENSION OF TIME

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

(a) a Force Majeure Event;

(b) a significant change in circumstances beyond the control of the Contractor;

(c) an Australia-wide or Partner Country-wide industrial dispute; or

(d) a change in the laws of Australia or the Partner Country that directly impacts on the provision of the Services.

13.2 Where in the Contractor's reasonable opinion there is likely to be a delay in the Contractor's discharging an obligation under the Contract because of a Relevant Cause the Contractor must:

(a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;

(b) give details of the likely effect on the Project and any Contractual implications;

(c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;

(d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances in the form of an Amendment Proposal in accordance with **Clause 12.5 above**; and

(e) use its best endeavours to continue to perform its obligations under the Contract.

13.3 AusAID must give consideration to the Contractor's recommendations and request for an extension of time and as soon as practicable after receiving the request notify the Contractor in writing whether it has determined that a Relevant Cause has occurred and whether all or part of the request has been granted. AusAID's approval of a request may be granted subject to conditions.

13.4 If AusAID approves in writing a request, the extension of time and any approved changes to the Contract will be documented in a "Deed of Amendment". The Contract shall be deemed to have been varied once the Deed of Amendment is signed by both the Contractor and AusAID.

13.5 Even if the Contractor has not given notice under **Clause 13.2 above**, where AusAID considers that a delay has arisen, in whole or in part, because of an act or omission on the part of AusAID, its employees or agents, AusAID may, by notice in writing to the Contractor, extend the time for performance of the relevant obligation of the Contractor.

13.6 Where AusAID has determined that a Relevant Cause has occurred, and the Contractor's inability to perform its obligations due to a Relevant Cause exceeds 45 Business Days, AusAID may:

(a) notify the Contractor that the Contract is suspended for a specified period of time; or

(b) delete part of the Services; or

(c) immediately or thereafter terminate the Contract in whole or in part by providing notice in writing to the Contractor.

13.7 A notice of suspension, deletion or termination of the Contract under **Clause 13.6 above** takes effect on the date that the notification is received by the Contractor.

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

14. HANDOVER

14.1 The Contractor must within 12 months of the Project Start Date draft a Handover Plan which includes all the functions to be performed to hand over Contract Material, Supplies, information, documents and other materials to the Partner Country in a manner which

ensures the Partner Country is able to benefit from the Project and in particular enables the Partner Country to manage ongoing maintenance requirements, as well as any other matters specified in **Schedule 1.** The Contractor must provide a copy of the Draft Handover Plan to AusAID within 12 months of the Project Start Date.

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

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

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

(a) deliver to AusAID or its nominee complete copies of all the Data and Contract Material, in a form and on a media approved by AusAID, and any other AusAID property including the Supplies;

(b) either destroy or deliver to AusAID all copies of AusAID Confidential Information as required by AusAID;

(c) if requested by AusAID, facilitate the assignment to AusAID, AusAID's nominee or to the Partner Country of sub-contracts relating to Supplies, including for licensing and support of information technology and any construction work maintenance;

(d) vacate the Project Office where this has been supplied by AusAID or the Partner Country;

(e) co-operate with AusAID and, if requested, AusAID's nominee, and provide reasonable assistance relating to the transfer of any contracts to AusAID, its nominee or the Partner Country;

(f) provide to AusAID or, if requested, to AusAID's nominee all information, including Data and Contract Material, necessary for an alternative service provider to assume provision of the Services;

(g) continue the provision of the Services for as long as reasonably requested by AusAID on the terms and conditions of the Contract;

(h) cooperate with AusAID and any other service provider in the ongoing provision of services similar to the Services; and

(i) allow AusAID to audit compliance with this clause.

15. ACCOUNTS AND RECORDS

15.1 The Contractor must at all times maintain full, true, separate and up-to-date accounts and records in relation to the Fees, Supplies and the Services. Such accounts and records must:

(a) record all receipts and expenses in relation to the Supplies and Services, including those involving foreign exchange transactions;

(b) be kept in a manner that permits them to be conveniently and properly audited;

(c) enable the extraction of all information relevant to this Contract;

(d) contain details of the disposition of Supplies as agreed to by AusAID such as replacement, write-off or transfer to the Partner Country; and

(e) the Contractor shall provide to AusAID a statement of Project expenditure on a regular basis for the duration of the Project. The details of the timing and content of the statement of expenditure are defined in Part A Project Specific Contract Conditions.

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

15.3 The accounts and records must be held for the term of this Contract and for a period of seven (7) years from the date of expiry or termination of this Contract.

16. REPORTS

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

16.2 The Contractor is responsible for any extra costs occasioned by any clarifications, discrepancies, errors or omissions in reports provided to AusAID or other information supplied in writing by the Contractor, provided such discrepancies, errors or omissions are not due to inaccurate information supplied in writing to the Contractor by AusAID.

16.3 AusAID may reject and withhold payment of Fees for any report which does not conform to the requirements of the Contract until the Contractor rectifies the report.

17. REVIEWS

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

17.2 The Contractor must participate cooperatively in any reviews conducted by AusAID or its nominees. In addition the Contractor must respond in writing to any draft review report within 28 days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.

17.3 Reviews may be conducted of:

(a) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services, including procurement and risk management procedures;

(b) the accuracy and reliability of the Contractor’s financial management systems;

(c) the Contractor’s compliance with their obligations under the Contract in relation to foreign exchange transactions;

(d) the accuracy of the Contractor's reports in relation to the provision of the Services;

(e) the Contractor's compliance with AusAID's *Child protection policy* and child protection compliance standards (Attachment 1 to the policy);

(f) the Contractor's compliance with its Contractor Personnel, confidentiality and privacy obligations; or

(g) any other matters relevant to the performance of any Services including user satisfaction.

17.4 Each Party must bear its own costs of any such reviews conducted by or on behalf of AusAID.

17.5 The requirement for, and participation in, reviews does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

18. AUDITS

18.1 Where AusAID has reasonable concerns regarding the Contractor's financial management systems AusAID must provide the Contractor with written notification of those concerns and what action is required of the Contractor. This may include:

(a) that the Company Director must provide a Statutory Declaration confirming that they have sighted the necessary supporting documentation and confirm the veracity of the claim for payment;

(b) providing AusAID with additional documentation to support the claim for payment; or

(c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including invoicing procedures and practices.

18.2 The Contractor must respond to any notice received under **Clause 18.1 above** within 14 days.

18.3 Where the Contractor does not respond within 14 days, or the response does not alleviate AusAID's concern, AusAID reserves the right, if it has not already done so, to direct the Contractor to provide AusAID with certification from an independent auditor as described in **Clause 18.1(c) above**.

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

(a) the terms of reference must be agreed in writing by AusAID;

(b) the audit must be undertaken according to the standards of the professional body relevant to the particular audit and those standards must be detailed in the terms of reference;

(c) the Contractor will bear the total cost of the audit; and

(d) AusAID will not make any further payments owed to the Contractor pending certification of the reliability of the Contractor's financial management systems and the veracity of the invoicing procedures and practices.

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

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

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

(a) during the hours of 9 am and 5 pm on a Business Day;

(b) except in the case of a breach of this Contract, subject to reasonable prior notice; and

(c) at no additional charge to AusAID.

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

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

20. PAYMENT

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

(a) AusAID's acceptance of the satisfactory completion of the Services or relevant Payment Milestone as specified in **Schedule 2**; and

(b) receipt of a correctly rendered invoice.

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

20.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.

20.4 The Contractor must make all foreign exchange transactions at arms length and at commercially competitive rates. Supporting documentation must be retained in accordance with Standard Conditions **Clause 15.1** (Accounts and Records) and may be audited by AusAID in accordance with Standard Conditions **Clause 17** (Reviews).

20.5 Where the Contractor is entitled to reimbursement for expenditure in a currency other than Australian dollars under this Contract, the Contractor must invoice AusAID for the equivalent Australian dollar amount as recorded by the Contractor in their general ledger converted at an exchange rate which is calculated in accordance with appropriate accounting standards.

20.6 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.

20.7 Subject to the Contract AusAID shall pay Reimbursable Costs within 30 days of receipt of a correctly-rendered invoice.

20.8 An invoice is correctly rendered if:

(a) the invoice details all Services provided against the Fees and records the amount payable in respect of each category of Services described in the Contract;

(b) the invoice details the Contractor's monthly contribution toward Project Vehicles in accordance with **Clause 9.2**;

(c) the invoice is based upon the calculation of Fees referred to in **Schedule 2**; and

(d) a company director of the Contractor, or their delegate has certified that the invoice:

(i) has been correctly calculated;

(ii) that the Services included in it have been performed in accordance with this Contract; and

(iii) in the case of Reimbursable Costs that these costs have been paid.

20.9 If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Contractor, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due from AusAID to the Contractor.

20.10 A payment by AusAID is not an admission of liability. In the event that AusAID makes a payment for the completion of a Payment Milestone or the procurement of Supplies or inputs that AusAID subsequently learns have not been completed to the quality or performance specifications required or provided as required, the payment shall be deemed an overpayment and recoverable from the Contractor. Without limiting recourse to other available remedies, the overpayment may be offset against any amount subsequently due to the Contractor.

20.11 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.

20.12 AusAID need not pay any amount due to the Contractor until the Contractor delivers to AusAID a written statement which satisfies the requirements of section 127 of the *Industrial Relations Act 1996* (NSW) or the requirements of similar State or Territory legislation, in relation to the payment of employees or sub-contractors of the Contractor who were engaged in the performance of the Contract.

20.13 Except as otherwise specified in this Contract, the Fees are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Contractor in providing the Services.

20.14 If the Contractor does not have an Australian Business Number (ABN), AusAID, in accordance with the relevant provisions of the Pay as You Go (PAYG) legislation, shall be required to withhold a prescribed proportion of the amount payable to the Contractor under the Contract, unless the exceptions under Division 12 of the PAYG legislation apply.

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

21. GOODS AND SERVICES TAX

21.1 Except as provided by this clause, all taxes, duties and charges imposed or levied in Australia in connection with the performance of this Contract shall be borne by the Contractor or its sub-contractor(s), as the case requires.

21.2 The amount shown against each item in **Schedule 2** is the 'value' of the 'periodic supplies' to be made under this Contract, as these terms are used in the *A New Tax System Act 1999* (Cth).

21.3 The amount payable under the Contract for each supply listed in **Schedule 2** is the value of that supply plus any GST payable by the Contractor under the GST legislation. Payment by AusAID to the Contractor of the GST shall be subject to the Contractor providing AusAID with a valid Tax Invoice issued in accordance with the relevant provisions of the GST legislation and regulations.

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

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

22. INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

23. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

23.1 The Contractor must at all times indemnify AusAID, its employees and agents and the Partner Country ("**those indemnified**") from and against any Loss or liability whatsoever

incurred by any of those indemnified or arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such Loss or liability arose out of an infringement, or an alleged infringement, of the Intellectual Property rights of any person, which occurred by reason of the performance or use of the Services.

24. MORAL RIGHTS

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

25. CONFIDENTIALITY

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

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

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

25.4 The Contractor may disclose AusAID Confidential Information:

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

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

(c) if required in connection with legal proceedings,

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

25.5 The Contractor must not transfer AusAID Confidential Information outside Australia, except to the Partner Country, or allow parties outside Australia to have access to it, without the prior approval of AusAID.

25.6 The Contractor must use AusAID Confidential Information held, acquired or which the Contractor may have had access to in connection with this Contract only for the purposes of fulfilling its obligations under this Contract. Upon expiry or earlier termination of this Contract the Contractor must either destroy or deliver to AusAID all AusAID Confidential Information, as required by AusAID.

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

26. PRIVACY

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

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

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

(a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;

(b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;

(c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;

(d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;

(e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to10) where that section or NPP is applicable to the Contractor, unless:

(i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or

(ii) in the case of a NPP – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorized by this Contract is inconsistent with the NPP;

(f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with a NPP binding a party to this Contract;

(g) to immediately notify AusAID if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any sub-contractor;

(h) not to transfer such information outside Australia, except to the Partner Country, or to allow parties outside Australia or the Partner Country to have access to it, without the prior approval of AusAID; and

(i) to ensure that any employee of the Contractor who is required to deal with Personal Information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause.

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

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

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

27. AusAID USE OF CONTRACT INFORMATION

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

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

28. PUBLICITY

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

28.2 The Contractor must not make any press, media or other announcements or releases relating to this Contract and the Services without the prior approval of AusAID Public Affairs Group as to the form, content and manner of the announcement or release.

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

28.4 The Contractor shall, if appropriate, erect a sign at each Project site that acknowledges the contributions of the Australian and Partner Governments. Such signs shall in all cases be discussed and agreed between AusAID and the Partner Government. Signs should use the Australian Government/AusAID logo (in-line version). No independent project or program logos or emblems are to be used. Contractor signs may also be displayed, but not in greater number or prominence than acknowledgments to either the Australian or Partner Governments.

29. WARRANTIES

29.1 The Contractor represents and warrants that it has made its own assessment of all information made available to the Contractor in respect of the Services and sought appropriate professional advice concerning:

(a) any information, statements or representations;

(b) the regulatory regime applicable to the delivery of the Services both in Australia and in the Partner Country;

(c) the assumptions, uncertainties and contingencies which may affect the future business of the Services; and

(d) the impact that a variation in future outcomes may have on any Services.

29.2 Subject to any law to the contrary, and to the maximum extent permitted by law, AusAID, its employees, agents and advisers each disclaim all liability for any Losses (whether foreseeable or not) suffered by any other person acting on any part of the information made available to the Contractor in respect of the Service, whether or not the loss arises in connection with any negligence, default or lack of care on the part of AusAID, its employees, agents or advisers or any other person or any misrepresentation or any other cause.

29.3 The Contractor warrants that it shall have full corporate power and authority to enter into, perform and observe its obligations under this Contract and that the execution, delivery and performance of this Contract shall be duly and validly authorised by all necessary corporate action.

30. PERSONNEL SECURITY

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

30.2 The Contractor is responsible for the immediate development and implementation of a Security Plan to ensure the safety and security of Contractor Personnel. The Security Plan should incorporate prevention strategies and response plans, including evacuation plans where appropriate. The Contractor shall submit a copy of the Security Plan to AusAID prior to mobilisation in the Partner Country. The Contractor shall review and update the Security Plan whenever considered necessary by the Contractor and shall submit the revised document to AusAID.

30.3 The Contractor must keep abreast of the security situation in the Partner Country including where relevant having regard to travel advisories and notices including those issued by the Australian Department of Foreign Affairs and Trade. The Australian advisories and notices are available at: www.dfat.gov.au

30.4 The Contractor acknowledges and confirms that, notwithstanding any other provisions of the Contract:

(a) it is not the function or responsibility of AusAID or any person acting or purporting to act on behalf of AusAID, to comment on or approve the Contractor's Security Plans; and

(b) the Contractor has not entered the Contract based on any representation, statement or assurance by AusAID or any person acting or purporting to act on behalf of AusAID, in respect of the safety or security of the Contractor, Contractor Personnel or any person acting on behalf of the Contractor, in the Partner Country or in any other location.

31. TERMINATION FOR CONTRACTOR DEFAULT

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

(a) commits a breach of this Contract and:

(i) that breach is not capable of remedy;

(ii) fails to remedy that breach within **[10]** Business Days (or such further time as AusAID may, in its absolute discretion, specify), after receiving a notice from AusAID requiring the Contractor to remedy the breach; or

(iii) does not commence to remedy that breach, within a reasonable time (having regard to the nature of the breach) after being given notice by AusAID requiring the Contractor to remedy the breach;

(b) becomes, or in AusAID's reasonable opinion is likely to become, bankrupt, insolvent or otherwise financially unable to fulfil its obligations under this Contract;

(c) becomes subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act* 2001;

(d) is wound up by resolution or an order of the court;

(e) ceases to carry on business;

(f) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;

(g) suffers any execution against its assets having, or which in AusAID's reasonable opinion is likely to have, an adverse effect on its ability to perform this Contract;

(h) ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Contract (except to the extent that this is outside the Contractor's reasonable control);

(i) assigns its rights otherwise than in accordance with the requirements of this Contract;

(j) suffers a change in Control which in AusAID's reasonable opinion may adversely affect the Contractor's ability to perform the Services under this Contract;

(k) is in breach of the warranty, regarding listing on a World Bank List or Relevant List, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;

(l) is, during the term of this Contract, listed on a World Bank List or Relevant List;

(m) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, bribery of a public official, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;

(n) is in breach of the warranty, regarding unsettled judicial decisions relating to employee entitlements, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;

(o) is, during the term of this Contract, convicted of an offence of, or relating to, bribery of a public official. In this Clause 31.1(o) the Contractor includes Contractor Personnel;

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

(q) is in breach of the warranty, regarding the good fame and character of Contractor Personnel, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract.

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

(a) subject to this Contract, the parties are relieved from future performance of this Contract, without prejudice to any right of action that has accrued at the date of termination;

(b) subject to this Contract, all licences and authorisations granted to the Contractor by AusAID under this Contract terminate immediately despite anything to the contrary contained in the relevant licence or authorisation;

(c) the AusAID Confidential Information, Supplies and any other property supplied or given to the Contractor by AusAID pursuant to this Contract must be immediately returned to AusAID;

(d) AusAID is not obliged to make any further payments (including the payment of Fees) to the Contractor. However, AusAID may, in its absolute discretion, consider making a payment to the Contractor in such amount and upon such terms as AusAID determines is appropriate in the circumstances; and

(e) the Contractor will indemnify and hold AusAID harmless against any Losses, costs and expenses arising out of or in connection with the termination or any breach of this Contract by the Contractor (including those arising from affected sub-contracts).

32. TERMINATION FOR CONVENIENCE

32.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor, terminate or reduce the scope of this Contract from the time specified in the notice (and without the need to give further notice) and, in that event, AusAID may give to the Contractor such directions as it thinks fit in relation to subsequent performance of this Contract.

32.2 Where notice is given under **Clause 32.1** the Contractor must:

(a) comply with all directions given by AusAID;

(b) cease or reduce (as applicable) the performance of work under the Contract; and

(c) immediately do everything possible to mitigate its Losses, and all other loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination (including those arising from affected sub-contracts) arising in consequence of termination of this Contract under this **Clause 32**.

32.3 In the event of termination or reduction in scope under this **Clause 32**, subject to **Clause 32.4**, AusAID will only be liable to the Contractor for:

(a) Fees, as payable under **Schedule 2**, for Services performed prior to the termination, on a pro rata basis; and

(b) Costs that are:

(i) directly attributable to the termination or reduction in scope of this Contract; and

(ii) in AusAID's opinion, reasonably and properly incurred by the Contractor in connection with the Contract,

to the extent that such Costs are substantiated to AusAID.

32.4 AusAID is not liable for any loss of profits or any other form of expectation loss arising out of, or in connection with, the termination or reduction in scope of this Contract under this **Clause 32**.

33. INDEMNITY

33.1 The Contractor must at all times indemnify AusAID, its employees, agents and contractors (except the Contractor) ("**those indemnified**") from and against any Loss or liability whatsoever suffered by those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such Loss or liability was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the Contractor, or any Contractor Personnel in connection with this Contract.

33.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 33.1 above** for the benefit of each of such persons in the name of AusAID or of such persons.

33.3 The indemnity in this clause is reduced to the extent that the Loss or liability is directly caused by AusAID, its employees or contractors (except the Contractor), as substantiated by the Contractor.

33.4 The Contractor is responsible for all risks associated with the Data, the Supplies and any AusAID property while in the possession or control of the Contractor.

33.5 This indemnity shall survive termination or expiration of this Contract.

34. INSURANCE

34.1 The Contractor must arrange and maintain for the duration of the Contract unless otherwise specified:

(a) public liability insurance with a limit of at least $5 million for each and every claim which covers:

(i) loss of, or damage to, or loss of use of any real or personal property; or

(ii) personal injury to, illness (including mental illness) or death of any person arising from the performance of the Contract;

(b) motor vehicle third party property damage insurance;

(c) workers' compensation insurance:

(i) which fully insures the Contractor for any amount it becomes liable to pay under any statute relating to workers' or accident compensation or for employer's liability at common law;

(ii) to be effected in the Partner Country as well as every state or territory in Australia where the Contractor Personnel normally reside or in which their contract of employment was made; and

(iii) which, where possible at law extends to indemnify AusAID as principal for AusAID's liability to persons engaged by the Contractor.

Where there is no workers compensation legislation in force in the Partner Country the Contractor should arrange adequate personal accident and illness insurance (accidental death and weekly benefits) for any Contractor Personnel not otherwise covered for the duration of the Contract;

(d) property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value;

(e) professional indemnity insurance to cover the Contractor's obligations under this Contract. The Contractor's professional indemnity policy must respond to claims arising under the *Trade Practices Act (Cth)* 1974, in regard to this Contract. The Contractor may obtain the insurance on an annual basis if necessary, but must maintain the necessary insurance each year until the expiration of three (3) years after the full Term of the Contract or earlier termination of the Contract;

(f) adequate medical and dental insurance for Contractor Personnel who are engaged to operate outside their country of permanent residence; and

(g) adequate insurance for medical evacuation and evacuation resulting from an insured event for all Contractor Personnel.

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

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

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

35. CONFLICT OF INTEREST

Conflict of Interest

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

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

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

Anti-Corruption

35.4 The Contractor warrants that the Contractor shall not make or cause to be made, nor shall the Contractor receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt act, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Contract. In addition, the Contractor shall not bribe public officials and shall ensure that all Contractor Personnel comply with this provision. Any breach of this clause shall be grounds for immediate termination of this Contract under Standard Conditions **Clause 31** (Termination for Contractor Default) by notice from AusAID.

36. FRAUD

36.1 For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means.

36.2 The Contractor and its sub-contractors must not engage in any fraudulent activity.

36.3 The Contractor must prepare a fraud risk assessment and zero tolerance fraud control strategy. These must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures that comply with the *Commonwealth Fraud Control Guidelines*.

36.4 The Contractor is responsible for preventing and detecting fraud including fraud within those functions outsourced / performed by a sub-contractor or under any other arrangement established by the Contractor relating to the management or administration of AusAID provided funds. The Contractor is responsible for ensuring that its staff and its subcontractors' staff are responsible and accountable to the Contractor for preventing and reporting any fraud or suspected fraud as part of their routine responsibilities.

36.5 The Contractor must report in writing within 5 working days to AusAID any detected, suspected, or attempted fraudulent activity involving AusAID provided funds. Where a matter is reported in writing to AusAID by a Contractor, the advice must provide where known:

(a) the name of the Project under which AusAID funding is being provided;

(b) name of any personnel or subcontractors involved;

(c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);

(d) the names of the suspected offender(s) (where known);

(e) details of witnesses;

(f) copies of relevant documents;

(g) references to any relevant legislation;

(h) a nominated contact officer;

(i) any other relevant information (eg, political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and

(j) the current status of any inquiries commenced by the Contractor.

36.6 The Contractor must, in consultation with AusAID, develop and implement a strategy to investigate the detected, suspected or attempted fraud based on the principles set out in the *Australian Government Investigations Standards* which are available from AusAID when a demonstrated need to distribute them exists. The Contractor will be responsible for the conduct of the investigation. Any investigator appointed by the Contractor should possess the minimum qualifications specified in the *Commonwealth Fraud Control Guidelines.* Before engaging a qualified investigator, the Contractor may consult with AusAID regarding the appointment and may request assistance from AusAID in meeting the actual costs of a qualified investigator. Provided that the Contractor has consulted with AusAID before engaging an investigator, AusAID may in its absolute discretion agree to meet some or all of those costs.

36.7 AusAID reserves the right to appoint its own investigator, conduct the investigation, conduct a concurrent investigation or refer the allegations to the appropriate law enforcement agencies or any other person or entity AusAID deems appropriate in Australia or in the partner countries for investigation. In this instance the Contractor shall provide all assistance that may be required at the Contractor's sole expense.

36.8 Following the conclusion of an investigation, where a suspected offender has been identified, the Contractor must report all alleged, suspected or detected cases of fraud to the local police and any other appropriate law enforcement agency in the country where the incident has occurred, unless the Director of the Audit section of AusAID agrees otherwise in writing.

36.9 Following the conclusion of an investigation, where the investigation finds the Contractor, an employee of the Contractor or a subcontractor of the Contractor has acted in a fraudulent manner, the Contractor shall:

(a) where money has been misappropriated, pay to AusAID or the project the full value of the AusAID funds that have been misappropriated; or

(b) where an item of property has been misappropriated, either return the item to AusAID or the project or if the item cannot be recovered or has been damaged so that it is no longer usable, replace the item with one of equal quality.

36.10 Following the conclusion of an investigation, where the investigation finds that a party other than the Contractor, an employee of the Contractor or a subcontractor of the Contractor, has acted in a fraudulent manner, the Contractor shall at the Contractor's cost make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, taking recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country. Before commencing any recovery action, the Contractor may consult with AusAID regarding the proposed course of action and may request assistance from AusAID in meeting the costs of the recovery action. Provided that the Contractor has consulted with AusAID before commencing recovery action, AusAID may in its absolute discretion agree to meet some or all of those costs.

36.11 The Contractor must keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.

36.12 If the Contractor considers that after all reasonable action has been taken to recover the funds or funded property and full recovery has not been achieved or recovery has only been achieved in part, the Contractor may seek approval from AusAID that no further recovery action be taken. The Contractor must provide to AusAID all information, records and documents required by AusAID to enable the AusAID delegate to make a decision on whether to approve non-recovery of funds or funded property.

36.13 In the event that any investigation finds that the contractor, an employee of the Contractor or a subcontractor of the Contractor has been involved in any fraudulent activity, or in the event that AusAID discovers that a suspected, attempted or detected fraud has not been reported to AusAID, AusAID, at AusAID's sole discretion, reserves the right to:

(a) Terminate the Contract with the Contractor, in which event, AusAID shall not be liable to the Contractor for any claim, demand, proceeding suit or action by the Contractor, and the Contractor shall indemnify, defend and hold harmless AusAID from any claim, demand, proceeding suit or action from any party or individual resulting from such termination; and / or.

(b) Not enter into any further agreement with the Contractor until such time as AusAID is satisfied that any recommended changes to the Contractor's management and procedures have been made in order to prevent any further fraudulent activity from occurring and to ensure timely reporting of suspected, attempted or detected fraud to AusAID.

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

(a) any fraud detected by the Contractor before the date of termination or expiry of this Contract but the Contractor had not commenced an investigation under **Clause 36.6** before that date,

(b) any investigation commenced by the Contractor under **Clause 36.6**, but not completed, before the date of termination or expiry of this Contract, and

(c) any investigation commenced by AusAID under **Clause 36.7**, but not completed, before the date of termination or expiry of this Contract.

37. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

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

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

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

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

(a) complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;

(b) informing AusAID of any adverse court of tribunal decision for a breach of workplace relations law, occupational health and safety laws, or workers' compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;

(c) providing AusAID any information AusAID reasonably requires to confirm that the Contractor (and any subcontractor) is complying with the Fair Work Principles;

(d) participate in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.

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

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

37.7 As far as practicable, the Contractor must:

(a) not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and

(b) ensure that all subcontractors impose obligations on subcontractors equivalent to the obligations under **Clauses 37.4** to **37.7** in this **Part B** of this Contract.

37.8 In addition to any other rights or remedies it has at law or in equity, or under this Contract, AusAID may, by notice in writing to the Contractor, terminate this Contract, with effect

from the date in the notice, if the Contractor is in breach of Clause **37.4** above in this **Part B** of this Contract.

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

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

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

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

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

(a) the policy Gender Equality in Australia's Aid Program – Why and How (March 2007);

(b) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014', and in particular the strategy's six guiding principles, located at http://www.ausaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;

(c) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child Protection Policy*;

(d) *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (http://www.ausaid.gov.au/keyaid/health.cfm);

(e) Environment. AusAID is bound by the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:

1. ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;

2. comply with AusAID's Environmental Management System outlined in the *Environmental Management Guide for Australia's Aid Program*, including:

a. assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;

b. report regularly on any such impacts as required by the Scope of Services; and

3. comply with all relevant environmental laws and regulations of the Partner Country.

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

38. INVESTIGATION BY THE OMBUDSMAN

38.1 In carrying out the Services, the Contractor, and an employee or subcontractor of the Contractor, may be a "Commonwealth service provider' under section 3BA of the Ombudsman Act 1976.

38.2 The Contractor must use its best endeavours, and must ensure that employees and subcontractors of the Contractor use their best endeavours, in undertaking the Services, not to engage in conduct that:

(a) would, if the Contractor or an employee or subcontractor were an officer of AusAID, amount to a breach of duty or to misconduct; or

(b) should be brought to the attention of the principal officer of AusAID.

38.3 If the Commonwealth Ombudsman commences an investigation of conduct of the Contractor, as a Commonwealth service provider, the Contractor, at the cost of the Contractor, must cooperate with the investigator including:

(a) providing all documentation required by the investigator,

(b) making Contractor Personnel available to assist the investigator and

(c) allowing the investigator, at any reasonable time of the day, to enter a place occupied by the Contractor and carry on the investigation at that place.

38.4 If the Ombudsman brings evidence to the notice of AusAID concerning the conduct of the Contractor, or of an employee or subcontractor of the Contractor, the Contractor must, at the cost of the Contractor, take whatever remedial action is required by AusAID or by the Ombudsman to rectify the situation.

38.5 The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including this requirement in relation to subcontracts.

38.6 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID, due to conduct of the Contractor or of an employee or subcontractor, which arise directly or indirectly, as a result of an investigation carried out by the Ombudsman.

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

39. RESOLUTION OF DISPUTES

39.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Contract. Subject to **Clause 20.11** (Payment) and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Contract.

39.2 A Party may give the other Party a notice of dispute ("**dispute notice**") in connection with this Contract. Following the giving of a dispute notice, the dispute must be referred to a senior officer of AusAID and a senior officer of the Contractor, who must use reasonable endeavours to resolve the dispute within 20 Business Days or such other period as is agreed by the Parties.

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

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

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

40. NOTICES

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

(a) when delivered (if left at that Party's address);

(b) on the third Business Day after posting (if sent by pre-paid mail); or

(c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice

had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

41. MISCELLANEOUS

41.1 Waiver

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

41.2 Liability of Party

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

41.3 Entire agreement

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

41.4 Severance

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

41.5 Assignment

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

41.6 Governing Law and Jurisdiction

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

41.7 Contra Proferentem

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

41.8 False and Misleading Information

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

SCHEDULE 1 – SCOPE OF SERVICES

Note to Tenderers: Part 3 of this RFT will appear as Schedule 1 of the consolidated contract.

SCHEDULE 2 – BASIS OF PAYMENT

Note to Tenderers: Part 4 of this RFT will appear as Schedule 2 of the consolidated contract.

SCHEDULE 3 - DEED OF CONFIDENTIALITY

THIS DEED POLL is made on the day of [ ]

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

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

RECITALS

A. AusAID and **Contractor's Name** (the "**Contractor**") have entered into a Contract for the purpose of a project in **Country**.

B. The Recipient has been engaged by the Contractor to work on the project.

C. The Recipient will, in carrying out that work, be given access to Confidential Information.

D. AusAID requires the Recipient to enter into this Deed in relation to use of Confidential Information.

THE RECIPIENT DECLARES AS FOLLOWS:

1. **INTERPRETATION**

In this Deed:

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

(a) is designated by AusAID as confidential; or

(b) the Recipient knows or ought to know is confidential,

and includes to the extent that it is confidential:

(c) information comprised in or relating to any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID;

(d) information relating to the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;

(e) the Data; and

(f) personal information under the *Privacy Act 1988*;

but does not include information which:

(g) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality; or

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

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

2. **NON DISCLOSURE**

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

3. **RESTRICTION ON USE**

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

4. **DELIVERY UP OF DOCUMENTS**

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

5. **SURVIVAL OF OBLIGATIONS**

5.1 The obligations in this Deed are perpetual.

EXECUTED as a deed poll.

SIGNED, by the Recipient in the presence of:	) ……..) Signature of
…….. Signature of witness	…….. Name of witness ***(Print)***

SCHEDULE 4 – DEED OF NOVATION AND SUBSTITUTION

This **DEED OF NOVATION AND SUBSTITUTION** made the day of

BETWEEN:

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

AND:

[ABN of] (the "**Subcontractor**") of the second part;

AND:

Contractor's Name ACN# of **Contractor's Address** (the "**Contractor**") of the third part.

WHEREAS:

A. AusAID is concerned to ensure that the Services under the Contract are properly delivered.

B. The Subcontractor is a subcontractor to the Contractor for the Services.

C. The Subcontractor and Contractor have agreed with AusAID to novate the Subcontract to AusAID in the event that AusAID exercises its right under **Clause 31** and **32** of the Contract.

D. The Subcontractor agrees that AusAID may novate the Subcontract to another Contractor at its sole and absolute discretion in the event that AusAID has exercised its right under **Clause 31** and **32** of the Contract.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. **DEFINITIONS**

"**Business Day**" means a day on which trading banks are open for business in Canberra;

"**Commencement Date**" has the same meaning as in the Contract;

"**Contract**" means the Contract for the provision of Services between AusAID and the Contractor dated on or about [ ];

"**Deed**" means this Deed of Novation;

"**Services**" means the services to be provided by the Contractor to AusAID under the Contract;

"**Party**" means AusAID, the Subcontractor or the Contractor;

"**Subcontract**" means the contract between the Contractor and the Subcontractor for the provision of the Subcontractor Services; and

"**Subcontractor Services**" means the services that the Subcontractor is obliged to provide to the Contractor under the Subcontract.

2. APPLICATION OF DEED

2.1 The Contractor and the Subcontractor agree that:

(a) this Deed is entered into for the benefit of AusAID; and

(b) AusAID may exercise the rights granted to it under this Deed.

2.2 This Deed commences on the Commencement Date of the Subcontract.

3. NOVATION

3.1 AusAID may issue a notice of substitution to the Subcontractor if AusAID is entitled to exercise its rights under **Clauses 31** or **32** of the Contract.

3.2 The Parties agree that on and from the date of issue of a notice of substitution:

(a) AusAID is substituted for the Contractor under the Subcontract in respect of the Subcontractor Services as if AusAID was originally the Party to the Subcontract instead of the Contractor, and all references in the Subcontract to the Contractor are to be read and construed as if they were references to AusAID;

(b) AusAID is to pay any amount due to the Subcontractor under the Subcontract to the Subcontractor and the receipt of the Subcontractor shall be full and sufficient discharge for any such payments;

(c) subject to paragraph (a), AusAID is bound by, and must fulfil, comply with and observe all the provisions of the Subcontract and enjoys all the rights and benefits of the Contractor under the Subcontract; and

(d) the performance by the Subcontractor of services under the Subcontract, is instead of, and not in addition to, any performance by the Contractor of its obligations under that Subcontract.

3.3 If AusAID exercises its rights of novation under this deed, AusAID may further novate the Subcontract by substituting a new contractor in place of the Contractor on the terms of this deed with appropriate alterations. In the event of such novation, the rights and obligations of the Subcontractor with respect to the Contractor shall become the rights and obligations of the Subcontractor with respect to the new contractor.

4. RELEASE

4.1 Except in relation to payment due from the Contractor to the Subcontractor under the Subcontract but unpaid on the date of issuing of the notice of substitution referred to in **Clause 3** of this Schedule, the Contractor releases and discharges AusAID from any and all claims, actions, proceedings, obligations and liabilities (whether based in negligence or any other form of legal liability) in respect of or in any way arising from the Subcontract prior to the date of the notice of substitution in respect of the Subcontractor Services.

5. FURTHER ASSURANCES

5.1 Each Party must take such steps, execute all such documents, and do all such acts and things as may be reasonably required by the other Party to give effect to any of the transactions contemplated by this Deed.

6. DISCHARGE

6.1 Neither the Subcontractor nor the Contractor are discharged or released or excused from this Deed by an arrangement made between the Contractor and the Subcontractor prior to the issue of a notice of substitution with, by any change to the Subcontract, or by any forbearance whether as to payment, time or otherwise.

6.2 The Contractor undertakes to notify AusAID of any alterations to the Subcontract or other matter referred to in **Clause 3** of this Schedule. A failure of the Contractor to notify AusAID under this clause does not alter the Subcontractor's obligations under this Deed.

6.3 This Deed by the Subcontractor for AusAID to assume the obligations of the Contractor is discharged in relation to the Subcontract only on completion by the Subcontractor of all its obligations under the Subcontract in respect of the Subcontractor Services, or, in the event of the issue of a notice of substitution, on the due and proper performance of the Subcontract by the Subcontractor.

6.4 The obligations of AusAID under this Deed in its application to the Subcontract must not exceed the obligations of the Contractor under the Subcontract.

7. NOTICES

7.1 A notice required or permitted to be given by one Party to another under this Deed must be in writing and is treated as being duly given and received:

(a) when delivered (if left at that Party's address);

(b) on the third Business Day after posting (if sent by pre-paid mail); or

(c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and the facsimile machine provides an affirmation of a successful transmission).

7.2 Address of Party

For the purposes of this clause, the address of a Party is the address set out below or another address of which that Party may from time to time give notice to each other Party:

AusAID
To: **Desk Name**
Attention: Country Program Manager
Address: Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601
Facsimile: **Desk Fax**

Contractor
To:
Attention:
Address:
Facsimile:

Subcontractor
To:
Attention:
Address:
Facsimile:

8. **LAWS**

8.1 This Deed is subject to and construed in accordance with the laws in force in the Australian Capital Territory.

9. **WARRANTY**

9.1 The Subcontractor and the Contractor each warrant and represent to AusAID that at all times:

(a) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the Subcontractor and the Contractor respectively;

(b) the Subcontractor and the Contractor respectively each has full corporate power and lawful authority to execute and deliver this Deed and to consummate and perform or caused to be performed its obligations under this Deed;

(c) this Deed constitutes a legal, valid and binding obligation of the Subcontractor and the Contractor respectively, enforceable in accordance with its terms by appropriate legal remedy; and

(d) to the best of each of the Subcontractor's or the Contractor's knowledge, there are no actions, claims, proceedings or investigations pending or threatened against or by the Subcontractor or the Contractor respectively that may have a material effect on the ability of the Subcontractor or the Contractor respectively to perform its obligations under this Deed.

10. GENERAL

10.1 Counterparts

This Deed may be executed up to three (3) counterparts and all of those counterparts taken together constitute one and the same instrument.

10.2 Attorneys

Where this Deed is executed on behalf of a Party by an attorney, that attorney by executing declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney executes this Deed on behalf of that Party.

10.3 Further Assurance

Each Party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and acts reasonably required of it or them by notice from another Party effectively to carry out and give full effect to this Deed and the rights and obligations of the Party under it.

10.4 Assignment

No Party may assign or transfer any of its rights or obligations under this Deed without the prior consent in writing of the other Parties. AusAID may withhold its consent in its absolute discretion.

EXECUTED as a Deed.

SIGNED, for and on behalf of the **COMMONWEALTH OF AUSTRALIA** in the presence of:	)))	…….. Signature
…….. Signature of witness		
…….. Name of witness ***(Print)***		
SIGNED for and on behalf of ***[Subcontractor]*** by:	)))	
…….. Director Name of Director ***(Print)***		…….. Director/Secretary Name of Director/Secretary ***(Print)***

SIGNED for and on behalf of ***[Contractor]*** by:)
)
)

……..

Director
Name of Director
(Print)

……..

Director/Secretary
Name of Director/Secretary
(Print)

SCHEDULE 5 – PERFORMANCE GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20

BETWEEN **COMMONWEALTH OF AUSTRALIA** represented by the Australian Agency for International Development ('**AusAID**')

AND **[ ]** ABN **[ ]**
('**Guarantor**')

RECITALS

A. AusAID wishes to procure certain services.

B. **Contractor's Name** ('**Contractor**') has agreed to supply the services to AusAID under the annexed Contract (the '**Contract**').

C. The Guarantor agrees to provide the guarantees and indemnities appearing in this Deed.

AGREEMENT

1. The Guarantor guarantees to AusAID the performance of the obligations undertaken by the Contractor under the Contract on the conditions set out in this Deed.

2. If the Contractor (unless relieved from the performance of the Contract by AusAID expressly or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its obligations under the Contract, the Guarantor shall, if required to do so by AusAID, complete or cause to be completed the obligations set out in, and in accordance with the conditions of, the Contract. If the Contractor commits any breach of its obligations, and such breach is not remedied by the Guarantor under this Deed and the Contract is then terminated for default, the Guarantor shall indemnify AusAID against losses, damages, costs and expenses directly incurred by reason of that default.

3. The Guarantor shall not be discharged or released or excused from this Deed by an arrangement made between the Contractor and AusAID with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise. The guarantee by the Guarantor in this Deed to assume the obligations of the Contractor shall continue in force and effect until completion of all the Contractor's obligations under the Contract or until the completion of the undertakings under this Deed by the Guarantor.

4. The undertakings of the Guarantor under this Deed shall not exceed the obligations of the Contractor under the Contract. Any liability of the Guarantor shall be coextensive, but not in excess of any liability of the Contractor to AusAID under the Contract. The Guarantor shall be entitled to all rights, privileges and defences otherwise available, to the Contractor with respect to any such liability, including without limitation all provisions of the Contract relating to the limitation of liability and the resolution of disputes.

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:

……..
Signature of witness

……..
Name of witness (print)

……..
Name and Position
(Print)

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

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