



Australian Government

AusAID

17 October 2009

<p>Request for Tender</p>

Papua New Guinea
Economic and Public Sector Program

REQUEST FOR TENDER

Papua New Guinea Economic and Public Sector Program

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

STRUCTURE OF THE RFT

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

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

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

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

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

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

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

AusAID Contracts Charter

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

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SECTION 1 – PROJECT SPECIFIC TENDER AND CONTRACT CONDITIONS

PART 1 – PROJECT SPECIFIC TENDER CONDITIONS

1. TENDER PARTICULARS

Closing Time:

(Clauses 1.11 and 1.14, Part 5)

2.00 pm local time in Canberra
Australian Capital Territory, 1 December 2009

Mode of submission:

(Clause 1.1, Part 5)

either

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

or

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

Electronic Tender Lodgement

Address:

(Clause 1.11, Part 5)

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

Canberra Tender Box Address:

(Clause 1.14, Part 5)

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

Business Hours

for hard copy lodgement:

(Clause 1.15, Part 5)

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

File Format for Electronic Tenders:

(Clause 4.3, Annex C to Part 5)

PDF (Portable Document Format)

Number of Copies of Tender:

(Clause 1.6, Part 5)

For electronic tender lodgement:

Technical Proposal: One (1) electronic copy.

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

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

For hard copy tender lodgement:

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

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

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

Endorsement of hard copy Tenders:

(Clause 1.16, Part 5)

“Tender for the Papua New Guinea Economic and Public Sector Program”

Tender Validity Period:

(Clause 1.8, Part 5)

180 days

Contact Person:

(Clause 2.1, Part 5)

Tamara Green

Fax: +61 2 6206 4885

Email address: EPSP@ausaid.gov.au

Page limits:

(Clauses 7.15 and 7.17, Part 5)

Technical proposal: fifteen (15) pages plus annexes

Curriculum Vitae: four (4) pages each

Information:

The following documents are attached:

1. EPSP Program Design Document;
2. Papua New Guinea - Australia Partnership for Development Public Service Schedule;
3. Strongim Gavman Program Management Framework; and
4. Advisory Support Facility Independent Evaluation 2007.
5. Microsoft Word versions of the following:
 - Annex A – Past Experience Form
 - Tender Schedule B – Specified Personnel Table
 - Tender Schedule C – Financial Proposal Tables
 - Annex B – Tenderer Declaration

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

2. PRE-TENDER BRIEFING

- 2.1 AusAID intends to hold a pre-tender briefing at 9:30am, Thursday 5 November 2009 in Port Moresby, Papua New Guinea at a venue to be advised.
- 2.2 Tenderers planning to attend the pre-tender briefing are requested to send advanced notification by email, indicating the name of the organisation and the number and names of people planning to attend to Tamara Green at EPSP@ausaid.gov.au, by 5.00 pm, Monday 2 November 2009.
- 2.3 AusAID will distribute all materials and relevant information provided at the pre-tender briefing to all Tenderers by way of an addendum to the RFT.

3. SCORE WEIGHTINGS AND TENDER ASSESSMENT

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

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

- 3.2 As part of the consideration of the technical merit of Tenders, AusAID will invite selected Tenderers' key personnel to interview. The following personnel will be required to attend: Contractor Representative, Program Director and two (2) of the following personnel: Monitoring and Evaluation (M&E) Specialist, Capacity Development Specialist, Gender Specialist or another representative nominated by the Contractor. Tenderers are required to attend the interview at their own cost. AusAID does not intend to interview personnel from any more than four (4) Tenderers, unless advantageous to AusAID. Tenderers not invited to interview will be notified that their bid will not be further considered.
- 3.3 Following the technical assessment, a like-for-like price assessment will be undertaken by AusAID of the proposals that are assessed by the Technical Assessment Panel (TAP) as technically suitable.
- 3.4 The like-for-like price assessment will represent 20% of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

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

- 3.5 For the purpose of **Clause 3.4**, Part 1, the Tenderer's bid price will be the total amount submitted in the Tenderer's Financial Proposal in *Table 4: Summary of Financial Proposal*.
- 3.6 Following the final assessment and calculation of the final aggregate scores, confirmation of the Tenderer's financial capacity to meet the contractual obligations referred to in **Clause 7** of this Part and consideration of other factors referred to in **Clause 7.8, Part 5**, a recommendation for further action will be made to the appropriate AusAID delegate.

Tenderers should be aware that the delegate is not bound to accept the TAP recommendation and may direct that other action be taken in accordance with this RFT.

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

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

- (a) a technical proposal that substantively and individually addresses the selection criteria provided in **Clause 4.2, Part 1** taking into consideration “other factors” under **Clause 7.8, Part 5**; and
- (b) the required annexes included in **Clause 4.3, Part 1**.

4.2 **Selection Criteria**

Selection Criteria 1: MANAGEMENT CAPACITY	(Weighting 30%)
--	------------------------

Demonstrated capacity and ability to provide appropriate management and administrative support, including financial and grants administration:

- a) to successfully manage projects and activities based offshore of a similar size and complexity, preferably in PNG, working with a wide range of partners and to deliver contracted outcomes;
- b) to provide effective security and administrative and logistical support to an offshore based team and office, preferably in PNG;
- c) to provide cost effective management support to a range of long and short term capacity development modalities to support operations in an offshore country, preferably in PNG, including technical assistance advisers, training, and research and analysis; and
- d) to develop and implement equitable, inclusive and accountable systems in support of partnership principles, particularly management of grants, procurement and sub-contracting.

Selection Criteria 2: EXPERIENCE	(Weighting 30%)
---	------------------------

- a) Tenderers are to demonstrate their experience by providing a brief critique of the Program Design Document (PDD), identifying its strengths and opportunities to enhance success and weaknesses and risks that could threaten its success;
- b) Demonstrated experience in designing, planning and managing similar capacity building programs at both the national and central agency level in a developing country, preferably in PNG; and
- c) Demonstrated experience in capacity building programs with a focus on public expenditure management, public sector planning and audit/risk management, preferably in PNG.

Selection Criteria 3: PERSONNEL**(Weighting 30%)**

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

Selection Criteria 4: RESPONSE TO SCENARIO**(Weighting 10%)**

Scenarios will be given to shortlisted Tenderers invited to participate in an interview.

4.3 Annexes**Annex 1 – Past Experience Form**

Details of relevant activities or projects in which the Tenderer has been involved which demonstrate the Tenderer's ability to fulfil the objectives of the Program must be presented in the format outlined below. This annex must not contain more than five (5) examples and details of each activity must not exceed one (1) A4 page.

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

PAST EXPERIENCE FORM

Activity Name:	
Activity Value:	
Activity Location(s):	
Activity Duration (months/years):	
Client/Donor:	
Year Completed:	
Brief description of the activity and the Organisation's role:	
Brief description of significant challenges to success and how bidder addressed these:	

Statement of the similarities between this activity and the requirements of the activity currently being tendered and how this activity supports your statements addressing the Selection Criteria:			
Nominated Activity Referees:			
1. Name:		2. Name:	
Address:		Address:	
Email:		Email:	
Phone:		Phone:	

Annex 2 – Work Plan

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

Annex 3 – Risk Management Plan

A detailed critique of the Risk Management Matrix provided in the EPSP Program Design Document (attached to this RFT) that must identify:

- (a) all risks that can be reasonably anticipated;
- (b) the level of probability of the risk eventuating;
- (c) the impact on the Program if the risk eventuates along with possible options for ameliorating the risk;
- (d) the entity(s) responsible for managing the risk consistent with the PDD; and
- (e) the approach to be taken to mitigate any impact.

Annex 4 – Draft Mobilisation Plan

A detailed draft Mobilisation Plan for the first three (3) months of the Program. The Mobilisation Plan must include provision for:

- (a) establishment of communication channels with AusAID, the Australian Diplomatic Mission and Stakeholders;
- (b) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including but not limited to;
 - (i) establishment of report preparation and delivery mechanisms;
 - (ii) establishment of financial control procedures; and

- (iii) establishment of all other management and administration requirements;
- (c) how the tenderer proposes to manage the transition from the existing ASF provider, including key actions and timelines, and roles and responsibilities of the tenderer's team and other key stakeholders to ensure a smooth transition process, with minimum transaction costs and disruptions for PNG stakeholders in particular; and
- (d) any other matters specified in the Scope of Services, **Part 3** of this RFT.

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

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

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

Annex 6 – Commonwealth Government Policies Compliance

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

5. TENDER SCHEDULE B – SPECIFIED PERSONNEL

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

- (a) a list of proposed team members in the table (in landscape) format provided and in accordance with the instructions included in **Clauses 5.2 to 5.3** below;
- (b) a skills matrix providing a summary illustration of the skills of the proposed Program team as a whole (broken down by individual team members) in the key skill areas required for the Program's implementation; and
- (c) a curriculum vitae for each proposed team member that conforms with the requirements outlined in **Clauses 7.16 and 7.17, Part 5**.

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

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

- 5.4 Tenderers are reminded of the requirements of **Clause 27, Part 6** particularly in relation to the availability of specified personnel. AusAID will consider as materially inaccurate, and 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.

Specified Personnel Table

Position	Name	Total Inputs in person months		Referee Contact Details		Commitments
		Home Base	Overseas	#1	#2	
Program Director	specify					
Capacity Development Specialist	specify					
Gender Specialist	specify					
Monitoring and Evaluation Specialist	specify					

6. TENDER SCHEDULE C – FINANCIAL PROPOSAL

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

6.2 It must:

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

- (d) be exclusive of GST.
- 6.3 Any escalators, foreign exchange rate variations, or other price risks, must be built into the fixed price proposal but separately disclosed as a single escalator factor. AusAID will not consider any “across the board” escalators subsequently applied to any rates or Program costs.
- 6.4 Information provided in the tables will be used for any financial assessment and for the value for money price assessment.
- 6.5 Tenderers may insert under each table any assumptions they have made in their financial proposal.

EPSP Program Office Costs

- 6.6 Tenderers must fill out *Table 1: Total EPSP Program Office Costs* below in accordance with the following notes and instructions.
- 6.7 The EPSP Program Office Costs need to be provided for the four (4) year duration of the Contract and will include:
 - (a) Personnel Costs in accordance with *Table 1A: 1 to 5* below (which are drawn from Part 4 - Basis of Payment). These tables are:
 - (i) *Table 1A – 1: EPSP Program Office Long Term Personnel Costs – International Staff.* This is the monthly salary for the staff and includes allowances for hardship and cost of living in country;
 - (ii) *Table 1A – 2: Allowances for EPSP Program Office Long Term Personnel Costs – International Staff.* Allowances for Long Term International Staff are to be based on the personnel circumstances and family structure of the posted member;
 - (iii) *Table 1A – 3: EPSP Program Office Long Term Personnel Costs – Local Staff.* For Long Term Local Staff, specified monthly rate is for all personnel costs associated with the position;
 - (iv) *Table 1A – 4: EPSP Program Office Short Term Personnel Costs – International Staff.* Travel costs associated with the deployment of these staff are to be claimed in accordance with the Part 4, Clause 7. These monthly fees may be invoiced under Regular Payments for the EPSP Program Office Costs; and
 - (v) *Table 1A – 5: EPSP Program Office Short Term Personnel Costs – Local Staff;*
 - (b) Office Set-up Costs in accordance with *Table 2B: EPSP Office Set-up Costs* below. These costs could include such things as office furniture, office equipment and vehicles.

- (c) Office Operational Costs in accordance with *Table 1C: EPSP Office Operational Costs*. These costs could include such things as office rental, internet service provider, security services and vehicle operating costs.

6.8 The Total EPSP Program Office Costs are inclusive of the following which apply to all cost categories identified in **Clause 1.4** above:

- (a) Security costs for:
- (i) the EPSP Program Office;
 - (ii) all EPSP Program Office international staff and their families; and
 - (iii) all EPSP Program Office local staff when they are required to travel on Program work outside the area in which they normally reside;
- (b) Health, medical evacuation, worker's compensation, liability and indemnity insurances for:
- (i) all EPSP Program Office international staff and their families; and
 - (ii) all EPSP Program Office local staff when they are required to travel on Program work outside the area in which they normally reside.

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

Table 1: Total EPSP Program Office Costs

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

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

Position and Total Inputs	2010 - Inputs/ Monthly Rate A\$	2011 - Inputs/ Monthly Rate A\$	2012 - Inputs/ Monthly Rate A\$	2013 - Inputs/ Monthly Rate A\$	2014 - Inputs/ Monthly Rate A\$	Total – A\$	Comments
Program Director	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	3 months @ Amount per month		
Capacity Development Specialist	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	3 months @ Amount per month		
Gender Specialist	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	3 months @ Amount per month		
M&E Specialist	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	3 months @ Amount per month		
Other Specify							
					Total		

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

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

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

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

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

Position and Total Inputs	2010 - Inputs/ Monthly Rate A\$	2011 - Inputs/ Monthly Rate A\$	2012 - Inputs/ Monthly Rate A\$	2013 - Inputs/ Monthly Rate A\$	2014 - Inputs/ Monthly Rate A\$	Total – A\$	Comments
Training and learning Specialist							
Information and Communication Specialist							
HIV Mainstreaming Specialist							
Other Specify							
					Total		

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

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

Table 1B: EPSP Office Set-up Costs

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

Table 1C: EPSP Office Operational Costs

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

Fixed Management Fee (FMF)

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

- (a) The FMF is inclusive of the following:
 - (i) All aspects of profit, including commercial margins for all personnel;
 - (ii) All overheads;
 - (iii) Routine travel costs incurred by the Contractor for administration and management of the Contract;
 - (iv) Financial management costs and financing costs, if any;
 - (v) All management support costs for all nominated personnel;
 - (vi) Cost of any Contractor administrative and head office staff;
 - (vii) Security costs for all Contractor personnel not covered under Clause 3.4 (above);
 - (viii) Insurance, as required in accordance with Clauses 33 and 34 of Part 6 (Standard Contract Conditions) of the Contract;
 - (ix) Taxation, as applicable;

- (x) Health, medical evacuation, worker's compensation, liability and indemnity insurances for all Contractor personnel not covered under Clause 3.4 (above); and
 - (xi) All other costs not specified as either Variable Management and Procurement Fees or Reimbursable Costs.
- (b) Tenderers must fill out *Table 2B: Escalation Factor for Extension Period* below, in accordance with the following notes and instructions:
- (i) The FMF applying to the fifth and sixth year of the contract will comprise an escalation factor of the percentages the tenderer inserts below;
 - (ii) The percentage is the escalation percentage that will be applied to the Personnel Costs and Office Operational Costs which apply for the initial term of the contract if the option to extend the contract is exercised and the contract extended by a further year.

Table 2A: Total Fixed Management Fee

Year	Total (A\$)
2010 (1 April 2010 to 31 December 2010)	
2011	
2012	
2013	
2014 (1 January 2014 to 31 March 2014)	
Total	

Table 2B: Escalation Factor for Extension Period

Year	%	Fixed Management Fee (2013 Fixed Management Fee increased by escalator) (\$A)
1 April 2014 – 31 March 2015		

Variable Management and Procurement Fees (VMPF) For Economic and Public Sector Program Funded Activities

- 6.11 Tenderers must fill out *Table 3A: Variable Management Fee* and *Table 3B: Procurement Fee*, in accordance with the following notes and instructions:
- (a) The Contractor may seek payment of the VMPF when it has incurred additional management costs for planning and implementing approved PNG EPSP activities.

The VMPF may only be applied to management costs not already provided for under Program Office resources.

Guidance:

Typically, these activities would be those funded fully or partially from the Imprest Account associated with the Program. It may also include circumstances where a proposal is approved and requires additional head office (outside PNG) inputs for the Contractor to implement. However, it is possible that PNG or another donor may provide the funds for an EPSP activity and for AusAID to agree for the Contractor to coordinate or facilitate implementation.

As outlined below, the Contractor would be entitled to a Variable Management Fee or Procurement Fee on the management or procurement costs incurred by the Contractor not provided for by the Program Office and Fixed Management Fee.

It is also possible that an EPSP activity funded from the EPSP Imprest Account may not attract either a Variable Management Fee or Procurement Fee. An example of such an event would be when the Contractor is directed to make a payment from an Imprest Account and the GoPNG implements the activity using its own business processes and systems.

- (b) The VMPF, if any is due, shall be paid quarterly in arrears and comprises the sum of:
 - (i) Variable Management Fees; and
 - (ii) Procurement Fees.
- (c) Variable Management Fees are payable as a fixed percentage of X% of the cost of goods and services incurred by the Contractor for implementing PNG EPSP activities.
- (d) Procurement Fees are payable as a fixed percentage of Y% of the cost of goods and services associated with an activity and procured by the Contractor for implementing PNG EPSP activities and could include the following:
 - (i) Activity (eg Training/ Research/ Course) costs;
 - (ii) Travel and accommodation costs; and
 - (iii) Equipment to support the activity.
- (e) Procurement Fees shall not apply to any other procurement undertaken by the Contractor as these are included in the Fixed Management Fee (see Clause 4.2).
- (f) The Procurement Fees and the Variable Management Fees to be applied by the Contractor must be included in the budget of the fully costed detailed proposal for each planned activity and be approved by the Program Management Group

Table 3A: Variable Management Fee

Variable Management Fee (%)
[insert] %

Table 3B: Procurement Fee

Procurement Fee (%)
[insert] %

- 6.12 Tenderers must fill out *Table 4: Summary of Financial Proposal*, in accordance with the following notes and instructions:

Table 4: Summary of Financial Proposal

Item	Amount (A\$)
Extract of Table 1 - Personnel Costs	
Extract of Table 1 - Office Set-up Costs	
Extract of Table 1 - Office Operational Costs	
Extract of Table 2 - 2010 Fixed Management Fee	
Extract of Table 2 - 2011 Fixed Management Fee	
Extract of Table 2 - 2012 Fixed Management Fee	
Extract of Table 2 - 2013 Fixed Management Fee	
Extract of Table 2 - 2014 Fixed Management Fee	
Variable Management Fee (Table 3A)% applied to indicative amount of A\$50 million.	
Procurement Fee (Table 3B)% applied to indicative amount of A\$10 million.	
Sub-Total	\$X
Escalator for Extension Period (Table 2B)	%
Add Fixed Management Fee from Table 2B	\$Y
Total	\$(X + Y)

7. TENDER SCHEDULE D – FINANCIAL ASSESSMENT

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

- 7.2 A Tenderer must respond to either Option 1 or Option 2 to satisfy the requirements of this Tender.
- 7.3 Tenderers should be aware that AusAID may wish to contact the nominated financial accountant to obtain further information to assess the financial capacity of the Tenderer to undertake the Contract. AusAID reserves the right to engage appropriate external expertise to assist with the analysis of the financial information. A report on the financial capacity of the Tenderer to undertake the Contract may be provided to either the delegate or the TAP. The financial information of Tenderers will be treated confidentially.
- 7.4 Where a Tenderer considers itself exempt from the need to provide the full financial information (Option 1) and chooses instead to supply with the information in Option 2 AusAID reserves the right to subsequently require the Tenderer to provide the information required in Option 1.

Option 1

- 7.5 This option is mandatory for:
- (a) those Tenderers who have not been subject to a financial assessment by AusAID in the 12 months preceding the date of release of this Tender;
 - (b) those Tenderers who have been subject to a financial assessment by AusAID within the 12 months preceding the date of release of this Tender who have experienced a material change in financial position since the last financial assessment was completed by AusAID; or
 - (c) those Tenderers who have finalised their latest annual financial statements since the Tenderers last financial assessment by AusAID.
- 7.6 Under this Option 1, Tenderers must provide details of the following:
- (a) the name of the tendering entity and its ultimate owner(s);
 - (b) the names and financial relationships between the tendering entity, its parent entity (if relevant) and other related entities within the group;
 - (c) the previous three years' annual financial statements for the tendering entity. These annual financial statements must be prepared in accordance with Generally Accepted Accounting Standards applicable to the Tenderers country of residence (audited if available). The annual financial statements for each year must include:
 - (i) a balance sheet;
 - (ii) a profit and loss statement; and
 - (iii) a cashflow statementeach prepared on an accrual accounting basis. An auditor's statement of financial viability or short form financial statements are not acceptable;
 - (d) contact name and telephone number of the Tenderer's financial accountant; and

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

Option 2

7.7 This option may be considered by a Tenderer where:

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

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

- (a) the date of its most recent financial assessment and the name of the tender for which this assessment was undertaken;
- (b) an explanation of why a Tenderer believes a further financial assessment is not warranted; and
- (c) a statutory declaration declaring that the Tenderer's financial position has not altered materially since the date of the previous assessment.

PART 2 – PROJECT SPECIFIC CONTRACT CONDITIONS

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

PART A – PROJECT SPECIFIC CONTRACT CONDITIONS

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

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

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

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

“Expenditure” means cash disbursement for the period.

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

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

“Long Term Adviser” or **“LTA”** means an adviser working continuously for six months or longer on the Program.

“Partner Country” means Papua New Guinea.

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

“Program” means the **Economic and Public Sector Program**, Program details of which are described in the Scope of Services (**Schedule 1**).

"**Program Director**" means the specified person nominated in **Clause 12.1** of **Schedule 1** (Specified Personnel).

"**Program Start Date**" means the date specified in **Clause 2** of **Schedule 1** (Scope of Services).

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

"**Short Term Advisers**" or "**STA**" means advisers working on the Program for less than six months continuously.

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

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

1.2 Counterparts of the Contract

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

2. TERM OF CONTRACT

- 2.1 The term of this Contract commences upon execution by both parties, being the date indicated at the front of this Contract, and continues until all obligations under this Contract have been fulfilled or earlier notice of termination under this Contract.
- 2.2 The Contractor must commence the Services in the Partner Country no later than [*insert Services Start Date*] 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 the Commonwealth.
- 2.3 The Contractor grants to the Commonwealth an option to extend the term of the Services for a period of up to 12 months. 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 Program expenditure referred to in Standard Conditions **Clause 34.1(e)** (Accounts and Records) must be provided on a three monthly basis and must indicate:

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

4. NOTICES

4.1 For the purposes of Standard Conditions **Clause 59** (Notices), the address of a Party is the address set out below or another address of which that Party may from time to time give notice in writing to each other Party:

AusAID

To: First Secretary Development Cooperation
Economic and Public Sector Governance Unit

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

Street Address: Godwit Road
WAIGANI NCD
Papua New Guinea

Facsimile: +61 2 6206 4983

Contractor:

To:
Attention:

Postal Address:

Street Address:

Facsimile:

5. MANAGEMENT SERVICES

- 5.1 The Contractor must provide all Management Services necessary for the provision of the Services. In addition to the other requirements specified by the Contract, at a minimum the Contractor must provide the following Management Services:
- (a) provide pre-mobilisation briefings to Contractor Personnel The briefings must cover issues including security, medical/health situation, cultural environment, detail on Program objectives and relevant contract obligations;
 - (b) decision-making within the Contractor's organisation and the advising of AusAID of decisions required by AusAID;
 - (c) pro-actively identifying and rectifying problems or recommending strategies to AusAID on how to rectify problems, which may arise in, or during the performance of, the Services;
 - (d) managing those risks which are the Contractor's responsibility under the Contract in accordance with the Risk Management Plan including in relation to Supplies after delivery and before their incorporation into the Program; and
 - (e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID.

6. SUB-CONTRACTING

- 6.1 In addition to the Standard Conditions **Clause 30** (Sub-Contracting) the following conditions apply to sub-contracts entered into by the Contractor:
- (a) the Contractor must obtain the prior written approval of AusAID to sub-contracts with any party, except Specified Personnel, to the value of A\$100,000 or more. In granting its approval AusAID may impose such conditions, in AusAID's opinion are appropriate, in relation to a proposed sub-contract; and
 - (b) if AusAID objects to the Contractor's recommended sub-contractor, or AusAID nominates a particular sub-contractor, the Contractor must enter into an agreement with such other sub-contractor as directed by AusAID on the basis of remuneration approved by AusAID and provide AusAID with a copy of the executed sub-contract.
- 6.2 Standard Conditions **Clauses 30.1 (d) and (e)** (with respect to Deeds of Novation and Substitution) will only apply to sub-contracts valued at \$100,000 or more.

7. GOVERNMENT TAXES, DUTIES AND CHARGES

7.1 Except to the extent referred to in this clause and Standard Conditions **Clause 40** (Goods and Services Tax), each Party must bear and is responsible for its own costs in connection with the preparation, execution, and carrying into effect of the Contract.

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

- (a) imposed or levied in Australia or overseas during the term of the Contract in connection with the performance of the Contract; and
- (b) which are not already included in the Fees payable by AusAID under the Contract,

must be paid by the Contractor.

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

- (a) the Contract, the Program, and any sub-contracts entered into for the performance of the Services;
- (b) the sale, purchase, lease, assignment, licence or transfer of any property under the Contract;
- (c) the obtaining of any approvals, consents or authorisations in respect of the Program; and
- (d) any instrument or transaction contemplated by or necessary to give effect to the Contract.

7.4 Subject to **Clause 7.8 below** if any new or existing government tax, duty or charge ("Changed Tax") levied in Australia or the Partner Country in connection with the performance of the Services under this Contract is introduced, increases, decreases or is removed in its entirety and this affects the cost to the Contractor of providing the Services, the Contractor must give AusAID:

- (a) written notice of the increase, decrease or removal;
- (b) written notice of the net effect of the Changed Tax on the cost of supplying the Services; and
- (c) in the case of a decrease or a removal, any supporting evidence of the change and an explanation of its effect on the Fees,

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

7.5 An increase in the Fees under **Clause 7.4 above** shall not be approved and AusAID is not obliged to pay the amount claimed to be attributable to the change in the Changed Tax unless and until the Contractor provides AusAID with evidence of the net effect of the change in the Changed Tax on the cost of supplying the Services and AusAID is satisfied that:

- (a) the claimed increase is actually attributable to that Changed Tax and takes into account reductions in any other Changed Tax; and
- (b) the net change in the Changed Tax has affected the Fees for supplying the Services,

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

7.6 A decrease in Fees under **Clause 7.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.

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

7.8 **Clause 7.4 above** does not apply to income tax, taxes on turnover or revenue or similar taxes imposed on or in respect of income, turnover or revenue.

8. PUBLICITY

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

8.2 The Contractor shall, if appropriate, erect a sign at each Program site that acknowledges the contributions of the Australian and Partner Governments. Such signs shall in all cases be discussed and agreed between AusAID and the Partner Government. Signs should use the kangaroo motif and the words “Australia”, “Australian Government” or “Australian Government AusAID initiative” as space permits. The AusAID logo (with the words Australian Agency for International Development) may also be used but only where AusAID deems such usage appropriate. Country specific emblems may also be used on signs where AusAID overseas posts have developed such emblems or logos, and must be used in conjunction with the Kangaroo motif. Contractor signs may also be displayed, but not in greater number or prominence than acknowledgments to either the Australian or Partner Governments.

8.3 The Contractor agrees to abide by the AusAID guidelines, “AusAID Logo: Guidelines for Australian Managing Contractors” which is available at <http://www.ausaid.gov.au/business/publications.cfm>

9. INSURANCES

9.1 In addition to the Contractor’s obligations regarding insurance detailed in Standard Conditions **Clause 53 (Insurance)** the Contractor must ensure that:

- (a) AusAID is notified immediately the Contractor becomes aware of any actual, threatened or likely claims under all of the insurances required by this Contract or any act or omission by the Contractor which could materially reduce the available limit of indemnity;
 - (b) AusAID is notified in writing whenever the insurer gives the Contractor a notice of cancellation of Program-related insurances;
 - (c) in respect of public liability insurance and property insurance that:
 - (i) all insurance agreements and endorsements (with the exception of limits of liability) name, and operate as if there was a separate policy of insurance covering, AusAID, the Contractor and sub-contractors; and
 - (ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;
 - (d) where AusAID is a joint insured under an insurance policy, the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against AusAID; and
 - (e) all premiums are promptly paid.
- 9.2 The Contractor undertakes that it shall use its best endeavours to ensure that it commits no act or omission which renders any of the insurances required by this Contract to be effected by it, null and void or of less value.
- 9.3 In respect of the public liability insurance, Standard Conditions **Clause 53.1(a)** is amended as follows: the Contractor must ensure that the limit for each and every claim is \$20 million.
- 10. CONFLICT OF INTEREST**
- 10.1 In addition to the Standard Conditions **Clause 54** (Conflict of Interest) the Contractor warrants:
- (a) that the Contractor shall not make or cause to be made any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Contract. Any such practice shall be grounds for immediate termination of this Contract under Standard Conditions **Clause 50** (Termination for Contractor Default) by notice from AusAID;
 - (b) that it has not received and shall not accept from any sub-contractor any payment as inducement or reward relating to the selection and engagement of a sub-contractor; and

- (c) that it acknowledges that it is aware of the provisions of section 141.1 of the Commonwealth Criminal Code in relation to the bribery of Commonwealth public officials.

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

11. PERSONNEL SECURITY

11.1 In addition to the Contractor's obligations under Standard Conditions **Clause 26.6** (Contractor Personnel), the Contractor will be responsible for the immediate development and implementation of a Security Plan to ensure the safety and security of all Contractor personnel, including Technical Assistance Personnel. The Security Plan should incorporate prevention strategies and response plans, including evacuation plans where appropriate. The Contractor will submit a copy of the security plan to AusAID prior to mobilisation in the Partner Country.

11.2 The Contractor acknowledges and confirms that, notwithstanding any other provision of the Contract:

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

12. INDEPENDENT MONITORING GROUP

12.1 AusAID will establish an Independent Monitoring Group (the "IMG") whose purpose is to provide AusAID with independent technical and other advice on any aspects of the Program and to assist AusAID to assess the performance of the Services.

12.2 The Contractor must:

- (a) attend and participate in those IMG meetings which AusAID directs it in writing to attend;
- (b) when required by AusAID, consult with the IMG on matters related to the Program including:

- (i) progress and performance of the Services;
 - (ii) any matters, circumstances or events which may be affecting or impacting upon the Contractor's relationship with the Partner Country's government, AusAID or the IMG and suggest actions to avoid or counteract any adverse effects on the relationships;
 - (iii) any matters, circumstances or events which may affect the Program and if there are anticipated or contingent problems or difficulties, suggestions to avoid or counteract those problems or difficulties; and
 - (iv) any issues or concerns which the Contractor may want to raise with AusAID.
- (c) co-operate with and assist in any way requested by the IMG in the performance of its monitoring and review;
- (d) co-operate with and assist the IMG by providing all necessary information and Contractor Personnel and ensuring its Contractor Personnel are available and willing to assist in answering inquiries or requests for information in respect of the performance of the Services; and
- (e) provide to the IMG copies of all reports, notices, information or other Program material which the MRG reasonably requires to fully and efficiently perform its monitoring and review as soon as practicable after such material is produced or received by the Contractor.

13. ANNUAL STRATEGIC FRAMEWORK

- 13.1 The Contractor must provide to AusAID, within three (3) months of the Program Start Date, and by 31 December in each year of the Program, an Annual Strategic Framework which, before it is implemented, must be approved by the PMG and CACC.
- 13.2 An indicative Annual Strategic Framework must be submitted to the Governments of Australia and PNG by 30 June each year, from the second year of Program implementation, for consideration and further consultation.
- 13.3 The Annual Strategic Framework 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 Strategic Framework;
 - (b) the Contractor's proposed strategy for coordinating any Third Party Issues and for providing the Services in a flexible manner as is appropriate;

- (c) Interpret results and outcomes so they are clear and measurable for each activity;
 - (d) Detail a responsive Implementation Plan using all Australian Government resources available in the sector, including EPSP, Strongim Gavman Program and Twinning activities;
 - (e) Demonstrate alignment with the Public Service Schedule to the PNG-Australia Partnership for Development; and
 - (f) a detailed budget for the period of the Annual Strategic Framework.
- 13.4 The Contractor must make amendments to the Annual Strategic Framework as reasonably requested by AusAID.
- 13.5 The first Annual Strategic Framework (2010) will be based on an update of the technical analysis supported by joint diagnostic of the links in the chain between central agencies and ultimate service delivery agencies.
- 13.6 Within 30 days of receipt of the Annual Strategic Framework in accordance with **Clause 13.1 above**, AusAID shall notify the Contractor in writing when a decision is likely to be made to reject or accept the Annual Strategic Framework. If such Annual Strategic Framework 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.
- 13.7 Acceptance by AusAID of the Annual Strategic Framework does not represent a change to the Contract. The Contract may only be varied in accordance with the Standard Conditions **Clause 31** (Contract Amendments).
- 14. PERFORMANCE REVIEWS**
- 14.1 The Contractor must cooperate fully in performance reviews of this Contract at the frequency and in relation to the matters specified by AusAID including on an ad hoc basis if requested by AusAID, for the purpose of ensuring that this Contract is being properly performed and may consider all aspects of the Contractor's performance including user satisfaction and the accuracy of reports and invoices. AusAID may appoint an independent person to assist in the performance of, or to perform, the reviews.
- 14.2 The Contractor must participate cooperatively in any reviews conducted by AusAID or by its nominees. In addition, the Contractor must respond in writing to any draft performance review report within 28 Business Days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.

14.3 Reviews may be conducted of:

- (a) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services under this Contract and ensuring value for money for the Commonwealth;
- (b) the accuracy of the Contractor's invoices and reports in relation to the provision of the Services under this Contract;
- (c) the Contractor's compliance with its personnel, confidentiality and privacy obligations; or
- (d) any other matters relevant to the performance of any Services in accordance with this Contract.

14.4 Each party must bear its own costs of any reviews.

14.5 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.

15. PROGRAM CO-ORDINATION

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

16. PROCUREMENT

16.1 The Contractor must, in its procurement of goods and services, comply with the Commonwealth's Procurement Guidelines and will ensure that:

- (a) the goods to be procured are of a satisfactory quality;
- (b) the goods will be delivered or completed in good order and condition and in accordance with the Program timetable;
- (c) the price paid for items procured represent value for money;
- (d) there is open and effective competition in the purchasing process to the extent practicable;
- (e) a professional approach be reflected in the purchasing process including ethical behaviour and fair dealing;
- (f) specifications are in writing and do not exclude Australian and New Zealand products which are suitable or reasonably adaptable to the requirement on hand;

- (g) procurement is planned including but not limited to early consultation with industry; and
 - (h) due consideration is given in procurement to maximise participation by Australian and New Zealand suppliers where practicable in accordance with Commonwealth Procurement Guidelines Number 12. (The Contractor may obtain information about manufacturers from the Industrial Supplies Offices in each capital city).
- 16.2 The Contractor shall undertake all procurement in its own name, not in the Commonwealth's name or as the Commonwealth's agent.
- 16.3 All assets procured under item 3.2(b) of the Basis of Payments (Schedule 2) will become the property of the Commonwealth immediately following reimbursement of the actual cost of that asset.
- 16.4 The Contractor should be aware of and conform with Australian Government purchasing policies in regard to any country as the Government may determine from time to time.
- 16.5 The Contractor must maintain procurement records which will record its efforts to implement these requirements and its procurement records will be deemed to be financial records.
- 17. CONTROL OF PROGRAM SUPPLIES**
- 17.1 The Contractor will be responsible for the reasonable care of all assets procured for the Program.
- 17.2 The Contractor carries all risk for Program assets until such time as they are handed over to AusAID or the Partner Country's government at AusAID's direction.
- 17.3 The Contractor must ensure that effective internal controls exist in relation to assets (including consumable items) prior to their issue for use.
- 17.4 The Contractor must maintain a Register of Assets (RoA) under its administrative control within the Partner Country's government. The RoA must record non-consumable items funded or supplied to the Program and having a value of A\$1,000 or more. In addition non-consumable items of a portable and attractive nature with a value of less than A\$1,000 are also to be recorded. The following is an indicative, but not exhaustive list of items that may include:
- (a) computer hardware and software;
 - (b) photographic equipment; and
 - (c) office furniture and equipment.

- 17.5 The RoA must show the date of receipt of the asset at the Program site, the cost, the purchase/payment document date and reference number, a description and identification number, and the location of the asset. Subsequent disposal action as agreed to in writing by AusAID such as replacement, write-off, or transfer to the Partner Country's counterpart agency shall also be recorded. The RoA and other relevant documents such as import papers and manufacturers' warranties relating to the assets shall be available for audit as required by AusAID.
- 17.6 Payment for the purchase of assets required to be placed on the RoA pursuant to **Clause 17.5** should not be approved by the Contractor unless the payment document carries the corresponding RoA reference/asset number.
- 17.7 The Program Director must ensure that the RoA is maintained in an accurate and current state, and must exercise administrative control on behalf of the Commonwealth over the assets recorded in the RoA. The Program Director will be responsible for the safe-keeping and maintenance of the assets in the RoA until directed by AusAID to transfer them to the Partner Country's counterpart agency or otherwise dispose of them.
18. **IMPREST ACCOUNT**
- 18.1 The Contractor shall establish an imprest account in accordance with this **Clause 18**.
- 18.2 The Contractor must undertake a selection process in order to recommend a commercial banking institution which represents value for money for AusAID approval, with which to establish the separate imprest account.
- 18.3 The imprest account will be titled the "PNG Economic and Public Sector Program Activity Funds Imprest Account" (the "Imprest Account"). In correspondence with AusAID, the Imprest Account will be referred to by this title.
- 18.4 Money in the Imprest Account is the money of the Contractor and is not held by the Contractor on trust for AusAID or as agent for AusAID.
- 18.5 The Contractor agrees that the money in the Imprest Account is to be used for the purpose of funding approved Program activities. Money paid into the Imprest Account, or paid to the Contractor for the purposes of the Imprest Account, must not be intermingled with the Contractor's other money.
- 18.6 The Contractor is responsible for the management of (including scheduling, acquittal and disbursement) and reporting on the Imprest Account.
- 18.7 Within 2 months of the Mobilisation Date, the Contractor must produce and submit to AusAID an Operations Procedures Manual for approval which details the management arrangements and operational procedures for the Imprest Account. Where appropriate, the Operations Procedures Manual must

be developed in consultation with counterparts using counterpart systems, forms and processes as much as possible.

- 18.8 The Contractor, in consultation with the Partner Government, where appropriate, will appoint two Specified Personnel as principal signatories to the Imprest Account. Both appointed personnel are to sign withdrawals. In circumstances where one of the principal signatories is absent from the Program, a third approved nominee may act as an alternative signatory to the Imprest Account. All principal and alternative signatories will be named in the Operations Procedures Manual for the Imprest Account and approved by AusAID.
- 18.9 The funds held in the Imprest Account shall be used solely for the purpose of funding approved activities which are developed under EPSP but are not eligible for other funding, such as under the Capacity Development Fund.
- 18.10 Bank charges relating to the Imprest Account must be paid with money from the Imprest Account and acquitted in the same way other expenditure is acquitted.
- 18.11 Interest earned on the Imprest Account must remain in the Imprest Account and must be used for Program purposes and acquitted to AusAID as such.
- 18.12 Subject to **Clause 18.13** and **18.14** below, money for the Imprest Account will be paid by AusAID to the Contractor on a three (3) month basis.
- 18.13 The first payment is payable following AusAID approval of the Operations Procedures Manual and each subsequent payment is payable following AusAID approval of the Contractor's:
- (a) acquittal of a minimum of 80% the immediately previous payment and 100% of all earlier payments; and
 - (b) cashflow projection of funds required for each subsequent payment, over the next twelve month period.
- 18.14 Amounts payable in accordance with **Clause 18.12** above will be paid within 10 days of notification received by AusAID's Finance Section.
- 18.15 The balance of the Imprest Account must be reported as at 31 March, 30 June, 30 September and 31 December each year, within 10 days of the end of each period, to the AusAID officer specified for the purposes of Standard Conditions **Clause 59** (Notices), with a copy of the balance provided to AusAID's Chief Finance Officer by:

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

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

- 18.16 On every anniversary of the Commencement Date, an audit of the Imprest Account and all documentation relating to the Imprest Account for the previous twelve months must be conducted by an independent external auditor. The audit must be completed within 28 days of each anniversary of the Commencement Date and three copies of each audit report sent to AusAID within 7 days of the Contractor's receipt of the audit report. One copy must be sent to the relevant AusAID officer specified for the purposes of Standard Conditions **Clause 59** (Notices), one copy must be sent to the Director, Audit and the third copy sent to the Chief Finance Officer at the following address:

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

- 18.17 A final independent audit of the Imprest Account and all documentation relating to the Imprest Account must be provided with the Program Completion Report for the period since the last independent audit provided in accordance with **Clause 18.16** above.
- 18.18 The cost of an audit conducted in accordance with **Clauses 18.16** and **18.17** is included in the fees payable to the Contractor, and the cost of any corrections or remedial work required to the Imprest Account pursuant to audit findings is to be borne by the Contractor.
- 18.19 The Imprest Account and all documentation relating to the Imprest Account, including documentation related to the use of the Imprest Account funds may be subject to audit by or on behalf of AusAID at any time and from time to time.
- 18.20 If, upon the premature termination of the Contract or at the end of the Contract, money remains in the Imprest Account, the Contractor must pay to AusAID an amount equal to the total amount of money (including any accrued interest) remaining in the Imprest Account.
- 18.21 This clause shall survive expiration or termination of this Contract.

19. RIGHT OF AusAID TO RECOVER MONEY

- 19.1 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.

19.2 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 19.2(b)(b) above** will, in the absence of payment in full of the refund claimed, be deemed to be evidence of the Contractor's acceptance that the amount of refund is correct and payable to AusAID on demand or deductible from subsequent payments due under the Contract; and
- (d) AusAID must, within 28 days of receipt after the Contractor's evidence supporting its opinion concerning the amount of the refund, consider the Contractor's evidence and give the Contractor written notice either:
 - (i) calling for payment within 28 days of the refund determined by AusAID's review;
 - (ii) calling for payment within 28 days of the refund as re-determined following its consideration of the Contractor's evidence; or
 - (iii) of AusAID's agreement that there is no refund payable.

19.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 19.2**, 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.

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

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

20. UNCONDITIONAL FINANCIAL UNDERTAKING

- 20.1 The Contractor must, on or before the Program Start Date, provide to AusAID a performance security in respect of the Services in the form of an unconditional and irrevocable financial undertaking from a financial institution authorised to carry on banking business under the *Banking Act 1959* (Cth) in Australia and approved by AusAID.
- 20.2 The performance security provided must be in the form appearing in Schedule 5 and must be provided at the Contractor's cost, for the maximum aggregate sum of A\$2,500,000 and be available for the term of the Contract.
- 20.3 AusAID is not obliged to make any payments under the Contract, whether or not such payments are due, prior to receipt of the performance security duly executed and, where applicable, stamped, in accordance with **Clause 20.1** above.
- 20.4 If AusAID becomes entitled to exercise all or any of its rights to recover moneys under or in relation to the Contract, AusAID may exercise all or any of its rights under the performance security.

21. PERFORMANCE GUARANTEE

- 21.1 The Contractor must, at its expense, provide to AusAID; within 10 Business Days of the Program Start Date, a performance guarantee executed by a guarantor delivered to AusAID, guaranteeing the performance by the Contractor of its obligations under the Contract, which must be substantially in the form appearing in **Schedule 6**.

PART 3 – DRAFT SCOPE OF SERVICES

Note to Tenderers: This Part forms a key Schedule of the Contract Conditions. Although this Scope of Services is presented as Part 3 of this RFT, in the consolidated Contract it will appear as Schedule 1. It reflects the most current version of the services required of the Contractor but may be updated by AusAID during contract negotiations, particularly in light of information included in the Tenderer's response to the RFT.

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SCHEDULE 1 - SCOPE OF SERVICES

Papua New Guinea – Australia Economic and Public Sector Program (EPSP)

1. INTRODUCTION

Background

- 1.1 For the past eleven years, AusAID's key mechanism of support to economic and public sector governance in Papua New Guinea (PNG) has been through the PNG Advisory Support Facility (ASF). The ASF provides technical assistance personnel (advisers) for up to three years to work in central agencies, national line departments and provincial governments in support of priority public administration and reform agendas, and is due to complete in March 2010. The ASF has also supported Government of PNG (GoPNG) initiatives such as the Public Sector Workforce Development Program (PSWDP), Financial Management Improvement Program (FMIP) and Support to Auditor General's Office (SAGO).
- 1.2 The Government of Australia (GoA) also provides support to economic and public sector governance in PNG through the Strongim Gavman Program (SGP) (formerly the Enhanced Cooperation Program), which places senior Australian Government officials in the Departments of Finance and Treasury, the Internal Revenue Commission and the Auditor General's Office. There are also smaller 'twinning' schemes between Australian agencies and their PNG counterparts including the Departments of Treasury and Finance and Administration and the Australian National Audit Office.

The Papua New Guinea – Australia Economic and Public Sector Program (EPSP)

- 1.3 EPSP is a significant initiative, conceived and designed collaboratively by the GoPNG and GoA. It replaces the existing ASF and will address the needs of central agencies in their role as key enabling institutions supporting effective government in PNG, with a focus on the equitable delivery of services to the men and women of PNG. EPSP provides an integrated framework to contribute to the priority outcomes of the Papua New Guinea-Australia Partnership for Development. In particular, EPSP will be a centrepiece for efforts to achieve priority outcome 4: An Efficient and Effective Public Service.
- 1.4 EPSP will adopt a new approach. The EPSP will facilitate high level PNG coordination and management of resources supporting economic and public sector development by working directly through the Department of Prime Minister and National Executive Council (PM&NEC) to the Central Agencies Coordinating Committee (CACC). At the agency level, the Program will build stronger relationships and foster joint problem identification, development of support packages and teamwork. Most initial support will focus on agencies and managers than can deliver demonstrable results within a reasonable timeframe.

Key Documents

- 1.5 The following key documents are relevant:
- (a) EPSP Program Design Document (EPSP PDD);
 - (b) Public Service Schedule (Schedule 4) to the PNG-Australia Partnership for Development;
 - (c) PNG Advisory Support Facility Independent Evaluation 2007; and
 - (d) Strongim Gavman Program Management Framework.

Precedence of Contract over the EPSP PDD

- 1.6 This Scope of Services outlines the role of the Contractor in supporting the implementation of the EPSP and must be read in conjunction with the EPSP PDD. The EPSP PDD sets out the context, scope, objectives and principles of EPSP and is the primary reference document from which to gain an understanding of the intent, purpose and features of EPSP. Where there is an inconsistency between the EPSP PDD and the Contract, the Contract will take precedence.

2. DURATION

- 2.1 The duration of these services is from 1 April 2010 to 31 March 2014.
- 2.2 In accordance with Part 2 Contract Specific Conditions Clause 2.3, AusAID may exercise an option to extend the Contract for up to 12 months.
- 2.3 The Program Mobilisation Date is the date of the Contract.
- 2.4 The Contractor must commence mobilising the EPSP in PNG by the Program Mobilisation Date.

3. GOAL

- 3.1 The Goal of EPSP is an effective and efficient public service that focuses on service delivery for the men and women of PNG and creates an enabling environment for broad-based economic growth.
- 3.2 The result areas that will be the focus for EPSP are:
- Result 1 A more skilled and effective public sector workforce
 - Result 2 Improved use and management of public financial resources
 - Result 3 Government is more informed, transparent and accountable
 - Result 4 Policy and regulatory settings are more supportive of sustainable broad-based growth

4. OVERVIEW OF EPSP IN ACTION

- 4.1 The EPSP will integrate and coordinate all GoA support to economic and public sector governance in PNG under one strategic framework. EPSP will provide PNG partner government agencies with a range of capacity development options including technical assistance, targeted training, research and analysis, twinning and access to grants through the Capacity Development Fund. The Program will also have strong links with the delivery of essential services, such as health, education and infrastructure, in provinces and districts.

5. OVERVIEW OF THE CONTRACTOR'S TASK

- 5.1 The Contractor is responsible for the implementation, monitoring and reporting of the EPSP. The Contractor will establish and maintain a program office in Port Moresby to deliver the services outlined in this Scope of Services (Program Office). The Contractor will complete diagnostics of the capacity development needs of GoPNG agencies and facilitate the submission of requests for EPSP assistance to the Program Management Group (PMG). Responding to the PMG, the Contractor will undertake, manage or coordinate procurement, recruitment and administration required to deliver on PMG decisions. The Contractor will manage imprest accounts and small grants schemes and, as appropriate, make payments from these to specified agencies or utilise these funds for implementing approved activities. The Contractor will be responsible for implementing and managing all EPSP strategies, plans and manuals and the EPSP Monitoring and Evaluation (M&E) matrix. The Contractor is to report on the progress of EPSP to both GoA and GoPNG.

6. OPERATING PRINCIPLES

- 6.1 Contractor is to implement EPSP in accordance with the following operating principles:
- (a) **Partnership and Mutual Accountability:** The spirit of partnership will manifest in a practical sense. Management and decision making at all levels will be collaborative, from the development of the annual strategic framework, to joint capacity diagnostics and joint selection processes where Australia and PNG have an equal say. Partnership in EPSP will mean mutual responsibility and mutual accountability;
 - (b) **Alignment and Effectiveness:** The program will support and be led by PNG's policy and program priorities, maximise efforts to work through and strengthen GoPNG systems and seek to increase value for money by using a wider range of forms of aid. As such, the program will be guided by PNG's coordination mechanisms, particularly the Central Agencies Coordinating Committee (CACC) and will maximise the ownership of the program by GoPNG. Effectiveness will be enhanced by long-term engagement in priority areas;
 - (c) **Coherence:** Activities will be developed to achieve coherence with the rest of EPSP, and with other programs and priorities of PNG, AusAID and

other donors. There will be explicit links between EPSP and Provincial Performance Improvement Initiative;

- (d) **Learning and Managing for Results:** Reflecting a greater focus on development results, EPSP will adopt a deeper approach to M&E. It will support M&E for accountability, management and learning, and will support mutual responsibility for results against agreed indicators, including the Millennium Development Goals, PNG's own targets and those agreed in the PNG-Australia Partnership for Development;
- (e) **Flexibility with Focus:** The results framework is the agreed program focus. That focus will be sharpened annually in the Strategic Framework. EPSP will respond to opportunities where they arise, will support change champions where they emerge and will be led by the priorities and initiatives of GoPNG; and
- (f) **Equity:** EPSP will enable program activities to adequately address gender, HIV, disability and other equity imperatives, and that they contribute to achieving a public service which promotes equal opportunities and is free from discrimination.

7. THE SIGNIFICANCE OF EPSP RESULTS FRAMEWORK

- 7.1 The EPSP is structured around a Results Framework, which provides the goal, results and outcomes the program aims to achieve (see Annex I). The results articulate the systematic change EPSP hopes to achieve by 2020 (i.e. in 10 years of implementation), while the outcomes will measure significant progress to achieving the goal and result areas have a shorter time horizon of the first four (4) years of program implementation.
- 7.2 The Results Framework is intended to provide the strategic focus for the EPSP. The Contractor is to lead the process to sharpen this focus annually through the Strategic Frameworks, as outlined below.

8. SERVICES

- 8.1 Contractor is to deliver the following services:
 - (a) Manage the transition of administration from the existing ASF to the EPSP (see Clause 9);
 - (b) Establish a Program Office in Port Moresby within 6 weeks of the Program Mobilisation Date (see Clause 11);
 - (c) Recruit, manage and support suitable staff (see Clause 18);
 - (d) Manage technical assistance (TA) (see Clause 14);
 - (e) Develop annual Strategic Frameworks (see Clause 9);
 - (f) Support AusAID and the Public Sector Adviser representing AusAID (see Clause 10);

- (g) Management services including management of the EPSP Program Office;
- (h) Assist GoPNG agencies with capacity diagnostic work, including gender analysis and support for the inclusion of strength-based approaches, as the basis for developing Partnerships for Capacity Development or other smaller packages of assistance (see Clause 13);
- (i) Design of activities including all procurement or recruitment activities including joint selection panels, contracting and mobilisation of program inputs (either undertaking these tasks directly, or supporting GoPNG agencies to undertake these tasks);
- (j) Development and implementation of a comprehensive program briefing, mobilisation and support package to ensure contracted program inputs achieve maximum impact;
- (k) Provision of technical support (including targeted training and professional development) and advice to all program inputs (both GoA and contracted);
- (l) Development and implementation of all EPSP strategies, plans and manuals as specified in this Scope of Services;
- (m) Pursuing opportunities to increase GoPNG involvement in program management and operations such as secondment opportunities and the gradual transfer of selected functions into GoPNG systems and structures;
- (n) Financial management of program funding, including all imprest accounts under the Capacity Development Fund, with the aim of transitioning financial management into GoPNG systems over the duration of the Contract (see Clauses 17 and 19);
- (o) Performance management and M&E of contracted program inputs in partnership with GoPNG agencies (i.e. all inputs not provided via SGP and twinning activities) (see Clause 20);
- (p) Operating in accordance with the principles of aid effectiveness and consistent with the PNG Commitment on Aid Effectiveness, including coordination with development partners and using and strengthening GoPNG systems;
- (q) Supporting and facilitating the overall monitoring of EPSP by the PMG;
- (r) Identification and resolution of emerging risks associated with the Contractor's services and EPSP operations more broadly, including those risks relating to the performance of EPSP TA personnel and staff;
- (s) Supporting GoPNG and GoA to manage risks associated with the implementation and management of EPSP;
- (t) Provision of logistical and other support to the MaD for TA personnel across the entire AusAID program in PNG (see Clause 6 of Annex B);

- (u) Reporting to PMG, CACC and AusAID;
- (v) Provision of secretariat services to the PMG;
- (w) Procurement, contracting and contract and performance management of contracted inputs and grants;
- (x) Supporting the EPSP's emphasis on gender equality by mainstreaming support for gender, as well as HIV/AIDS and disability, in all of the EPSP's operations and functions and supporting all the Contractor's TA personnel and Program Office staff to do so in an integrated and practical manner;
- (y) Develop standard templates for use by partner agencies to request assistance under EPSP through the PMG for all contracted program inputs, as specified in this Scope of Services; and
- (z) Perform other management tasks as reasonably required for the effective delivery of the Contractor Services in support of the EPSP.

9. ANNUAL STRATEGIC FRAMEWORK

- 9.1 The Contractor is to develop, under the direction of AusAID (or the Public Sector Adviser acting on behalf of AusAID) and in close cooperation with the PMG, an Annual Strategic Framework to prioritise and coordinate program resources in jointly agreed activities that are considered essential for improving public sector performance, service delivery and growth, and which will achieve the results and outcomes within the Results Framework and in accordance with outcomes listed at Annex I.
- 9.2 The Contractor is to ensure each Annual Strategic Framework:
- (a) is developed and updated annually to interpret the results and outcomes of the Results Framework to ensure they are clear and measurable for each activity;
 - (b) details a responsive implementation plan using all resources available, including SGP and twinning activities;
 - (c) aligns to high level commitments outlined in the Public Service Schedule of the PNG-Australia Partnership for Development;
 - (d) aligns to EPSP strategies including the Gender Strategy, Sustainability Strategy and Integrated Capacity Development Strategy;
 - (e) addresses value for money criteria; and
 - (f) leverages GoPNG funding to joint initiatives, including under co-financing arrangements.
- 9.3 The first Annual Strategic Framework will be based on an update of the Technical Analysis at Annex J that shows:

- (a) the agencies/provinces that could achieve quick wins and had fewer entrenched and difficult problems and warrants early support; and
 - (b) how service delivery agencies and provinces are impeded by central agencies with concrete examples that would then guide the type and sequence of activities needed under the program.
- 9.4 The Annual Strategic Framework is the centrepiece of the EPSP's facilitation of whole of government coordination and, through CACC, will facilitate high level dialogue between Australia and PNG. It will be a key deliverable each year for the Contractor.
- 9.5 The Annual Strategic Framework will be submitted to the CACC for acceptance. Acting on guidance from the CACC, the PMG will provide directions to the Contractor to implement the annual Strategic Framework through PMG approval of agency requests for assistance. Typical activities will include grants and co-financing under the Capacity Development Fund, TA, targeted training and research and analysis which are discussed in more detail later in this Scope of Services.
- 10. SUPPORT AUSAID AND THE PUBLIC SECTOR ADVISER**
- 10.1 The Public Sector Adviser will be located initially in AusAID's PNG office and will work closely with AusAID, partner agencies, the Program Director and Program Office, SGP team leaders and external stakeholders. The Public Sector Adviser may be tasked to represent AusAID and will provide strategic advice to both governments on public sector management and reform and how EPSP can best support this. The Position Description for the Public Sector Adviser is specified in the EPSP PDD at Annex 7.
- 10.2 The Contractor will support AusAID and the Public Sector Adviser to:
 - (a) provide advice and strategic guidance on public sector management and reform issues, particularly as they relate to the implementation of EPSP;
 - (b) enable coherence of priorities and activities within EPSP and identify proposals that can achieve quick wins that will establish program and GoPNG credibility;
 - (c) support policy dialogue between Australia and PNG on public sector issues, particularly in relation to priority setting through the annual Strategic Framework and Partnerships for Capacity Development, and measuring progress towards achieving the goal and result areas under EPSP;
 - (d) enable coherence of program priorities and activities with other AusAID programs, in particular with the Sub-National Strategy, and enable cross-program learning and coordination; and
 - (e) enable coordination and coherence of all Australian whole of government inputs in the sector.

11. EPSP PROGRAM OFFICE

- 11.1 The Contractor is to establish a Program Office in Port Moresby in accordance with Annex K within six (6) weeks of the Program Mobilisation Date which will be managed and directed by the EPSP Program Director.
- 11.2 The Program Office must be established in accordance with the Contractor's Tender Proposal and be of sufficient size, equipment, staffing, security and operating resources, necessary to manage EPSP for the duration of the Contract. The location of the Office will be approved by AusAID and must allow safe and secure access for both EPSP personnel and PNG stakeholders.
- 11.3 The EPSP Program Office will provide technical advice and support to all contracted program inputs as well as any GoA inputs (i.e. including SGP and twinning activities), as reasonably directed by AusAID.
- 11.4 EPSP Program Office structure will be finalised in detail by agreement between GoA, GoPNG and the Contractor.
- 11.5 The Contractor is to provide all necessary staff required to support the provision of the Contractor Services as agreed and specified in this Contract and manage all Program Office personnel in accordance with Clause 18 (Human Resource Management) below. Recruitment of EPSP Program Office personnel will be conducted in consultation with AusAID and GoPNG and in accordance with the EPSP Human Resource Management and Professional Development Plan, outlined below. All Program Office personnel required for the first 12 months of the Contract must be recruited, contracted and mobilised within 3 months of the Program Mobilisation Date.
- 11.6 EPSP Program Office personnel will report to the Program Director.
- 11.7 EPSP Program Office personnel will include expertise in the following areas:
 - (a) capacity development;
 - (b) public sector reform in a developing country context;
 - (c) understanding of the PNG development context;
 - (d) gender equity;
 - (e) M&E;
 - (f) training, learning and development;
 - (g) human resource management;
 - (h) program management;
 - (i) HIV mainstreaming; and
 - (j) information and communication.

12. SPECIFIED PERSONNEL AND PERSONNEL INPUTS

12.1 The Contractor will provide the following Specified Personnel to perform the Services in accordance with their TOR and position descriptions as detailed in Annex L:

- (a) Program Director (Name);
- (b) Capacity Development Specialist (Name);
- (c) Gender Specialist (Name); and
- (d) M&E Specialist (Name).

12.2 The Contractor must also provide the additional personnel inputs at Annex H to this Scope of Services. (These will be those proposed by the preferred bidder in their tender documents.)

13. PARTNERSHIPS FOR CAPACITY DEVELOPMENT

13.1 Under EPSP, key partner agencies will enter into Partnerships for Capacity Development with the Program as an agreed strategy that will outline the basis of EPSP support to that agency. Formation of these Partnerships will be a key deliverable for the Contractor in the first year of the EPSP.

13.2 Partnerships for Capacity Development will be based on detailed capacity diagnostics (either new or existing) which will:

- (a) include detailed analysis of resource needs and objectives in order to identify the most effective form of external assistance required to meet each agency's particular objectives (including local and international TA personnel, targeted training, institutional partnerships, twinning programs, research and analysis and grants from the Capacity Development Fund); and
- (b) take account of the relative costs and benefits of these different options, including a value for money assessment.

13.3 Upon mobilisation of EPSP the Contractor (from the EPSP Program Office) is to manage the completion of capacity diagnostics, where required, and development of Partnerships for Capacity Development for priority agencies within the first year of the Program. This will be undertaken in close consultation with the Public Sector Advisor/ AusAID and relevant partner agency, and in accordance with the Capacity Development Approach in the EPSP PDD. The capacity diagnostics are to utilise as reference any existing agency diagnostics undertaken through other sources, including SGP.

13.4 The Contractor must ensure Partnerships for Capacity Development:

- (a) Address the appropriateness, relevance and rationale for EPSP support;

- (b) Show the link between agency level performance and improvement in the overall public sector system, as articulate in the EPSP Results Framework;
- (c) Create strategic partnerships and dialogue at the agency level and with senior management of those agencies;
- (d) Enhance agency ownership and management of provided resources and define mutual accountabilities and responsibilities;
- (e) Facilitate an appropriate transition from externally-based support to full localisation to enable sustainability of reforms;
- (f) Include realistic expectation and timeframes for capacity development within a clear, medium to long-term framework;
- (g) Provide an integrated approach, linked to whole-of-government reforms and agency-specific objectives;
- (h) Articulate agreed objectives, outcomes and results monitoring methods;
- (i) Be supported by a Management Framework for identifying training, research and technical assistance, supporting twinning relationships and developing mentoring arrangements (especially for women) in support of sustainable change; and
- (j) Use TA personnel strategically and effectively, supported by strong diagnostics and phased down over the duration of EPSP.

13.5 The Contractor will manage the submission of requests for assistance under the Partnerships for Capacity Development. This will include:

- (a) Preparing standard templates for agencies to use to request assistance from the PMG, linked to PNG strategies and agency corporate plans and identifying how assistance will lead to better service delivery outcomes, particularly at the sub-national level;
- (b) Assisting agencies, where required, to prepare requests for assistance for the PMG;
- (c) Ensuring PMG-approved activities are implemented in an efficient manner. This may require the Contractor to seek further detail from the partner agency about the TOR for the activity, the outputs and the costs; and
- (d) supporting the PMG to assess whether the requests for assistance are in accordance with the overall EPSP Capacity Development Approach, including the agency's Partnership for Capacity Development, where applicable, and the EPSP annual Strategic Framework.

- 13.6 When these approved activities are to be implemented by the Contractor, the costs are to be drawn from the relevant trust or imprest account established for that purpose.

14. TECHNICAL ASSISTANCE PERSONNEL

- 14.1 Where a request for TA personnel is approved by the PMG, the Contractor is to recruit, mobilise, demobilise, support and manage (by developing management systems, principles and processes to ensure TA personnel perform effectively) all EPSP TA personnel in accordance with this Scope of Services. The Contractor will ensure GoPNG have a key role in the recruitment of TA personnel and in the management of TA in their workplace.
- 14.2 TA personnel will report to the Program Office and also to the GoPNG agency or agencies with whom they are working. Specific reporting relationships will be specified in individual position descriptions or terms of reference.
- 14.3 The Contractor's services in the management of TA personnel include the following which are discussed in more detail in Annex B to this Scope of Services:
- (a) Recruitment of TA personnel;
 - (b) Mobilisation and demobilisation of TA personnel;
 - (c) Performance management of TA personnel;
 - (d) Ensuring there are Workplans for TA Personnel;
 - (e) Ensuring ongoing professional development of TA personnel;
 - (f) Support to the MaD;
 - (g) Support to the Communities of Practice;
 - (h) Providing ongoing logistical and other support for TA personnel;
 - (i) Providing pastoral care to TA personnel and their families; and
 - (j) Managing the transition of ASF TA personnel deployed in 2009.
- 14.4 TA is only one modality for capacity development under EPSP and it is anticipated utilisation of TA will be decreased over the duration of the program. Nevertheless, in the early years of the program TA will form the majority of overall program costs and Contractor services as demand for TA support from GoPNG remains high.

15. TARGETED TRAINING

- 15.1 The Contractor is to deliver demand-driven, short-term targeted training to key partner agencies to address key skills deficits specific to that agency, if identified though a shared diagnostic as part of a coherent capacity development approach

(such as through a Partnership for Development), in accordance with the annual Strategic Framework, as approved by the PMG.

15.2 The Contractor is to deliver the following which are discussed in detail in Annex D to this Scope of Services:

- (a) Targeted training strategy;
- (b) Assistance to partner agencies to submit requests for assistance using the EPSP standard templates developed by the Contractor;
- (c) Guidance to partner agencies on how managers can put such training into an incentive framework and use it to build a professional service;
- (d) Where the Contractor proposes to utilise specialist inputs to deliver approved targeted training requests it must do so in accordance with this Clause. Consideration is to be given to:
 - (i) Selection of training providers; and
 - (ii) Logistical and administrative support to the training delivery; and
- (e) Performance assessment of targeted training.

15.3 The Contractor may also be required to provide targeted training support through EPSP for other AusAID initiatives as reasonably directed by AusAID.

16. **RESEARCH AND ANALYSIS**

16.1 The Contractor is to support enhanced research and analysis if identified though a shared diagnostic as part of a coherent capacity development approach (such as through a Partnership for Development), in accordance with the annual Strategic Framework, and as approved by the PMG, which:

- (a) explores evidence-based PNG solutions and information which will contribute to more effective and efficient service delivery for the men and women of PNG;
- (b) is applied towards a stronger evidence base for policy decisions and resource allocations;
- (c) is in response to issues identified through GoPNG reform efforts and EPSP implementation;
- (d) is closely linked to information, action learning, data and communication initiatives;
- (e) facilitates the identification and application of disaggregated and gender specific data to assist in the development and execution of policies and budgets;

- (f) develops the capacity of PNG institutions, researchers and research users to be better informed with regards to service delivery issues.

Research and Analysis Consultancies

- 16.2 Targeted research and analysis will primarily be outsourced through research and analysis consultancies to be supported by the Contractor. Outsourced research and analysis consultancies may include partner agencies, NGOs, national or international organisations. Contractor support to research and analysis consultancies is to include, but is not limited to:
- (a) developing terms of reference for the research and analysis project;
 - (b) advertising, recruitment and contracting;
 - (c) performance management; and
 - (d) ensuring all documentation, reports etc are provided to AusAID in a timely manner.
- 16.3 Where EPSP Program Office initiates its own research or analysis activities, and this is approved by the PMG, it should work in close consultation with GoPNG partner agencies where relevant.
- 16.4 Activities to identify and evaluate EPSP impact and inform M&E requirements may also be supported by the Program's research and analysis component (i.e., supporting an ongoing series of issues based evaluation studies, as outlined in Clause 4 of Annex F below – Periodic Issues -Based Evaluation Studies).
- 16.5 The Contractor is to maintain effective records of all EPSP supported research and analysis.

17. IMPREST ACCOUNTS AND CAPACITY DEVELOPMENT FUND

- 17.1 The Contractor is to manage and acquit funds provided under the Contract for Program-related grants and imprest accounts (see Annex K).
- 17.2 The Contractor will support the implementation of activities funded under these grants and imprest accounts which are identified through a shared diagnostic. This will be undertaken as part of a coherent capacity development approach (such as through a Partnership for Development) and be in accordance with the Annual Strategic Framework, and approved by the PMG.

Capacity Development Fund

- 17.3 EPSP will incorporate a Capacity Development Fund, which will comprise up to 30 per cent of the Program value. Grants or funding will take two forms within the Fund:
- (a) Co-Financed Grants - mostly existing imprest account mechanisms to support the implementation of GoPNG initiatives; and

- (b) Incentive-Based Grants to complement activities of the Partnerships for Capacity Development.
- 17.4 The Contractor is to assume the management of a range of existing imprest accounts under the Co-Financed Grants component of the Capacity Development Fund. These accounts will include GoA resources and potentially funding from GoPNG and other donors. The purpose manuals and procedures for these accounts are to continue in the early stages of the EPSP. The Contractor is required to review these within the first year of implementation to look at ways to standardise and rationalise operating approaches. Approval for any changes is to be agreed in writing by the GoA and GoPNG. The existing accounts include (see Annex E for more details about their purpose):
- (a) Public Sector Workforce Development Program (PSWDP) account;
 - (b) Financial Management Training Trust Account (FMTTA) under FMIP;
and
 - (c) Support to the Auditor General's Office (SAGO) account.
- 17.5 The Contractor is to manage Incentive-Based Grants approved by the PMG as part of an integrated response of a Partnership for Capacity Development. The Contractor is to review the incentives component, including the financial management arrangements, two years after mobilisation.
- 17.6 The Contractor will develop Guidelines for the use of Incentive-Based Grants, including criteria against which the PMG will assess requests for the Grants.
- 17.7 Procurement associated with the use of grants will be undertaken by GoPNG using its own procurement systems where appropriate.

EPSP Activity Funds

- 17.8 The Contractor shall establish, manage and acquit a PNG Economic and Public Sector Program Activity Fund Imprest Account in accordance with Clause 18 of Part 2 and Clause 8 of Part 4 (Basis of Payment) for funding all approved activities which are developed under EPSP but are not eligible for other funding, such as under the Capacity Development Fund.

18. HUMAN RESOURCE MANAGEMENT

- 18.1 The Contractor is responsible for managing all human resources for EPSP, including EPSP TA personnel and EPSP Program Office staff, in accordance with this Clause.

EPSP Human Resource Management and Professional Development Plan

- 18.2 The Contractor must develop an EPSP Human Resource Management and Professional Development Plan for submission to AusAID within six (6) months of the Mobilisation Date (with the exception of the security plan which must be submitted within one (1) month of the Mobilisation Date, as specified in Table 1 below). The EPSP Human Resource Management and Professional Development

Plan will outline how the Contractor will recruit, support and manage the performance of EPSP TA personnel and Program Office staff, and will include a:

- (a) Recruitment manual;
- (b) Human resources performance management manual which outlines processes and principles for the performance management of all EPSP TA personnel and EPSP Program Office staff;
- (c) Ongoing learning and development manual outlining how all EPSP TA personnel and Program Office staff will be supported to continually enhance and develop their skills, knowledge and attributes through induction, mentoring and ongoing training programs. This will include:
 - (i) a proposed budget for submission to AusAID on the approximate costs of the ongoing learning and development and an annual budgetary upper limit; and
 - (ii) strategies for developing and supporting mentoring arrangements (especially for women), in coordination with partner agencies, as a means to support targeted training inputs and technical assistance, and continue ongoing learning and development in partner agencies;
- (d) Code of conduct; and
- (e) Security plan as required in accordance with Clause 49 (Personnel Security) of the Program Specific Contract Conditions, which must be submitted within one (1) month of the Mobilisation Date.

19. FINANCIAL MANAGEMENT & PROCUREMENT

EPSP Contractor Financial Management and Procurement Requirements

- 19.1 The Contractor is responsible for the procurement of materials, equipment and services necessary for the provision of the Services consistent with the principles articulated in the Commonwealth Procurement Guidelines and the Commonwealth Grants Guidelines, and in accordance with the requirements of this Contract. The Commonwealth Procurement Guidelines are available at http://www.finance.gov.au/ctc/commonwealth_procurement_guide.html and the Commonwealth Grant Guidelines are available at <http://www.finance.gov.au/publications/fmg-series/23-commonwealth-grant-guidelines.html>.
- 19.2 The Contractor is to encourage, support and facilitate a high degree of involvement by GoPNG representatives in all Contractor managed procurement, including active participation in, and chairing of, Program Management Group meetings, Independent Monitoring Group, selection panels, and interview processes.
- 19.3 The Contractor must provide to AusAID, in accordance with Clause 20 (Performance Monitoring and Assessment) below:

- (a) monthly financial summaries of expenditure under EPSP generally, through the monthly update reports; and
- (b) any other specific reports or financial information as reasonably requested by AusAID on an as needed or ad hoc basis.

EPSP Financial Management and Procurement Manual

- 19.4 The Contractor must prepare and submit to AusAID, within 2 months of the Mobilisation Date, an EPSP Financial Management and Procurement Manual that outlines how the Contractor will provide the Financial Management and Procurement Services outlined in this Clause 19.

EPSP Fraud Control Plan

- 19.5 To ensure that it meets its accountabilities in detecting, investigating and reporting all incidents of fraud or suspected fraud in accordance with Clause 55 of Part B. The Contractor must provide a EPSP Fraud Control Plan to AusAID within four months of the Mobilisation Date.
- 19.6 The EPSP Fraud Control Plan must set out how the Contractor will deal with instances of fraud or suspected fraud in accordance with AusAID requirements.

EPSP Imprest and Trust Account Manuals

- 19.7 Within 2 months of the Mobilisation Date, the Contractor must prepare and submit to AusAID an EPSP Activity Funds Imprest Account Operations Procedures Manual that conforms to the requirement set out in the Contract Specific Conditions Clause 18.
- 19.8 The Contractor may also be required to establish and manage an imprest account for the Incentive-Based Grants under the Capacity Development Fund, as agreed by AusAID and subject to the outcome of the review. This will include preparing and submitting to AusAID a manual for this imprest account that conforms to the requirement set out in the Contract Specific Conditions Clause 18.

Existing Imprest Accounts and Operating Procedures Manuals

- 19.9 GoPNG Trust accounts already exist for the co-financed grant arrangements under the PSWDP, FMIP and SAGO. The Contractor will assume management responsibility for these accounts as specified in Clause 17 above and Annex E of this Scope of Services.
- 19.10 The Contractor is required to review existing trust accounts and operating procedures manuals within the first year of this Contract to look at ways to standardise and rationalise operating approaches.

20. PERFORMANCE MONITORING AND ASSESSMENT

- 20.1 Ultimate oversight of M&E of the EPSP will be the responsibility of the CACC, with support from the Contractor.

- 20.2 The Contractor will, led by the EPSP M&E Specialist and under the direction of CACC, support GoPNG to monitor and assess performance management, learning and accountability for aid effectiveness in accordance with the EPSP M&E Framework. Detailed discussion of the responsibilities in relation to Performance Monitoring and Assessment are also discussed in Annex F to this Scope of Services.
- 20.3 The Contractor is to complete a facilitated performance analysis in November/December each year to feed into the Annual Program Report and finalisation of the Strategic Framework for the coming year, and to feed into the AusAID Performance Reporting Cycle.
- 20.4 Performance M&E is to include:
- (a) Quarterly Program Reports;
 - (b) Annual Program Reports;
 - (c) Biennial Program Effectiveness Reviews;
 - (d) Mid-Term Reviews (Independent Progress Report);
 - (e) Periodic Issues Based Evaluation Studies;
 - (f) M&E Matrix;
 - (g) M&E Working Group; and
 - (h) EPSP Contractor Performance Reporting.
21. **EPSP CONTRACTOR MANAGEMENT STRATEGIES, PLANS AND MANUALS**
- 21.1 The Contractor is to develop the following significant Program strategies as specified in more detail in this Scope of Services:
- (a) EPSP Management Strategy (see Annex C);
 - (b) EPSP Sustainability Strategy (see Annex C);
 - (c) EPSP Integrated Capacity Development Strategy (see Annex C);
 - (d) EPSP Gender Strategy (see Annex C);
 - (e) EPSP Risk Management Plan (see Annex C);
 - (f) Targeted Training Strategy (see Clause 15 and Annex D);
 - (g) EPSP Activity Funds and Incentive-Based Grants Imprest Account Manuals (see Annex E);
 - (h) EPSP Human Resource Management and Professional Development Plan (see Clause 18); and

- (i) EPSP Human Resources Performance Management Manual (see Clause 18).

21.2 The Contractor is to ensure that the management strategies, plans and manuals required under this Scope of Services:

- (a) are prepared in consultation with AusAID/ the Public Sector Adviser;
- (b) are designed as practical tools to ensure a clear, transparent and shared understanding of the role of the Contractor across all EPSP stakeholders;
- (c) are aligned with the Public Service Schedule of the PNG-Australia Partnership for Development;
- (d) are aligned with the EPSP Results Framework;
- (e) draw on existing approaches and lessons learned, as contained in the equivalent management documentation developed and in use under the ASF to ensure:
 - (i) continuity of effective approaches;
 - (ii) introduction of changes or innovations only where necessary and adding value; and
 - (iii) minimal disruption to ongoing processes and procedures;
- (f) are updated as required, but at least annually, to ensure they reflect current GoPNG-GoA requirements, draw on international best practice and are continuously improved over time;
- (g) are submitted to AusAID in draft form by the dates of submission listed in Table 1 below, with the exception of the Security Plan which will be submitted in final version; and
- (h) are submitted to AusAID in final form within one month of the date AusAID approves the drafts submitted in accordance with in Table 1 below.

Table 1

Document	Draft Submitted to AusAID
EPSP Contractor Management Strategy (including EPSP Contractor Information and Communications Strategy and EPSP Risk Management Strategy)	Within 1 month of mobilisation Conduct initial assessment of the Information and Communications Strategy in Year 1
EPSP M&E Matrix	Review after mobilisation (hold workshop within 3 months) and finalise within 4 months
Partnerships for Capacity Development (selected agencies as agreed with AusAID and GoPNG)	Within 12 months of mobilisation
EPSP Integrated Capacity Development Strategy	Within 12 months of mobilisation
EPSP Strategic Framework 2010	Within 4 months of mobilisation
EPSP Sustainability Strategy	Within 12 months of mobilisation
EPSP Targeted Training Strategy	Within 12 months of mobilisation
EPSP Gender Strategy	Within 12 months of mobilisation
EPSP Fraud Control Plan	Within 4 months of mobilisation
EPSP Human Resource Management and Professional Development Plan (Recruitment Manual, Performance Management Manual, Ongoing Learning and Development Manual and Code of Conduct)	Within 6 months of mobilisation
Security Plan	Within 1 month of mobilisation
EPSP Financial Management and Procurement Manual	Within 2 months of mobilisation
EPSP Activity Funds Imprest Account Manual	Within 2 months of mobilisation
EPSP Incentive-Based Grants Guidelines	Within 2 months of mobilisation

22. MILESTONES

22.1 Key milestones for the program are:

1	EPSP Program Office established and staff recruited	Year 1
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2	2010 Strategic Framework accepted by CACC	Year 1
3	Targeted Training Strategy completed	Year 1
4	2011 Strategic Framework accepted by CACC	Year 1
5	2010 Annual Program Report accepted by CACC	Year 2
6	2012 Strategic Framework accepted by CACC	Year 2
8	2011 Annual Program Report accepted by CACC	Year 3
9	2013 Strategic Framework accepted by CACC	Year 3
10	2012 Annual Program Report accepted by CACC	Year 4
12	Activity Completion Report accepted by CACC	Year 4

23. **REPORTS**

23.1 The Contractor is responsible for reporting to the CACC, PMG and AusAID.

23.2 All reports must:

- (a) be provided in accordance with the specification under Standard Condition Clause 35 (Reports);
- (b) be accurate and not misleading in any respect;
- (c) be prepared in accordance with directions provided by AusAID;
- (d) allow AusAID and GoPNG to properly assess progress under the Contract;
- (e) be provided in the format, number and on the media approved or requested by AusAID;
- (f) not incorporate either the AusAID or the Contractor's logo;
- (g) be provided at the time specified in this Schedule;
- (h) incorporate sufficient information to allow AusAID to monitor and assess the success of the Services in achieving the objectives of AusAID's Gender and Development Policy; and
- (i) incorporates data and other information which demonstrates linkages between EPSP and other programs (in particular SGP, sub national and service delivery programs), including data which is disaggregated by province.

23.3 In addition to the reports required under Annex F of this Scope of Services, the Contractor must provide:

- (a) a monthly update report to AusAID containing a summary of current information on the status of EPSP finances and human resources;
 - (b) a quarterly financial report associated with reporting responsibilities for managing imprest and grant/trust accounts;
 - (c) timely and up-to-date information as requested by AusAID or CACC:
 - (i) as part of AusAID's Quality at Implementation and Annual Program Performance Report processes; or
 - (ii) as part of other reporting or briefing request that is required by AusAID or CACC; and
 - (d) an activity completion report in accordance with AusAID's guidelines and requirements with:
 - (i) a draft report submitted to AusAID three months prior to the EPSP Contractor Contract completion dates; and
 - (ii) a final report submitted to AusAID two (2) weeks after receipt of AusAID's comments.
- 23.4 The Contractor is to maintain a collection of all reports, technical papers and publications produced as part of the Contractor services for and on behalf of AusAID and GoPNG.
- 23.5 The Contractor is to work collaboratively with AusAID and CACC to continuously improve its reporting quality and ensure EPSP reports are meeting the needs of EPSP stakeholders.

24. EPSP MANAGEMENT AND LINES OF ACCOUNTABILITY

Management and Governance Arrangements

- 24.1 The Program will be, as much as possible, embedded in existing GoPNG structures. As such, its peak body is the CACC, which will provide strategic guidance to the program and will be an active oversight body for the program's M&E. The role of CACC in the management and governance of EPSP is central to improving the effectiveness of public sector policy and implementation processes.
- 24.2 Other key stakeholders in the management of the EPSP are the PMG, AusAID and EPSP Program Office. The EPSP Management Strategy (outlined in Annex C) will detail relationships between key stakeholders, as they relate to management and governance of EPSP, in more detail.
- 24.3 EPSP Management and lines of accountability are discussed in detail in Annex G to this Scope of Services. These include the following stakeholders:
- (a) CACC (see clause 24.4);

- (b) The Program Management Group (see clause 24.5);
- (c) EPSP Program Office (see clause 24.6); and
- (d) AusAID (see clause 24.7).

24.4 **CACC**

- (a) The CACC will provide strategic guidance to the program.
- (b) The CACC's responsibilities include consideration of and approval of the Annual Strategic Framework, Annual Program Reports, any changes to the EPSP Results Framework and the EPSP Activity Completion Reports.
- (c) The Contractor, primarily through the Program Director, will support the CACC's capacity to lead and coordinate policy and to support greater coherence across GoPNG programs, including providing additional advice and support to CACC for its consideration of program matters if necessary.
- (d) See Annex G of this Scope of Services.

24.5 **The Program Management Group**

- (a) The Program Management Group (PMG) will be responsible for operational decision-making and oversight of program implementation.
- (b) The Contractor is to:
 - (i) provide secretariat services to the PMG;
 - (ii) report to the PMG through the Program Director; and
 - (iii) other support to the PMG as required.
- (c) See Annex G of this Scope of Services.

24.6 **EPSP Program Office**

- (a) See Annex G of this Scope of Services and Annex K.

24.7 **AusAID**

- (a) AusAID will employ two key positions under the program:
 - (i) **Public Sector Adviser:** A full time Public Sector Adviser, located initially in AusAID's PNG Country Office, will work closely with AusAID, partner agencies, the Program Director and Program Office, SGP Team Leaders and external stakeholders. This person may be granted authority to represent AusAID on matters relating to the EPSP.

- (ii) **Policy Coordinator:** AusAID will maintain a seconded AusAID officer within the CACC Secretariat as the Policy Coordinator.

- (b) See Annex G of this Scope of Services.

25. ASF TRANSITION ARRANGEMENTS

- 25.1 The Contractor must support GoPNG and GoA to make a smooth transition from the ASF to the EPSP in a way that minimises disruptions to the operations and activities of the EPSP and other programs (including SGP, FMIP/PCaB, PSWDP, SAGO, MaD).
- 25.2 To support the ASF – EPSP Transition Period, the Contractor must facilitate a comprehensive planning workshop immediately upon mobilisation. This workshop may include members of the EPSP Design Team, AusAID, DNPM, PMG, the Public Sector Adviser and the ASF Management Team.
- 25.3 During the ASF – EPSP Transition Period, the Contractor must work with the ASF Team cooperatively and collaboratively, under the direction of the Public Sector Adviser and with the support of AusAID to:
 - (a) receive a ‘handover’ of relevant information that will support the smooth transition from the ASF to the EPSP; and
 - (b) communicate with all stakeholders about the transition.

ANNEXES

- A. Acronyms and Definitions
- B. Technical Assistance Personnel
- C. Significant Program Strategies
- D. Targeted Training
- E. EPSP Capacity Development Fund
- F. Performance Monitoring and Assessment
- G. EPSP Management and Lines of Accountability
- H. Contractor Personnel Inputs
- I. EPSP Program – Results Framework
- J. EPSP Technical Analysis
- K. Program Office
- L. Terms of Reference for Key Personnel and Specialist Inputs

ANNEX A - ACRONYMS AND DEFINITIONS

ASF	Advisory Support Facility
ASF End Date	30 April 2010
ASF–EPSP Transition Phase	The period starting with the EPSP Program Mobilisation Date and ending with the ASF End Date
AusAID	Australian Agency for International Development
Australian Government Inputs	SGP deployees and twinning activities
CACC	Central Agencies Coordinating Committee
Contracted Program Inputs	All activities delivered under EPSP (including Partnerships for Capacity Development and the Capacity Development Fund).
Contractor	Implementing Service Provider
Contractor Services	All services required to be provided by the Contractor in accordance with this Scope of Services
Communities of Practice	Professional networking activities which aim to consolidate knowledge, disseminate information and enhance cross-program coherence on a thematic issue (such as capacity building approaches, or public financial management).
DNPM	Department of National Planning and Monitoring
DPLGA	Department of Provincial and Local Government Affairs
EPSP	Economic and Public Sector Program
EPSP PDD	EPSP Program Design Document
EPSP TA Personnel	Technical Assistance personnel provided by the Contractor in support of the EPSP (excluding SGP and Twinning personnel)
FMIP	Financial Management Improvement Program
GoA	Government of Australia
GoPNG	Government of Papua New Guinea
IMG	Independent Monitoring Group
M&E	Monitoring and Evaluation
M&E Framework	As set out in Annex F
MaD	Making a Difference capacity building course

MaD Program Manager	A consultant contracted directly by AusAID to provide oversight of the MaD.
ODW	Office for the Development of Women
PCaB	Provincial Capacity Building Program
PM&NEC	Department of Prime Minister and National Executive Council
PMG	(EPSP) Program Management Group
PPMF	Performance Planning and Monitoring Framework
Program Mobilisation Date	Also referred to as Mobilisation. The date that the Contractor must mobilise in PNG as defined in the Contract
Program Office	The Program Office to be established by the Contractor in accordance with Annex K.
PSWDP	Public Sector Workforce Development Program
SAGO	Support for Auditor General's Office
SGP	Strongim Gavman Program
SNS	Sub National Strategy
TA	Technical Assistance
TOR	Terms of Reference
Provincial Performance and Improvement Initiative (PPII)	A GoPNG initiative led by DPLGA in partnership with DNPM and AusAID. PPII's objective is to improve service delivery by provincial, district and local level government administrations through more efficient and effective public administration.
WoG	Whole-of-Government

ANNEX B - TECHNICAL ASSISTANCE PERSONNEL

1. Provision of Technical Assistance Personnel

- 1.1 Where a request for TA personnel is approved by the PMG, the Contractor is to recruit, mobilise, demobilise, support and manage (by developing management systems, principles and processes to ensure TA personnel perform effectively) all EPSP TA personnel in accordance with the EPSP PDD and this Scope of Services. The Contractor will ensure GoPNG have a key role in the recruitment of TA personnel and in the management of TA in their workplace.

2. Recruitment of TA Personnel

- 2.1 Contractor is to provide recruitment services in respect of those TA personnel as follows:
- (a) employing best practice processes in identifying, selecting and engaging TA personnel to ensure that the aid effectiveness objectives of the EPSP are fully met;
 - (b) supporting the agencies to develop a position description and terms of reference for the TA personnel;
 - (c) ensuring that appropriate GoPNG representatives participate throughout the recruitment process;
 - (d) ensuring that all recruitment for TA personnel is conducted in a manner that is consistent with the principles of the Commonwealth Procurement Guidelines (CPGs), including the core principle of “value for money” (incorporating both technical and price assessments), and all relevant regulatory and AusAID requirements;
 - (e) ensuring that all TA personnel are recruited against the GoA-GoPNG approved TOR for the position;
 - (f) ensuring that all TA personnel are recruited on the basis of demonstrated understanding and ability to integrate principles of gender equality and gender mainstreaming as part of their capacity building approach, including awareness and understanding of the AusAID PNG Domestic Violence policy;
 - (g) a variety of recruitment methods are used, as appropriate, including (but not limited to) direct advertising in national daily/weekend newspapers and/or professional journals, use of specialist recruitment agencies, use of Contractor websites or databases;
 - (h) utilising recruitment methods that are innovative, flexible and tailored to meet the agency’s needs and are designed to identify, encourage and attract eligible candidates:

- (i) who are women, in order to achieve gender equality within the EPSP TA Personnel team;
 - (ii) who are PNG nationals and/or based within PNG, in order to ensure greater local expertise within the EPSP TA personnel team;
 - (iii) who have the requisite technical skills and experience, as well as strong interpersonal qualities required to support EPSP's capacity development objectives; and
 - (iv) who will adhere to the EPSP Contractor Code of Conduct and understand and promote the gender, HIV and disability equality principles of the EPSP;
- (i) prior to engagement of any TA personnel, AusAID and GoPNG are provided with a copy of the preferred candidate's CV with a brief report on the recruitment strategy, interview and referee checks, together with any other assessments used (which must include price), and a comment on any alternate short-listed candidates;
 - (j) facilitating the final approval by AusAID and GoPNG of the preferred candidate, on the basis that AusAID reserves the right to reject the Contractor-nominated candidate at AusAID's absolute discretion and to require the Contractor to undertake further recruitment activities at the Contractor's expense;
 - (k) Supporting agencies to develop exit strategies for technical assistance support over time; and
 - (l) a salary range for each position is established prior to the commencement of recruitment.

3. Performance Management of TA Personnel

- 3.1 Further and subject to the requirements of Clause 20 of Schedule 1 regarding the overall Contractor performance monitoring and assessment, the Contractor is to provide performance management services in accordance with the requirements of the EPSP PDD as follows:
- (a) ensuring that the performance of all TA personnel is managed effectively;
 - (b) ensuring genuine GoPNG input into the performance management processes of all TA personnel and enabling increasing GoPNG involvement in these processes over time:
 - (i) based on clear identification of demand and capacity for increasing involvement by the agency; and
 - (ii) in a manner that makes use of or at least replicates, where system weakness prevents their use, existing GoPNG personnel

management processes, moving towards greater GoPNG management of TA Personnel as systems are strengthened.

- (c) ensuring that all TA Personnel are made aware of, fully comply with, and are managed appropriately in the event of non-compliance with, a EPSP Contractor Code of Conduct that:
 - (i) sets out clear expectations in relation to appropriate and professional conduct;
 - (ii) contains workplace policies and protocols addressing issues related to gender equality, HIV and AIDS, disability, discrimination and harassment; and
 - (iii) is based as closely as possible on the Australian Public Service Code of Conduct;
- (d) ensuring that all TA personnel integrate principles of gender equality, HIV mainstreaming and disability equality as part of their capacity building approach;
- (e) ensuring that all TA personnel participate in ongoing professional development programs provided by the Contractor in accordance with Clause 5 of this Annex B below and the EPSP Human Resource Management and Professional Development Plan outlined in Clause 18.2 of Schedule 1;
- (f) ensuring that all EPSP TA personnel work in cooperation, coordination and harmony with personnel working under other programs of support to the agency;
- (g) Ensuring all EPSP TA personnel comply with their quarterly reporting requirements;
- (h) Using TA quarterly reports as a key resource upon which EPSP TA personnel performance management will be based; and
- (i) ensuring all EPSP TA personnel are familiar, comply with and work in accordance with the EPSP PDD.

4. Workplans for TA Personnel

- 4.1 Subject to the requirements of Clause 7, Annex F, the Contractor must support all EPSP TA Personnel to develop individual annual workplans as follows:
 - (a) completing, in the initial month of the placement, a brief situational analysis of the capacity needs of the work area within which they are placed, upon which the workplan will be based;
 - (b) ensuring workplans are developed collaboratively with relevant GoPNG personnel within one month of TA Personnel commencement

in PNG and reviewed within six months to ensure ongoing appropriateness;

- (c) at a minimum, ensuring workplans contain:
 - (i) a clear statement of roles and responsibilities, including lines of reporting and accountability requirements;
 - (ii) clear links to the Partnership for Capacity Development for that agency, and the supporting capacity diagnostics, where applicable;
 - (iii) clear links with GoPNG strategies and plans;
 - (iv) clear links with the agency's corporate and/or strategic plans;
 - (v) agreed capacity development objectives, including the balance of indirect and direct assistance and an explicit gender mainstreaming objective; and
 - (vi) a simple monitoring framework to support individual performance management and to provide data for the Contractor Monitoring Framework; and
- (d) submitting work plans to relevant Agency personnel as determined by the agency head, as well as to AusAID, to ensure transparency and accountability.

5. Ongoing Professional Development of TA Personnel

- 5.1 To ensure that TA personnel retain and develop their knowledge and capabilities the Contractor is to provide (in accordance with the EPSP Human Resource Management and Professional Development Plan specified in Clause 18.2 of Schedule 1):
 - (a) an induction program for any new TA personnel that will include a well rounded introduction to PNG (specific to the city where the TA personnel will be based), GoPNG systems and processes, and the EPSP;
 - (b) an ongoing program of professional development for all EPSP TA personnel in areas that are most critical to the EPSP including:
 - (i) approaches to capacity development, particularly to support TA personnel to understand and balance indirect and direct approaches, to move beyond the more traditional 'counterpart model', to take a strategic and flexible approach and to realise benefits of inter-agency cooperation and coordination. This will include participation in the MaD Program as specified in Clause 6 of this Annex B below;

- (ii) overarching policy issues, including gender equity, HIV mainstreaming, disability, anti-corruption, and links to service delivery and the sub national strategy;
 - (iii) cross-cultural communication; and
 - (iv) performance monitoring and aid effectiveness.
- (c) The Contractor may be required by AusAID to allow participants other than EPSP TA personnel to take part in the induction and/or professional development programs (for example the Making a Difference course) including personnel working on the SGP, twinning or other programs.

6. Making a Difference Capacity Development Program (MaD)

- 6.1 Further to above, as a component of the professional development of EPSP TA personnel in capacity development, all long term EPSP TA Personnel will be encouraged to include AusAID's MaD capacity development program in their workplans.
- 6.2 The Contractor is to provide logistical, management and administrative support to the MaD Program for TA personnel across the entire AusAID program in PNG, including but not limited to:
- (a) supporting the recruitment, with input from AusAID and the MaD Program Manager, of locally-based facilitators to deliver the program in PNG;
 - (b) assisting the Program Manager to establish facilitator availability and selection for each course;
 - (c) contracting of facilitators;
 - (d) logistical support including venue, arrangements for participants attending from outside Port Moresby (including travel allowances, travel, airport transfers and accommodation), production of course materials including manuals and production of workshop outputs;
 - (e) advertising, registration and managing attendance of participants from across the AusAID program in PNG;
 - (f) preparation and distribution of course certificates to successful participants;
 - (g) liaison with the MaD Program Manager (an AusAID funded and managed position) and AusAID; and
 - (h) logistical and administrative support for Capacity Development Community of Practice events.

- 6.3 AusAID and the MaD Program Manager will be responsible for development of MaD and any associated program, strategic targeting of participant agencies, ongoing improvement of course content and delivery mechanisms. The Contractor is to support AusAID and the MaD Program Manager (while that role continues) in these responsibilities.
- 6.4 In the event that the MaD Program Manager position is discontinued, the Contractor is to assist AusAID in undertaking the responsibilities outlined in Clause 6.3 of Annex B.

7. Communities of Practice

- 7.1 The Contractor is to, under the direction of AusAID, establish (where they do not yet exist) and manage Communities of Practice in common technical areas, such as public financial management and human resource management, to bring together advisers and counterparts across sectors and AusAID PNG programs. The Communities of Practice will allow advisers and counterparts to share their experiences and explore opportunities to collaborate and learn from one another.
- 7.2 The Contractor is to support the delivery of Communities of Practice by:
- (a) Providing logistical support including venue and travel, as required;
 - (b) Advertising and managing attendance of participants from across the AusAID program in PNG, including maintaining records of participants from all Communities of Practice; and
 - (c) Providing secretariat support for meetings.

Typically, this will involve four half day workshops per year. These will be funded through the EPSP Activity Funds Imprest Account.

8. Ongoing logistical and other support for TA Personnel

- 8.1 Further to Clause 1 of this Annex B above, the Contractor is to provide all logistical and other support to EPSP TA personnel that is necessary to enable the TA personnel to fulfil their roles in accordance with the EPSP PDD, the relevant agency Partnership for Capacity Development (where applicable), their terms of reference and workplans, such as support for personal welfare, travel, physical working arrangements, information technology, vehicles and other transport, security and all other personnel issues, including but not limited to:
- (a) assistance to mobilise to PNG and to the specific location of the position, including providing information before arrival (if relevant), visas, flights, transfer of personal effects and transport upon arrival;
 - (b) facilitate entry and exit briefings with AusAID and other relevant external stakeholders as part of the induction process;

- (c) assistance, as required, to find appropriate accommodation, to obtain a PNG drivers licence and to establish banking arrangements;
 - (d) assistance to make work travel arrangements including flights, accommodation and per diems;
 - (e) provision of a comprehensive orientation briefing covering issues such as medical facilities, shopping options and security;
 - (f) provision of security briefing, equipment and training, including security radios and mobile phone sim cards;
 - (g) provision of safe, reliable and suitable land transport for official use;
 - (h) provision of adequate medical insurance including emergency medical evacuation insurance; and
 - (i) develop mentor arrangements between TA personnel.
- 8.2 The Contractor must maintain close ties with EPSP TA personnel at all times to ensure they are well informed of EPSP implementation issues and to ensure a positive relationship among the TA Personnel and as between TA Personnel and GoPNG counterparts.
- 8.3 The Contractor is to ensure that all support provided to EPSP TA personnel is tailored to meet the specific needs of all TA personnel, including taking into account whether TA personnel are internationally or locally engaged and whether TA personnel are male or female.

9. Transition of ASF TA Personnel: 2009 to 2010

- 9.1 Further to Clause 1 of this Annex B above, the Contractor is to support a smooth and seamless transition from the existing ASF to the EPSP, including the provision and management of existing ASF TA personnel as follows:
- (a) The Contractor is to, upon mobilisation, provide the option to existing ASF advisers to continue under the EPSP, on terms at least commensurate with their current conditions at the time of transition, if the following conditions are met:
 - (i) the advisory position filled by the ASF long-term adviser in 2009 has been identified by the partner agency as required in 2010;
 - (ii) the ASF long-term adviser has agreed with AusAID to continue under the EPSP and has agreed to share his or her contract and performance assessment information to the Contractor; and
 - (iii) the ASF long-term adviser has been assessed as performing effectively by ASF management in his or her last annual and/or six-monthly performance assessment;

- (b) Where the conditions in (a) above are met and ASF long-term advisers are transitioned to the EPSP, the Contractor is to contract these advisers as EPSP TA Personnel from the ASF End Date on these terms and conditions for the duration of their existing contract;
- (c) Upon the completion of their ASF contracts, and agreement by the PMG to continue these long-term advisers, these advisers will be subject to the terms and conditions established by the Contractor for EPSP TA Personnel; and
- (d) All EPSP TA Personnel will have their performance assessed and managed by the Contractor as of the ASF End Date in accordance with the management principles, systems and processes established by the Contractor in accordance with Clause 3 of this Annex and Clause 20 (Performance Monitoring and Assessment) of this Scope of Services.

ANNEX C - SIGNIFICANT PROGRAM STRATEGIES

1. EPSP Management Strategy

- 1.1 The Contractor is to develop a EPSP Contractor Management Strategy outlining:
- (a) how the EPSP Program Office will be structured, including roles, responsibilities and accountabilities;
 - (b) relationships between the EPSP Program Office, AusAID (including the Public Sector Adviser) and key GoA and GoPNG stakeholders; and
 - (c) the information and communication strategy setting out engagement protocols to enable effective communication between the Contractor and relevant GoPNG and GoA stakeholders. The Information and Communication Strategy will include regular seminars for GoPNG officials and advisers, a program newsletter with wide distribution outlining common themes and public sector developments, and wide circulation of a summarised annual EPSP Strategic Framework. The Contractor is to will conduct an initial assessment of the Information and Communication Strategy by the end of the first year of program implementation.
- 1.2 The Contractor is to submit the EPSP Contractor Management Strategy (including the EPSP Information and Communication Strategy) to AusAID within one month of mobilisation (as per Table 1 in Clause 21 of this Scope of Services).

2. EPSP Sustainability Strategy

- 2.1 The Contractor is to must lead the preparation of a sustainability strategy in the first year of the program, to document the expected contribution of specific approaches to sustainability, as well as the risks to sustainability and methods for managing those risks.

3. EPSP Integrated Capacity Development Strategy

- 3.1 The Contractor led by the Capacity Development Specialist, will establish and manage an Integrated Capacity Development Strategy in support of Program initiatives in the first year of the program.
- 3.2 The Contractor must ensure the Integrated Capacity Development Strategy:
- (a) reflects the Capacity Development Approach articulated in the EPSP PDD;
 - (b) demonstrates clear linkages with the EPSP Gender Strategy, Sustainability Framework, Results Framework and Management Framework;

- (c) supports the Public Service Schedule for the PNG-Australia Partnership for Development; and
- (d) is clearly aligned with GoPNG development strategies.

4. **EPSP Gender Strategy**

- 4.1 During the first year of EPSP implementation the Contractor, led by the Gender Specialist, will establish and manage a Gender Strategy that documents the specific approaches and actions the EPSP will implement to advance gender equality and empower women in the public service.
- 4.2 The EPSP Gender Strategy must:
 - (a) be coherent with the PNG Program's Gender Mainstreaming Framework and the AusAID Office for Development Effectiveness report Violence Against Women in Melanesia and East Timor: A Review of International Lessons (2008);
 - (b) ensure strong coordination between EPSP and the PNG Office for the Development of Women (ODW);
 - (c) be clearly linked with other EPSP Strategies, including the Integrated Capacity Development Strategy, Management Strategy and Sustainability Strategy;
 - (d) align with relevant GoPNG development strategies;
 - (e) have a strong focus on supporting change and human resource management within partner agencies and stakeholders; and
 - (f) support the implementation of an effective gender strategy in the public service.

5. **EPSP Risk Management Plan**

- 5.1 The Contractor is to provide a EPSP Risk Management Plan updated annually as an Annex to the EPSP Contractor Management Strategy that addresses:
 - (a) all risks that can be reasonably anticipated;
 - (b) the level of probability of the risk eventuating;
 - (c) the impact on the Program if the risk eventuates along with possible options for ameliorating the risk;
 - (d) the entity(s) responsible for managing the risk consistent with the EPSP PDD; and
 - (e) the approach to be taken to mitigate any impact.

ANNEX D - TARGETED TRAINING

1. TARGETED TRAINING

- 1.1 The Contractor is to deliver demand-driven, short-term targeted training to key partner agencies to address key skills deficits specific to that agency, if identified through a shared diagnostic as part of a coherent capacity development approach (such as through a Partnership for Development), in accordance with the EPSP PDD. This will require the delivery of the following strategies outlined below.

2. TARGETED TRAINING STRATEGY

- 2.1 The Contractor is to develop a Targeted Training Strategy within the first year of program mobilisation which will identify priority sectors for training through the EPSP and facilitate integration between targeted training and broader institutional strengthening initiatives.
- 2.2 The Targeted Training Strategy will ensure all short-term targeted training, whether delivered by the Contractor Program Office or sub-contracted to a Training Provider, is implemented:
- (a) As a component of a holistic approach to enhancing skills in partner government agencies. All targeted training will therefore complement other forms of aid, including technical assistance, twinning, on the job coaching and mentoring;
 - (b) To enhance gender equity outcomes within the overall context of EPSP. Special measures must be utilised to enable women to participate in and benefit from mentoring and training programs. There will be an emphasis on providing training for women in the public sector to enhance career opportunities and move towards a more equitable public sector;
 - (c) As complementary and directly supporting GoPNG's own program development and workforce development initiatives;
 - (d) With consideration to the range of other AusAID funded education and training programs including the Pacific Leadership Program, Pacific Executive Program, Australian Leadership Awards, Australian Development Scholarships, and the Australian Regional Development Scholarships;
 - (e) With a goal to progressively, through the duration of EPSP, increase the use of GoPNG systems for the procurement of training;
 - (f) In accordance with the principles of transparency and accountability in the selection of training activities and awardees, with selection processes and outcomes clearly documented;

- (g) To support networks within GoPNG and between GoPNG and training providers
 - (h) In manner which emphasises the capability of the team rather than the individual to build professional peer groups and broader institutional strength over time, rather than creating isolated skilled individuals who no longer fit the prevailing organisational culture; and
 - (i) In accordance with the EPSP PDD.
- 2.3 The Contractor is to assist partner agencies to submit requests for assistance using the EPSP standard templates developed by the Contractor. Requests for targeted training assistance may include:
- (a) the range of short-term training methodologies required (for example, on-the-job training, workplace attachments, twinning, external training);
 - (b) how the targeted training requested is aligned to organisation planning and change;
 - (c) how the targeted training requested is aligned to the agency Partnership for Capacity Development (if applicable);
 - (d) the process for selecting trainees (including the development of proformas to applications); and
 - (e) performance management of trainees after training.
- 2.4 The Contractor is to provide guidance to partner agencies on how managers can put such training into an incentive framework and use it to build a professional service. This could include:
- (a) encouraging the work unit to discuss and identify deficiencies in workplace skills that undermine performance;
 - (b) selecting groups or individuals for training on the understanding that better performance will be expected post-training; and
 - (c) insisting that the training is applied and maintained over time and that the group or individual is more productive on return.

3. **Specialist Inputs**

- 3.1 Where the Contractor proposes to utilise specialist inputs to deliver approved targeted training requests it must do so in accordance with this Clause.

Selection of Training Providers

- 3.2 When selecting a training provider to deliver approved targeted training the Contractor is to:

- (a) Advertise tender documentation based on the approved request for targeted training assistance, the EPSP Targeted Training Strategy and the Partnership for Capacity Development (where applicable) not less than 8 weeks before the commencement of the training;
- (b) investigate and encourage the use of suitably qualified local sub-contractors, government officials, and other local industry to supply training/support services, as appropriate;
- (c) Establish a tender selection panel (comprising at least one representative each from the relevant partner agency and the EPSP Program Office) to assess bids to deliver training;
- (d) Develop practical and cost-effective selection and procurement arrangements that meet the objectives of Commonwealth Procurement Guidelines and Clause 19 of this Scope of Services (Financial Management and Procurement);
- (e) Submit recommendations from training provider selection process to AusAID for endorsement; and
- (f) Notify the successful tenderer at least four (4) weeks prior to commencement of the training, sign the contracts and debrief unsuccessful bidders.

Training Delivery

- 3.3 The Contractor is to provide any logistical or administrative support required by a training provider to ensure the efficient and effective delivery of externally provided targeted training.

4. PERFORMANCE ASSESSMENT OF TARGETED TRAINING

- 4.1 The Contractor is responsible for monitoring and assessing the delivery of all EPSP targeted training to ensure quality standards are achieved. This includes:
- (a) Where the targeted training is delivered by an external training provider, monitoring the performance of that training provider and conducting assessments of the impact of that training.
 - (b) Managing participant feedback reports from all targeted training.
 - (c) Preparing terms of reference and sub contracting independent assessments of the impact of short term training, where appropriate.
 - (d) Submitting brief reports to AusAID following the delivery of all targeted training; and
 - (e) Maintaining effective records of all EPSP targeted training, including participants and performance reviews.

- 4.2 The Contractor may also be required to provide targeted training support through EPSP for other AusAID initiatives as directed by AusAID.

ANNEX E - IMPREST ACCOUNTS AND CAPACITY DEVELOPMENT FUND

1. INTRODUCTION

- 1.1 EPSP will incorporate a Capacity Development Fund, which will comprise up to 30 per cent of the program value. The Fund will include GoA resources, and potentially funding from GoPNG and other donors. Grants or funding will take three forms within the Fund:
- (a) So called Co-Financed Grants which are mostly existing mechanisms to support the implementation of GoPNG initiatives;
 - (b) EPSP Activity Funds which are for funding activities which are developed under EPSP but are not eligible for other funding such as by the existing co-financed grants; and
 - (c) Incentive-Based Grants to complement activities of the Partnerships for Capacity Development.

2. CO-FINANCED GRANTS

- 2.1 Upon the ASF End Date or the Program Mobilisation Date, whichever is the most suitable, the Contractor must provide support to GoPNG in their administration and management of existing Trust Account mechanisms in accordance with their existing operations manuals. [Comment: This will be clarified during transition workshops].
- 2.2 Australia and PNG will support long term multi-year strategic investments for capacity development, as approved by the PMG, through co-financed grants distributed through joint trust account mechanisms, as specified in this Annex E.
- 2.3 Co-financed grants will be the mechanism by which Australia maintains GoPNG programs for economic and public sector development, including PSWDP, SAGO and FMIP.
- 2.4 Agreements for co-financed grants will be established by high level Exchange of Letters between AusAID and GoPNG.

Public Sector Workforce Development Program (PSWDP) Trust Account

- 2.5 The Contractor will, together with relevant officials of the Public Sector Workforce Development Program (PSWDP) and the PNG Department of Personnel Management maintain the PSWDP Trust Account for the purpose of supporting and implementing the activities of the PSWDP in enhancing and developing the public service workforce in Papua New Guinea.
- 2.6 The Scope of Services detailed here defines the Contractor's responsibilities and tasks with regard to the management of the PSWDP Trust Account. It

should be read in conjunction with the approved PSWDP Trust Account Operating Procedures Manual.

- 2.7 No payments or withdrawals shall occur unless the following approval processes have been followed:
 - (a) The PSWDP Secretariat Director will be responsible for reviewing and endorsing all expenditure requests, to ensure all payments relate to approved activities and are outlined in the activity budget.
 - (b) A costed PSWDP work plan must be prepared by the PSWDP Secretariat on an annual basis and endorsed by the PSWDP Management Board that AusAID is a member of.
 - (c) A costed PSWDP work plan, derived from the annual work plan, must be prepared each quarter by the PSWDP Secretariat, and approved by the PSWDP Management Board and AusAID for funding.
 - (d) All payments relating to approved activities must be included in the PSWDP work plan and comply with GoPNG procedures.
 - (e) Other costs as agreed in writing by AusAID and the Management Board.
- 2.8 The Contractor is to request replenishments for the PSWDP Trust account. The amounts for this will be based on information from AusAID, in consultation with GoPNG, acting on the advice, reports and recommendation of the PSWDP Management Board, the advice of the PSWDP Secretariat and the PSWDP's Chief Finance Officer.
- 2.9 The PSWDP Trust Account Operating Procedures Manual details what is allowable expenditure and disallowable expenditure from the Trust Account. All payments should be made in line with the allowable expenditure unless the additional expenditure is requested and approved in writing by AusAID.
- 2.10 Reporting requirements of the Contractor to AusAID through the PSWDP Chief Finance Officer are outlined below:
 - (a) The Contractor is required to report to AusAID regularly throughout the life of EPSP as specified elsewhere in this Scope of Services. For the purposes of managing and reporting on the operation of the PSWDP Trust Account, the Contractor shall:
 - (i) maintain all financial records with regard to the operation of the PSWDP Trust Account;
 - (ii) manage those risks which are the Contractor's responsibility under the Contract in accordance with the Operating Procedures Manual;

- (iii) integrate Progress Reports on the PSWDP Trust Account operation into 6-monthly reporting and/or Exception reporting; and
 - (iv) integrate management of the PSWDP Trust Account into Facility Management Planning.
- (b) The Contractor will ensure through appropriate tasking of EPSP advisers that the following reports are provided quarterly to AusAID:
 - (i) a work plan for trust account payments from the PSWDP Secretariat to AusAID for approval. A copy will also be provided to the PSWDP Secretariat Chief Finance Officer for information;
 - (ii) an acquittal of the Trust Account (all funds) and a summary report of prior year payments, amounts received each quarter, amounts paid each quarter, and balance to AusAID for approval ensuring that all reasonable efforts have been made for the acquittal and recovery of advances where appropriate; and
 - (iii) A report of cost of each component of the PSWDP segregated by funding agency, activity and expense type.
- 2.11 The PSWDP Secretariat will arrange for auditing of the Trust Account through the Auditor General's Office in PNG. Audit dates will be determined and agreed upon with the Auditor General's Office, PSWDP Management Board, EPSP and AusAID. The PSWDP Secretariat Director will be tasked with facilitating arrangements for the Special Purpose Audit through the Department of Personnel Management (DPM) and the Auditor General's Office. The auditor will be required to report on stewardship of funds in the Trust Account. The audit report should be presented to AusAID and DPM.
- 2.12 The Managing Contractor will assist the PSWDP Secretariat to integrate its functions into the Department for Personnel over the life of the PSWDP.

Financial Management Training Trust Account (FMTTA)

- 2.13 The Contractor will, together with relevant officials of the PNG Department of Finance (DoF), maintain the Financial Management Training Trust Account (FMTTA) for the purpose of supporting capacity building within the Finance Training Branch (FTB) of the PNG DoF in training development, delivery and management. The upper limit of the Trust Account will be agreed between AusAID and DoF, with approval from the PMG.
- 2.14 The account will be managed with quarterly accountable cash advances from AusAID disbursed using the guidelines and instructions set out in the FMTTA Operating Procedures Manual. The Contractor is to request replenishment for the FMTTA based on information from AusAID. The reporting under these procedures should indicate transparency and strong internal control processes.
- 2.15 No payments or withdrawals shall occur unless the following approval processes have been followed:

- (a) A costed annual work plan has been prepared by the Assistant Secretary Finance Training Branch (FTB) and endorsed by the Financial Management Capacity Development Operations Committee (FMCDO) (which AusAID attends);
 - (b) A costed quarterly work plan, derived from the annual work plan, has been prepared by the Assistant Secretary FTB and endorsed by the FMCDO and approved by AusAID for funding;
 - (c) All payments relating to approved activities must be included in the FTB work plan and comply with GoPNG procedures; and
 - (d) Any additional costs are agreed in writing by AusAID.
- 2.16 The Scope of Services detailed here defines the Contractor's responsibilities and tasks with regard to the management of the FMTTA. It should be read in conjunction with the approved FMTTA Operating Procedures Manual.
- 2.17 The FMTTA Operating Procedures Manual details what is allowable expenditure and disallowable expenditure from the FMTTA. All payments should be made in line with the allowable expenditure unless the additional expenditure is requested and approved in writing by AusAID.
- 2.18 The Contractor shall:
- (a) employ an accountant (local) as part of the EPSP management team to be located in FTB;
 - (b) in close consultation with DoF counterparts, implement appropriate financial management, accounting and reporting procedures and systems for the operation of the FMTTA established by DoF;
 - (c) continue to manage the FMTTA in accordance with the FMTTA Operating Procedures Manual;
 - (d) ensure costed three (3) monthly work plans for the FMTTA are submitted to the FMCDO for approval with each quarterly acquittal;
 - (e) acquit the FMTTA on a quarterly basis and submit acquittal to AusAID for approval, including making all reasonable efforts for the acquittal and recovery of advances;
 - (f) report on a quarterly basis to the FMCDO on expenditure from the FMTTA;
 - (g) arrange for quarterly spot checks or "mini" audits of the FMTTA in-country to check compliance with Operating Procedures Manual;
 - (h) arrange for two (2) independent audits of the FMTTA by a reputable, and suitably qualified, local firm. AusAID must clear Terms of Reference for each audit prior to the engagement of the audit firm. The auditor will be required to report to AusAID on stewardship of funds

in the FMTTA as well as the adequacy and accuracy of Program financial records and reports; and

- (i) during the last quarter of the EPSP, evaluate the effectiveness of existing procedures and make any recommendations to AusAID and GoPNG for transferring management of the account to GoPNG should a new phase be implemented.

2.19 The Contractor is required to report formally to AusAID regularly throughout the life of EPSP as specified elsewhere in this Scope of Services. For the purposes of managing and reporting on the operation of the FMTTA, the Contractor shall:

- (a) maintain all financial records with regard to the operation of the FMTTA;
- (b) manage those risks which are the Contractor's responsibility under the Contract in accordance with the Operating Procedures Manual;
- (c) integrate Progress Reports on the FMTTA operation into 6-monthly reporting and/or Exception reporting; and
- (d) integrate management of the FMTTA into Facility Management Planning.

Support to Auditor General's Office (SAGO) Trust Account

2.20 The Contractor will assist the PNG Auditor General's Office (AGO) to manage and report on the SAGO Trust Account for the purpose of supporting and building the capacity of the AGO to perform independent audits and report findings effectively to Parliament.

2.21 The Scope of Services detailed here defines the Contractor's responsibilities and tasks with regard to the management of the SAGO Trust Account. It should be read in conjunction with the approved SAGO Trust Account Operating Procedures Manual.

2.22 Responsibility for the overall management of the SAGO Trust Account falls within the Finance and Administration Branch of the AGO. The Contractor will support the AGO's management of the account, as requested, by:

- (a) backing up the accounting package monthly;
- (b) providing support to report preparation, as required; and
- (c) provide other support to the AGO as required.

2.23 The Contractor will arrange for annual independent auditing of the Trust Account. Audit dates will be determined and agreed upon with the Auditor General's Office, SAGO Steering Committee, EPSP and AusAID. The auditor will be required to report on stewardship of funds in the Trust Account. The audit report will be presented directly to AusAID by the auditor.

- 2.24 The Contractor will provide additional support to the management and reporting of the SAGO Trust Account through the placement and management of an EPSP advisor in the Finance and Administration Branch of the AGO in the initial years of EPSP. EPSP capacity diagnostics of AGO should consider how long this technical assistance should be continued.
- 2.25 The Contractor is required to report to AusAID and the SAGO Steering Committee any detected, suspected or attempted fraudulent activity involving AusAID provided funds, in accordance with the SAGO Trust Account Operating Procedures Manual.
- 2.26 AusAID, in consultation with GOPNG, will make the initial deposits and subsequent replenishments to the Trust Account, acting on the advice, reports and recommendation of the SAGO Steering Committee, and the advice of the AGO's Chief Finance Officer. The Contractor is to request replenishment of the Trust Account based on information from AusAID.
- 2.27 The SAGO Trust Account Operating Procedures Manual details what is allowable expenditure and disallowable expenditure from the Trust Account. All payments will be made in line with the allowable expenditure unless the additional expenditure is requested and approved in writing by AusAID.

3. **EPSP ACTIVITY FUND**

- 3.1 Further to Clause 19 (Financial Management and Procurement) above, the Contractor is to establish and manage an EPSP Activity Fund Imprest Account in accordance with the EPSP PDD and the following principles:
 - (a) be consistent with the PNG Commitment on Aid Effectiveness and the PNG-Australia Partnership for Development;
 - (b) management and financial reporting of activities supported by the Fund will be transparent and subject to GoPNG financial management legislation and associated procedures and regulations;
 - (c) complete financial reporting within GoPNG systems;
 - (d) ensure alignment of all approved funds with GoPNG strategies and corporate plans;
 - (e) ensure alignment of all approved funds with agency Partnerships for Capacity Development, where applicable;
 - (f) ensure all procurement associated with the expenditure of the Capacity Development Fund is undertaken by GoPNG using its own systems, where appropriate;
 - (g) where GoPNG systems are insufficient the Contractor will identify opportunities to directly support the strengthening of GoPNG's financial management, procurement and audit systems and processes which will enhance the capacity of all development partners to increasingly use those systems and achieve improved aid

effectiveness. The Contractor will implement supplementary systems with a view to progressively using GoPNG systems over the duration of EPSP as the systems improve and the program develops; and

- (h) transparency and accountability.

3.2 The Contractor is responsible for the establishment and management of the EPSP Activity Fund Imprest Account. This includes, but is not limited to:

- (a) Supporting partner agencies in submitting requests for assistance to the PMG, using EPSP standard templates;
- (b) supporting the PMG in assessing requests for assistance;
- (c) overseeing distribution of funds;
- (d) assisting GoPNG to establish new trust account mechanisms, where necessary. This includes ensuring operating procedures manuals exist for all trust accounts;
- (e) supporting, where need and agreed between the Contractor, AusAID and the partner agency, management of trust accounts. This will be detailed further in each trust account operating procedures manual but may include assisting the partner agency:
- (f) with implementing appropriate financial management, accounting and operating procedures, including maintaining financial records with regard to the operation of the trust account;
- (g) to develop costed workplans;
- (h) backing up accounting information; and
- (i) with regular acquittals.
- (j) overseeing reporting of EPSP Activity Fund expenditure; and
- (k) in coordination with AusAID and GoPNG, commissioning annual independent audits of trust funds under EPSP, as part of the annual reporting process.

3.3 Decisions on allocations under the EPSP Activity Fund will be made by the PMG, upon receipt of requests for assistance, using EPSP standard templates.

3.4 The Contractor is to forecast expenditure and request replenishment of this account quarterly.

4. **INCENTIVE-BASED GRANTS**

4.1 Each year up to A\$1 million will be allocated for Incentive-Based Grants. The initial maximum per grant is to be A\$100,000 but this is to be reviewed after two years of implementation.

- 4.2 The Contractor is to request pre-payment for funds for this purpose. Initially this may be on an ad hoc basis as necessary but subsequently when expenditure is more predictable, this should be quarterly. Schedule 2 Basis of Payment provides further guidance concerning pre-payment for Incentive Based Grants.
- 4.3 Contractor is to distribute incentive-based grants as identified through a shared diagnostic as part of a coherent capacity development approach (such as through a Partnership for Development), in accordance with the EPSP PDD and as approved by the PMG. The Contractor will distribute and manage incentive-based grants in accordance with the Incentive-Based Grants Guidelines (see Clause 17).
- 4.4 Funding will focus on initiatives to support workplace teams and enhance the effectiveness of their work environment, in order to overcome operational inertia and address institutional blockages.
- 4.5 Incentives could include, but are not limited to: training; training materials; outreach between centre and provinces; database management and improved information flows; information technology upgrades; work-related equipment and consumables, and workplace repair and maintenance.
- 4.6 Incentives may also be used to support special measures to increase the participation of women in the public service.
- 4.7 The Contractor is to review the purpose, utility, effectiveness and procedures for the Incentive Based Grants two years after mobilisation.

ANNEX F - PERFORMANCE MONITORING AND ASSESSMENT

1. INTRODUCTION

- 1.1 Ultimate oversight of M&E of the EPSP will be the responsibility of the CACC, with support from the Contractor.
- 1.2 The Contractor will, led by the EPSP M&E Specialist and under the direction of CACC, support GoPNG to monitor and assess performance management, learning and accountability for aid effectiveness in accordance with the EPSP M&E Framework, in particular:
 - (a) Support the implementation of all EPSP M&E arrangements, as outlined in this Annex F;
 - (b) ensuring all EPSP M&E arrangements are adjusted to align closely with the indicators and reporting requirements for GoPNG as a whole; and
 - (c) supporting the development of baseline diagnostics in the first 6 months of program mobilisation to complement the EPSP PDD and guide the M&E Framework.
- 1.3 The Contractor will ensure all M&E arrangements for EPSP contain the following features:
 - (a) mix of quantitative and qualitative indicators and a range of evaluation methodologies (a 'mixed-methods' approach), including participatory methods that bring in both men and women;
 - (b) a combination of indicators of progress and success, and qualitative approaches to monitoring capacity development;
 - (c) maximum use of, and thereby strengthening of, GoPNG monitoring and reporting systems, and support for greater GoPNG analysis of data, including gender analysis;
 - (d) commitment to sex, provincial and other disaggregating data to the greatest extent possible;
 - (e) integration of program reporting with the reporting cycles of GoPNG and AusAID;
 - (f) inclusion of resources to support a responsive program of issues-based evaluation studies;
 - (g) support agency performance planning as an integral part of budget processes;
 - (h) full-time M&E professional resources to support GoPNG and EPSP performance assessment and reporting; and

- (i) the use of the EPSP Capacity Diagnostic as both a planning and a monitoring tool.

2. **FACILITATED PERFORMANCE ANALYSIS**

- 2.1 The Contractor is to complete a facilitated performance analysis in November/December each year to feed into the finalisation of the Strategic Framework for the coming year and to feed into the AusAID Performance Reporting Cycle which commences in February each year.
- 2.2 The Contractor is to facilitate structured annual programs of Contribution Dialogue meetings as a basis for the contribution analysis, with the aim of:
 - (a) bringing together all the evidence on changes in the areas of EPSP work with information about other GoPNG, AusAID, and donor programs also operating in those areas; and
 - (b) to reach consensus about the extent of the contribution made by EPSP to the perceived changes

3. **BIENNIAL PROGRAM EFFECTIVENESS REVIEW**

- 3.1 The program will be subject to a biennial independent evaluation in the form of a Program Effectiveness Review. The Biennial Program Effectiveness Review will be undertaken every two years and will include a mix of formative and summative evaluation of program progress and outcomes and will incorporate a formal evaluation of risk management. The Program Effectiveness Review will provide the opportunity to test key assumptions in the program design related to the effectiveness of different forms of aid and to review and revise the program's theory of change as the basis for achieving positive, sustainable change.
- 3.2 The second Program Effectiveness Review, at the end of Year 4, will be a Mid-Term Review (Independent Progress Report) and will inform decisions about the future shape and focus of the program for its second phase, allowing enough time for any necessary re-design and any restructuring of management or implementation arrangements.
- 3.3 These evaluations will be undertaken by a joint Independent Monitoring Group (IMG). The IMG will include senior personnel with technical evaluation skills as well as public sector, economic governance and public financial management expertise.
- 3.4 The Contractor is to support Program Effectiveness Reviews by supporting any contracting, logistical and administrative arrangements, as directed by AusAID, including the recruitment of IMG members and development of evaluation TORs and methodology.

4. **PERIODIC ISSUES BASED EVALUATION STUDIES**

- 4.1 In order to deepen the understanding of the issues, opportunities and constraints in the economic and public sector field, and of the contributions

being made by GoPNG and donor support efforts via EPSP, the program will support an ongoing series of issues-based evaluation studies as part of the Program's research and analysis component.

- 4.2 These periodic evaluations will examine specific issues of interest or concern during program implementation, identified by any stakeholder, as agreed by the PMG on the basis of a proposed evaluation plan.
- 4.3 The Contractor is to assist, with support from the M&E Specialist, by:
 - (a) Developing evaluation plans;
 - (b) Identifying, recruiting and managing appropriate expertise, particularly within PNG and the region; and
 - (c) Disseminating the findings widely through an explicit communication strategy, prepared and agreed during the preparation of evaluation plans.

5. **MONITORING AND EVALUATION MATRIX**

- 5.1 An indicative M&E Matrix for EPSP is provided in the EPSP PDD, which specifies data sources, monitoring mechanisms and a mix of indicators and research questions to guide the Contribution Dialogue process, forming the basis for the ongoing M&E of program effectiveness. It also includes a series of performance measures for the program management and governance arrangements to provide the most effective structure for the management of the program as a partnership between the Governments of PNG and Australia.
- 5.2 The Contractor is to review the M&E Matrix upon mobilisation of EPSP through a participatory workshop (to be held within three months of program mobilisation) so that it utilises current GoPNG systems to the greatest extent possible, and to maximise the value of data and reporting tools for GoPNG. The M&E Matrix will be finalised within four months of mobilisation, as specified in Table 1 of this Scope of Services.
- 5.3 The M&E Matrix is to be set out using the following heading or another format agreed between the Contractor and AusAID in writing:
 - (a) Item;
 - (b) Research Questions and Indicators of Progress (Success) Data Source/ Monitoring;
 - (c) Mechanisms; and
 - (d) Frequency.
- 5.4 The Contractor is to ensure the Annual Program Report is aligned with the Matrix and the other provisions of the M&E arrangements.

6. M&E WORKING GROUP

- 6.1 The Contractor is to establish a M&E Working Group, convened by the M&E Specialist, to bring together officials with a M&E role from EPSP core agencies (those represented on the PMG) to form a community of practice.
- 6.2 The M&E Working Group will:
 - (a) peer review M&E arrangements and framework to enable closest possible links with GoPNG systems and timetables;
 - (b) build capacity in M&E amongst members;
 - (c) strengthen the status and value of monitoring information as an important contributor to government decision-making;
 - (d) participate in the annual Contribution Dialogue process, and
 - (e) support the operationalisation of GoPNG's increasing interest in development results, as articulated in the PNG-Australia Partnership for Development, and enhance GoPNG's own M&E efforts.
- 6.3 The Working Group could be a conduit to identifying new avenues for the Contractor to support stronger results focus and enhanced performance assessment and reporting within and beyond GoPNG for the EPSP.
- 6.4 The Working Group may also be the basis for identifying options for the secondment of GoPNG M&E officials to the EPSP team for a short period – for example around the annual Facilitated Performance Analysis, or to participate in a specific evaluation study – as a capacity development investment.
- 6.5 There has been a commitment by GoPNG to develop a whole-of-government Performance Planning and Monitoring Framework (PPMF), which could be a principal tool for monitoring public service performance. The Contractor is to support, if requested, GoPNG to develop a PPMF.
- 6.6 If a PPMF is developed and implemented, it will frame GoPNG's performance monitoring and the progress of specific outcomes and outputs that government agencies are expected to deliver on an annual basis. If a PPMF is developed AusAID and CACC may direct the Contractor to:
 - (a) adjust EPSP M&E arrangements to align closely with the indicators and reporting requirements for GoPNG as a whole; and
 - (b) consider the extent to which program-specific M&E activities can be scaled back to increasingly use improving GoPNG systems while retaining sufficient monitoring and management for program quality.

7. EPSP CONTRACTOR PERFORMANCE REPORTING

- 7.1 The Contractor must provide the following reports by the date indicated:

- (a) Program Annual Report to the CACC, including information and outcomes based on the Facilitated Performance Analysis and Quarterly Program Reports. To be submitted in February each year, at least two (2) weeks before CACC meets to consider the Report;
- (b) Indicative Strategic Framework for CACC consideration and further consultation. To be submitted in June each year, at least two (2) weeks before CACC meets to consider the Framework;
- (c) Final Strategic Framework for CACC approval. To be submitted in December each year, at least two (2) weeks before CACC meets to consider the Framework.
- (d) Quarterly Program Reports to Program Management Group;
- (e) Quarterly Implementation Reports, prepared by TA personnel for the Program Director, that feed into the EPSP Quarterly Program Reports; and
- (f) Annual Facilitated Performance Analysis to be submitted in November/December each year.

ANNEX G - EPSP MANAGEMENT AND LINES OF ACCOUNTABILITY

1. MANAGEMENT AND GOVERNANCE ARRANGEMENTS

- 1.1 The program will be, as much as possible, embedded in existing GoPNG structures. As such, its peak body is the CACC which will provide strategic guidance to the program and will be an active oversight body for the program's M&E. The role of CACC in the management and governance of EPSP is central to improving the effectiveness of public sector policy and implementation processes.
- 1.2 Other key stakeholders in the management of the EPSP are the PMG, AusAID and EPSP Program Office. The EPSP Management Strategy (outlined in Annex C and Clause 21 of this Scope of Services) will detail relationships between key stakeholders, as they relate to management and governance of EPSP, in more detail.

CACC

- 1.3 The CACC will provide strategic guidance to the program including:
 - (a) High level strategic guidance to the PMG and Program Director regarding economic and public sector issues and opportunities;
 - (b) Ensuring consistency with government policies and providing institutional incentives for change, including greater scrutiny and consultation;
 - (c) Approving the annual Strategic Framework for the Program, including prioritisation, sequencing and alignment decisions in order to maximise program effectiveness;
 - (d) Considering annual program performance reports and monitoring program effectiveness at the strategic and results level; and
 - (e) Commissioning selected issues-based evaluation studies.
- 1.4 The Contractor, primarily through the Program Director, will support the CACC's capacity to lead and coordinate policy and to support greater coherence across GoPNG programs, including providing additional advice and support to CACC for its consideration of program matters if necessary.

The Program Management Group

- 1.5 The Program Management Group (PMG) will be responsible for operational decision-making and oversight of program implementation.
- 1.6 The PMG will meet two-monthly to consider progress and approve new or changed program inputs, based on formal requests for assistance using EPSP standard templates.
- 1.7 Other responsibilities of the PMG will include:

- (a) developing and operationalising the annual Strategic Framework through approval of program activities in the four results areas;
- (b) ensuring high quality activity proposals are approved within the agreed capacity development approach and in line with program operating principles. This includes targeting key leverage points and links in the central agency-service delivery chain and the identification of proposals that can achieve quick wins that will establish program and government credibility;
- (c) approving the allocation of program resources under both the Partnerships for Capacity Development and Capacity Development Fund;
- (d) providing a forum for senior officials to consider effective approaches to increasing coordination and coherence within and between GoPNG and donor-funded activities in economic and public sector management; and
- (e) monitoring the effectiveness of the program at an operational, or outcomes, level, with particular focus on the Partnerships for Capacity Development and gender, disability and HIV mainstreaming approaches.

1.8 The Contractor is to provide secretariat services to the PMG.

1.9 The Contractor is to report to the PMG through the Program Director.

EPSP Program Office

1.10 The EPSP Program Office will be responsible for the supporting the provision of Contractor services specified in this Scope of Services and will be established in accordance with Clause 11.

AusAID

1.11 Key responsibilities of AusAID in managing the implementation of EPSP include:

- (a) setting the strategic direction of the program and having responsibility for overall management and coordination of AusAID's assistance to the economic and public sector;
- (b) working closely with GoPNG and GoA partners to facilitate coordination between EPSP and other relevant programs ('whole of aid program' coherence);
- (c) being a member of the EPSP PMG;
- (d) monitoring Contractor performance against this Contract; and

- (e) leading the preparation of sector performance reports in accordance with AusAID's own reporting obligations.
- 1.12 To achieve this, AusAID will employ two key positions under the program: a Public Sector Adviser located initially in AusAID's PNG Country Office; and a Policy Coordinator (AusAID officer) co-located in the CACC Secretariat.

Public Sector Adviser

- 1.13 A full time Public Sector Adviser, located initially in AusAID's PNG Country Office, will work closely with AusAID, partner agencies, the Program Director and Program Office, SGP Team Leaders and external stakeholders.
- 1.14 The Public Sector Adviser will be contracted to and managed by AusAID's PNG Country Office in close coordination with PM&NEC, other partner agencies and the Program Director.
- 1.15 The Public Sector Adviser will report to the AusAID Counsellor, Governance, and to the First Secretary, Economic and Public Sector Governance on a day-to-day basis.
- 1.16 Responsibilities of the Public Sector Adviser will include:
- (a) providing strategic advice to both governments on public sector management and reform and how EPSP can best support this;
 - (b) enabling coherence of priorities and activities within EPSP and with the broader aid program, in particular with SGP and the Sub-National Strategy; and
 - (c) providing technical and analytical support in the implementation of EPSP and other sector-related matters.
 - (d) supporting the EPSP Program Office by working closely with the Program Director in the management and implementation of EPSP, in particular reporting to the PMG, CACC and AusAID.
- 1.17 The Public Sector Adviser will work closely with the Program Director and other Program Office technical personnel including the Capacity Development Specialist, Gender Specialist and M&E Specialist. In addition to the Adviser's strategic and coordination roles, s/he will support the Program Director in the management and implementation of EPSP, in particular reporting to the PMG, CACC and AusAID.
- 1.18 The Public Sector Adviser will *not* be directly involved in decisions related to the contract between the Managing Contractor and AusAID. Nor will the Public Sector Adviser be directly involved in performance management or day-to-day management of Program Office personnel or contracted inputs under EPSP; advisers, training providers, researchers, etc will report to the Program Director and the relevant PNG Agency Head.

Policy Coordinator

1.19 AusAID will maintain a seconded AusAID officer within the CACC Secretariat as the Policy Coordinator. While not dedicated to EPSP this officer will have several key roles of relevance for EPSP:

- (a) technical support to the CACC Secretariat on policy coordination and whole-of-government performance monitoring;
- (b) liaison between GoPNG and AusAID in PNG, and Australian whole-of-government support through SGP; and
- (c) support to the CACC in terms of its responsibilities under EPSP.

ANNEX H - CONTRACTOR PERSONNEL INPUTS

1. The Contractor is to provide the following inputs for Specified Personnel.

Position	Input	Comment
Program Director	48 months	
Capacity Development Specialist	48 months	
Gender Specialist	48 months	
Monitoring and Evaluation Specialist	48 months	

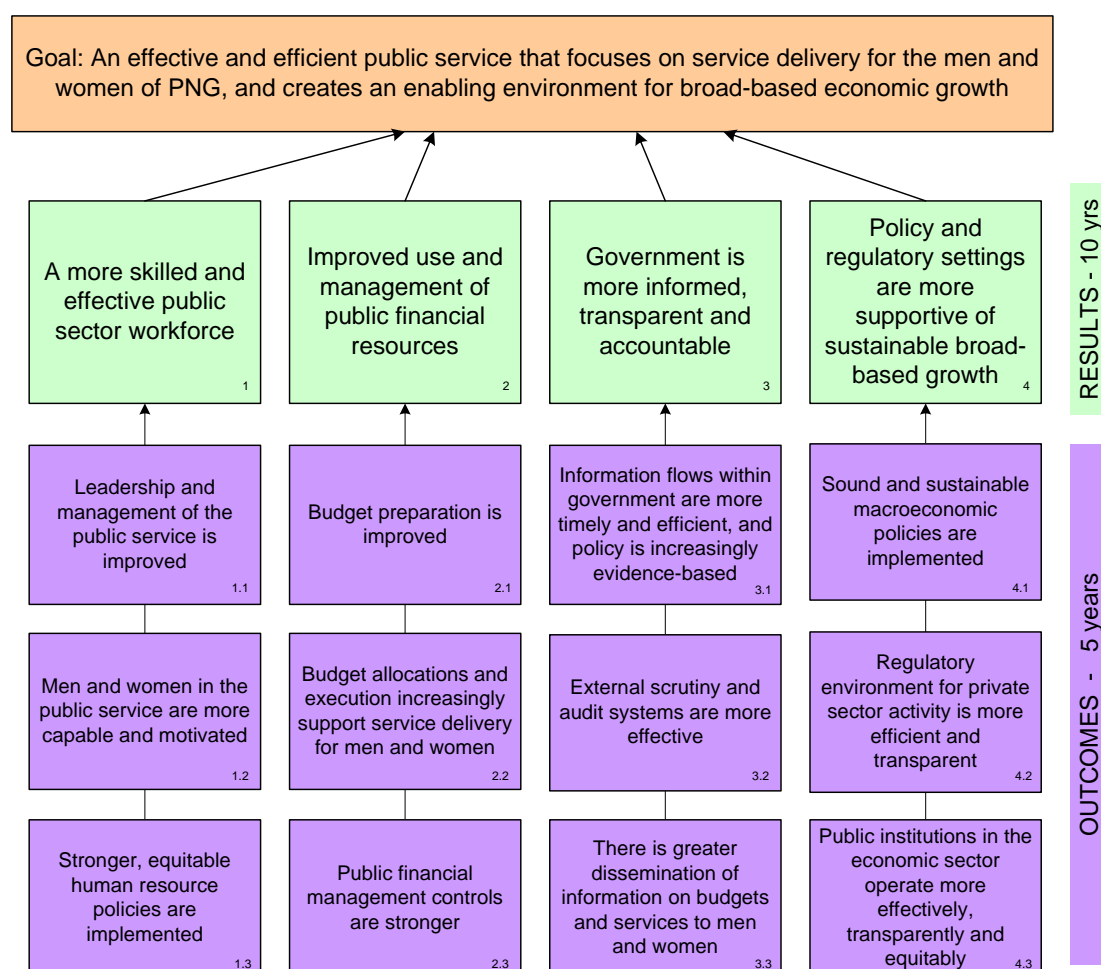
2. The Contractor is to provide the following personnel inputs.

Position	Input	Comment
Training and Learning Specialist		
Information and Communication Specialist		
HIV Mainstreaming Specialist		
Accountant (local)	48 months	Part of Program Office but positioned in PNG Dept of Finance, Finance Training Branch, and associated with management of the FMTTA. See Annex E Clause 2.18.
Other		

Note: These inputs are those agreed by AusAID from those specified in the bidders tender proposal.

ANNEX I - EPSP RESULTS FRAMEWORK

The EPSP is structured around a results framework, which provides the Goal, Results and Outcomes the program aims to achieve over its 5-10 year timeframe. The Results articulate the systemic change the program hopes to achieve by 2020 (i.e. in 10 years of program implementation), while the Outcomes will represent significant progress to achieving the goal and result areas and have a shorter time horizon of the first five years of program implementation.



ANNEX J - EPSP TECHNICAL ANALYSIS

On the basis of currently available analysis, and before specific diagnostics are launched, an indicative set of implementation priorities is set out below. It is recognised that EPSP cannot address all these priorities, nor will they necessarily match the priorities of GoPNG.

1. A more skilled and effective public sector workforce

Central coordination

Early priorities would be to strengthen PM&NEC coordination through assistance to NEC Secretariat, CACC Secretariat, and central agencies, with specific reference to their ability to:

- Develop/strengthen criteria for examination of Cabinet submissions (e.g. relevant policy framework, explanation of financial, environmental etc implications; time period that submission relates to; other departments or agencies involved)
- Strengthen capacity of central agencies to check agency submissions for conformity with the criteria and enable feedback to be given
- Distribute NEC minutes publicly or issues press releases with essential details

A further stage would be to:

- Strengthen the capacity of line agencies, provinces, districts and Local Level Governments (LLGs) to prepare NEC submissions according to the criteria developed; and
- Strengthen the capacity of the PM&NEC and CACC Secretariats to analyse policy options and brief ministers accordingly.

Leadership, management, organizational culture

It is essential to work with agency leaders and managers as they are critical in shaping organisational culture and producing results. Managers can create a sense of direction, set benchmarks for performance, support team-building and information-sharing, and motivate and recognise staff achievement. Given the wide disparity in leadership and management talent throughout the public service, it should be an early priority to identify agencies that are doing well in which to work with departmental heads and clarify lessons to be learned from their effectiveness.

This would enable a template to be created of key dimensions of managerial and agency effectiveness that will provide input into the diagnostics being used. A template of good practice for management, delegation, supervision and accountability should also be developed based on clear assignation of responsibilities and tasks, with defined delegation and reporting-back arrangements down the line. There is a need to resist the latest international management fashions and base the approach on good fit with the context and good practice in PNG.

In a further stage, managers would work through organisational objectives and work unit responsibilities with staff at the work unit level, including establishing simple benchmarks for assessing performance and delivery and relating codes of conduct in a practical way to the workplace. Results achieved in the first set of agencies could be used to create a demonstration effect and widen the effort. Surveys should be considered to enable service users, taxpayers and the private sector to give feedback on levels of service and results achieved.

In parallel, work should start with DPM on its post-devolution responsibilities, with a focus on policy issues including (as the immediate highest priority) specifying limits on “spill and fill” restructuring, together with developing criteria for senior appointments, and procedures for merit recruitment and promotion on a somewhat longer timescale. Work on this would ideally start in the first year but would be likely to take longer to develop, test, and discuss broadly so as to gain understanding and ownership.

Efforts should to be made with agencies that are interested in program support to enforce administrative standards and sanctions, and refer criminal cases to the courts where appropriate. This should not be initiated across the board in a first stage, but only in agencies that are committed to raising performance and/or those in which civil society and the business sector take an interest and could be mobilized in parallel, thus reinforcing the incentives on staff to perform. Lessons learned will be valuable, including on the desirable balance to strike between positive incentives such as recognition and workplace training, and negative sanctions such as reprimands, administrative sanctions or dismissal, and criminal charges.

Much of the above would need to be supported by appropriate, workplace-related, targeted training. To ensure maximum benefits, managers would need guidance on how to put such training into an incentive framework and use it to build a professional service. This could be done by (i) encouraging the work unit to discuss and identify deficiencies in workplace skills that undermine performance, (ii) selecting groups or individuals for training on the understanding that better performance will be expected post-training, and (iii) insisting that the training is applied and maintained over time and that the group or individual is more productive on return. Capability for teamwork, information sharing and effective records management and retrieval will need to be part of this process. Emphasis on the capability of the group or team rather than the individual will improve the chances of building professional peer groups and broader institutional strength over time, rather than creating isolated skilled individuals who no longer fit the prevailing organisational culture.

2. There is improved use and management of public financial resources

Budgets to strengthen service delivery

At present, over-expenditure on salaries and wages is sucking resources from operations and maintenance budgets (goods and services) and disabling development projects. This is one of the most significant reasons that services have declined – and have collapsed in some areas – and continue to decline despite the abundance of resources available. An early priority should therefore be to rein in expenditure on wages and salaries that is above appropriated amounts, with particular attention to the provincial level. It would be important to work with the Departments of Treasury and Finance so that warrants are not released for payroll expenditures that exceed appropriation. It may be necessary to reach this target in stages so as to give managers timely warning to rationalise staffing levels, with attention to the skills actually needed in order to deliver services and severely cut back the burgeoning recruitment of casuals who may not be suitably qualified. A particular focus would be warranted on over-staffing in administrative functions as opposed to staffing and resources needed for service delivery.

Second, an immediate focus on supporting the productive use of the DSIP grants (10 million kina per district) is recommended. As districts are not equipped for project planning, implementation, or financial reporting, it would be important to bring in support for them in the near term, enable consultation on priorities, identify where project or service complexity warrants technical support for design and implementation, and set up simple systems to track expenditure.

Third, immediate attention to rebuilding implementation capacity for maintenance is warranted. This could entail support for key agencies such as Works, Education and Health to restore or upgrade their operational capacity to carry out maintenance, with a prime focus on roads in the first year. It would be helpful to consult with communities on priorities, and set and communicate performance benchmarks so that early wins can be recognised and publicised.

A large proportion of government expenditure goes through procurement contracts, so a fourth priority would be to strengthen procurement transparency, competitiveness and efficiency at all levels of the administration. For sustained results, the program would need to support stronger management, improved financial and procurement reporting, widespread dissemination of standardised bidding documents, clear criteria for bid evaluation and contract awards, and timely project execution and monitoring. Reinforcing CSTB oversight, it would be helpful to support business and civil society scrutiny of procurement decisions. Given the dearth of fully-trained procurement officers, there would need to be a large training effort, with PNG-specific modules developed with the CSTB and TRG, but training alone is unlikely to produce results without a stronger management and incentive framework around the procurement process.

Working through and with the PPII program, EPSP should assist provinces to work within unified budgets and to plan and prepare budget submissions accordingly.

EPSP would also assist line agencies to prepare budget submissions within assigned ceilings.

In parallel, it would be a high priority to begin the task of clarifying functional responsibilities at different levels of government (with responsibility for rural and feeder roads a first priority) so that staff and budgets can be allocated accordingly in further stages. This would be a long-term task but needs to be started as soon as possible. Cooperation and advice from NEFC will be central to success.

Subsequent steps would include:

- Formulate and cost service delivery objectives within a macro-fiscal framework – build on that to restore Medium-Term Resource Framework.
- Assist agencies with unit cost analysis and focus on a better mix of inputs and cost control to justify budget submissions (including reducing administrative costs and staff).
- Assess capacity of district and LLG governments to prepare budgets, implement, and account for activities.
- Align budgets (see next item).

Closer links between development, recurrent and windfall budgets

An early priority would be to support more effective project preparation in DNPM, line agencies and provinces. This would include identification of preparation, implementation and maintenance requirements and costs at all stages: design phase (consultation, planning, engineering, technical specifications); land and water rights (if needed); procurement; project execution and inspection; staffing, equipment and supplies; debt service (if any) and maintenance. This would enable the full project cycle to be supported and appropriate recurrent as well as development funds to be budgeted over the period of the project's life. It would be important to foreshadow expenditure needed in future years for the purposes of budget planning, and, where windfall (off-budget) or other trust account funds will be used to fund investment costs, to ensure that the project is supported in future years through the mainstream budget. Considerable management commitment and technical expertise would be needed to make this a reality, as well as cooperation from and between central agencies.

To support the identification and inclusion of the costs of the full project cycle, communications between Treasury and DNPM are critical in order to (i) ensure recurrent budgets reflect requirements of projects approved; (ii) drop or postpone projects that cannot be delivered without more recurrent financing than is available/allowed under the Medium-Term Fiscal Strategy. This would mean approved projects can be delivered effectively and would avoid waste of money on projects that will not be viable.

Subsequent steps would include:

- Building on the first stage, the next step would be to set joint or unified annual development and recurrent budget envelopes for line agency and for sub-national budgets, and prepare and evaluate budget submissions within that framework. This will require substantial support from Treasury to line and sub-national agencies.
- A further step would be to set out project and service delivery requirements within a multi-year framework defined by macro-fiscal policy and then move in stages to a full MTEF.

3. Government is more informed, transparent and accountable

Comprehensive, transparent and accountable budgets

An early priority would be to build on the public consultation in budget preparation that was tentatively started a few years ago, extend it to sub-national levels so that women's voices are heard at all levels. Research shows that including adequate representation of women in consultations results in better quality and better targeted services for the community as a whole. As a follow-up, it would be important to explain publicly how final budgets relate to the recommendations and proposals received, what choices were made and why, the deviations of FBO outturns from budgets as appropriated, and to invite public feedback on budget performance.

At the same time, and complementary with the above, a high priority would be to put systems in place for key information that central agencies can supply to the public, after consultations with CIMC, Transparency International, and other grassroots NGOs to identify priority information. This information would need to be in user-friendly form, easily accessible, and disaggregated by district and by sector. It would include regular publication of warrant releases; announcements at local levels of development projects, maintenance and services that they can expect to see, and expected dates, for all three budgets (plan, recurrent, windfall). In parallel, provinces would need support to publish budget plans and outturns based on integrated budgets and disaggregated by sector and type of service. In further steps, benchmarks and timelines for delivery of services and information flows would be established to give public servants targets to work towards and to enable monitoring and feedback from the public.

Support for improved information flows that would help efficiency and transparency within and between levels of government administration is also a high priority. This would include prompt information on warrant releases to provincial budget officers, administrators and program managers (by fax, telephone, email or radio depending on communications difficulties); transmission of information to provinces on budget appropriations to line agencies; assistance to provinces in publishing simple presentations, e.g. in Excel, of total budgets including own revenue and central transfers (700 and 200 series).

Budget comprehensiveness as well as transparency would be assisted by supporting the Department of Finance and other agencies to minimise the use of trust accounts, increase transparency in decision-making and access to trust accounts, and ensure that transactions data as well as budget balances are produced for all trust accounts. Adequate numbers of well-managed and trained staff would be needed to support these improvements in performance and ensure prompt trust account reconciliations. Budget transparency would also be supported by regular public reporting and press releases under the Fiscal Responsibility Act, and timely updating of the Treasury website.

Subsequent steps would include:

- Development of greater ownership of IFMS among potential users both inside and beyond DoF, and ensuring that the IFMS has the capacity to produce tables disaggregated by sector and locality, for both plan and actuals, for development, recurrent and windfall budgets. Similarly support would be needed to enable DPM to produce information for both internal and public use on public sector workforce disaggregated by (i) regular staff versus casuals; (ii) numbers employed under goods and services budget; (iii) numbers at different grade levels; (iv) occupational categories and skill levels; with all categories broken down by geographic location and gender.
- Early attention to adherence to the Public Financial Management Act (PFMA) in relevant statutory authorities (Sas) is also a priority. Considerable Government commitment and program support would be needed to enable Sas to adopt transparent financial management and reporting including on gross revenues, expenditures, and debt.
- Accountability can be supported by an immediate tightening up on reports required from all levels of government and all types of agency (including Sas), investigating the reasons for slow or absent reporting, and, in a further stage, ensuring the compatibility of reporting formats and technology. Reporting as well as other communications would be assisted by improvements in and extensions of telephone, fax and email services throughout the country. Planning for adequate communications facilities throughout the country should start in the first year.
- A further support for accountability would be achieved by using audit reports as mini-diagnostics of operational weakness and malfeasance and then supporting managers to follow up in order to find and remedy the causes of poor performance. In some cases, fragmentary or absent account and record-keeping would prevent any meaningful accountability, and it would be important to allocate program resources to building more effective records management and retrieval, and identifying areas where this is most needed.

External audit and the PAC

The OAG has made notable progress in eliminating the audit backlog and preparing timely audit reports, but their impact has been diminished by lack of prompt tabling and thorough discussion in Parliament. Follow-up by government agencies and, where appropriate, prosecution, in response to the findings of external audits and the PAC has also been limited. It would be important for the EPSP to collaborate with other relevant programs on ways to tackle these weaknesses in the cycle of accountability and support follow-up on findings within government. In parallel, it would be useful to enable publication of summary audit findings and to support monitoring and analysis by civil society organisations.

4. Policy, regulatory and institutional settings are more supportive of sustainable broad-based growth

An early and urgent priority would be to support analysis within government of the macroeconomic impacts of the global financial crisis. A further urgent priority would be to analyse the impact of the LNG project on the macroeconomy and sectors such as transport, housing, social services, migration (both internal and external), and public investment in infrastructure, and to plan and implement a facilitation and mitigation strategy that would lessen the chances of inflation and destabilisation of the real economy and the regions. Following on from that, it would be equally important to work out how to safeguard revenues and plan for carefully staged expenditures, in order to minimise inflationary and exchange rate pressures and avoid wasteful spending. This could include consideration of off-shore placements of funds (e.g. with the Bank of International Settlements), with a focus on low risk and security of returns. In parallel, support would be needed to develop a prudent government investment policy, having regard to avoiding conflict of interest with the state's role as a regulator, and giving priority to investing in the sustainability of broad-based growth and services.

Support for macro-fiscal sustainability on a broad front is also a high priority for the first and following years of the program. This would entail support in strengthening tax and customs policy, services, and compliance, and developing and adhering to the Medium-Term Fiscal and Debt Strategies, with continuing debt repayment so that PNG is well positioned when the current boom fades. While expenditure from the Supplementary (windfall) Budgets must be constrained over time in order to avoid inflationary pressure, it is also important to ensure that amounts released each year do contribute to sustainable development. Support is likely to be needed to dovetail windfall expenditures with the priorities and project planning established under the mainstream budget and to ensure that there is sufficient recurrent funding associated with windfall investments to maintain assets in future.

A focus on timely and transparent implementation of the National Agriculture Development Plan, National Television Service and the recommendations of the National Land Report is a high priority also for initial and subsequent years and would open up economic opportunity in the rural areas. It would be particularly important to support women farmers and entrepreneurs by helping them establish rights to land and access to finance. Supporting the construction of informal-sector

market facilities at local levels would also aid local entrepreneurship especially of women.

Another important area for women is entitlement to royalties from mineral resource and forestry revenues, so that they can be ploughed back into the local community and businesses. Here, the program could support women in relevant regions, and also cooperate with the Extractive Industries Transparency Initiative (EITI) which the Government has indicated it would adopt in order to achieve greater transparency in the distribution of resource-related payments and revenues at all levels.

An early win could be achieved by supporting the Department of Labour and industrial Relations in restoring its labour market information service including the technology and information-gathering capability needed to maintain it. Information on employment, unemployment, vacancies and skill deficits is important for macroeconomic analysis, business, and labour market participants alike.

Support for the economic environment would also include a review of the existing structure of regulation and the ways in which regulations are enforced. This could be reinforced by commissioning surveys to assess private sector views on priorities for action. The “Doing Business” Survey of PNG would also be a useful source in informing program support for the investment climate. After this diagnostic stage, support would be needed to help the relevant agencies simplify and clarify regulations, remove enforcement abuses, and move towards an efficient and orderly regulatory environment. Tackling the deterrent effects of violent crime and insecurity would require cooperation with other programs.

In a further stage, the program would support an in-depth review of a number of state-owned enterprises and statutory authorities/SOEs whose functioning has important implications for the good management of the economy and the natural resource sectors (the diagnostic developed under the PERR could be used), with follow-up support to strengthen corporate governance, improve management, strengthen financial compliance and enable regular SA and corporate reporting.

ANNEX K - PROGRAM OFFICE

Program Office: The Managing Contractor will establish a Program Office in Port Moresby, led by a Program Director. Program Office staffing will be finalised in detail by agreement between Australia and PNG once the Managing Contractor has been selected, but full-time resources will include a Capacity Development Specialist, Gender Specialist and M&E Specialist. Other specialist inputs will be provided in the areas of training and learning, information and communication, and HIV mainstreaming.

The Program Office will be responsible for:

1. assisting GoPNG agencies with capacity diagnostic work, including gender analysis and support for the inclusion of strength-based approaches, as the basis for developing Partnerships for Capacity Development or other smaller packages of assistance;
2. selecting technical assistance under the program from local, regional, or international sources;
3. technical support and advice to all program inputs (both GoA and contracted);
4. implementation of a program communication and information strategy to collate and disseminate appropriate data between and across key partners and stakeholders;
5. pursuing opportunities to increase GoPNG involvement in program management and operations, such as secondment opportunities and the gradual transfer of selected functions into GoPNG systems and structures;
6. financial management of program funding, including the Capacity Development Fund – with the aim of transitioning financial management into GoPNG systems over the life of the program;
7. performance management, monitoring and evaluation of contracted program inputs, in partnership with GoPNG agencies (i.e. all inputs not provided via SGP or twinning activities);
8. supporting and facilitating the overall monitoring of EPSP by the PMG;
9. reporting to PMG, CACC and AusAID;
10. providing secretariat services to the PMG (and other support as required);
11. Develop standard templates for use by partner agencies to request assistance under EPSP through the PMG for all contracted program inputs; and
12. procurement, contracting and contract management of contracted inputs.

ANNEX L - TERMS OF REFERENCE FOR KEY PERSONNEL AND SPECIALIST INPUTS

Program Director

The Program Director will have overall responsibility for managing the Program Office on behalf of AusAID and will provide strategic and operational input and support to EPSP on behalf of GoPNG and GoA. The Program Director will report on program performance to the EPSP PMG, CACC and AusAID. The Program Director is a full-time position based in the Program Office.

Key responsibilities:

- Working closely with, and providing flexible support to PNG partner agencies through Partnerships for Capacity Development and the Capacity Development Fund, as well as providing advice and guidance on operational and policy issues and on the management and implementation of EPSP;
- Working closely with AusAID, the Public Sector Adviser and SGP Team Leaders to engage with PNG economic and public sector issues and implement the EPSP in partnership with GoPNG, particularly through the PMG;
- Working closely with the PMG and AusAID to support overall joint GoA/GoPNG management of EPSP, and develop and implement the annual Strategic Framework;
- Working closely with the PMG and AusAID to monitor progress in implementing the annual Strategic Framework and the program overall, and use performance information to support decision-making processes;
- Support high quality activity proposals within the agreed capacity development approach and in line with program operating principles;
- Operate in accordance with the principles of aid effectiveness set out in the EPSP design, including using and supporting PNG systems, maintaining constructive working relationships within partner agencies, with external stakeholders, and with broader aid program personnel; and
- Monitor the effectiveness of the program at an operational or outcomes level, with particular focus on the Partnerships for Capacity Development and gender and HIV mainstreaming approaches.

Skills, knowledge and experience:

- Proven senior program management experience including the leadership of a large program comprising diverse forms of support and personnel from varied professional, cultural and language backgrounds;

- Significant experience in strategic, public sector and/or economic management, preferably in a developing country context;
- A sound (and/or the capacity to acquire an) understanding of the PN development context;
- Demonstrated understanding of the range of capacity development approaches and their applicability to different contexts and needs;
- Demonstrated commitment to gender equity and HIV mainstreaming in human resource practices;
- High level interpersonal and cross-cultural skills, and
- Counselling, mediation and problem solving experience in complex environments.

In addition, the Program Director will be expected to:

- Advise the PMG (and CACC where appropriate) on strategic and critical performance issues, ensuring advice is given early and solutions are proposed which are practical, cost effective and give primacy to AusAID and GoPNG interests;
- Support coordination and coherence of EPSP with other parts of the Australian aid program and with development partners to enable cross-program learning and coordination;
- Plan and monitor the work of EPSP, on behalf of the PMG and AusAID;
- Establish and provide quality control for all plans, reports, systems, outputs and contract management;
- Manage (using program resources) all placements, including initial induction and orientation, ongoing support and training, trouble shooting, counselling for performance;
- Monitor EPSP progress, make recommendations about appropriate actions, including managing risk;
- Provide motivation and leadership by fostering a collaborative approach to work challenges within the Program Office, between advisers and host agencies and between AusAID and its partners;
- Oversee the disbursement of EPSP funds, including the Capacity Development Fund, and certify payments in accordance with agreed procedures;

- Performance management, monitoring and evaluation of contracted program inputs, in partnership with GoPNG agencies; and
- Enable the heightening awareness of gender related issues and HIV/AIDS in PNG through EPSP activities and placements.

Capacity Development Specialist

The Capacity Development Specialist will ensure that program-sponsored activities target and increase the opportunity for the development of competencies and capabilities in individuals, groups or organisations supported by the program. The Capacity Development Specialist will also enable capacity development strategies and outcomes to be consistent across the program, including with SGP. This is a full-time position based in the Program Office.

Key responsibilities:

- Establishing and managing an integrated capacity development strategy, including enhancing gender equity outcomes, in support of program initiatives;
- Working with the Program Director, Monitoring and Evaluation Specialist and partner agencies to enable capacity development impacts to be appropriately monitored and reported;
- Supporting partner agencies to use diagnostic tools to analyse capacity issues crucial to improving agency performance and more effective implementation of corporate plans and annual action plans;
- Providing technical support to SGP to enable a consistent approach to capacity development within the economic and public sector; and
- Working with AusAID to ensure the “Making a Difference” program is appropriately managed and implemented within the context of EPSP.

Skills, knowledge and experience:

- Demonstrated experience and understanding of contemporary capacity development strategies and systems;
- A thorough understanding and/or experience of the capacity development needs of partner agencies in the PNG context;
- Excellent interpersonal and cross-cultural skills;
- Demonstrated commitment to gender equity and HIV mainstreaming in human resource practices; and

- Ability to liaise and keep up-to-date remotely.

In addition, the Capacity Development Specialist will be expected to:

- Assess the current levels of capacity within partner agencies and use this information to assist EPSP to develop Partnerships for Capacity Development and the annual Strategic Framework;
- Document opportunities for ongoing capacity development within the overall context of EPSP;
- Establish agreed and realistic targets for capacity development within the overall context of EPSP;
- Examine opportunities for linking identified targets to incentives supported by EPSP; and
- Ensuring capacity development strategies and opportunities enhance gender equity outcomes within the overall context of EPSP.

Gender Specialist

Activities sponsored by EPSP will be subject to a gender and equity analysis to anticipate and determine likely impacts and to suggest options and opportunities for maximising positive equity and quality outcomes across partner agencies and GoPNG in general. The Gender Specialist will support this analysis and, in collaboration with the AusAID Gender and Equity Adviser, enable gender and equity methodologies and strategies to be consistent across the program. This is a full-time position based in the Program Office.

Key responsibilities:

- Ensuring program activities adequately address gender and other equity imperatives, and that they contribute to achieving a public service which promotes equal opportunities and is free from discrimination;
- Assist with the implementation of more equitable human resource policies and systems;
- Assist with the determination and publishing of gender disaggregated data which allows government to assess and analyse the impact of budget decisions within an equity framework and improve the current scarcity of public information in this area; and
- Support the introduction of budget gender analysis to assess broad based impacts.

Skills, knowledge and experience:

- Demonstrated experience and understanding of contemporary gender and equity strategies and systems, in particular AusAID and GoPNG policies;
- A thorough understanding and/or experience of the gender and equity needs of partner agencies in the PNG context;
- An understanding and appreciation of gender and equity issues and needs in an economic and public sector reform environment;
- Mainstreaming and adult learning understanding and experience;
- Excellent interpersonal and cross-cultural skills; and
- Ability to liaise and keep up-to-date remotely.

In addition, the Gender and Equity Specialist will be expected to:

- Work closely with the ODW and key partners to enable gender and equity priorities to be mainstreamed throughout the program;
- Assess the current levels of capacity within partner agencies, particularly ODW and M&NEC to support gender and equity initiatives and use this information to assist EPSP to manage gender and equity activities;
- Assist with the development of EPSP gender and equity strategy/plans and the identification of appropriate expertise, particularly within PNG and the region;
- Ensure EPSP places special attention to working in the areas of gender violence and gender advocacy; and
- Ensure EPSP gender and equity practices are closely aligned with program support for HIV mainstreaming.

Monitoring and Evaluation Specialist

M&E in EPSP will allow both governments to continually calibrate implementation to maintain progress towards results and outcomes. The M&E specialist will support both countries' increasing commitment to managing for development results and a greater performance orientation, while also investing in opportunities for learning and incorporating qualitative techniques to capture the depth and breadth of change experiences. The M&E Specialist will enable M&E methodologies and strategies to be consistent across the program. This is a full-time position based in the Program Office.

Key responsibilities:

- Ensure the EPSP M&E Framework is appropriately managed, updated and implemented as per the design;
- Develop the methodology for the Facilitated Performance Analysis;
- Facilitate the structured Contribution Dialogue as a basis for the contribution analysis;
- Coordinate the collection of all the evidence on changes, including gender and equity data, in the areas of EPSP work with information about other GoPNG,
- AusAID and donor programs also operating in those areas;
- Support the Program Director with all monitoring, evaluation and reporting activities;
- Provide targeted and agreed technical support to GoPNG agencies; and
- Enable EPSP to meet all GoPNG and AusAID reporting requirements.

Skills, knowledge and experience:

- Demonstrated experience and understanding of contemporary M&E strategies and systems;
- A thorough understanding and/or experience of the M&E needs of partner agencies in the PNG context;
- Excellent interpersonal and cross-cultural skills;
- Ability to liaise and keep up-to-date remotely; and
- Demonstrated commitment to gender equity within an M&E context.

In addition, the M&E Specialist will be expected to:

- Assist with the review of the M&E Framework after mobilisation, through a participatory M&E workshop so that it utilises current GoPNG systems to the greatest extent possible, and to maximise the value of data and reporting tools for GoPNG;
- Assist with the development of evaluation plans and with the identification of appropriate expertise, particularly within PNG and the region;
- Assist with, and in some cases lead, the management and implementation of the EPSP periodic issues-based evaluation studies; and

- Ensuring M&E strategies and opportunities enhance gender equity and HIV/AIDS mainstreaming outcomes within the overall context of EPSP.

Training and Learning Specialist Inputs

EPSP will support targeted training to address key skills deficits specific to an agency within a coherent capacity development approach. On-the-job coaching, short-term targeted courses (either in-country or regionally) and twinning arrangements will be supported to enhance skills in partner government agencies. Training and learning specialist inputs will support these activities. The Managing Contractor will propose the extent and structure of the inputs during the Tender process.

Key responsibilities:

- Develop a targeted training strategy for EPSP which incorporates proven success factors;
- Coordinate and support targeted training initiatives endorsed by other AusAID programs required beyond EPSP;
- Coordinate and support twinning initiatives supported and endorsed by EPSP;
- Work with partner agencies to effectively use incentive-based grants for targeted training activities as part of the integrated response of a Partnership for Capacity Development;
- Enable training and learning strategies and opportunities to enhance gender equity outcomes within the overall context of EPSP; and
- Facilitate adult learning strategies, particularly in support of gender and equity objectives, to be developed and used across all capacity development initiatives supported by EPSP.

Skills, knowledge and experience:

- Demonstrated experience and understanding of adult training and learning methodologies, strategies and systems appropriate to the PNG context;
- A thorough understanding and/or experience of the training and learning needs of partner agencies in the economic and public sector context;
- Demonstrated commitment to gender equity and HIV mainstreaming in human resource practices,
- A proven ability to establish agreed and realistic training and learning targets, including gender and equity objectives;
- Excellent interpersonal and cross-cultural skills; and

- Ability to liaise and keep up-to-date remotely.

In addition, training and learning specialist inputs will be expected to:

- Manage the integration of mentor systems; participant follow-up action planning prudent selection of participants; in-depth scoping of training needs and course specifications; supporting networks within Government and training providers; accessing specialist experts; and monitoring training within the context of EPSP and other AusAID targeted training needs; and
- Support training and learning activities required for the mainstreaming of HIV and gender and equity initiatives throughout EPSP.

Information and Communication Specialist Inputs

EPSP will support an information and communication strategy regarding public sector improvement initiatives. Research and analysis will be closely linked to information, data and communication initiatives. This will contribute to improved service delivery by providing valid data and information to public servants and organisations delivering goods and services, as well as informing public sector end-users and consumers. Information and communication specialist inputs will support EPSP, partner agencies and associated AusAID programs with the management and implementation of communication activities in support of the program. The Managing Contractor will propose the extent and structure of the inputs during the Tender process.

Key responsibilities:

- The development and implementation of a program communication and information strategy to collate and disseminate appropriate data between and across key partners and stakeholders;
- Complete an assessment of the availability of key information and of communication pathways to facilitate the use and application of technical diagnostics;
- Manage and implement regular seminars for GoPNG officials and advisers, a program newsletter with wide distribution outlining common themes and public sector developments, and wide circulation of a summarised annual Strategic Framework; and
- During the first year initiate work with partner agencies to support planning for adequate communications facilities throughout the country.

Skills, knowledge and experience:

- Demonstrated experience and understanding of communication strategies and systems appropriate to the PNG context;

- A thorough understanding and/or experience of the communication needs of partner agencies in the economic and public sector context;
- Demonstrated commitment to gender equity and HIV mainstreaming in human resource practices;
- Excellent interpersonal and cross-cultural skills, and
- Ability to liaise and keep up-to-date remotely.

In addition, information and communication specialist inputs will be expected to:

- Assess the current levels of capacity within partner agencies to support communication initiatives and use this information to assist EPSP to manage communication activities;
- Assist with the development of communication plans and with the identification of appropriate expertise, particularly within PNG and the region;
- Establish agreed and realistic targets for communication outcomes within the overall context of EPSP; and
- Ensuring communication strategies and opportunities enhance gender equity outcomes within the overall context of EPSP.

HIV Mainstreaming Specialist Inputs

EPSP will mainstream HIV initiatives and activities across the program. All program personnel will be skilled, trained and supported by EPSP, through HIV mainstreaming specialist inputs to maximise the opportunity to impact upon appropriate HIV strategies within the PNG public sector. All activities supported by EPSP will be subject to a mainstreaming analysis to anticipate and determine likely impacts and to suggest options and opportunities for addressing HIV issues across partner agencies and GoPNG in general. HIV mainstreaming specialist inputs will also enable gender and equity methodologies and strategies to be consistent across the program. The Managing Contractor will propose the extent and structure of inputs during the Tender Process.

Key responsibilities include:

- Ensuring program activities adequately address HIV imperatives, and that they contribute to achieving a public service which promotes activities in support of HIV and AIDS opportunities and is free from associated discrimination;
- Assist with mainstreaming of HIV initiatives which will result in the implementation of stronger and more appropriate HIV and AIDS human resource policies and systems; and

- Assist with the collection and appropriate use of HIV and AIDS (disaggregated) data which allows government and the program to assess and analyse the impact of budget decisions within an HIV and AIDS framework.

Skills, knowledge and experience:

- Demonstrated experience and understanding of contemporary HIV and AIDS mainstreaming strategies and systems, in particular AusAID and GoPNG policies;
- A thorough understanding and/or experience of the HIV/AIDS environment and the needs of partner agencies in the PNG context;
- An understanding and appreciation of HIV and AIDS issues and needs in an economic and public sector environment;
- Excellent interpersonal and cross-cultural skills;
- Mainstreaming and adult learning understanding and experience, and
- Ability to liaise and keep up-to-date remotely.

In addition, HIV mainstreaming specialist inputs will be expected to:

- Work closely with the ODW and key partners to enable HIV and AIDS strategies to be mainstreamed throughout the program;
- Assess the current levels of capacity within partner agencies, particularly ODW and PM&NEC to support HIV and AIDS initiatives and use this information to assist EPSP to appropriately manage HIV and AIDS activities;
- Assist with the development of a EPSP HIV and AIDS strategy/plans and with the identification of appropriate expertise, particularly within PNG and the region; and
- Ensure EPSP HIV mainstreaming practices are closely aligned with program support for gender and equity strategies.

PART 4 – BASIS OF PAYMENT

Note to Tenderers: This Part forms a key Schedule of the Contract Conditions. Although this Basis of Payment is presented as Part 4 of this RFT, in the consolidated Contract it will appear as Schedule 2. It reflects the most current version of the basis of payment by may be updated by AusAID during contract negotiations, particularly in light of information included in the Tenderer's response to the RFT.

PART 4 – BASIS OF PAYMENT

PNG Economic and Public Sector Program (EPSP)

Note to Tenderers: This Part forms a key Schedule of the Contract.

1. TOTAL AMOUNT

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

2. PAYMENT STREAMS

- 2.1 For the performance of the Services described in the Contract, AusAID shall pay the Contractor as follows:
 - (a) **Imprest Account Payments** in accordance with **Clause 3** of this Part 4, up to a maximum total amount of **A\$60,000,000** plus GST if any up to a maximum amount of **A\$6,000,000** [*Note: This is an indicative amount only. The actual amount will be determined following AusAID appropriations*];
 - (b) **EPSP Program Office Costs** in accordance with **Clause 4** of this Part 4 and paid as Regular Payments up to a maximum total amount of **A\$xxx,xxx** plus GST if any up to a maximum amount of **A\$xxx,xxx**;
 - (c) **Fixed Management Fee (FMF)** in accordance with **Clause 5** of this Part 4 and paid as Milestone Payments in accordance with **Clause 6** of this Part 4, up to a maximum total amount of **A\$xxx,xxx** plus GST if any up to a maximum amount of **A\$xxx,xxx**;
 - (d) **Payments for Incentive Grants** in accordance with **Clause 7** of this Part 4, up to a maximum total amount of **A\$4,000,000** plus GST if any up to a maximum amount of **A\$400,000**;
 - (e) **Reimbursable Costs** in accordance with **Clause 8** of this Part 4, up to a maximum total amount of **A\$xxx,xxx** plus GST if any up to a maximum amount of **A\$xxx,xxx**; and
 - (f) **Variable Management and Procurement Fees (VMPF) for EPSP Funded Activities** in accordance with **Clause 7** of this Part 4, up to a maximum total amount of **A\$xxx,xxx** plus GST if any up to a maximum amount of **A\$xxx,xxx**.

3. IMPREST ACCOUNT PAYMENTS

- 3.1 The Contractor must establish the PNG Economic and Public Sector Program Activity Fund Imprest Account in accordance with **Clause 18** of Part 2. Funds in the Imprest Account can only be used for the purposes described in the

Imprest Account Manual and this **Clause 3**. The funds will not be reallocated for any other purpose under this Part 4.

- 3.2 The PNG Economic and Public Sector Program Activity Fund Imprest Account is for funding activities which are developed under EPSP but are not eligible for other funding such as by the Capacity Development Fund or provided for by other donors and where the costs are not also covered under **Clauses 4, 5, 6, 7 and 8** below.
- 3.3 Incentive Based Grants will initially be managed as a pre-payment in accordance with **Clause 9** of this Basis of Payment. However, after 12 months of operation, the effectiveness of this approach will be reviewed and this may lead to implementation of an Incentive Grants Imprest Account.
- 3.4 If required, AusAID will make payment to the PNG Economic and Public Sector Program Activity Fund Imprest Account quarterly. The amount of each AusAID payment will be determined by AusAID in consultation with the Contractor and based on the estimated costs of activities to be funded by AusAID from the Imprest Account over the forthcoming three month period, less any existing balance previously uncommitted.
- 3.5 Invoices for the next payment of AusAID's contribution must be accompanied by an 80% acquittal against agreed expenditure for the preceding three month period and a full acquittal against all agreed expenditure for all other previous periods.
- 3.6 Activities funded from the PNG Economic and Public Sector Program Activity Fund Imprest Account may attract either a Variable Management Fee or a Procurement Fee, or neither.
- 3.7 Indicative amounts of payments to the PNG Economic and Public Support Program Activity Fund Imprest Account are presented in **Table 1** below. The actual amounts payable will be determined in accordance with **Clause 8.4** above.

Table 1: Indicative PNG EPSP Funds Imprest Account Payments

Year	A\$ 1 Jan	A\$ 1 Apr	A\$ 1 Jul	A\$ 1 Oct	Amount (A\$)
2010	N/A	Amount	Amount	Amount	Amount
2011	Amount	Amount	Amount	Amount	Amount
2012	Amount	Amount	Amount	Amount	Amount
2013	Amount	Amount	Amount	Amount	Amount
2014	Amount	N/A	N/A	N/A	Amount
				Total	\$Total

Note to Tenderers: Quarterly figures will be agreed by AusAID and GoPNG in consultation with the preferred Tenderer.

4. EPSP PROGRAM OFFICE COSTS

4.1 The EPSP Program Office Costs are those incurred at cost by the Contractor to staff, set up and operate the EPSP Program Office in PNG. These are to be paid at cost and invoice quarterly in arrears.

4.2 The EPSP Program Office Costs includes all:

- (a) Personnel Costs in accordance with this Part 4 Annex A and its **Tables 2A – 1 to A - 5**;
- (b) Office Set-up Costs in accordance with this Part 4 Annex B and its **Table 2B**; and
- (c) Office Operational Costs in accordance with this Part 4 Annex C and its **Table 2C**;

for the four (4) year duration of the Contract.

4.3 The total and indicative component amounts for the EPSP Program Office Costs are summarised in **Table 2** below.

4.4 The EPSP Program Office Costs are inclusive of the following which apply to all cost categories identified in **Clause 4.2** above:

- (a) Security costs for:
 - (i) the EPSP Program Office;
 - (ii) all EPSP Program Office international staff and their families; and
 - (iii) all EPSP Program Office local staff when they are required to travel on Program work outside the area in which they normally reside;
- (b) Health, medical evacuation, worker's compensation, liability and indemnity insurances for:
 - (i) all EPSP Program Office international staff and their families; and
 - (ii) all EPSP Program Office local staff when they are required to travel on Program work outside the area in which they normally reside.

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

Table 2: Total EPSP Program Office Costs

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

5. FIXED MANAGEMENT FEE (FMF)

5.1 The total FMF for the four years of the Contract is summarised in **Table 3** below.

5.2 The FMF is inclusive of the following:

- (a) All aspects of profit, including commercial margins for all personnel;
- (b) All overheads;
- (c) Routine travel costs incurred by the Contractor for administration and management of the Contract;
- (d) Financial management costs and financing costs, if any;
- (e) All management support costs for all nominated personnel;
- (f) Cost of any Contractor administrative and head office staff;
- (g) Security costs for all Contractor personnel not covered under **Clause 4.4** (above);
- (h) Insurance, as required in accordance with **Clauses 33 and 34** of Part 6 (Standard Contract Conditions) of the Contract;
- (i) Taxation, as applicable;
- (j) Health, medical evacuation, worker's compensation, liability and indemnity insurances for all Contractor personnel not covered under **Clause 4.4** (above); and
- (k) All other costs not specified as either Variable Management and Procurement Fees or Reimbursable Costs.

5.3 The FMF is specified the first four (4) years of this Contract and will be billed to AusAID on satisfactory achievement of Milestones in accordance with **Clause 6** to this Part 4.

5.4 Should AusAID exercise its rights, under **Clause 2.3** of Part 2 to extend the term of this Contract, the FMF applying to the fifth year of the Contract will

comprise an escalation factor of A% [*Tenderer to specify*] on top of the Personnel Costs and Office Operational Costs which apply for the initial term of the contract.

Table 3: Total Fixed Management Fee

Year	Total (A\$)
2010 (assume 1 April 2010 to 31 December 2010)	
2011	
2012	
2013	
2014 (assume 1 January 2014 to 31 March 2014)	
Total	

6. MILESTONES

- 6.1 AusAID shall pay the Contractor the FMF in instalments known as Milestone Payments. The Milestone Payments payable by AusAID to the Contractor shall not exceed the sum of A\$xxx,xxx plus GST if any up to a maximum amount of A\$xxx,xxx.
- 6.2 Where a Milestone is a report, AusAID shall not make payment until all of the outputs to be achieved by the Contractor in the period covered by the report have been achieved.
- 6.3 The Milestone Payments will be payable to the Contractor progressively within thirty (30) days of AusAID acceptance of the satisfactory achievement of the Milestones specified in **Table 4** at **Annex D** to this Part and subject to the provisions of **Clause 20** of Part 6.
- 6.4 In the case that the Contract is extended in accordance with **Clause 2.3** of Part 2, the total amount of the FMF costs will be revised. A new milestone table will be inserted with additional and/ or revised milestones. It will reflect milestones already paid and the negotiated percentages of the total FMF costs for the additional Contract period.

7. INCENTIVE BASED GRANTS

- 7.1 The total amount payable by AusAID to the Contractor for Incentive Based Grants shall not exceed the sum of A\$4,000,000 plus any GST up to A\$400,000 and is based on a pro rata annual limit of A\$1,000,000 plus GST.
- 7.2 The Contractor shall invoice AusAID for a pre-payment for approved Incentive Based Grants. The Contractor is to make Grant payments to nominated agencies for approved Grants, as directed by the Program Management Group. The Contractor is to acquit expenditure on Incentive-Based Grants

- 7.3 In the first six months and perhaps twelve months of the Contract, requests for Incentive Based Grants are expected to be irregular and a small number. During this period, the Contractor may request pre-payment and provide acquittal on an ad hoc basis to meet the operational need. When the frequency of requests for Incentive Based Grants settles into a regular and steady flow and forecasting becomes practicable, the requests for pre-payments and acquittals should move to a quarterly basis.
- 7.4 At the conclusion of the Contract, the Contractor is to acquit all expenditure for Incentive Based Grants and return to AusAID any unspent funds unless directions to do otherwise are provided by AusAID in writing.

8. REIMBURSABLE COSTS

- 8.1 AusAID shall reimburse the Contractor on a quarterly basis in arrears, for eligible travel costs in accordance with **Clause 8.2 and 8.3** below.

8.2 Travel

Eligible travel costs payable under this **Clause 8** are:

- (a) All travel related costs for travel undertaken by Contractor Personnel to attend EPSP meetings or coordination meetings with AusAID;
 - (b) All travel related costs for international travel undertaken by Contractor Personnel for the purposes of:
 - (i) Short Term International Personnel associated with the EPSP Program Office being mobilised and demobilised;
 - (ii) Consulting with stakeholders or service providers;
 - (iii) Other travel undertaken by Contractor Personnel with the prior written agreement of AusAID; and
 - (c) Any other costs proposed by the Contractor for which AusAID provides prior written agreement, except those specifically excluded under **Clause 8.3** below.
- 8.3 The following travel related costs are not eligible for reimbursement under this **Clause 8**:
- (a) Mobilisation, demobilisation and leave entitlements, as these costs are included in the EPSP Program Office Costs;
 - (b) Routine travel associated with the administration of the Contract, as these costs are included in the FMF; and
- 8.4 Travel associated with managing any activities and conducting any procurements funded from the Imprest Account, as these travel costs are included in the VPMF.

9. **VARIABLE MANAGEMENT AND PROCUREMENT FEES (VMPF) FOR ECONOMIC AND PUBLIC SECTOR PROGRAM FUNDED ACTIVITIES**

- 9.1 The Contractor may seek payment of the VMPF when it has incurred additional management costs for planning and implementing approved PNG EPSP activities. The VMPF may only be applied to management costs not already provided for under Program Office resources.

Guidance:

Typically, these activities would be those funded fully or partially from the Imprest Accounts associated with the Program. It may also include circumstances where a proposal is approved and requires additional head office (outside PNG) inputs for the Contractor to implement. However, it is possible that PNG or another donor may provide the funds for an EPSP activity and for AusAID to agree for the Contractor to coordinate or facilitate implementation.

As outlined below, the Contractor would be entitled to a Variable Management Fee or Procurement Fee on the management or procurement costs incurred by the Contractor not provided for by the Program Office and Fixed Management Fee.

It is also possible that an EPSP activity funded from the EPSP Imprest Account may not attract either a Variable Management Fee or Procurement Fee. An example of such an event would be when the Contractor is directed to make a payment from an Imprest Account and the GoPNG implements the activity using its own business processes and systems.

- 9.2 The VMPF, if any is due, shall be paid quarterly in arrears and comprises the sum of:
- (a) Variable Management Fees, in accordance with **Clause 9.3** below; and
 - (b) Procurement Fees, in accordance with **Clause 9.4** below.
- 9.3 Variable Management Fees are payable as a fixed percentage of X% of the cost of goods and services incurred by the Contractor for implementing PNG EPSP activities.
- 9.4 Procurement Fees are payable as a fixed percentage of Y% of the cost of goods and services associated with an activity and procured by the Contractor for implementing PNG EPSP activities and could include the following:
- (a) Activity (eg Training/ Research/ Course) costs;
 - (b) Travel and accommodation costs; and
 - (c) Equipment to support the activity.

Procurement Fees shall not apply to any other procurement undertaken by the Contractor as these are included in the Fixed Management Fee (see **Clause 4.2**).

- 9.5 The Procurement Fees and the Variable Management Fees to be applied by the Contractor must be included in the budget of the fully costed detailed proposal for each planned activity and be approved by the Program Management Group.

10. CLAIMS FOR PAYMENT

- 10.1 The Contractor's tax invoice must be submitted when due pursuant to this **Part** in a form identifiable with the Services.

- 10.2 All tax invoices must include a certification by a Company director of the Contractor, or their delegate:

- (a) that the invoice has been correctly calculated; and
- (b) that the Services included in it have been performed in accordance with the Contract.

- 10.3 All claims for payment must be made out to:

Chief Finance Officer

Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601

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

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

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

Annexes:

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

EPSP Program Office Personnel Costs

Attachments:

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

EPSP Program Office Long Term Personnel Costs – International Staff

Table 2A - 1

Position and Total Inputs	2010 - Inputs/ Monthly Rate A\$	2011 - Inputs/ Monthly Rate A\$	2012 - Inputs/ Monthly Rate A\$	2013 - Inputs/ Monthly Rate A\$	2014 - Inputs/ Monthly Rate A\$	Total – A\$	Comments
Program Director	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	3 months @ Amount per month		
Capacity Development Specialist	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	3 months @ Amount per month		
Gender Specialist	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	3 months @ Amount per month		
M&E Specialist	9 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	12 months @ Amount per month	3 months @ Amount per month		
Other Specify							
				Total			

Notes:

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

Allowances for EPSP Program Office Long Term Personnel Costs – International Staff

Table 2A – 2

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

Notes:

1. Allowances for Long Term International Staff are to be based on the personnel circumstances and family structure of the posted member.
2. This may be invoiced under Regular Payments for the EPSP Program Office Costs.
3. These also apply to Long Term Personnel costs.

EPSP Program Office Long Term Personnel Costs – Local Staff

Table 2A - 3

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

Notes:

1. For Long Term Local Staff, specified monthly rate is for all personnel costs associated with the position.
2. This may be invoiced under Regular Payments for the EPSP Program Office Costs.
3. Allowances for Long Term Personnel are not part of these costs.

EPSP Program Office Short Term Personnel Costs – International Staff

Table 2A - 4

Position and Total Inputs	2010 - Inputs/ Monthly Rate A\$	2011 - Inputs/ Monthly Rate A\$	2012 - Inputs/ Monthly Rate A\$	2013 - Inputs/ Monthly Rate A\$	2014 - Inputs/ Monthly Rate A\$	Total – A\$	Comments
Training and learning Specialist							
Information and Communication Specialist							
HIV Mainstreaming Specialist							
Other Specify							
					Total		

Notes:

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

EPSP Program Office Short Term Personnel Costs – Local Staff

Table 2A - 4

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

Notes:

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

EPSP Office Set-up Costs

Table 2B - 1

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

1. This may be invoiced under Regular Payments for the EPSP Program Office Costs.

These costs could include such things as office furniture, office equipment, vehicles.

EPSP Office Operational Costs

Table 2C

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

1. This may be invoiced under Regular Payments for the EPSP Program Office Costs.

These costs could include such things as office rental, internet service provider, security services, vehicle operating costs.

MILESTONES

Table 4

No.	Scope of Services Reference	Description	Due date	Means of Verification	Value (A\$)
1.	Clause 11	EPSP Program Office established and staff recruited	Year 1	AusAID visit to program office and satisfied sufficient staff to manage existing workload.	(6.25% of total)
2.	Clause 9	2010 Strategic Framework finalised	Year 1	Submitted to CACC and accepted by AusAID.	(6.25% of total)
3.	Clause 15	Targeted Training Strategy completed	Year 1	Submitted to the PMG and accepted by AusAID.	(6.25% of total)
4.	Clause 9	2011 Strategic Framework accepted by CACC	Year 1	Submitted to CACC and accepted by AusAID.	(6.25% of total)
5.	Clause 7.1	2010 Program Annual Report accepted by CACC	Year 2	Submitted to CACC and accepted by AusAID.	(12.5% of total)
6.	Clause 9	2012 Strategic Framework accepted by CACC	Year 2	Submitted to CACC and accepted by AusAID.	(12.5% of total)
7.	Clause 7.1	2011 Program Annual Report accepted by CACC	Year 3	Submitted to CACC and accepted by AusAID.	(12.5% of total)
8.	Clause 9	2013 Strategic Framework accepted by CACC	Year 3	Submitted to CACC and accepted by AusAID.	(12.5% of total)
9.	Clause 7.1	2012 Program Annual Report accepted by CACC	Year 4	Submitted to CACC and accepted by AusAID.	(12.5% of total)
10.	Clause 23	Activity Completion Report accepted by CACC	Year 4	Accepted by AusAID.	(12.5% of total)
Total (total from Table 2)					100% of Total

INDICATIVE INFORMATION IN A QUARTERLY INVOICE

1. A quarterly invoice could contain the following:
 - a. Imprest Account Replenishment;
 - b. EPS Program Office Costs (Regular Payments);
 - c. Milestones (if any due);
 - d. Variable Management Fee (if any due);
 - e. Requested Pre-payment for Incentive Based Grants; and
 - f. Procurement Fee if any due.
2. Supporting documentation would be provided as necessary eg:
 - a. Acquittals of Imprest Account expenditure;
 - b. Acquittals for Incentive based Grants; and
 - c. Expenditure to date in the various components of the Contract.

SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

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PART 5 – STANDARD TENDER CONDITIONS

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

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

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

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

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

- (a) the technical proposal which includes:
 - (i) **Tender Schedule A** addressing the selection criteria and including the required annexes in the form specified in **Part 1**; and
 - (ii) **Tender Schedule B** providing details of Specified Personnel in the form specified in **Part 1**;
- (b) The financial proposal in the form specified in **Part 1 Tender Schedule C**. For electronic submissions, **Tender Schedule C** must be submitted as a separate file, and for hard copy submissions, **Tender Schedule C** must be submitted in a separate sealed envelope;
- (c) The financial assessment material in the form specified in **Part 1, Tender Schedule D**. For electronic submissions, **Tender Schedule D** must be submitted as a separate file, and for hard copy submissions, **Tender Schedule D** must be submitted in a separate sealed envelope; and
- (d) The completed and signed Tenderer Declaration in the form specified in **Annex B of this Part 5**.

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

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

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

- 1.7 Tenders submitted by facsimile or email will not be considered.
- 1.8 It is a condition of this RFT that each Tender must remain valid and available for acceptance by AusAID for the **Tender Validity Period** specified in the Tender Particulars (**Clause 1, Part 1**).
- 1.9 A person or persons having authority to lodge the Tender and enter into a contract on behalf of the Tenderer must sign the Tenderer Declaration (**Annex B of this Part 5**).
- 1.10 AusAID may extend the **Closing Time** at its sole and absolute discretion, and will issue an Addendum notifying any decision to extend.

Conditions Applying to Electronic Tender Lodgement

- 1.11 Electronic tenders must be lodged electronically via the Australian Government Tender System, AusTender, at <https://www.tenders.gov.au> before the **Closing Time** and in accordance with the tender lodgement procedures set out in **Annex C of this Part 5** and on AusTender.
- 1.12 Where there is any inconsistency between the tender lodgement procedures set out on AusTender and those set out in this RFT, this RFT will prevail.
- 1.13 Tenders not submitted in accordance with **Clause 1.11** will be excluded from evaluation.
- 1.14 It is the responsibility of tenderers to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on AusTender. Neither AusAID nor the Commonwealth takes any responsibility for any problems arising from tenderers' infrastructure and/or Internet connectivity.

Conditions Applying to Hard Copy Tender Lodgement

- 1.15 For hard copy lodgement, the Tenderer is responsible for the delivery of their Tender. The Tender must be placed in AusAID's **Canberra Tender Box**. The Tender must be delivered during **Business Hours** by the **Closing Time**. Failure to submit a Tender in accordance with this clause may render the Tender liable to rejection.
- 1.16 The Original Tender document and any copies requested should be bound using a plastic comb binding, and should contain no plastic page separators.
- 1.17 The Tender should be endorsed with the name of the Program and marked: "Tender Box: Attention **Contact Person**." The Tenderer's postal address and fax number should be provided on the outside of the Tender.

2. TENDERER ENQUIRIES

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

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

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

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

3. **LATE TENDERS**

Conditions Applying to Tenders Lodged Electronically

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

Conditions Applying to Tenders Lodged in Hard Copy

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

4. **NON-CONFORMING TENDERS**

- 4.1 Subject to **Clause 3 (Late Tenders) of this Part 5**, Tenders will be regarded as non-conforming if they fail to conform with one or more of the requirements of the RFT.
- 4.2 AusAID reserves the right to seek clarification of non-conforming Tenders in accordance with **Clause 5 of this Part 5**.

4.3 Subject to **Clause 3 (Late Tenders) of this Part 5**, AusAID may, at its absolute discretion, assess or reject a non-conforming Tender.

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

5. **CLARIFICATION OF TENDERS**

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

- (a) respond to any request for clarification within the time period specified by AusAID;
- (b) ensure that additional information provided answers AusAID's enquiry and is fully consistent with the Tender submitted by the Tenderer; and
- (c) not seek to change any aspect of their Tender by providing additional information to AusAID.

5.2 Clarifications are provided on the terms of the RFT.

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

6. **AMENDMENT OF THE RFT**

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

7. **ASSESSMENT OF TENDERS**

7.1 Tenders will be assessed on the following basis:

- (a) technical, which includes the other factors described in **Clause 7.8, Part 5** which in AusAID's opinion may impact upon the suitability of any Tenderer including the financial viability of any Tenderer; and
- (b) financial,

to achieve the best value for money outcome.

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

Technical Assessment

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

7.4 AusAID may invite a Tenderer (shortlisted or otherwise) to give AusAID a short presentation, respond to a scenario, and be interviewed by the TAP. Specified Personnel,

such as the proposed in-country Program Director, a contractor representative and others outlined in RFT Part 1 Clause 3.2 will be required to attend at the presentation/ interview. AusAID's expectation is that all will attend. If Specified Personnel are unable to attend due to extraordinary circumstances, AusAID at its sole discretion may agree to alternative arrangements such as participation by teleconference. Specified Personnel will be required to participate in the set scenarios and answer any questions asked by the TAP. The TAP will be convened in Canberra (but may be convened in Port Moresby) and the costs of the Tenderer's (and its personnel's) attendance must be borne by the Tenderer.

- 7.5 Tenderers should note that failure by a Tenderer or proposed Specified Personnel to attend the presentation (either in person or, if AusAID agrees, via teleconference) may disadvantage the Tender.
- 7.6 TAP members are required to maintain the "commercial-in-confidence" nature of the proceedings of the TAP meeting. TAP members must not discuss matters relating to the technical assessment of any tender with any party. Tenderers must not make contact with any members of the TAP, outside any TAP meeting, and any such contact will be considered a breach of confidentiality and may result in AusAID rejecting the tender of the Tenderer concerned.
- 7.7 AusAID reserves the right to take into account in the assessment of this Tender the past performance of the Tenderer or any proposed personnel contained in the Tender in accordance with **Annex A of this Part 5**.
- 7.8 In making its assessment the TAP or AusAID may have regard to other factors relevant to the suitability, capacity and qualifications of a Tenderer including but not limited to:
 - (a) the Tenderer's ability to comply with AusAID policies referred to in this RFT and the Tenderer's ability to comply with the **Contract Conditions**;
 - (b) the resourcing of Tenders;
 - (c) information obtained from any source which is relevant to the capacity of the Tenderer or any proposed personnel to perform the Services and achieve the Program goals and objectives. Such information may be the result of inquiries made by AusAID; and
 - (d) the Tenderer's demonstrated understanding of the cultural environment of the Program.

These other factors have not been allocated any specific weightings.

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

Goods and Services Tax

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

Insurances

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

Program Vehicles

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

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

Technical proposal format

7.15 The technical proposal must:

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

Curricula vitae

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

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

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

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

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

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

Referees

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

8. JOINT VENTURES AND CONSORTIUMS

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

9. ASSOCIATES AND OTHER SUB-CONTRACTORS

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

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

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

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

10. **OWNERSHIP OF TENDERS AND RFT**

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

11. **CONFLICT OF INTEREST**

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

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

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

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

12. TENDERING CONDUCT

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

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

13. INELIGIBILITY TO TENDER

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

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

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

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

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

14. **AusAID's RIGHTS**

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

14.2 AusAID reserves the right to:

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

15. **TENDERER'S ACKNOWLEDGEMENT**

15.1 A Tender is submitted on the following basis:

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

16. **DEBRIEFING OF TENDERERS**

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

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

17. AUSTRALIAN GOVERNMENT AND AUSAID LAWS AND POLICIES

17.1 Freedom of Information

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

17.2 Privacy

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

17.3 Access by Australian National Audit Office

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

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

17.4 Access by Ombudsman

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

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

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

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

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

17.7 Other Australian Government and AusAID Policies

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

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

18. FURTHER REQUIREMENTS

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

19. CONTRACT NEGOTIATIONS

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

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

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

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

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

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

20. **CONTRACT PLANS**

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

21. **APPLICABLE LAW**

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

ANNEX A – AUSAID USE OF PERFORMANCE INFORMATION

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

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

ANNEX B – TENDERER DECLARATION

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

1. DEFINITIONS

1.1 In this declaration:

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

“**Services**” means Services to be performed by the Contractor in the Economic and Public Sector Program;

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

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

2. BASIS OF DECLARATION

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

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

3. THE OFFER

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

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

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

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

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

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

- 3.16 Neither the Tenderer nor any of its employees, agents or contractors had knowledge of the technical proposal or the Tender Price for the Services of any other tenderer prior to the Tenderer submitting its Tender for the Services.
- 3.17 Neither the Tenderer nor any of its employees, agents or contractors disclosed the technical proposal or the Tender Price for the Services submitted by the Tenderer to any other tenderer who submitted a tender for the Services or to any other person or organisation prior to the **Closing Time**.
- 3.18 Neither the Tenderer nor any of its employees, agents or contractors provided information to any other tenderer, person or organisation, to assist another tenderer for the Services to prepare a tender known in the building and construction industry as a “cover bid”, whereby the Tenderer was of the opinion or belief that another tenderer did not intend to genuinely compete for the Contract.
- 3.19 The Tenderer is genuinely competing for the Contract and its Tender is not a “cover bid”.
- 3.20 Prior to the Tenderer submitting its Tender for the Services neither the Tenderer nor any of its employees, agents or contractors entered into any Contract, agreement, arrangement or understanding that the successful Tenderer for the Services would pay any money, or would provide any other benefit or other financial advantage, to or for the benefit of any other tenderer who unsuccessfully tendered for the Tender.
- 3.21 I acknowledge that each party constituting the Tenderer is bound jointly and severally by this Tender.

4. ADDENDA TO TENDER DOCUMENTS

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

Number _____ Dated _____ Number _____ Dated _____

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

5. ADDRESS OF TENDERER

Address or Registered Office of Tenderer

Address for service of notices (NOT PO. BOX)

Telephone Number: Fax Number:

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

insert name and title

Signature

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

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

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

2. REGISTERED TENDERERS AND NOTICES

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

3. AUSTENDER HELP DESK

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

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

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

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

Virus Checking

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

Tender File Formats, Naming Conventions and Sizes

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

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

Scanned or Imaged Material, including Statutory Declarations

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

5. ELECTRONIC LODGEMENT PROCESS

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

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

6. **LATE TENDERS, INCOMPLETE TENDERS AND CORRUPTED FILES**

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

7. **PROOF OF LODGEMENT**

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

8. **AUSTENDER SECURITY**

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

PART 6 – STANDARD CONTRACT CONDITIONS

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

PART B – STANDARD CONTRACT CONDITIONS

20. INTERPRETATION

20.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

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

"AusAID Confidential Information" means information that:

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

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

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

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

"Commonwealth Procurement Guidelines" means the guidelines issued by the Minister for Finance and Administration that governs purchasing by Commonwealth agencies and departments. Details are available at: http://www.finance.gov.au/procurement/procurement_guidelines.html.

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

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

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

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

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

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

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

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

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

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

"Document" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Tax" means any income tax, capital gains tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property

tax, undistributed profits tax, withholding tax, goods and services tax, consumption tax, value added tax, municipal rates, stamp duties and other fees, levies and impositions, assessed or charged, or assessable or chargeable by or payable to any governmental taxation or excise authority and includes any additional tax, interest, penalty, charge, fee or other amount imposed or made on or in relation to a failure to file a relevant return or to pay the relevant tax.

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

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

20.2 General

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

- (a) the contractual obligations of the Parties must be interpreted and performed in accordance with the Contract as a whole;
- (b) Contract clause headings are for convenience only and shall not be taken into consideration in the interpretation or construction of the Contract;
- (c) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- (d) a word denoting the singular number includes the plural number and vice versa;
- (e) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;
- (f) a word denoting a gender includes all genders;
- (g) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Contract;
- (h) where used in the Contract the words “including” or “includes” will be read as “including, without limitation” or “includes, without limitation” (as the case may be);

- (i) a reference to any contract or document is to that contract or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (j) “shall” and “must” denote an equivalent positive obligation;
- (k) a reference to any Party to this Contract, or any other document or arrangement, includes that Party's executors, administrators, substitutes, successors and permitted assigns; and
- (l) a reference to "dollars" or "\$" is to an amount in Australian currency.

20.3 **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.

20.4 **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.

21. **SCOPE OF CONTRACT**

- 21.1 The Contract sets out the terms and conditions on which the Contractor agrees to secure the aims and objectives of the Program supplying, or procuring the supply of, the provision of the Services.
- 21.2 The activities to be performed and responsibilities assumed by the Contractor are detailed in **Schedule 1**.
- 21.3 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.

22. **AUSAID’S OBLIGATIONS**

22.1 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.

23. NON-EXCLUSIVITY

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

24. PROVISION OF SERVICES

- 24.1 In providing the Services, the Contractor must:
- (a) perform the Services as described in **Schedule 1** for the term of the Contract, unless the Contract is terminated earlier;
 - (b) accept and implement AusAID's reasonable directions in relation to the management of the Program;
 - (c) use its best endeavours to ensure the spirit and intent of the Program are fully met by the Services, including acting within the spirit and intent of the Treaty, MOU or Subsidiary Arrangement;
 - (d) liaise and cooperate with AusAID and the Australian Diplomatic Mission in or having responsibility for the Partner Country especially in relation to security, personal safety and welfare matters;
 - (e) subject to any flexibility permitted in the Contract, ensure all timing obligations included in the Contract are fully met;
 - (f) within the term of the Contract assist AusAID in the maintenance and ongoing implementation of the Services, including monitoring and evaluating the Services to ensure results accord with the aims of the Program, and provide necessary handover assistance to any subsequent service provider and to the Partner Country;
 - (g) ensure that the Services are provided to a standard which shall promote Australia's international reputation and standing as a source of skill and expertise in the provision of international assistance;
 - (h) perform the Services in a manner which, as far as possible, establishes and maintains a harmonious, cooperative and effective working relationship with any personnel from the Partner Country involved in the Program;
 - (i) if a Risk Management Plan for the Program has not been prepared prior to the Mobilisation Date, the Contractor must prepare a Risk Management Plan within 30 days after the Mobilisation Date. If requested by AusAID, the Contractor will make the Risk Management Plan available to AusAID;

- (j) whether a Risk Management Plan is prepared under paragraph (i) above, or was prepared prior to the Mobilisation Date (for example, as part of the Contractor's tender for the Program or as part of the EPSP Program Design Document or similar document), the Contractor must maintain and update the Risk Management Plan, as necessary, to ensure that at all times it adequately reflects Program risks and includes risk-minimisation strategies. The Contractor must promptly advise AusAID of any significant risks in accordance with **Clause 25 below**. The Contractor must also ensure the Risk Management Plan contains provisions for advance notification of AusAID of risks that may lead to disruption or delay of the Program;
 - (k) liaise with, and obtain all necessary consents, approvals and authorisations from any public and other authorities in the Partner Country;
 - (l) provide adequate support resources to secure the aims and objectives of the Program;
 - (m) be responsive to the changing needs and environment of the Partner Country; and
 - (n) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity.
- 24.2 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.
- 24.3 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.
25. **EARLY NOTIFICATION**
- 25.1 The Contractor must report immediately, and in any event within seven (7) days, to AusAID on any actual, perceived or anticipated problems or risks that may have a significant effect on the achievement of the aims and objectives of the Program, on the cost to AusAID or on the delivery or operation of the Services. If the report is first given orally, the Contractor must promptly confirm the report in writing to AusAID. The Contractor must recommend to AusAID options to prevent or mitigate the impact of problems on the Program.
26. **CONTRACTOR PERSONNEL**
- 26.1 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.

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

27. SPECIFIED PERSONNEL

- 27.1 The Contractor must provide all Specified Personnel for the Program and for the minimum periods specified in **Schedule 1**.
- 27.2 During the minimum periods specified in **Schedule 1**, the Long Term Advisers included in the Specified Personnel must be exclusively dedicated to the Program and only perform the duties required under this Contract unless otherwise agreed in writing by AusAID.
- 27.3 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:
- (a) are of good fame and character;
 - (b) are properly qualified for the tasks they are to perform;
 - (c) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner;
 - (d) are adequately briefed and understand the environment and culture of the Partner Country; and
 - (e) act in a fit and proper manner while they are carrying out work or performing duties under the Contract.
- 27.4 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 27.8 below**.
- 27.5 Subject to **Clause 27.4 above**, Specified Personnel may be temporarily absent from the Program. Where Specified Personnel are unavailable for work in respect of the Contract, for any period in excess of 2 weeks, the Contractor must notify AusAID in writing immediately and, if requested, must provide replacement personnel acceptable to AusAID and the Partner Government at no additional charge and at the earliest opportunity and for the duration of the absence.
- 27.6 The costs incurred by the Contractors in providing temporary substitute personnel due to the absence of Specified Personnel are the responsibility of the Contractor.
- 27.7 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.

- 27.8 Before appointing Specified Personnel to the Program, the Contractor must obtain AusAID's written approval. In seeking approval of proposed Specified Personnel the Contractor must provide to AusAID:
- (a) the full names, dates of birth, and nationalities of proposed personnel and their accompanying dependants;
 - (b) a statement demonstrating that the proposed personnel has the demonstrated skills and capacity to undertake the job specification of the position and duration of the proposed appointment;
 - (c) a copy of the proposed person's curriculum vitae certified as accurate by the person and showing recent and relevant experience and formal qualifications including dates of award; and
 - (d) assurances that the nominated personnel has no existing commitments (defined in relation to the commitments of the position and not the individual's commitment to a particular organisation), to other AusAID projects that will suffer detriment if accepted on this Program. If this is not the case AusAID may require further information before assessing the individual's suitability.
- 27.9 If the Contractor is unable to provide acceptable replacement Specified Personnel with equivalent qualifications and experience AusAID may seek a reduction in fees.
- 27.10 This clause is a fundamental term of the Contract, such that breach shall entitle AusAID to terminate the Contract in accordance with **Clause 50** and sue for damages.

28. **PROGRAM VEHICLE CONTRIBUTION**

- 28.1 For the purposes of this clause, "Program Vehicles" are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Program and that are provided for Program activities. Vehicles purchased by the Program, but handed over to the Partner Country immediately (where maintenance and insurance are Partner Country responsibilities and Contractor Personnel do not use the vehicles or only use them on an exceptional basis) are not considered Program Vehicles for the purposes of requiring a financial contribution by the Contractor.
- 28.2 In consideration of the Contractor being entitled to use Program Vehicles for non-program use the Contractor must contribute \$250.00 for each Program Vehicle for each month of the Program. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor's invoices.
- 28.3 The Contractor must abide by the following requirements with regards to Program Vehicles:

- (a) Program demands must always take precedence over private use;
- (b) the Contractor must ensure that any persons driving the Program Vehicle must have a current valid international or Partner Country drivers license for the class of Program Vehicle;
- (c) the Contractor is responsible for ensuring Program Vehicles are appropriately insured;
- (d) the Contractor is responsible for ensuring that seat belts are fitted and must make every effort to ensure that they are worn at all times by drivers and all passengers;
- (e) the Contractor is responsible for any costs incurred in the event of an accident while the Program Vehicle is being privately used; and
- (f) the Contractor must ensure that Program Vehicles are serviced in accordance with manufacturer's requirements.

29. **PROCUREMENT SERVICES**

29.1 In procuring all Supplies, the Contractor must:

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

29.2 The Contractor shall bear the loss or damage in respect of Supplies until handover of Supplies to the Partner Government.

29.3 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.

29.4 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.

- 29.5 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.
- 29.6 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.

30. SUB-CONTRACTING

- 30.1 The Contractor may not sub-contract the whole of the Services. The sub-contracting of parts or elements of the performance of the Services is subject to compliance with the following requirements:
- (a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;
 - (b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;
 - (c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:
 - (i) comply with relevant and applicable laws, regulations and development policies, including AusAID's *Child protection policy* (<http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>) and child protection compliance standards (Attachment 1 to the policy), both in Australia and in the Partner Country;
 - (ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;
 - (iii) be bound by the same obligations regarding **Clauses 34** (Accounts and Records), **37** (Audits), **38** (Access to Premises), **45** (Privacy), and **54.4** (Anti-corruption) **below** and as required by Project Specific Conditions **Clause 3** (Accounts and Records) as the Contractor; and
 - (iv) be bound by appropriate obligations in relation to ongoing software licensing, computer maintenance requirements and handover arrangements to the Partner Country;

- (d) if requested by AusAID, the Contractor must provide to AusAID an executed Deed of Novation and Substitution in the form at **Schedule 4** (Deed of Novation), contemporaneously with or within ten (10) Business Days of execution of the sub-contract by the Contractor;
- (e) the sub-contract must include the right of AusAID, in the event of AusAID issuing a notice of substitution under the Deed of Novation at **Schedule 4** (Deed of Novation), to further novate the sub-contract to another contractor;
- (f) the Contractor must maintain up-to-date records of the names of all sub-contractors engaged by the Contractor to perform part of the Services. If requested by AusAID, the Contractor must, within five (5) working days, provide to AusAID a copy of the records of sub-contractors' names, in the format specified by AusAID. The sub-contract must include the right of AusAID to disclose the name of the sub-contractor, in accordance with **Clause 46** (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.

30.2 The obligations of **Clause 30.1 above** apply equally to Associates.

30.3 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.

31. **CONTRACT AMENDMENT**

31.1 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.

31.2 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".

31.3 AusAID or the Contractor may propose an amendment to the manner of providing the Services or changes to the Program, at any time for the purpose of improving the delivery of the Services or, the efficiency, cost-effectiveness and development impact of the Services.

31.4 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.

31.5 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.

31.6 AusAID may, at its sole discretion, accept or reject the Amendment Proposal submitted by the Contractor.

32. **EXTENSION OF TIME**

32.1 Subject to **Clause 32.6 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.

32.2 Where in the Contractor’s reasonable opinion there is likely to be a delay in the Contractor’s discharging an obligation under the Contract because of a Relevant Cause the Contractor must:

- (a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;
- (b) give details of the likely effect on the Program and any Contractual implications;
- (c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;
- (d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances in the form of an Amendment Proposal in accordance with **Clause 31.5 above**; and
- (e) use its best endeavours to continue to perform its obligations under the Contract.

32.3 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.

- 32.4 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.
- 32.5 Even if the Contractor has not given notice under **Clause 32.2 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.
- 32.6 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.
- 32.7 A notice of suspension, deletion or termination of the Contract under **Clause 32.6 above** takes effect on the date that the notification is received by the Contractor.
- 32.8 In the event of suspension, deletion or termination of Services or the Contract under **Clause 32.6 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.

33. **HANDOVER**

- 33.1 The Contractor must within 12 months of the Program Start Date draft a Handover Plan which includes all the functions to be performed to hand over the Program to the Partner Country in a manner which ensures the Partner Country is able to continue the Program and in particular to manage ongoing maintenance requirements as well as any other matters specified in **Schedule 1** and provide a copy to AusAID.

- 33.2 The Contractor must make changes to the Handover Plan as reasonably requested by AusAID and update the Handover Plan as necessary during the Program but at least annually and 6 months before the end of the Contract.
- 33.3 The Contractor must ensure that a finalised Handover Plan is provided to AusAID within seven (7) days of any early termination of the Program, or one month prior to the expected completion of the Program.
- 33.4 The Contractor must provide all reasonable assistance and cooperation necessary to, on expiration or termination of the Contract, facilitate the provision of the Services by AusAID or an alternative service provider. In particular the Contractor must:
- (a) deliver to AusAID or its nominee complete copies of all the Data, in a form and on a media approved by AusAID, and any other AusAID property including the Supplies held or used by the Contractor;
 - (b) either destroy or deliver to AusAID all copies of AusAID Confidential Information as required by AusAID;
 - (c) if requested by the Partner Country, facilitate the assignment to the Partner Country of sub-contracts relating to Supplies, including for licensing and support of information technology and any construction work maintenance;
 - (d) vacate the Program Office where this has been supplied by AusAID or the Partner Country;
 - (e) co-operate with AusAID and, if requested, AusAID's nominee, and provide reasonable assistance relating to the transfer of any contracts to AusAID, its nominee or the Partner Country;
 - (f) provide all information necessary for an alternative service provider to assume provision of the Services;
 - (g) continue the provision of the Services for as long as reasonably requested by AusAID on the terms and conditions of the Contract;
 - (h) cooperate with AusAID and any other service provider in the ongoing provision of services similar to the Services; and
 - (i) allow AusAID to audit compliance with this clause.

34. ACCOUNTS AND RECORDS

- 34.1 The Contractor must at all times maintain full, true, separate and up-to-date accounts and records in relation to the Fees, Supplies and the Services. Such accounts and records must:
- (a) record all receipts and expenses in relation to the Supplies and Services, including those involving foreign exchange transactions;

- (b) be kept in a manner that permits them to be conveniently and properly audited;
 - (c) enable the extraction of all information relevant to this Contract;
 - (d) contain details of the disposition of Supplies as agreed to by AusAID such as replacement, write-off or transfer to the Partner Country; and
 - (e) the Contractor shall provide to AusAID a statement of Program expenditure on a regular basis for the duration of the Program. The details of the timing and content of the statement of expenditure are defined in Part A Project Specific Contract Conditions.
- 34.2 Accounts and records must be provided for inspection by AusAID immediately upon the request of AusAID.
- 34.3 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.
35. **REPORTS**
- 35.1 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.
- 35.2 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.
- 35.3 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.
36. **REVIEWS**
- 36.1 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.
- 36.2 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.
- 36.3 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.
- 36.4 Each Party must bear its own costs of any such reviews conducted by or on behalf of AusAID.
- 36.5 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.
- 37. AUDITS**
- 37.1 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.
- 37.2 The Contractor must respond to any notice received under **Clause 37.1 above** within 14 days.

- 37.3 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 37.1(c) above**.
- 37.4 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.

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

- 38.1 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.
- 38.2 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.
- 38.3 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.
- 38.4 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.

39. PAYMENT

- 39.1 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.
- 39.2 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.
- 39.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.
- 39.4 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 34.1** (Accounts and Records) and may be audited by AusAID in accordance with Standard Conditions **Clause 36** (Reviews).
- 39.5 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.
- 39.6 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.
- 39.7 Subject to the Contract AusAID shall pay Reimbursable Costs within 30 days of receipt of a correctly-rendered invoice.
- 39.8 An invoice is correctly rendered if:
 - (a) the invoice details all Services provided against the Fees and records the amount payable in respect of each category of Services described in the Contract;
 - (b) the invoice details the Contractor's monthly contribution toward Program Vehicles in accordance with **Clause 28.2**;
 - (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.
- 39.9 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.
- 39.10 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.
- 39.11 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.
- 39.12 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.
- 39.13 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.
- 39.14 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.
- 39.15 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.
- 40. **GOODS AND SERVICES TAX**
 - 40.1 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.

- 40.2 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).
- 40.3 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.
- 40.4 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.
- 40.5 AusAID shall not pay to the Contractor any amount referable to GST, except as provided in this clause.

41. **INTELLECTUAL PROPERTY RIGHTS**

- 41.1 Subject to **Clause 41.2**, 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.
- 41.2 **Clause 41.1** 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 41.2** 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.
- 41.3 The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.
- 41.4 The Contractor must deliver all Contract Material to AusAID or to the Partner Government counterpart agency as may be directed in writing by AusAID.

42. **INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

- 42.1 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.

43. MORAL RIGHTS

- 43.1 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.

44. CONFIDENTIALITY

- 44.1 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.
- 44.2 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.
- 44.3 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.
- 44.4 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.
- 44.5 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.
- 44.6 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.
- 44.7 This clause shall survive expiration or termination of this Contract.

45. **PRIVACY**

- 45.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services.
- 45.2 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*.
- 45.3 The Contractor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services:
- (a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;
 - (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
 - (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
 - (d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
 - (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to 10) where that section or NPP is applicable to the Contractor, unless:
 - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or
 - (ii) in the case of a NPP – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorized by this Contract is inconsistent with the NPP;
 - (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with a NPP binding a party to this Contract;
 - (g) to immediately notify AusAID if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any sub-contractor;

- (h) not to transfer such information outside Australia, except to the Partner Country, or to allow parties outside Australia or the Partner Country to have access to it, without the prior approval of AusAID; and
- (i) to ensure that any employee of the Contractor who is required to deal with Personal Information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause.

45.4 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.

45.5 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 45.4 above**.

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

46. **AusAID USE OF CONTRACT INFORMATION**

46.1 AusAID may disclose matters relating to the Contract, including the Contract and the names of sub-contractors as specified in **Clause 30.1(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.

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

47. **PUBLICITY**

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

47.2 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.

47.3 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.

- 47.4 The Contractor shall, if appropriate, erect a sign at each Program site that acknowledges the contributions of the Australian and Partner Governments. Such signs shall in all cases be discussed and agreed between AusAID and the Partner Government. Signs should use the Australian Government/AusAID logo (in-line version). No independent project or program logos or emblems are to be used. Contractor signs may also be displayed, but not in greater number or prominence than acknowledgments to either the Australian or Partner Governments.

48. **WARRANTIES**

- 48.1 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.
- 48.2 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.
- 48.3 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.

49. **PERSONNEL SECURITY**

- 49.1 The Contractor is responsible for the security of Contractor Personnel and for taking out and maintaining appropriate insurances in respect of Contractor Personnel.
- 49.2 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.

- 49.3 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
- 49.4 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.

50. TERMINATION FOR CONTRACTOR DEFAULT

- 50.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor terminate this Contract, with effect from the date in the notice, if the Contractor:
- (a) commits a breach of this Contract and:
 - (i) that breach is not capable of remedy;
 - (ii) fails to remedy that breach within ten (10) Business Days (or such further time as AusAID may, in its absolute discretion, specify), after receiving a notice from AusAID requiring the Contractor to remedy the breach; or
 - (iii) does not commence to remedy that breach, within a reasonable time (having regard to the nature of the breach) after being given notice by AusAID requiring the Contractor to remedy the breach;
 - (b) becomes, or in AusAID's reasonable opinion is likely to become, bankrupt, insolvent or otherwise financially unable to fulfil its obligations under this Contract;
 - (c) becomes subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act 2001*;
 - (d) is wound up by resolution or an order of the court;

- (e) ceases to carry on business;
- (f) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;
- (g) suffers any execution against its assets having, or which in AusAID's reasonable opinion is likely to have, an adverse effect on its ability to perform this Contract;
- (h) ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Contract (except to the extent that this is outside the Contractor's reasonable control);
- (i) assigns its rights otherwise than in accordance with the requirements of this Contract;
- (j) suffers a change in Control which in AusAID's reasonable opinion may adversely affect the Contractor's ability to perform the Services under this Contract;
- (k) is in breach of the warranty, regarding listing on a World Bank List or Relevant List, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (l) is, during the term of this Contract, listed on a World Bank List or Relevant List;
- (m) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, bribery of a public official, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (n) is in breach of the warranty, regarding unsettled judicial decisions relating to employee entitlements, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (o) is, during the term of this Contract, convicted of an offence of, or relating to, bribery of a public official. In this Clause 31.1(o) the Contractor includes Contractor Personnel; or
- (p) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, child abuse, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract.

50.2 If this Contract is terminated under this Clause 50:

- (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).

51. TERMINATION FOR CONVENIENCE

- 51.1 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.
- 51.2 Where notice is given under **Clause 51.1** 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 51**.
- 51.3 In the event of termination or reduction in scope under this **Clause 51**, subject to **Clause 51.4**, 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.

- 51.4 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 51**.

52. INDEMNITY

- 52.1 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.
- 52.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 52.1 above** for the benefit of each of such persons in the name of AusAID or of such persons.
- 52.3 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.
- 52.4 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.
- 52.5 This indemnity shall survive termination or expiration of this Contract.

53. INSURANCE

- 53.1 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.
- 53.2 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.
- 53.3 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.
- 53.4 In the event of an insurance claim any deductible/excess payable shall be the responsibility of the Contractor.

54. CONFLICT OF INTEREST

Conflict of Interest

- 54.1 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.
- 54.2 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 54.3 below**, that may result in a conflict of interest arising or continuing.
- 54.3 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

- 54.4 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 50** (Termination for Contractor Default) by notice from AusAID.

55. FRAUD

- 55.1 For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means.
- 55.2 The Contractor and its sub-contractors must not engage in any fraudulent activity.
- 55.3 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*.
- 55.4 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.

- 55.5 The Contractor must report in writing within 5 working days to AusAID any detected, suspected, or attempted fraudulent activity involving AusAID provided funds. Where a matter is reported in writing to AusAID by a Contractor, the advice must provide where known:
- (a) the name of the Program under which AusAID funding is being provided;
 - (b) name of any personnel or subcontractors involved;
 - (c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);
 - (d) the names of the suspected offender(s) (where known);
 - (e) details of witnesses;
 - (f) copies of relevant documents;
 - (g) references to any relevant legislation;
 - (h) a nominated contact officer;
 - (i) any other relevant information (eg, political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and
 - (j) the current status of any inquiries commenced by the Contractor.
- 55.6 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.
- 55.7 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.

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

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

55.12 **Clauses 55.6, 55.7, 55.8, 55.9 and 55.10** shall survive expiration of this Contract in relation to:

- (a) any fraud detected by the Contractor before the date of expiry of this Contract but the Contractor had not commenced an investigation under **Clause 55.6** before that date,
- (b) any investigation commenced by the Contractor under **Clause 55.6**, but not completed, before the date of expiry of this Contract, and
- (c) any investigation commenced by AusAID under **Clause 55.7**, but not completed, before the date of expiry of this Contract.

56. **COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES**

56.1 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.

56.2 A list, as amended from time to time, of Australian laws that may apply to the delivery of developmental aid to foreign countries can be found on the AusAID website: <http://www.ausaid.gov.au/business/contracting.cfm>.

This list is not exhaustive and is provided for information only. The provision of this list does not relieve the Contractor from complying with the obligations contained in **Clause 56.1**.

56.3 The Contractor and all Contractor Personnel must at all times have regard to and operate in accordance with relevant guidelines, as amended from time to time, and listed on the AusAID website:
<http://www.ausaid.gov.au/business/contracting.cfm>.

56.4 The Contractor must notify AusAID of any material breach by the Contractor or Contractor Personnel of a law or guideline referred to in this **Clause 56**.

56.5 On becoming aware of a material breach by the Contractor or Contractor Personnel of a law or guideline, whether or not such a breach is notified to AusAID by the Contractor, AusAID may, in addition to any other rights available to AusAID, terminate this Contract under **Clause 50**.

- 56.6 The Contractor must in carrying out its obligations under this Contract comply with those laws in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the *Criminal Code Act 1995 (Cth)* and listed in regulations made under that Act and regulations made under the *Charter of the UN Act 1945 (Cth)*. The Contractor must ensure that funds provided under this Contract do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform AusAID immediately.
- 56.7 The Contractor must when providing any Services and procuring the Supplies have regard to and operate in accordance with Australian policies on developmental aid to foreign countries including:
- (a) the policy Gender Equality in Australia's Aid Program – Why and How (March 2007);
 - (b) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014', and in particular the strategy's six guiding principles, located at http://www.ausaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;
 - (c) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child protection policy*;
 - (d) Environment. AusAID is bound by the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:
 - (i) ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;
 - (ii) comply with AusAID's Environmental Management System outlined in the *Environmental Management Guide for Australia's Aid Program*, including:
 - A. assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;
 - B. report regularly on any such impacts as required by the Scope of Services; and
 - (iii) comply with all relevant environmental laws and regulations of the Partner Country.

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

57. INVESTIGATION BY THE OMBUDSMAN

- 57.1 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.
- 57.2 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.
- 57.3 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.

- 57.4 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.
- 57.5 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.
- 57.6 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.
- 57.7 This clause shall survive expiration or termination of this Contract.

58. RESOLUTION OF DISPUTES

- 58.1 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 39.11** (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.
- 58.2 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.
- 58.3 If the Parties have not been able to resolve the dispute in accordance with **Clause 58.2 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.
- 58.4 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.
- 58.5 Nothing in this clause prevents either Party from seeking urgent injunctive relief.

59. NOTICES

59.1 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).

60. MISCELLANEOUS

60.1 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.

60.2 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.

60.3 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.

60.4 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.

60.5 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.

60.6 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.

60.7 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.

60.8 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:

Schedule 3

- (g) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality; or
- (h) has been independently developed or acquired by the Recipient as established by written evidence.

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

2. NON DISCLOSURE

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

3. RESTRICTION ON USE

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

4. DELIVERY UP OF DOCUMENTS

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

5. SURVIVAL OF OBLIGATIONS

- 5.1 The obligations in this Deed are perpetual.

EXECUTED as a deed poll.

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

.....
 Signature of witness

.....
 Name of witness
(Print)

SCHEDULE 4 – DEED OF NOVATION AND SUBSTITUTION

This **DEED OF NOVATION AND SUBSTITUTION** made the _____ day of _____

BETWEEN:

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

AND:

[_____ ABN _____ of _____] (the “**Subcontractor**”) of the second part;

AND:

Contractor's Name ACN# of **Contractor's Address** (the “**Contractor**”) of the third part.

WHEREAS:

- A. AusAID is concerned to ensure that the Services under the Contract are properly delivered.
- B. The Subcontractor is a subcontractor to the Contractor for the Services.
- C. The Subcontractor and Contractor have agreed with AusAID to novate the Subcontract to AusAID in the event that AusAID exercises its right under **Clause 31** and **32** of the Contract.
- D. The Subcontractor agrees that AusAID may novate the Subcontract to another Contractor at its sole and absolute discretion in the event that AusAID has exercised its right under **Clause 31** and **32** of the Contract.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. **DEFINITIONS**

“**Business Day**” means a day on which trading banks are open for business in Canberra;

“**Commencement Date**” has the same meaning as in the Contract;

“**Contract**” means the Contract for the provision of Services between AusAID and the Contractor dated on or about [_____];

“**Deed**” means this Deed of Novation;

“**Services**” means the services to be provided by the Contractor to AusAID under the Contract;

“**Party**” means AusAID, the Subcontractor or the Contractor;

“**Subcontract**” means the contract between the Contractor and the Subcontractor for the provision of the Subcontractor Services; and

“**Subcontractor Services**” means the services that the Subcontractor is obliged to provide to the Contractor under the Subcontract.

2. **APPLICATION OF DEED**

2.1 The Contractor and the Subcontractor agree that:

- (a) this Deed is entered into for the benefit of AusAID; and

(b) AusAID may exercise the rights granted to it under this Deed.

2.2 This Deed commences on the Commencement Date of the Subcontract.

3. **NOVATION**

3.1 AusAID may issue a notice of substitution to the Subcontractor if AusAID is entitled to exercise its rights under **Clauses 31 or 32** of the Contract.

3.2 The Parties agree that on and from the date of issue of a notice of substitution:

- (a) AusAID is substituted for the Contractor under the Subcontract in respect of the Subcontractor Services as if AusAID was originally the Party to the Subcontract instead of the Contractor, and all references in the Subcontract to the Contractor are to be read and construed as if they were references to AusAID;
- (b) AusAID is to pay any amount due to the Subcontractor under the Subcontract to the Subcontractor and the receipt of the Subcontractor shall be full and sufficient discharge for any such payments;
- (c) subject to paragraph (a), AusAID is bound by, and must fulfil, comply with and observe all the provisions of the Subcontract and enjoys all the rights and benefits of the Contractor under the Subcontract; and
- (d) the performance by the Subcontractor of services under the Subcontract, is instead of, and not in addition to, any performance by the Contractor of its obligations under that Subcontract.

3.3 If AusAID exercises its rights of novation under this deed, AusAID may further novate the Subcontract by substituting a new contractor in place of the Contractor on the terms of this deed with appropriate alterations. In the event of such novation, the rights and obligations of the Subcontractor with respect to the Contractor shall become the rights and obligations of the Subcontractor with respect to the new contractor.

4. **RELEASE**

4.1 Except in relation to payment due from the Contractor to the Subcontractor under the Subcontract but unpaid on the date of issuing of the notice of substitution referred to in **Clause 3** of this Schedule, the Contractor releases and discharges AusAID from any and all claims, actions, proceedings, obligations and liabilities (whether based in negligence or any other form of legal liability) in respect of or in any way arising from the Subcontract prior to the date of the notice of substitution in respect of the Subcontractor Services.

5. **FURTHER ASSURANCES**

5.1 Each Party must take such steps, execute all such documents, and do all such acts and things as may be reasonably required by the other Party to give effect to any of the transactions contemplated by this Deed.

6. **DISCHARGE**

6.1 Neither the Subcontractor nor the Contractor are discharged or released or excused from this Deed by an arrangement made between the Contractor and the Subcontractor prior to the issue of a notice of substitution with, by any change to the Subcontract, or by any forbearance whether as to payment, time or otherwise.

Schedule 4

- 6.2 The Contractor undertakes to notify AusAID of any alterations to the Subcontract or other matter referred to in **Clause 3** of this Schedule. A failure of the Contractor to notify AusAID under this clause does not alter the Subcontractor's obligations under this Deed.
- 6.3 This Deed by the Subcontractor for AusAID to assume the obligations of the Contractor is discharged in relation to the Subcontract only on completion by the Subcontractor of all its obligations under the Subcontract in respect of the Subcontractor Services, or, in the event of the issue of a notice of substitution, on the due and proper performance of the Subcontract by the Subcontractor.
- 6.4 The obligations of AusAID under this Deed in its application to the Subcontract must not exceed the obligations of the Contractor under the Subcontract.

7. NOTICES

- 7.1 A notice required or permitted to be given by one Party to another under this Deed must be in writing and is treated as being duly given and received:
- (a) when delivered (if left at that Party's address);
 - (b) on the third Business Day after posting (if sent by pre-paid mail); or
 - (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and the facsimile machine provides an affirmation of a successful transmission).

7.2 Address of Party

For the purposes of this clause, the address of a Party is the address set out below or another address of which that Party may from time to time give notice to each other Party:

AusAID

To: **Desk Name**
 Attention: Country Program Manager
 Address: Australian Agency for International Development
 GPO Box 887
 CANBERRA ACT 2601

Facsimile: **Desk Fax**

Contractor

To:
 Attention:
 Address:
 Facsimile:

Subcontractor

To:
 Attention:
 Address:
 Facsimile:

8. LAWS

8.1 This Deed is subject to and construed in accordance with the laws in force in the Australian Capital Territory.

9. WARRANTY

9.1 The Subcontractor and the Contractor each warrant and represent to AusAID that at all times:

- (a) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the Subcontractor and the Contractor respectively;
- (b) the Subcontractor and the Contractor respectively each has full corporate power and lawful authority to execute and deliver this Deed and to consummate and perform or caused to be performed its obligations under this Deed;
- (c) this Deed constitutes a legal, valid and binding obligation of the Subcontractor and the Contractor respectively, enforceable in accordance with its terms by appropriate legal remedy; and
- (d) to the best of each of the Subcontractor's or the Contractor's knowledge, there are no actions, claims, proceedings or investigations pending or threatened against or by the Subcontractor or the Contractor respectively that may have a material effect on the ability of the Subcontractor or the Contractor respectively to perform its obligations under this Deed.

10. GENERAL

10.1 Counterparts

This Deed may be executed up to three (3) counterparts and all of those counterparts taken together constitute one and the same instrument.

10.2 Attorneys

Where this Deed is executed on behalf of a Party by an attorney, that attorney by executing declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney executes this Deed on behalf of that Party.

10.3 Further Assurance

Each Party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and acts reasonably required of it or them by notice from another Party effectively to carry out and give full effect to this Deed and the rights and obligations of the Party under it.

10.4 Assignment

No Party may assign or transfer any of its rights or obligations under this Deed without the prior consent in writing of the other Parties. AusAID may withhold its consent in its absolute discretion.

EXECUTED as a Deed.

SIGNED, for and on behalf of the
COMMONWEALTH OF
AUSTRALIA in the presence of:

)
)
)

.....
Signature

.....
Signature of witness

.....
Name of witness
(Print)

SIGNED for and on behalf of
[Subcontractor] by:

)
)
)

.....
Director
Name of Director
(Print)

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

SIGNED for and on behalf of
[Contractor] by:

)
)
)

.....
Director
Name of Director
(Print)

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

SCHEDULE 5 - UNCONDITIONAL FINANCIAL UNDERTAKING**THIS DEED POLL** made

20

BY:

[]
 (the “**Guarantor**”)

FOR THE BENEFIT OF:

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

RECITALS:

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

THE GUARANTOR DECLARES as follows:

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

EXECUTED as a deed poll.

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

Signature of Director

Signature of Director/Secretary

Name of Director
(*Print*)

Name of Director/Secretary
(*Print*)

OR

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

Signature of attorney

Name of attorney
(*Print*)

Signature of witness

Date of power of attorney

Name of witness
(*Print*)

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

AND [] ABN []
(‘Guarantor’)

- A. AusAID wishes to procure certain services.
- B. **Contractor's Name** ('**Contractor**') has agreed to supply the services to AusAID under the annexed Contract (the '**Contract**').
- C. The Guarantor agrees to provide the guarantees and indemnities appearing in this Deed.

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

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

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

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

.....
Name of witness (print)

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

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