



Australian Government

AusAID

Friday 21 October 2011

<p>Request for Tender</p>

**PAPUA NEW GUINEA HEALTH AND HIV/AIDS
IMPLEMENTATION SERVICES PROVIDER**

ATM Number AA1112-31

REQUEST FOR TENDER

PAPUA NEW GUINEA HEALTH AND HIV/AIDS IMPLEMENTATION SERVICES PROVIDER

AusAID manages the Australian Government's official overseas aid program. AusAID assists developing countries to reduce poverty and achieve sustainable development, in line with Australia's national interest. AusAID is seeking tenders from organisations interested in providing services for the **Papua New Guinea Health and HIV/AIDS Implementation Services Provider (HHISP)** (the "**Project**").

The HHISP encompasses two programs:

1. the Health Systems Capacity Development Program (HSCDP); and
2. the HIV/AIDS Program.

By combining these two programs under the one contract, it is envisaged that greater efficiency and integration of health and HIV/AIDS service delivery in Papua New Guinea (PNG) will be achieved. The overarching objectives for both programs are to improve maternal and child health outcomes and deliver increased health and HIV/AIDS services to the rural majority and high risk populations. The HHSIP will provide targeted support to priority provinces and the Autonomous Region of Bougainville in Papua New Guinea. This will be primarily via capacity building assistance, grants management and research.

It is expected that Tenderers will take a consortia approach to this Tender.

If your organisation chooses to lodge a tender (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 5 - Scope of Services**.

STRUCTURE OF THE RFT

This Request for Tender has two sections and six parts as follows:

Section 1

Part 1 Project Specific Tender Conditions

Part 2 Standard Tender Conditions

Section 2

Part 3 Project Specific Contract Conditions

Part 4 Standard Contract Conditions

Part 5 Scope of Services

Part 6 Basis of Payments and other Schedules

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

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

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

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

AusAID Contracts Charter

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

SECTION 1, PART 1 – TENDER PARTICULARS

1. TENDER PARTICULARS

Closing Time: (Clauses 1.11 and 1.15, Part 2)	2:00 pm local time in Canberra, Australian Capital Territory, Monday 5 December 2011.
Mode of Submission: (Clause 1.1, Part 2)	<p><u>Either:</u></p> <ul style="list-style-type: none"> - Electronically, via AusTender at https://tenders.gov.au before the tender Closing Time; <p><u>or</u></p> <ul style="list-style-type: none"> - in hard copy, by depositing by hand in the Canberra Tender Box before the tender Closing Time.
Electronic Tender Lodgement Address: (Clauses 1.11, Part 2)	Via AusTender at https://tenders.gov.au
Hard Copy Tender Lodgement Address: (Clause 1.15, Part 2)	Tender Box, Ground Floor, AusAID, 255 London Circuit, Canberra ACT 2601, AUSTRALIA.
Business Hours for Hard Copy Lodgement: (Clause 1.15, Part 2)	Monday to Friday, 8:30 am to 5:00 pm local time in Canberra, Australian Capital Territory, excluding public holidays.
Number of Copies of Tender: (Clause 1.6, Part 2)	<p><u>For Electronic Tender Lodgement:</u></p> <p>Tender Schedule A - Technical Proposal: One (1) electronic copy in a separate file.</p> <p>Tender Schedule B - Specified Personnel: One (1) electronic copy in a separate file.</p> <p>Tender Schedule C - Financial Proposal: One (1) electronic copy in a separate file.</p> <p>Tender Schedule D - Financial Assessment material: One (1) electronic copy in a separate file.</p> <p>Tender Schedule E – Additional Information: One (1) electronic copy in a separate file.</p> <p><u>For Hard Copy Tender Lodgement:</u></p> <p>Tender Schedule A - Technical Proposal: One (1) printed original and one (1) copy, to be printed double sided without section dividers.</p> <p>Tender Schedule B - Specified Personnel: One (1) printed original.</p> <p>Tender Schedule C - Financial Proposal: One (1) printed original in a separate sealed envelope.</p> <p>Tender Schedule D - Financial Assessment material: One (1) printed original in a separate sealed envelope.</p> <p>Tender Schedule E - Additional Information: One (1) printed original.</p> <p>One (1) CD/DVD: containing five separate PDF files as specified for electronic lodgement above.</p>

Endorsement of Hard Copy Tenders: (Clause 1.17, Part 2)	“Tender for the Papua New Guinea Health and HIV/AIDS Implementation Services Provider”
File Format for Electronic Tenders: (Clause 2.3, Annex D, Part 2)	PDF (Portable Document Format). If compressing PDF files, Tenderers must use a ‘zip’ file compression program.
Tender Validity Period: (Clause 1.8, Part 2)	180 days
AusTender Helpdesk: (Clause 1.2, Annex D, Part 2)	Phone: 1300 651 698 International: +61 2 6215 1558 Email: tenders@finance.gov.au
Contact Person: (Clause 2.1, Part 2)	PAS Officer Email address: HHISP@ausaid.gov.au
Page limits: (Clauses 7.12 and 7.14, Part 2)	Tender Schedule A - Technical Proposal (response to selection criteria): Maximum of twelve (12) pages plus annexes. Curriculum Vitae: Maximum three (3) pages each.
Information:	The following documents are attached: <ul style="list-style-type: none"> - PNG Health System Capacity Development Program: Design and Implementation Framework (Health Design); - PNG-Australia HIV and AIDS Program: Sanap wantaim na strongim sapot long daunim HIV na AIDS (2006) Program Implementation Framework (HIV/AIDS Design); - PNG-Australia HIV & AIDS Program Description and Implementation Arrangements 2012-2015; - PNG-Australia HIV/AIDS Program 2011 Annual Program Plan; and - GoPNG National HIV/AIDS Strategy 2011-2015 (NB: not attached but available on www.nacs.org.pg)

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

2. PRE-TENDER BRIEFING

2.1 AusAID intends to hold the pre-tender briefings on **Tuesday 8 November 2011** at 9:00am at Muruk Haus, Government Printing Office, Somare Circuit, Waigani, National Capital District, Papua New Guinea.

2.2 Tenderers planning to attend the pre-tender briefing are requested to send advanced notification by email, indicating the name of the organisation and the number of people planning to attend to the Contact Person by close of business **Friday 4 November 2011**.

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

3. EVALUATION PROCESS AND SCORE WEIGHTINGS

- 3.1 After the Closing Time, AusAID will review **Tender Schedule E** to confirm the Tenderer’s eligibility to tender and its compliance with Australian Government policy. AusAID may exclude Tenders from the evaluation process at this stage if they are non-conforming.
- 3.2 AusAID will also assess each Tender’s compliance with AusAID’s Adviser Remuneration Framework as attached at **Schedule 9** to the **Draft Contract**. If a Tenderer proposes an Adviser whose remuneration package is not consistent with the rates specified in the Adviser Remuneration Framework, AusAID will notify the Tenderer that it has five business days (or such longer period as AusAID may, at its discretion, allow) to take action either by:
- (a) proposing an alternative team member; or
 - (b) renegotiating the Adviser’s remuneration package such that it complies with the Adviser Remuneration Framework.
- 3.3 If a Tenderer does not amend its Tender to comply with the Adviser Remuneration Framework within the period specified by AusAID, its Tender will be deemed non-conforming and will be excluded from the evaluation process.
- 3.4 Conforming Tenders will proceed for evaluation and assessment as per **Clause 7, Part 2** of this RFT.

Interviews

- 3.5 In accordance with **Clause 7, Part 2** of this RFT, interviews form part of the technical assessment. Tenderers will be advised in writing at least seven (7) days prior to interview but it is expected that interviews would be held during the week commencing **Monday 19 December 2011**, in Port Moresby, Papua New Guinea. Interviews will entail a short presentation by the Tenderer and questions from the Technical Assessment Panel to the Tenderer.
- 3.6 Tenderers will be advised following the Technical Assessment Panel short-listing which advisers are required to attend the interview.

Note to Tenderers: If the required advisers are unable to attend, a teleconference or videoconference presentation may be arranged.

Assessment Weightings

- 3.7 The Technical Assessment Panel (TAP) will assess the Technical Proposal (Tender Schedules A and B) of the conforming Tenders against the Selection Criteria in **Clause 4.2 of this Part**. This assessment of the Tender’s technical score will account for eighty per cent of the overall score using the following formula:

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

- 3.8 Following consideration of the Technical Proposal, AusAID will undertake a like-for-like price assessment of Financial Proposal (Tender Schedule C) of those Tenderers who are assessed by the TAP as technically suitable.
- 3.9 The like-for-like price assessment will represent twenty per cent of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

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

- 3.10 Following the final assessment and calculation of the final aggregate scores, AusAID will confirm the financial capacity of the highest ranked Tenderer(s) to meet the contractual obligations in accordance with **Clause 7 of this Part**. AusAID will also consider the other factors referred to in **Clause 7.8, Part 2**.
- 3.11 At the end of the evaluation process, 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** (*up to twelve (12) pages plus annexes*) that substantively and individually addresses the selection criteria provided in **Clause 4.2 of this Part** taking into consideration “other factors” under **Clause 7.8, Part 2**; and
 - (b) the required **annexes** included in **Clause 4.3 of this Part** (*up to the page limits specified in Clause 4.3*).

Selection Criteria

- 4.2 Tenderers will be evaluated against the selection criteria and weightings as follows:

1. THE ORGANISATION

Weighting 30%

Management and Administrative Support Arrangements

- (a) Demonstrated capacity in providing appropriate administrative and financial management support for the Project;
- (b) Demonstrated ability to manage and support a large and diverse team and provide effective security and administrative and logistical support to an offshore based team and office; and
- (c) Demonstrated capacity to develop appropriate systems and processes to manage the Project effectively.

2. APPROACH

Weighting 40%

Response to the Design Documents

- (a) Demonstrated understanding of the objectives and recognition of the critical constraints associated with the Project, as demonstrated by the Tenderer's critique of the *Health System Capacity Development Program: Design and Implementation Framework* and the *PNG-Australia HIV/AIDS Program Implementation Framework* (2006) and the HIV Program Description and Implementation Arrangements; and

Methodology and Work Plan

- (b) Proposed practical and strategic approach to fulfilling the Project objectives within the specified timeframe, and the resources the Tenderer will make available for Project implementation.

3. PERSONNEL

Weighting 30%

HHISP Director

- (a) The Tenderer's proposed HHISP Director has appropriate qualifications and practical experience in team management; and

Other Key Team Members

- (b) The other key team members proposed by the Tenderer have appropriate experience and qualifications.

4.3 Annexes

Annex 1 – Past Experience Form – up to one (1) A4 page each with up to three (3) examples

The Tenderer must present in the format outlined below details of relevant activities or projects in which the Tenderer has been involved which demonstrate the Tenderer's ability to fulfil the objectives of the Project. This Annex must not contain more than three (3) 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 7.15 – 7.18, Part 2.**

PAST EXPERIENCE FORM

Activity Name:	
Activity Value:	
Activity Location(s):	
Activity Duration	
Client/Donor:	
Year Completed:	
Brief description of the activity and the Tenderer's role:	

Brief description of activity outcomes:			
Brief description of any contractor performance issues and their resolution:			
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 – Team Member Inputs (Bar Charts) – up to one (1) A3 page

The Tenderer must provide a bar chart which shows the proposed inputs per team member for this Project and indicates total months or days for the duration of the Project (denoting a person as “part-time” is not acceptable). This chart must be presented on A3 paper.

The chart should clearly indicate inputs of team members in the Tenderers’ home country, in Papua New Guinea and in total.

Annex 3 – Risk Management Plan – up to two (2) A4 pages

The Tenderer must provide a detailed Risk Management Plan of a maximum of two (2) A4 pages 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 Project if the risk eventuates along with possible options for ameliorating the risk;
- (d) the entity/entities responsible for managing the risk; and
- (e) the approach to be taken by the Tenderer to mitigate any impact.

Annex 4 – Mobilisation Plan up to two (2) A4 pages

The Tenderer must provide a detailed Mobilisation Plan for the first three (3) months of the Project. The Mobilisation Plan must be no more than two (2) A4 pages and 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; and
- (c) any other matters specified in the Scope of Services, **Part 5** of this RFT.

5. **TENDER SCHEDULE B – TECHNICAL PROPOSAL (SPECIFIED PERSONNEL)**

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

- (a) a list of proposed team members in the table (in landscape) format provided below and in accordance with the instructions included in **Clauses 5.2 and 5.3** below – *up to two (2) A4 pages*;
- (b) a skills matrix providing a summary illustration of the skills of the proposed Project team as a whole (broken down by individual team members) in the key skill areas required for the Project's implementation – *up to two (2) A4 pages*; and
- (c) a curriculum vitae for each proposed team member that conforms with the requirements outlined in **Clauses 7.15 and 7.18, Part 2** – *up to three (3) pages per person*.

5.2 Tenderers must provide the information in the Referees column of the Specified Personnel table in accordance with **Clauses 7.16 - 7.19, Part 2**.

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

5.4 Tenderers are reminded of the requirements of **Clause 8, Part 4** particularly in relation to the availability of Specified Personnel. AusAID will consider as materially inaccurate, and may therefore reject, any Tender which does not disclose the fact that a proposed team member has an existing and continuing commitment to another AusAID project.

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

5.6 Tenderers are reminded of the requirements of **Clause 19.2, Part 2** particularly in relation to providing police clearance certificates for all personnel nominated in the Specified Personnel table for positions specified as working with children:

- (a) Tenderers must request the required criminal record checks in sufficient time to ensure that police clearance certificates can be provided in accordance with **Clause 19.2, Part 2**.
- (b) Tenderers should note that in Australia, national criminal record checks are available through the Australian Federal Police and take around 20 working days. The type of employment should be specified as ‘overseas employment’. Different checking procedures apply in each country and may take six weeks or longer. Individuals need to give their consent to a criminal record check and should be informed of the purpose for which it will be used, including sighting by AusAID.

Table 1: Specified Personnel

Position	Job Level and Professional Discipline Category	Working with Children (Y/N)	Name	Total Inputs	Referee Contact Details		Commitments
				Months	#1	#2	
HHISP Director	C4						
HSCDP (Health) Coordinator	C3						
HIV/AIDS Program Coordinator	C3						
Health Institutions and Systems Specialist	C3						
Finance and Audit Management Specialist	C3						
Human Resources Development Manager	B3						
<i>Tenderers to propose other specified personnel as required</i>							

6. TENDER SCHEDULE C - FINANCIAL PROPOSAL

6.1 **Tender Schedule C** of the Tender must contain the information required and in the format detailed in this **Clause 6**.

6.2 Tender Schedule C must:

- (a) be submitted in accordance with the format provided in the tables below;
- (b) be a fully costed fixed price based on the outputs and/or inputs as specified in the Scope of Services, including:
- (i) escalation and any allowance for foreign exchange rate variations;

- (ii) necessary insurances required by the Contract Conditions and for the performance of the Services;
 - (c) preferably be expressed in Australian dollars; and
 - (d) include detailed information on any assumptions used in preparing the pricing.
- 6.3 If Tender Schedule C is in a currency other than Australian dollars, for the purposes of the evaluation, AusAID will convert the Tenderer's nominated currency into Australian dollars at the exchange rate at the Closing Time.
- 6.4 Any escalators, foreign exchange rate variations, or other price risks, must be built into the fixed price proposal but separately disclosed as a single escalator factor. AusAID will not consider any "across the board" escalators subsequently applied to any rates or Project costs.
- 6.5 AusAID will use the information provided in the tables for any financial assessment and for the like-for-like price assessment.
- 6.6 Tenderers must ensure that all personnel are assigned a Job Level and Professional Discipline Category in accordance with the Adviser Remuneration Framework as attached at **Schedule 9** to the **Draft Contract**. If a Tenderer proposes an Adviser whose remuneration package is not consistent with the rates specified in the Adviser Remuneration Framework, **Clauses 3.2 and 3.3 of this Part** will apply.
- 6.7 The long term rates specified in the Adviser Remuneration Framework are inclusive of twenty (20) days leave per twelve (12) month period. Tenderers must detail in their Financial Proposal (Table 3) the leave entitlements of nominated Long Term Advisers. If leave entitlements exceed a total of 20 days per 12 month period, the Tenderer must provide a justification and a narrative description of how the Tenderer will ensure, during Long Term Adviser absences, the continued quality of Services. The cost of any additional leave will be accounted for by a pro rata reduction in the relevant Adviser's remuneration rate. Tenderers should note that leave entitlements and the management strategy may be assessed by the TAP or AusAID as part of the technical assessment process. AusAID reserves the right to negotiate leave entitlements if AusAID consider them to be excessive.

Management Fees

- 6.8 Tenderers must detail in the Financial Proposal at **Table 1: Management Fee** below a Management Fee for the term of the Contract and for the option period in the event that AusAID exercises its option to extend the Contract under **Clause 2.3 of Part 3** of this RFT. The table must be in the format provided. The Management Fee applies to the delivery of the Project activities as detailed in **Part 5** and will be paid as set out in **Clause 2, Part 6** of this RFT. Note that Year 1 only covers a few months and the remaining years align with Australian financial years (1 July – 30 June) covering twelve months.
- 6.9 Tenderers must provide in the Financial Proposal a breakdown of their Year 2 Management Fee in **Table 2: Year 2 Management Fee Breakdown** below in the format provided, including all assumptions they have taken into account. This is based on Year 2 as Year 1 is not a full twelve months.

Long Term Adviser Costs

- 6.10 Tenderers must detail in the Financial Proposal at **Table 3: Long Term Adviser Costs** below the costs of all Long Term Advisers for the term of the Contract and for the option period in the event that AusAID exercises its option to extend the Contract under **Clause 2 of Part 3** of this RFT. The table must be in the format provided. These costs must include consideration of all factors of pay as detailed in **Clause 4, Part 6** of this RFT. Note that Year 1 fees must be based on the ARF. An escalation can be applied from Year 1; however, only one rate can be nominated for the four years. The escalator nominated will apply once only to rates for any extension period.

Short Term Adviser Costs

- 6.11 Tenderers must detail in the Financial Proposal at **Table 4: Short Term Adviser Costs** below the costs of all Short Term Advisers for the term of the Contract and for the option period in the event that AusAID exercises its option to extend the Contract under **Clause 2 of Part 3** of this RFT. The table must be in the format provided. These costs must include consideration of all factors of pay as detailed in **Clause 5, Part 6** of this RFT. Note that Year 1 fees must be based on the ARF. An escalation can be applied from Year 1; however, only one rate can be nominated for the four years. The escalator nominated will apply once only to rates for any extension period.

Other Personnel Costs

- 6.12 Tenderers must detail in the Financial Proposal at **Table 5: Other Personnel Costs** below the costs of all Other Personnel not classified under the ARF, for the term of the Contract and for the option period in the event that AusAID exercises its option to extend the Contract under **Clause 2 of Part 3** of this RFT. The table must be in the format provided. These costs must include consideration of all factors of pay as detailed in **Clause 6, Part 6** of this RFT. The escalator nominated will apply once only to rates for any extension period.

Adviser Support Costs

- 6.13 Tenderers are not required to specify Adviser Support Costs in **Tender Schedule C**. Adviser Support Costs will be negotiated with the preferred Tenderer during contract negotiations and paid in accordance with **Clause 7, Part 6** of this RFT.

Operational Costs

- 6.14 Tenderers are not required to specify Operational Costs in **Tender Schedule C**. Operational Costs will be paid to the Contractor in accordance with **Clause 8, Part 6** of this RFT.

Program Costs

- 6.15 Tenderers are not required to specify Program Costs in **Tender Schedule C**. Program Costs will be paid to the Contractor in accordance with **Clause 9, Part 6** of this RFT. Program Costs may be amended slightly during contract negotiations.

Grant Costs

- 6.16 Tenderers are not required to specify Grant Costs in **Tender Schedule C**. Grant Costs will be paid to the Contractor in accordance with **Clause 10, Part 6** of this RFT. Grant Costs may be amended slightly during contract negotiations.

Summary for like for like assessment

- 6.17 Tenderers must detail in the Financial Proposal at **Table 7: Summary Table** below the total costs details in Tables 1-6 of the Financial Proposal, for the term of the Contract and for the option period in the event that AusAID exercises its option to extend the Contract under **Clause 2, Part 3** of this RFT. The table must be in the format provided.

Table 1: Management Fee

Year	Escalator (%)	Management Fees
Year 1 (1/3/12 – 30/6/12)		
Year 2 (1/7/12 – 30/6/13)		
Year 3 (1/7/13 – 30/6/14)		
Year 4 (1/7/14 – 30/6/15)		
Total (Year 1-4)		
Year 5 (1/7/15 – 30/6/16)		
Year 6 (1/7/16 – 30/6/17)		
Total (Year 5-6)		
Total (Year 1-6)		

Table 2: Year 2 Management Fee Breakdown

Item	Maximum Amount Payable
profits, including commercial margins and mark-up for personnel and Project management	
financial management costs, including the cost of an independent annual audit of the Project and financing costs, if any	
costs of Contractor administrative and head office staff, including the cost of a Contractor Representative, if any	
insurance costs as required by this Contract, but exclusive of the costs of medical insurance for Advisers	
taxation, as applicable	
costs of complying with the Contractor's reporting and liaison obligations under this Contract	
costs associated with all personnel briefings in Australia or in-country	
costs associated with any sub-contracting and procurement of goods and services	
costs, including domestic and international travel, accommodation, per diems, and local transport costs where required for Contractor Head Office personnel (other than those listed as Long Term Advisers in Part 6 of this RFT)	
any other overheads required to perform the Services in accordance with this Contract	
all escalators for the term of this Contract	
any allowance for risks and contingencies	
Other costs, <i>please specify</i>	
TOTAL	

Table 3: Long Term Adviser Costs

Name and Position	ARF Group & Job Level	Monthly Fee Year 1 - 4 (1/3/12 – 30/6/15) (AUD)	Inputs Year 1 - 4 (Months)	Annual Leave Allowance (up to 20 days per annum) (AUD)	Escalator (to apply once only to any extension period)	Mobility Allowance (if any) (AUD)	Total (Years 1-4) (AUD)
HHISP Director	C4						
HSCDP Health Coordinator	C3						
HIV/AIDS Program Coordinator	C3						
Health Institutions and Systems Specialist	C3						
Finance and Audit Management Specialist	C3						
Human Resources Development Manager	B3						
<i>Tenderers to specify other LTAs as required</i>							
TOTAL							

Table 4: Short Term Adviser Costs

Name and Position	ARF Group & Job Level	Daily Fee Year 1- 4 (1/3/12 – 30/6/15)	Inputs (Days)	Escalator	Total (Years 1-4)
<i>Tenderers to specify STAs as required</i>					
TOTAL					

Table 5: Other Personnel Costs

Position	Monthly Fee (AUD)	Daily Fee (AUD)	Inputs (Months or days)	Escalator (to apply once only to any extension period)	Total (AUD)
<i>Tenderers to insert rows as required</i>					
Total					

Note that either a daily or monthly fee and inputs apply, not both.

Table 7: Summary for Like-for-Like Assessment

Item	Maximum Amount Payable
Management Fees	<i>Insert total amount from Table 1 (Years 1-6)</i>
Long Term Adviser Costs	<i>Insert total amount from Table 3 (Years 1-4)</i>
Short Term Adviser Costs	<i>Insert total amount from Table 4 (Years 1-4)</i>
Other Personnel Costs	<i>Insert total amount from Table 5 (Years 1-4)</i>
Total Tender Price (excluding GST)	

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 specified under the Contract.
- 7.2 For this RFT, AusAID has appointed an independent financial assessor to evaluate the Tenderers' financial capacity.
- 7.3 The Tenderer should be prepared to provide the financial assessor with details of relevant financial data and other relevant information concerning the Tenderer, if so requested by the financial assessor. Financial data and other information may include, but will not be limited to:
- (a) complete annual financial statements for the last three (3) financial years, with all supporting notes;
 - (b) descriptions of any recent changes of substance in the Tenderer's financial position that are not reflected in the most recent financial information provided under **Clause 7.3(a) above**;
 - (c) details of any other tendering opportunities currently being pursued by the tendering entity or related entities within the group; and
 - (d) details of any significant events, matters or circumstances that may significantly affect the Tenderer's capacity to perform the Services.
- 7.4 To facilitate the financial assessment process, Tenderers must provide the following details in **Tender Schedule D**:
- (a) The name, telephone number and email address of the tendering entity's nominated contact point for the financial assessment.
- 7.5 Failure by a Tenderer to provide financial information when requested by the financial assessor may result in the Tender not being assessed further.
- 7.6 The financial assessor's report on the financial capacity of the Tenderer to undertake the Contract may be provided to either the delegate or the TAP.
- 7.7 The financial information of Tenderers will be treated confidentially.

8. **TENDER SCHEDULE E – ADDITIONAL INFORMATION**

- 8.1 **Tender Schedule E** must contain the additional information required and in the format detailed in this clause.
- (a) The completed and signed **Tenderer Declaration** in the form specified in **Annex A, Part 2**;
 - (b) The completed and signed **Tenderer's Submission Checklist** in the form specified in **Annex B, Part 2**;

- (c) Details of any information the Tenderer will seek to have specified as confidential in the Contract should it be awarded to the Tenderer, in the form specified in **Annex C, Part 2**;
- (d) Any **Letters of Association** and other details of proposed sub-contractors in accordance with **Clause 9.2, Part 2** – *up to one (1) A4 page per organisation*; and
- (e) A brief statement disclosing whether Tenderers are compliant or non compliant and/or have (or have had) issues associated with policies named in **Clause 17, Part 2**. Note that **Clause 17.6, Part 2** refers to the World Bank List and similar lists maintained by other donors of development funding. **Clause 13.4, Part 2** requires each Tenderer to disclose, in its Tender, the information specified in that clause regarding investigations, proceedings, informal processes, temporary suspension and listing by the World Bank or any other donor of development funding. Tenderers must disclose any relevant information in this statement.

PART 2 – STANDARD TENDER CONDITIONS

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PART 2 – STANDARD TENDER CONDITIONS

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

1. TENDER LODGEMENT

1.1 Tenders must be lodged either:

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

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

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

- (a) The Technical Proposal comprising:
 - (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 Long Term Advisers in the form specified in **Part 1**;
- (b) The Financial Proposal in the form specified in **Part 1**. 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**. 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;
- (d) The Additional Information in the form specified in **Part 1**.

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** of this RFT). Different numbers of copies may be required for hard copy lodgement and for electronic lodgement.

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

- 1.8 It is a condition of this RFT that each Tender must remain valid and available for acceptance by AusAID for the **Tender Validity Period** specified in the Tender Particulars (**Clause 1, Part 1** of this RFT).
- 1.9 A person or persons having authority to lodge the Tender and enter into a contract on behalf of the Tenderer must sign the Tenderer Declaration (**Annex A of this Part**).
- 1.10 AusAID may extend the **Closing Time** at its sole and absolute discretion, and will issue an Addendum notifying any decision to extend.

Conditions Applying to Electronic Tender Lodgement

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

Conditions Applying to Hard Copy Tender Lodgement

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

2. TENDERER ENQUIRIES

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

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

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

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

3. **LATE TENDERS**

Conditions Applying to Tenders Lodged Electronically

3.1 A Tender lodged electronically after the **Closing Time** is a late Tender in accordance with the conditions specified in **Clause 5, Annex D of this Part** and will be excluded from evaluation.

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

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

Conditions Applying to Tenders Lodged in Hard Copy

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

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

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

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

4. **NON-CONFORMING TENDERS**

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

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

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

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

5. **CLARIFICATION OF TENDERS**

- 5.1 AusAID reserves the right to seek clarification of any Tender. Tenderers must:
- (a) respond to any request for clarification within the time period specified by AusAID;
 - (b) ensure that additional information provided answers AusAID's enquiry and is fully consistent with the Tender submitted by the Tenderer; and
 - (c) not seek to change any aspect of their Tender by providing additional information to AusAID.
- 5.2 Clarifications are provided on the terms of the RFT.
- 5.3 Failure to supply clarification to the satisfaction of AusAID may render the Tender liable to rejection.

6. **AMENDMENT OF THE RFT**

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

7. **ASSESSMENT OF TENDERS**

- 7.1 Tenders will be assessed on the following basis:
- (a) technical, which includes the other factors described in **Clause 7.8 of this Part** which in AusAID's opinion may impact upon the suitability of any Tenderer including the financial viability of any Tenderer; and
 - (b) financial,
- to achieve the best value for money outcome.
- 7.2 Tenderers should note that value for money determinations are made on a whole-of-life basis and that AusAID is not bound or required to accept the lowest priced Tender or any Tender.

Technical Assessment

- 7.3 The technical assessment will be undertaken by the Technical Assessment Panel (the "**TAP**") comprising AusAID representative(s) and independent specialists appointed at AusAID's sole discretion. Representatives of the Partner Government may also participate. The TAP will assess Tenders based on the selection criteria specified in **Part 1**.
- 7.4 AusAID may invite a Tenderer (shortlisted or otherwise) to give AusAID a short presentation and be interviewed by the TAP. Long Term Advisers, such as the proposed in-country HHISP Director, may be required to attend at the presentation. If Long Term Advisers are unable to attend, a teleconference or videoconference presentation may be arranged. Long Term Advisers will be required to answer any questions asked by the TAP.

- 7.5 Tenderers should note that failure by a Tenderer or proposed Long Term Advisers to attend the presentation (either in person or via teleconference or videoconference) may disadvantage the Tenderer.
- 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 Tenders the past performance of the Tenderer or any proposed personnel contained in the Tender in accordance with **Annex E of this Part**.
- 7.8 In making its assessment, the TAP or AusAID may have regard to other factors relevant to the suitability, capacity and qualifications of a Tenderer including but not limited to:
- (a) the Tenderer’s ability to comply with AusAID policies referred to in this RFT and the Tenderer’s ability to comply with the **Contract Conditions**;
 - (b) the resourcing of Tenders;
 - (c) information obtained from any source which is relevant to the capacity of the Tenderer or any proposed personnel to perform the Services and achieve the Project goals and objectives. Such information may be the result of inquiries made by AusAID; and
 - (d) the Tenderer’s demonstrated understanding of the cultural environment of the Project.

These other factors have not been allocated any specific weightings.

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

Goods and Services Tax

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

Insurances

- 7.11 The Financial Proposal must be inclusive of all necessary insurances required by the Contract Conditions and for the performance of the Services. Notwithstanding the requirements of the Contract, AusAID recommends that all Tenderers seek advice on and consider arranging professional indemnity insurance as a matter of prudent commercial practice.

Technical Proposal Format

7.12 The Technical Proposal must:

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

Curricula Vitae

7.13 The curriculum vitae ("CVs") for team member must include the following information:

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

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

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

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

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

Referees

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

8. JOINT VENTURES AND CONSORTIUMS

- 8.1 AusAID intends to contract with a single legal entity.
- 8.2 If a Tender is submitted by 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 must be nominated in the Tender.
- 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 are clearly specified in the body of the text in **Tender Schedule A**.
- 8.4 AusAID may require parent company guarantees from the parent companies of parties to a joint venture or consortium.

9. ASSOCIATES AND OTHER SUB-CONTRACTORS

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

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

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

- 9.3 In addition to Associates, Tenderers are required to include detailed information on other work to be sub-contracted (excluding Long Term Advisers) and proposed sub-contractors, where these are reasonably known at the time of the Tender and have expressed their willingness to be involved in the Project.
- 9.4 Letters in which organisation's express their willingness to be involved with the Tenderer in the Project as a sub-contractor must be limited to a single page per organisation and include details on the broad skills or areas in which the organisation may add value.

Note to Tenderers: 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 Any 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, all Tender materials.
- 10.4 Copyright in the RFT is reserved to AusAID.

11. **CONFLICT OF INTEREST**

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

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

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

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

12. TENDERING CONDUCT

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

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

13. INELIGIBILITY TO TENDER

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

- (a) **“Proposed Subcontractor”** means a subcontractor that the Tenderer intends to engage for the Project, whether or not nominated in its Tender;
- (b) **“Related Entity”** means any person or company which is:
 - (i) a Proposed Subcontractor;
 - (ii) in the same group as the Tenderer or a Proposed Subcontractor;
 - (iii) a ‘related body corporate’ of the Tenderer or a Proposed Subcontractor, within the meaning of the *Corporations Act 2001*; or
 - (iv) associated with the Tenderer or a Proposed Subcontractor in respect of its Tender;
- (c) **“Relevant List”** means any list maintained by a donor of development funding which is similar to the World Bank List; and
- (d) **“World Bank List”** means the World Bank’s “Listing of Ineligible Firms” or the “Listing of Firms Letters of Reprimand” posted at www.worldbank.org.

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

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

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

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

- (b) is subject to any proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List;
 - (c) is temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process;
 - (d) is temporarily suspended from tendering by a donor of development funding other than the World Bank; or
 - (e) is the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.
- 13.5 If a Tenderer becomes aware of a circumstance referred to in **Clause 13.4** after it has submitted its Tender to AusAID, the Tenderer must immediately notify AusAID in writing.
- 13.6 AusAID will exclude any Tender from evaluation if the Tenderer is in breach of the warranty in **Clause 13.3**, or does not disclose any circumstance required under **Clause 13.4** or **13.5**.
- 13.7 AusAID reserves the right to exclude any Tender from evaluation if the Tenderer or a Related Entity:
- (a) becomes listed on a World Bank List or Relevant List, or is subject to proceedings or an informal process which could lead to such a listing;
 - (b) is or becomes temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process; or
 - (c) is or becomes temporarily suspended from tendering by a donor of development funding other than the World Bank.
- 13.8 Tenderers should note that if they tender in breach of this **Clause 13**, or are subsequently listed on a World Bank List or Relevant List, AusAID may terminate any contract subsequently entered into with that Tenderer.
14. **AusAID's RIGHTS**
- 14.1 As a Commonwealth Government agency, all AusAID procurement is subject to the Commonwealth Procurement Guidelines. The core principle of Commonwealth procurement is to achieve value for money. AusAID is also bound to conduct its procurement in an ethical, accountable, transparent, efficient and effective manner.
- 14.2 AusAID reserves the right to:
- (a) seek Tenders from any organisation;
 - (b) accept or reject any Tender;
 - (c) terminate, extend or vary its procurement process for the Services;
 - (d) request clarification in relation to a Tender;
 - (e) seek information or negotiate with any organisation that has not been invited to submit a Tender;

- (f) terminate negotiations with the preferred Tenderer and commence negotiations with any other Tenderer;
- (g) evaluate Tenders as AusAID sees appropriate; and
- (h) negotiate with any one or more Tenderers.

15. TENDERER'S ACKNOWLEDGEMENT

15.1 A Tender is submitted on the following basis:

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

16. DEBRIEFING OF TENDERERS

- 16.1 If requested, AusAID will provide Tenderers with a written debriefing on the results of the assessment of their Tender, including reasons why the Tender was not successful.
- 16.2 AusAID will not enter into discussion or communications on the content of the Tender debrief once it has been completed.

17. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

17.1 Freedom of Information

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

17.2 Privacy

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

17.3 Access by Australian National Audit Office

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

17.4 Access by Ombudsman

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

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

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

17.6 *United Nations Act 1945, Criminal Code Act 1995 and World Bank List*

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

17.7 Fair Work Principles

- (a) Tenderers should note that the Australian Government Fair Work Principles apply to this procurement. More information on the Fair Work Principles and their associated User Guide can be found at www.deewr.gov.au/fairworkprinciples.
- (b) In particular Tenderers should note that in accordance with the Fair Work Principles AusAID will not enter into a contract with a Tenderer who:
 - (i) fails, when required by the Commonwealth, to confirm it understands and complies with all relevant workplace relations law, occupational health and safety law, or workers’ compensation law;
 - (ii) is subject to an order from any Court or Tribunal decisions relating to a breach of workplace relations law, occupational health and safety law, or workers’ compensation law with which the Tenderer has not fully complied or is not fully complying;
 - (iii) has a *Fair Work Act 2009* agreement that was made on or after 1 January 2010 that does not include genuine dispute resolution procedures; or
 - (iv) fails to provide information when requested by AusAID relevant to their compliance with the Fair Work Principles.
- (c) For the purposes of **Clause 17.7(b)** above:

- (i) a genuine dispute resolution procedure is one which provides each of the following processes to resolve workplace disputes:
 - (A) the ability for employees to appoint a representative in relation to the dispute;
 - (B) in the first instance procedures to resolve the dispute at the workplace level;
 - (C) if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and
 - (D) if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties; and
- (ii) a decision or order with which the Tenderer has not fully complied or is not fully complying includes any relevant penalty or order of a Court or Tribunal, but it does not extend to infringement notices issued by workplace inspectors or a provisional improvement notice issued by an occupational health and safety inspector, or those instances where a penalty or a requirement has been imposed but the period for payment/compliance has not expired.

17.8 Other Australian Government and AusAID Policies

- (a) Tenderers should familiarise themselves with AusAID policies including:
 - (i) the policy *Gender Equality in Australia's Aid Program – Why and How* (March 2007). This document is available on AusAID's website at <http://www.ausaid.gov.au/publications/default.cfm>;
 - (ii) the strategy *Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014*, and in particular the strategy's six guiding principles, located at http://www.ausaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;
 - (iii) AusAID's policy on the environment as set out in the *Environmental Management Guide for Australia's Aid Program*. This document is available on AusAID's website at <http://www.ausaid.gov.au/keyaid/envt.cfm>.
 - (iv) AusAID's *Child Protection Policy*, in particular the child protection compliance standards at Attachment 1 to the policy. This document is available on AusAID's website at <http://www.ausaid.gov.au/publications/default.cfm>;
 - (v) *Family Planning and the Aid Program: Guiding Principles* (August 2009). This document is available on AusAID's website at: <http://www.ausaid.gov.au/keyaid/health.cfm>; and
 - (vi) any other policies published from time to time on <http://www.ausaid.gov.au> or as otherwise notified to Tenderers.

18. FURTHER REQUIREMENTS

18.1 Tenderers must not nominate current AusAID employees as Long Term Advisers or as people who will be engaged by the Tenderer if it is selected as the preferred Tenderer.

18.2 Tenderers must not:

- (a) nominate former AusAID employees as Long Term Advisers or as people who will be engaged by the Tenderer if it is selected as the preferred Tenderer; or
- (b) prepare their Tenders with the involvement or assistance of former AusAID employees,

unless the former employee's employment by AusAID ended more than nine months before the Closing Time.

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 evaluation 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 Long Term Advisers Table (**Clause 5, Part 1**) as working with children in accordance with the following requirements:

- (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 this **Clause 19.2**, 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 AusAID intends 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 Payment 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 Tendered price.
- 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. **CONFIDENTIALITY**

- 20.1 AusAID undertakes to keep confidential any Tender provided to AusAID by Tenderers prior to the award of a contract and, in respect of unsuccessful Tenderers, after contract award.
- 20.2 The obligation of confidentiality in **Clause 20.1** does not apply if the Tender:
- (a) is disclosed by AusAID to its advisers or employees solely in order to consider a Tender, evaluate or clarify a Tender, negotiate any resulting contract or manage a contract with a successful Tenderer;
 - (b) is disclosed by AusAID to the responsible Minister;
 - (c) is disclosed by AusAID, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (d) is authorised or required by law to be disclosed; or
 - (e) is in the public domain otherwise than due to a breach of **Clause 20.1**.
- 20.3 AusAID will agree to keep confidential any specific information provided under, or in connection with, the Contract where it is appropriate to do so having regard to the matters covered by the Commonwealth's *Guidance on Confidentiality in Procurement*.
- 20.4 To enable AusAID to consider whether it will agree to keep specific information confidential, Tenderers must include in their Tender any request that information is to be treated as confidential following the award of a contract to it in the form specified in **Annex C to this Part** specifying the information and giving reasons why it is necessary to keep the information confidential by making specific reference to each of the four (4) criterion specified in the Commonwealth's *Guidance on Confidentiality in Procurement*.
- 20.5 AusAID will consider any request made under **Clause 20.4** and will inform the preferred Tenderer whether or not AusAID, in its sole discretion, agrees to the request and the terms under which it agrees.
- 20.6 The terms of any agreement will form part of the Contract to be awarded at the completion of the Tender process.
- ## 21. **CONTRACT PLANS**
- 21.1 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.

22. APPLICABLE LAW

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

ANNEX A – TENDERER DECLARATION

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

1. DEFINITIONS

1.1 In this declaration:

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

“**Former AusAID Employee**” means a person who was employed by AusAID at any time during the nine (9) month period before the Closing Time.

“**Related Entity**” has the meaning given in **Clause 13.1** (Ineligibility to Tender) of **Part 2** of the RFT;

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

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

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

2. BASIS OF DECLARATION

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

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

3. THE OFFER

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

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

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

3.4 I warrant that the Tender was not prepared with the involvement or assistance of a Former AusAID Employee.

- 3.5 I acknowledge that if the Tenderer is found to have made false or misleading material claims or statements in the Tender or in this declaration, or to have used confidential information, or received improper assistance, AusAID will reject at any time any Tender lodged by or on behalf of the Tenderer.
- 3.6 I acknowledge and agree to the matters specified in **Clauses 14** (AusAID's Rights) and **15** (Tenderer's Acknowledgement) of **Part 2**.
- 3.7 I agree:
- (a) that the Tenderer will be bound by this Tender for the Tender Validity Period of 180 days after the **Closing Time**; and
 - (b) that this Tender may be accepted by AusAID at any time before the expiration of that period or any additional period to which we may agree.
- 3.8 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.
- 3.9 I understand that AusAID is not bound to accept the lowest priced or any Tender.
- 3.10 I warrant that in preparing the Tender for the Services the Tenderer did not act in any way which did or could have had the effect of reducing the competitiveness of the tender process for the Services. In particular I warrant that the Tenderer did not engage in:
- (a) any discussion or correspondence with other tenderers concerning the amount of the Tender;
 - (b) any collusive tendering or other anti-competitive practices with any of the other Tenderers or any other person; or
 - (c) any conduct or have any arrangement or arrive at any understanding with any of the other Tenderers.
- 3.11 **[This clause applies to government owned Tenderers only.]** I warrant that in preparing the Tender, the Tenderer has complied with the principles of competitive neutrality.
- 3.12 I warrant that the Tenderer and its Related Entities are not:
- (a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 2** of the RFT; or
 - (b) listed on a Relevant List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 2** of the RFT.
- 3.13 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not subject to any proceedings or informal processes which could lead to listing on a World Bank List or listing on a Relevant List. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity is subject to proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List. I warrant that the Tenderer has included information regarding the proceedings in Tender Schedule E.

- 3.14 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process, or temporarily suspended from tendering by a donor of development funding other than the World Bank. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity has been temporarily suspended from tendering by either the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the temporary suspension in Tender Schedule E.
- 3.15 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity is the subject of a formal or informal investigation by the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the investigation in Tender Schedule E. |
- 3.16 I undertake that, if the Tenderer becomes aware of a circumstance referred to in **Clause 13.4** (Ineligibility to Tender) of **Part 2** of the RFT after it has submitted its Tender, I will immediately notify AusAID in writing.
- 3.17 Neither the Tenderer nor any of its employees, agents or contractors have been convicted of an offence of, or relating to bribery of a public official, nor are they subject to any proceedings which could lead to such a conviction.
- 3.18 I undertake that the Tenderer will not permit any of its employees, agents or contractors, to work with children if they pose an unacceptable risk to children's safety or well being.
- 3.19 No employees of the Tenderer, or its agents or contractors, who have been nominated in Project positions that involve working with children, have been convicted of a criminal offence relating to child abuse, nor are they subject to any proceedings which could lead to such a conviction.
- 3.20 Neither the Tenderer nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.

Note to Tenderers: *The following Clauses 3.21 and 3.22 will be used by AusAID to confirm the Tenderer's compliance with the relevant requirements of the Fair Work Principles.* |

- 3.21 The Tenderer has read and understood the Fair Work Principles User Guide and understands that the Fair Work Principles will apply to the procurement for the Project.

3.22 Compliance with Fair Work Principles

(a) The Tenderer declares the following:

- (i) The Tenderer has had _____ ***[Nil or specify number]*** adverse Court or Tribunal decision for a breach of workplace relations law, occupational health and safety law, or workers' compensation law in the past two years preceding the date of this Request for Tender.
[If response is nil adverse decisions go to 3.22(a)(iii) below]

- (ii) ***[Note to Tenderers: Strike through whichever option does not apply]*** |

The Tenderer has fully complied or is fully complying with all penalties or orders arising from the Court or Tribunal decisions declared above.

OR

The Tenderer has not fully complied with or is currently not fully complying with _____ **[Number]** of the penalties or orders arising from the Court or Tribunal decisions declared above and has provided as part of its Tender information about each of these penalties or orders in the form required in Appendix A to the Fair Work Principles User Guide.

Tenderers must provide additional information about each decision declared above in Clause 3.22(a)(ii) as specified in Appendix A to the Fair Work Principles User Guide. Tenderers should note that they will not be eligible for further consideration for this procurement if they have not fully complied with, or are not fully complying with, any Court or Tribunal decision, or have not appealed the decision prior to the end of the appeal period.

- (iii) The Tenderer understands its obligations under all applicable workplace relations, occupational health and safety, and workers' compensation laws. The Tenderer undertakes that it complies with all of these obligations.
- (iv) The Tenderer confirms that (except where it is an overseas based supplier to which these requirements do not apply in accordance with the Fair Work Principles User Guide) it:
 - (A) has consultation arrangements which encourage cooperation and engagement of employees and management; and
 - (B) understands and respects their employees' rights in relation to freedom of association and the right to representation at work, including that the Tenderer allows its employees to be able to make a free and informed choice about whether to join a union and be represented at work.
- (v) Where the Tenderer has a *Fair Work Act 2009* enterprise agreement that was approved on or after 1 January 2010 that enterprise agreement includes a genuine dispute resolution procedure that includes the following:
 - (A) the ability for employees to appoint a representative in relation to the dispute;
 - (B) in the first instance procedures to resolve the dispute at the workplace level;
 - (C) if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and
 - (D) if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.
- (b) If at any time prior to entry into a contract with the preferred Tenderer, any information provided in this declaration changes, the Tenderer agrees to advise AusAID of that change within 7 calendar days.

- (c) The Tenderer agrees AusAID may provide any information collected, or provided to it by the Tenderer during the course of this RFT process (including breaches of the Fair Work Principles) to other Commonwealth agencies or regulatory bodies including the Department of Education, Employment and Workplace Relations, Australian National Audit Office, Fair Work Ombudsman and Fair Work Australia.
- (d) The Tenderer agrees that failure to comply with **Clause 3.22** of this Tenderer Declaration will result in its Tender being excluded from further consideration.

- 3.23 Neither the Tenderer nor any of its employees, agents or contractors had knowledge of the technical proposal or the Tender Price for the Services of any other tenderer prior to the Tenderer submitting its Tender for the Services.
- 3.24 Neither the Tenderer nor any of its employees, agents or contractors disclosed the technical proposal or the Tender Price for the Services submitted by the Tenderer to any other tenderer who submitted a tender for the Services or to any other person or organisation prior to the **Closing Time**.
- 3.25 Neither the Tenderer nor any of its employees, agents or contractors provided information to any other tenderer, person or organisation, to assist another tenderer for the Services to prepare a tender known in the building and construction industry as a “cover bid”, whereby the Tenderer was of the opinion or belief that another tenderer did not intend to genuinely compete for the Contract.
- 3.26 The Tenderer is genuinely competing for the Contract and its Tender is not a “cover bid”.
- 3.27 Prior to the Tenderer submitting its Tender for the Services neither the Tenderer nor any of its employees, agents or contractors entered into any Contract, agreement, arrangement or understanding that the successful Tenderer for the Services would pay any money, or would provide any other benefit or other financial advantage, to or for the benefit of any other tenderer who unsuccessfully tendered for the Tender.
- 3.28 I warrant that the Tenderer and its related entities, in submitting this Tender, do not have any actual or potential conflict of interest.

OR

- 3.29 The Tenderer, in submitting this Tender, has the following actual and/or potential conflicts of interest:

[insert details]
- 3.30 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 B – TENDERER’S SUBMISSION CHECKLIST

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

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

	Checked
Tender Schedule A: Technical Proposal and Annexes	
Is the Technical Proposal within the specified page limit?	
Does the Technical Proposal address each of the selection criteria individually?	
Does the Technical Proposal indicate the Tenderer’s nominated contact person and contact details on the cover page?	
Are the required annexes included and within the specified page limit(s)?	
<p>If the Past Experience Annex is used, have at least two (2) referees been nominated and has it been confirmed that they are:</p> <ul style="list-style-type: none"> a) not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with the Tenderer or a subsidiary of the Tenderer? b) not included in the Tender as proposed team members? c) not AusAID employees? 	

	Checked
<p>Are both the Technical Proposal and annexes:</p> <ul style="list-style-type: none"> a) in a type font of no less than 12 point on A4 paper? b) formatted with left and right page margins no less than 2.5cm and top and bottom page margins no less than 3cm, excluding headers, footers and page numbers? c) absent of AusAID's logo or any representation or mark which indicates that the Tenderer is in any way related to or connected with AusAID? 	
For electronic lodgement, has one (1) electronic copy containing all parts and annexes been provided?	
For hard copy lodgement, has one (1) printed original containing all parts and annexes been provided?	
Tender Schedule B: Specified Personnel	
Are the CVs within the specified page limit and certified and signed by the nominated personnel?	
Do the CVs include the name and personal contact details of the nominated personnel?	
Do the CVs include the nationality and, if relevant, permanent residency status of the nominated personnel?	
Do the CVs include details of the professional qualifications of nominated personnel (if relevant), including institution and date of award?	
Do the CVs include details of recent relevant professional and development work experience, including the duration and extent of inputs?	

	Checked
<p>Have at least two (2) referees been nominated on each of the CVs and has it been confirmed that they are:</p> <ul style="list-style-type: none"> a) not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with the Tenderer or a subsidiary of the Tenderer b) not included in the Tender as proposed team members? c) not AusAID employees? 	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed original been provided?	
Tender Schedule C: Financial Proposal	
Is the financial proposal in the required format?	
<p>Is the financial proposal a fully costed schedule of rates (preferably expressed in Australian dollars) and based on the inputs as specified in the Scope of Services, including:</p> <ul style="list-style-type: none"> (a) escalation? (b) necessary insurances required by the Contract Conditions and for the performance of the Services? (c) detailed information on assumptions used in preparing the pricing? 	
For electronic lodgement has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement has one (1) printed original been provided in a separate, sealed envelope?	
Tender Schedule D: Assessment	
Details as per the RFT.	

	Checked
Tender Schedule E: Additional Information	
Has the Tenderer's Declaration been completed and signed?	
Has Annex C to Part 2 Standard Tender Conditions relating to Confidential Information been completed?	
Have any letters of association required under Part 2 Standard Tender Conditions been completed?	
Has a brief statement disclosing whether the Tenderer is compliant with policies named in Clause 17 of Part 2 Standard Tender Conditions been completed?	
For electronic lodgement has one (1) electronic copy in a separate file been submitted?	
For hard copy lodgement, has one (1) printed original been submitted?	

ANNEX C – CONFIDENTIAL INFORMATION

Tenderers must submit this completed Annex C with their Tender.

1. Will the Tenderer be seeking to have any information designated as confidential in the contract should it be awarded to the Tenderer? Yes/No (please circle)
2. If the answer to Question 1 is yes, please complete the following table:

Information	Reasons for claiming confidentiality
Information must be specifically identified and must not be described in general terms	
<i>Specify</i>	<i>Reasons why information is commercially sensitive</i>
	<i>Why and how the disclosure would cause unreasonable detriment to the owner of the information or another party and details on the unreasonable detriment that would be caused</i>
<i>Specify</i>	<i>Reasons why information is commercially sensitive</i>
	<i>Why and how the disclosure would cause unreasonable detriment to the owner of the information or another party and details on the unreasonable detriment that would be caused</i>

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

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT TENDER SYSTEM

- 1.1 AusTender is the Australian Government's procurement information system. Access to and use of AusTender is subject to terms and conditions. In participating in this tender process, Tenderers must comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender at <https://www.tenders.gov.au>.

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

AusTender Help Desk
Telephone: 1300 651 698
International: +61 2 6215 1558
Email: tenders@finance.gov.au

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

2. PREPARING TO LODGE A TENDER ELECTRONICALLY

Virus Checking

- 2.1 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's 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

- 2.2 Tenderers must lodge their tender in accordance with the requirements set out in this **Clause 2** 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.
- 2.3 AusAID will accept tenders lodged in the **File Format for Electronic Tenders** specified in the Tender Particulars (**Clause 1 of Part 1** of this RFT).
- 2.4 The tender file name/s:
- (a) should incorporate the tenderer's company name;
 - (b) should reflect the various parts of the bid they represent, where the tender comprises multiple files;
 - (c) must not contain \ / : * ? " < > | characters. Check your files and re-name them if necessary; and

- (d) must not exceed 100 characters including the file extension.

2.5 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.

2.6 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.

2.7 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**.

2.8 Tenders must be completely self-contained. No hyperlinked or other material may be incorporated by reference.

3. **SCANNED OR IMAGED MATERIAL, INCLUDING STATUTORY DECLARATIONS**

3.1 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.

4. **ELECTRONIC LODGEMENT PROCESS**

4.1 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's 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 2** or otherwise advised by AusAID or required by AusTender.

4.2 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**.

4.3 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**.

4.4 Tenders lodged through AusTender will be deemed to be authorised by the tenderer.

4.5 If tenderers have any problem in accessing the AusTender website or uploading a tender they must contact AusAID via the nominated **Contact Person (Clause 1 of Part 1)** or the AusTender Help Desk (**Clause 1.2** above) **prior to Closing Time**. Failure to do so will exclude a tender from consideration.

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

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

5.2 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**.

5.3 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 5.2** will only apply to the final upload.

5.4 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.

6. **PROOF OF LODGEMENT**

6.1 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.

- 6.2 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 4.2 and 4.5**.

7. AUSTENDER SECURITY

- 7.1 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.

- 7.2 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.

ANNEX E - AUSAID USE OF PERFORMANCE INFORMATION

1. AusAID reserves the right to take into account in the assessment of each 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 Tender evaluation any contractor performance information contained in any internal AusAID contractor performance reporting systems in relation to performance of the Tenderer or proposed management, administrative and Project personnel on previous AusAID activities, provided that the Tenderer has seen the report and has had a reasonable opportunity to comment on it; and
 - (b) take into account in the Tender evaluation 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 five (5) year period.
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 five (5) year 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 evaluation of the Tender by the TAP and AusAID. Where information has been received in accordance with paragraph 2 (a) above, this may also be introduced into the TAP process.
4. AusAID may, at any time, make independent inquiries of:
 - (a) any person or entity which it reasonably believes to have actual knowledge of the performance of the Tenderer or proposed personnel member/s on a previous project or activity, whether or not that person or entity is nominated in the Tender as a referee for the Tenderer or proposed personnel member; and
 - (b) any Commonwealth Government department, agency or other government entity in Australia whether Commonwealth or State, or any other country, including law enforcement agencies in relation to a person who is proposed for inclusion in a Tender or a Tenderer.

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

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PART 3 – PROJECT SPECIFIC CONTRACT CONDITIONS

Note to Tenderers: Although these Project Specific Contract Conditions are presented as **Part 3** of this RFT, in the consolidated Contract Conditions they will appear as **Part A**.

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

1. INTERPRETATION

Definitions

1.1 In this Contract, unless the context otherwise requires:

“**Changed Tax**” means a new or existing Commonwealth, State or Territory Government or Partner Country tax, duty or charge imposed or a change in an existing Commonwealth, State or Territory Government or Partner Country tax, duty or charge after the execution of this Contract.

“**Project**” means the **Papua New Guinea Health and HIV/AIDS Implementation Services Provider**.

“**HHISP Director**” means the specified person nominated in **Annex 1 to Schedule 1**.

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

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

“**Partner Country**” means the country/countries in which the Services are to be delivered, as specified in **Schedule 1** (Scope of Services).

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

“**Related Body Corporate**” has the meaning set out in section 50 of the *Corporations Act 2001*.

“**Short Term Advisers**” or “**STA**” means Advisers working on the Project for less than six months continuously.

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

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

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

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 this Contract is terminated.
- 2.2 The Contractor must commence the Services in the Partner Country on **1 March 2012** and must complete the Services by **30 June 2015** unless AusAID exercises the option in **Clause 2.3**.
- 2.3 The Contractor grants to the Commonwealth an option to extend the term of this Contract for a period of up to two (2) years. The option must be exercised by notice in writing to the Contractor two (2) months prior to the date of completion of the Services specified in **Clause 2.2 above** of this Part. If the option to extend is exercised, the Contractor must continue to provide the Services for the extended term on the terms and conditions contained in this Contract, except that this **Clause 2.3** shall no longer apply.

3. ACCOUNTS AND RECORDS

- 3.1 The statement of Project expenditure referred to in **Clause 15.2** (Accounts and Records) of the Standard Contract Conditions must be provided on a 3 monthly basis and must indicate:
- (a) total expenditure of the Project to date;
 - (b) disaggregated expenditure for the Project to date identifying all categories of expenditure including the Management Fees and Reimbursable Costs;
 - (c) total expenditure for the period of 3 months; and
 - (d) forward expenditure and expenses by category for the period of 3 months.

4. NOTICES

- 4.1 For the purposes of **Clause 41** (Notices) of the Standard Contract Conditions, 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: Australian Agency for International Development (AusAID), Port Moresby

Attention: First Secretary, AusAID Health

Postal Address: Australian Agency for International Development
Locked Bag 129
Waigani NCD

PAPUA NEW GUINEA

Street Address: Australian High Commission
Godwit Road
Waigani NCD
PAPUA NEW GUINEA

Facsimile: +675 321 6450

Contractor

To: Contractor's Name

Attention: Title First Name Surname

Postal Address: Postal Address

Street Address: Street Address

Facsimile: Fax |

5. MANAGEMENT SERVICES

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

- (a) provide pre-mobilisation briefings to Contractor Personnel covering security, medical/health situation, cultural environment, details on the Project 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 this Contract in accordance with the Risk Management Plan including in relation to Supplies after delivery and before their incorporation into the Project; and
- (e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID.

6. MOBILISATION OF SERVICES

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

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

7. MONITORING REVIEW GROUP

- 7.1 AusAID may establish a Monitoring Review Group (the “**MRG**”) to provide AusAID with independent technical and other advice on any aspects of the Project and to assist AusAID to assess the performance of the Services.

- 7.2 If established, the Contractor must:

- (a) attend and participate in those MRG meetings which AusAID directs it in writing to attend;
- (b) when required by AusAID, consult with the MRG on matters related to the Project including:
 - (i) progress and performance of the Services;
 - (ii) any matters, circumstances or events which may be affecting or impacting upon the Contractor’s relationship with the Partner Country, Stakeholders, AusAID or the MRG and suggest actions to avoid or counteract any adverse effects on the relationships;
 - (iii) any matters, circumstances or events which may affect the Project and if there are anticipated or contingent problems or difficulties, suggestions to avoid or counteract those problems or difficulties; and
 - (iv) any issues or concerns which the Contractor may want to raise with AusAID.
- (c) co-operate with and assist in any way requested by the MRG in the performance of its monitoring and review;
- (d) co-operate with and assist the MRG 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 MRG copies of all reports, notices, information or other Project 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.

8. ANNUAL PLAN

- 8.1 The Contractor must provide to AusAID, within three (3) months of the Project Start Date, and annually thereafter, an Annual Plan which, before it is implemented, must be approved by AusAID.

- 8.2 The Annual Plan must be prepared in accordance with directions provided in writing by AusAID, be consistent with this Contract and include the following matters:
- (a) the Contractor's plan for performance of the Services required for the period of the Annual Plan;
 - (b) the Contractor's proposed strategy for coordinating any Third Party Issues and for providing the Services in a flexible manner as is appropriate;
 - (c) a detailed budget for the period of the Annual Plan; and
 - (d) a description of how the Services will be implemented and monitored and evaluated.
- 8.3 The Contractor must make amendments to the Annual Plan as reasonably requested by AusAID.
- 8.4 Within 30 days of receipt of the Annual Plan in accordance with **Clause 8.1** above, AusAID shall notify the Contractor in writing when a decision is likely to be made to reject or accept the Annual Plan. If such Annual Plan has not been approved or rejected within 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.
- 8.5 AusAID's acceptance of an Annual Plan does not represent a change to the Contract. The Contract may only be varied in accordance with **Clause 12** (Contract Amendment) of the Standard Contract Conditions.
9. **SUB-CONTRACTING**
- 9.1 In addition to **Clause 11** (Sub-Contracting) of the Standard Contract Conditions, the following conditions apply to sub-contracts entered into by the Contractor:
- (a) the Contractor must obtain AusAID's prior written approval to sub-contracts with any party, except Specified Personnel, to the value of **AUD100,000** or more. In granting its approval AusAID may impose such conditions, in AusAID's opinion are appropriate, in relation to a proposed sub-contract; and
 - (b) if AusAID objects to the Contractor's recommended sub-contractor, or AusAID nominates a particular sub-contractor, the Contractor must enter into an agreement with such other sub-contractor as directed by AusAID on the basis of remuneration approved by AusAID and provide AusAID with a copy of the executed sub-contract.
- 9.2 **Clauses 11.1** (Sub-contracting) (d) and (e) (with respect to Deeds of Novation and Substitution) of the Standard Contract Conditions will only apply to sub-contracts valued at **AUD100,000** or more.
- 9.3 The Contractor must not procure any Supplies or services from a Related Body Corporate without AusAID's prior written approval.

10. GRANT ADMINISTRATION

10.1 In this clause, “Commonwealth Grant Guidelines” means the guidelines issued by the Minister for Finance that govern granting activities by Commonwealth agencies and departments. Details are available at: http://www.finance.gov.au/publications/fmg-series/docs/FMG23_web.pdf

10.2 In administering grants, the Contractor must:

- (a) implement procedures so that grant administration is undertaken in a manner that is consistent with the Commonwealth Grant Guidelines, in particular the seven Key Principles for Grants Administration; and
- (b) maintain complete and accurate records documenting the procedures followed in selecting grant recipients.

11. MEETINGS

11.1 The HHISP Director must attend meetings in Port Moresby at times determined by AusAID, to review or discuss this Contract including the following matters:

- (a) the general progress of the Project;
- (b) matters arising from the Contractor’s reports to AusAID;
- (c) any issues arising as a result of communication by either Party with Stakeholders;
- (d) any other Third Party Issues and the Contractor’s proposal for resolution of any issue referred to in **Clause 10.1 (c) above**;
- (e) any proposed amendments to the Project including in relation to timing, whether or not any such amendment has been agreed to by AusAID;
- (f) Contract performance matters;
- (g) the accuracy of invoices; and
- (h) such other matters in relation to which either Party provides five (5) Business Days’ notice in writing to the other Party.

11.2 AusAID may require the HHISP Director and other Specified Personnel to attend an implementation briefing in Canberra prior to mobilisation. AusAID may also require the HHISP Director and other Specified Personnel to attend a meeting at the Australian Diplomatic Mission in or having responsibility for the Partner Country before commencement of Project implementation.

11.3 The Contractor acknowledges and agrees that the costs of any meetings under this **Clause 11** are included in the Management Fees. AusAID may determine the length of the meetings required, but AusAID expects that such meetings shall be for approximately 8 hours (excluding meal breaks).

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

- 12.1 Without limiting AusAID's rights under any provision of this Contract, any payment or debt owed by the Contractor to AusAID in relation to this Contract may be deducted by AusAID from the amount of payment of any claim for Fees or from any other moneys payable or due to the Contractor or may be recovered in any court of competent jurisdiction.
- 12.2 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 this 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 12.2(b)(ii)** 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 this Contract; and
 - (d) AusAID must, within 28 days of receipt after the Contractor's evidence supporting its opinion concerning the amount of the refund, consider the Contractor's evidence and give the Contractor written notice either:
 - (i) calling for payment within 28 days of the refund determined by AusAID's review; or
 - (ii) calling for payment within 28 days of the refund as re-determined following its consideration of the Contractor's evidence; or
 - (iii) of AusAID's agreement that there is no refund payable.
- 12.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 12.2**, 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.
- 12.4 Where AusAID deducts the amount of a debt or payment in accordance with this **Clause 12**, it must advise the Contractor in writing that it has done so.
- ## 13. **GOVERNMENT TAXES, DUTIES AND CHARGES**
- 13.1 Except to the extent referred to in this **Clause 13** and **Clause 21** (Goods and Services Tax) of the Standard Contract Conditions, each Party must bear and is responsible for its own

costs in connection with the preparation, execution, and carrying into effect of this Contract.

13.2 Except where this Contract, the Treaty or Memorandum of Understanding between Australia and the Partner Country provides otherwise, all taxes:

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

must be paid by the Contractor.

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

13.4 Subject to **Clause 13.8 below** if a Changed Tax occurs 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 Management 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.

13.5 An increase in the Management Fees under **Clause 13.4** 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 Management Fees for supplying the Services,

and the increase shall take effect from the date on which the Changed Tax became effective.
- 13.6 A decrease in the Management Fees under **Clause 13.4** shall take effect from the date on which the change in the Changed Tax becomes effective.
- 13.7 The Contractor may claim a Changed Tax adjustment only once in respect of any change.
- 13.8 **Clause 13.4** does not apply to income tax, taxes on turnover or revenue or similar taxes imposed on or in respect of income, turnover or revenue.
- 14. **INSURANCES**
- 14.1 In addition to the Contractor's obligations regarding insurance detailed in **Clause 35** (Insurance) of the Standard Contract Conditions, the Contractor must ensure that:
 - (a) AusAID is notified immediately the Contractor becomes aware of any actual, threatened or likely claims under all of the insurances required by this Contract or any act or omission by the Contractor which could materially reduce the available limit of indemnity;
 - (b) AusAID is notified in writing whenever the insurer gives the Contractor a notice of cancellation of Project-related insurances;
 - (c) in respect of public liability insurance and property insurance that:
 - (i) all insurance agreements and endorsements (with the exception of limits of liability) name, and operate as if there was a separate policy of insurance covering, AusAID, the Contractor and sub-contractors; and
 - (ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;
 - (d) where AusAID is a joint insured under an insurance policy, the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against AusAID; and
 - (e) all premiums are promptly paid.
- 14.2 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.
- 14.3 In respect of the public liability insurance, **Clause 35.1(a)** of the Standard Contract Conditions is amended as follows: the Contractor must ensure that the limit for each and every claim is **AUD20,000,000**.

15. **COMPLIANCE WITH AusAID POLICIES**

- 15.1 In respect to its obligations to comply with AusAID's Policies, the Contractor must upon mobilisation implement the plans contained in its Tender for compliance with AusAID's Gender and Development Policy and/or Environmental Policy and report regularly to AusAID on any anticipated or unanticipated issues that may alter the Project Environmental Management Plan.

16. **PERFORMANCE GUARANTEE**

Note to Tenderers: the inclusion of this clause will depend on the outcome of negotiations with the preferred Tenderer.

- 16.1 The Contractor must, at its expense, provide to AusAID, within 10 Business Days of the Project Start Date, a performance guarantee executed by *[insert name of guarantor]* delivered to AusAID, guaranteeing the Contractor's performance of its obligations under the Contract, which must be substantially in the form appearing in **Schedule 6**.

PART 4 – STANDARD CONTRACT CONDITIONS

Note to Tenderers: Although these Standard Contract Conditions are presented as **Part 4** of this RFT, in the consolidated Contract they will appear as **Part B**.

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

1. INTERPRETATION

Definitions

1.1 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).

“**Adviser**” means an individual who provides advice on the strategic direction or implementation of the Australian aid program and is engaged under this Contract. This includes:

- (a) individuals who provide technical expertise and advice to counterpart governments and/or other in-country development partners;
- (b) individuals who provide technical advice to AusAID; or
- (c) individuals who provide leadership and oversight or technical inputs for the delivery of the Project;
- (d) individuals engaged by the Contractor as employees or sub-contractors and individuals engaged by the Contractor’s sub-contractors,

but does not include:

- (e) locally engaged staff employed in non-specialist roles associated with this Contract, including staff engaged in administrative or logistical roles; or
- (f) the Contractor’s head office staff or contractor representatives.

“**Adviser Support Costs**” has the meaning given in **Schedule 2**.

“**Adviser Remuneration Framework**” means the set of rates and allowances for Advisers detailed in **Schedule 9** of this Contract.

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

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

“**AusAID Confidential Information**” means information that:

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

“**AusAID Eligibility Criteria**” means the criteria organisations wishing to tender for AusAID contracts must satisfy. Details are available at <http://www.usaid.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 Deregulation that governs purchasing by Commonwealth agencies and departments. Details are available at: <http://www.finance.gov.au/publications/fmg-series/procurement-guidelines/index.html>.

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

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

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

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

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

“**Cost**” or “**Costs**” means any actual costs or expenses.

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

“**Daily Remuneration Rate**” has the meaning given in **Schedule 2**.

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

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

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

“**Document**” includes:

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

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

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

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

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

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

“**Housing Costs**” means the reimbursable amount payable to a Long Term Adviser in accordance with the Adviser Remuneration Framework.

“**Information Officer**” has the meaning given by section 6 of the *Australian Information Commissioner Act 2010* (Cth).

“**Intellectual Property**” means all copyright and all rights in relation to inventions (including patent rights), trade marks, designs and confidential information, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

“**Job Level**” means the levels of professional expertise identified in the Adviser Remuneration Framework and labelled one (1), two (2), three (3) or four (4).

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

“**Management Fee**” has the meaning given in **Schedule 2**.

“**Mobility Allowance**” means the supplemental payment payable to Long Term Advisers in addition to the Monthly Remuneration Rate in accordance with the Adviser Remuneration Framework.

“**Monthly Remuneration Rate**” has the meaning given in **Schedule 2**.

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

“**NAA**” means National Archives of Australia.

“**Partner Government**” means the Government of the Partner Country.

“**Party**” means AusAID or the Contractor.

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

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

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

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

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

“Program Specific Contract Conditions” means Contract Conditions in Part A of this Contract.

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

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

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

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

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

“Special Location Allowance” means the country specific income supplement that is payable to Long Term Advisers in accordance with the Adviser Remuneration Framework.

“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 Contract Conditions” means Contract Conditions in Part B of this Contract.

“Supplies” means Project Supplies and Project Administration and Equipment purchased by the Contractor for use in this Project.

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

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

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

General

- 1.2 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.

Counterparts of the Contract

- 1.3 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.

Contract Prevails

- 1.4 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.

Inconsistency

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

2. SCOPE OF CONTRACT

- 2.1 The Contract sets out the terms and conditions on which the Contractor agrees to secure the aims and objectives of the Project supplying, or procuring the supply of, the provision of the Services.
- 2.2 The activities to be performed and responsibilities assumed by the Contractor are detailed in **Schedule 1**.
- 2.3 Neither the Contractor, nor Contractor Personnel or Associates, shall by virtue of this Contract be, or for any purpose be deemed to be, and must not represent themselves as being, an employee, partner or agent of AusAID.

3. AUSAID'S OBLIGATIONS

- 3.1 AusAID must:
 - (a) make payments to the Contractor in accordance with the Contract; and
 - (b) perform, fulfill, comply with, submit to and observe the terms and conditions of the Contract, which are to be performed, fulfilled, complied with, submitted to or observed by AusAID.

4. NON-EXCLUSIVITY

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

5. PROVISION OF SERVICES

- 5.1 In providing the Services, the Contractor must:

- (a) perform the Services as described in **Schedule 1** for the term of the Contract, unless the Contract is terminated earlier;
- (b) accept and implement AusAID's reasonable directions in relation to the management of the Project;
- (c) use its best endeavours to ensure the spirit and intent of the Project are fully met by the Services, including acting within the spirit and intent of the Treaty, MOU or Subsidiary Arrangement;
- (d) liaise and cooperate with AusAID, with the stakeholders, and the Australian Diplomatic Mission in or having responsibility for the Partner Country especially in relation to security, personal safety and welfare matters;
- (e) subject to any flexibility permitted in the Contract, ensure all timing obligations included in the Contract are fully met;
- (f) within the term of the Contract assist AusAID in the maintenance and ongoing implementation of the Services, including monitoring and evaluating the Services to ensure results accord with the aims of the Project, and provide necessary handover assistance to any subsequent service provider and to the Partner Country;
- (g) ensure that the Services are provided to a standard which shall promote Australia's international reputation and standing as a source of skill and expertise in the provision of international assistance;
- (h) perform the Services in a manner which, as far as possible, establishes and maintains a harmonious, cooperative and effective working relationship with stakeholders and any personnel from the Partner Country involved in the Project;
- (i) if a Risk Management Plan for the Project has not been prepared prior to the Project Start Date, the Contractor must prepare a Risk Management Plan within 30 days after the Project Start Date. If requested by AusAID, the Contractor will make the Risk Management Plan available to AusAID;
- (j) whether a Risk Management Plan is prepared under paragraph (i) above, or was prepared prior to the Project Start Date (for example, as part of the Contractor's tender for the Project or as part of the Project Design Document or similar document), the Contractor must maintain and update the Risk Management Plan, as necessary, to ensure that at all times it adequately reflects Project risks and includes risk-minimisation strategies. The Contractor must promptly advise AusAID of any significant risks in accordance with **Clause 2** below. The Contractor must also ensure the Risk Management Plan contains provisions for advance notification of AusAID of risks that may lead to disruption or delay of the Project;
- (k) liaise with, and obtain all necessary consents, approvals and authorisations from any public and other authorities in the Partner Country;
- (l) provide adequate support resources to secure the aims and objectives of the Project;
- (m) be responsive to the changing needs and environment of the Partner Country; and

- (n) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity.
- 5.2 Without limiting its other obligations and liabilities under this Contract, the Contractor must remedy at its cost any failure to comply with its obligations to perform the Services in accordance with this Contract as soon as practicable after becoming aware of the failure.
- 5.3 The Parties recognise that the performance of the Services may be affected by changes to relevant policy in the Partner Country, and that some flexibility in the performance of the Services shall be required.
6. **EARLY NOTIFICATION**
- 6.1 The Contractor must report immediately, and in any event within seven (7) days, to AusAID on any actual, perceived or anticipated problems or risks that may have a significant effect on the achievement of the aims and objectives of the Project, on the cost to AusAID or on the delivery or operation of the Services. If the report is first given orally, the Contractor must promptly confirm the report in writing to AusAID. The Contractor must recommend to AusAID options to prevent or mitigate the impact of problems on the Project.
7. **CONTRACTOR PERSONNEL**
- 7.1 The Contractor must ensure that Contractor Personnel are aware of, and must use its best endeavours to ensure Contractor Personnel comply with, the requirements of the Contract.
- 7.2 The Contractor must use its best endeavours to ensure that all Contractor Personnel are of good fame and character.
- 7.3 The Contractor must use its best endeavours to ensure that all Contractor Personnel conduct themselves in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct*.
- 7.4 The Contractor must use its best endeavours to ensure that all Contractor Personnel and their accompanying family members while in-country:
- (a) are aware of local laws, culture and customs in the Partner Country; and
 - (b) act in a fit and proper manner.
- 7.5 The Contractor must use its best endeavours to ensure that no Contractor Personnel or their accompanying family members:
- (a) become involved in the political affairs of the Partner Country (unless citizens of the Partner Country);
 - (b) interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country); or
 - (c) share information known as a result of their work on, or relationship to, the Project,

in a way that a reasonable person could foresee may be detrimental to the relationship between the Australian and Partner Governments.

- 7.6 The Contractor must not employ a currently serving Commonwealth employee in any capacity in connection with the Services without the prior written approval of AusAID.
- 7.7 The Contractor must ensure that media advertisements placed by the Contractor for personnel to fill a Project position acknowledge that the Project is funded by AusAID as part of the Australian Government's official overseas aid program.
- 7.8 AusAID may give notice to the Contractor requiring the Contractor to remove any Contractor Personnel from work in respect of the Services. The Contractor must promptly arrange for the removal of such Contractor Personnel from work in respect of the Services and their replacement (if required) with Contractor Personnel acceptable to AusAID.
- 7.9 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Contractor Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.
- 7.10 The Contractor must advise AusAID immediately in writing if any Contractor Personnel is arrested for, or convicted of, criminal offences relating to child abuse, or for accessing or possessing child pornography. AusAID may require Contractor Personnel under formal investigation in relation to such criminal offences to be suspended from duty or transferred to other duties during the investigation.
- 7.11 AusAID may give notice to the Contractor requiring the Contractor to temporarily suspend from duty, or transfer to other duties, any Contractor Personnel who are under criminal or internal investigation in relation to child abuse or accessing or possessing child pornography. The Contractor must comply promptly with any such notice.

8. SPECIFIED PERSONNEL

- 8.1 The Contractor must provide all Specified Personnel for the Project and for the minimum periods specified in **Schedule 1**.
- 8.2 During the minimum periods specified in **Schedule 1**, the Long Term Advisers included in the Specified Personnel must be exclusively dedicated to the Project and only perform the duties required under this Contract unless otherwise agreed in writing by AusAID.
- 8.3 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:
 - (a) are properly qualified for the tasks they are to perform;
 - (b) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner; and
 - (c) are adequately briefed and understand the environment and culture of the Partner Country.

- 8.4 The Contractor must use its best endeavours to secure the availability of Specified Personnel for the term of the Contract. If a change to Specified Personnel is required the Contractor must provide AusAID with not less than 3 months prior written notice of such change except where circumstances beyond the reasonable control of the Contractor make the giving of such notice impracticable. Any proposed change to the Specified Personnel must only be made after written consent from AusAID and in accordance with the procedure set out in **Clause 8.8** below.
- 8.5 Subject to **Clause 8.4** above, Specified Personnel may be temporarily absent from the Project. Where Specified Personnel are unavailable for work in respect of the Contract, for any period in excess of 2 weeks, the Contractor must notify AusAID in writing immediately and, if requested, must provide replacement personnel acceptable to AusAID and the Partner Government at no additional charge and at the earliest opportunity and for the duration of the absence.
- 8.6 The costs incurred by the Contractors in providing temporary substitute personnel due to the absence of Specified Personnel are the responsibility of the Contractor.
- 8.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Specified Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.
- 8.8 Before appointing Specified Personnel to the Project, the Contractor must obtain AusAID's written approval. In seeking approval of proposed Specified Personnel the Contractor must provide to AusAID:
- (a) the full names, dates of birth, and nationalities of proposed personnel and their accompanying dependants;
 - (b) a statement demonstrating that the proposed personnel has the demonstrated skills and capacity to undertake the job specification of the position and duration of the proposed appointment;
 - (c) a copy of the proposed person's curriculum vitae certified as accurate by the person and showing recent and relevant experience and formal qualifications including dates of award; and
 - (d) assurances that the nominated personnel has no existing commitments (defined in relation to the commitments of the position and not the individual's commitment to a particular organisation), to other AusAID projects that will suffer detriment if accepted on this Project. If this is not the case AusAID may require further information before assessing the individual's suitability.
- 8.9 If the Contractor is unable to provide acceptable replacement Specified Personnel with equivalent qualifications and experience AusAID may seek a reduction in fees.
- 8.10 This clause is a fundamental term of the Contract, such that breach shall entitle AusAID to terminate the Contract in accordance with **Clause 32** and sue for damages.

9. PROJECT VEHICLE CONTRIBUTION

- 9.1 For the purposes of this clause, “Project Vehicles” are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Project and that are provided for Project activities. Vehicles purchased by the Project, but handed over to the Partner Country immediately (where maintenance and insurance are Partner Country responsibilities and Contractor Personnel do not use the vehicles or only use them on an exceptional basis) are not considered Project Vehicles for the purposes of requiring a financial contribution by the Contractor.
- 9.2 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute **AUD250** for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor’s invoices.
- 9.3 The Contractor must abide by the following requirements with regards to Project Vehicles:
- (a) Project demands must always take precedence over private use;
 - (b) the Contractor must ensure that any persons driving the Project Vehicle must have a current valid international or Partner Country drivers license for the class of Project Vehicle;
 - (c) the Contractor is responsible for ensuring Project Vehicles are appropriately insured;
 - (d) the Contractor is responsible for ensuring that seat belts are fitted and must make every effort to ensure that they are worn at all times by drivers and all passengers;
 - (e) the Contractor is responsible for any costs incurred in the event of an accident while the Project Vehicle is being privately used; and
 - (f) the Contractor must ensure that Project Vehicles are serviced in accordance with manufacturer’s requirements.

10. PROCUREMENT SERVICES

- 10.1 In procuring all Supplies, the Contractor must:
- (a) determine what Supplies are required for proper implementation of the Services and advise AusAID;
 - (b) keep AusAID informed of ongoing requirements for Supplies in connection with the Project;
 - (c) implement procedures so that procurement is undertaken in a manner that is consistent with the Commonwealth Procurement Guidelines, in particular, observing the core principle of achieving value for money and the supporting principles;
 - (d) maintain complete and accurate records documenting the procedures followed in procuring, and the particulars of Supplies; and

- (e) use its best endeavours to ensure Supplies are maintained including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed.
- 10.2 The Contractor shall bear the loss or damage in respect of Supplies until handover of Supplies to the Partner Government.
- 10.3 The Contractor must use its best endeavours to ensure all Supplies are free from defects in design, material, manufacture or workmanship. The Contractor must replace defective Supplies under warranty provisions or at its own cost.
- 10.4 The Contractor shall establish and maintain a Register of Assets which shall record any non-consumable Supplies valued at **AUD2,000** or more, which at a minimum contains the following information: reference identification number (which may be for example, a serial number, engine number or chassis number); description of the asset; date of procurement; cost; location; current status; and disposal or handover details.
- 10.5 The Register of Assets and associated documentation such as import documents, invoices and warranties shall be subject to audit by or on behalf of AusAID at any time and from time to time.
- 10.6 The Contractor must use the Supplies for purposes permitted under this Contract only and must ensure that the Supplies at all times remain free from any Encumbrance.

11. SUB-CONTRACTING

- 11.1 The Contractor may not sub-contract the whole of the Services. The sub-contracting of parts or elements of the performance of the Services is subject to compliance with the following requirements:
 - (a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;
 - (b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;
 - (c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:
 - (i) comply with relevant and applicable laws, regulations and development policies, including AusAID's *Child Protection Policy* (<http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>) and child protection compliance standards (Attachment 1 to the policy), both in Australia and in the Partner Country, and also *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.ausaid.gov.au/keyaid/health.cfm>);
 - (ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;

- (iii) be bound by the same obligations regarding **Clauses 15** (Accounts and Records), **17** (Audits), **18** (Access to Premises), **26** (Privacy), and **36** (Anti-corruption) below and as required by Project Specific Contract Conditions **Clause 3** (Accounts and Records) as the Contractor; and
 - (iv) be bound by appropriate obligations in relation to ongoing software licensing, computer maintenance requirements and handover arrangements to the Partner Country;
 - (d) if requested by AusAID, the Contractor must provide to AusAID an executed Deed of Novation and Substitution in the form at **Schedule 4** (Deed of Novation), contemporaneously with or within 10 Business Days of execution of the sub-contract by the Contractor;
 - (e) the sub-contract must include the right of AusAID, in the event of AusAID issuing a notice of substitution under the Deed of Novation at **Schedule 4** (Deed of Novation), to further novate the sub-contract to another contractor;
 - (f) the Contractor must maintain up-to-date records of the names of all sub-contractors engaged by the Contractor to perform part of the Services. If requested by AusAID, the Contractor must, within five (5) working days, provide to AusAID a copy of the records of sub-contractors' names, in the format specified by AusAID. The sub-contract must include the right of AusAID to disclose the name of the sub-contractor, in accordance with **Clause 27** (AusAID Use of Contract Information) below;
 - (g) the Contractor must maintain records as to the performance of each of the sub-contractors engaged by the Contractor including details of any defects in such performance and the steps taken to ensure compliance with the Contract and provide to AusAID if requested; and
 - (h) if requested by AusAID, the Contractor must provide to AusAID a copy of any proposed or executed sub-contract.
- 11.2 The obligations of **Clause 9.1** above apply equally to Associates.
- 11.3 Despite any consent or approval given by AusAID, the Contractor shall remain at all times responsible for ensuring the suitability of Associates and sub-contractors and for ensuring that the Services are performed in accordance with the Contract.
12. **CONTRACT AMENDMENT**
- 12.1 The Contractor must not do anything that amounts to a variation of this Contract in whole or in part otherwise than in accordance with this clause.
- 12.2 Changes to the Contract shall not be legally binding upon either party unless agreed in writing and signed by both Parties in the form of a "Deed of Amendment".
- 12.3 AusAID or the Contractor may propose an amendment to the manner of providing the Services or changes to the Project, at any time for the purpose of improving the delivery of the Services or, the efficiency, cost-effectiveness and development impact of the Services.

- 12.4 The Contractor must prepare an “Amendment Proposal” for any change sought by AusAID, or the Contractor, at no extra cost to AusAID and this must be submitted to AusAID in a timely manner.
- 12.5 The Amendment Proposal must include specific identification of the proposed change, associated cost implications, a cost/benefit and risk analysis, including of developmental impact improvements, a general plan for implementation of the change and a projected time schedule.
- 12.6 AusAID may, at its sole discretion, accept or reject the Amendment Proposal submitted by the Contractor.

13. EXTENSION OF TIME

- 13.1 Subject to **Clause 13.6** below neither AusAID nor the Contractor shall be in breach of the Contract to the extent that performance of their Contract obligations is prevented by any of the following causes (“Relevant Causes”) that arise during the term of the Contract:
 - (a) a Force Majeure Event;
 - (b) a significant change in circumstances beyond the control of the Contractor;
 - (c) an Australia-wide or Partner Country-wide industrial dispute; or
 - (d) a change in the laws of Australia or the Partner Country that directly impacts on the provision of the Services.
- 13.2 Where in the Contractor’s reasonable opinion there is likely to be a delay in the Contractor’s discharging an obligation under the Contract because of a Relevant Cause the Contractor must:
 - (a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;
 - (b) give details of the likely effect on the Project and any Contractual implications;
 - (c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;
 - (d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances in the form of an Amendment Proposal in accordance with **Clause 12.5** above; and
 - (e) use its best endeavours to continue to perform its obligations under the Contract.
- 13.3 AusAID must give consideration to the Contractor’s recommendations and request for an extension of time and as soon as practicable after receiving the request notify the Contractor in writing whether it has determined that a Relevant Cause has occurred and whether all or part of the request has been granted. AusAID’s approval of a request may be granted subject to conditions.

- 13.4 If AusAID approves in writing a request, the extension of time and any approved changes to the Contract will be documented in a “Deed of Amendment”. The Contract shall be deemed to have been varied once the Deed of Amendment is signed by both the Contractor and AusAID.
- 13.5 Even if the Contractor has not given notice under **Clause 13.2** above, where AusAID considers that a delay has arisen, in whole or in part, because of an act or omission on the part of AusAID, its employees or agents, AusAID may, by notice in writing to the Contractor, extend the time for performance of the relevant obligation of the Contractor.
- 13.6 Where AusAID has determined that a Relevant Cause has occurred, and the Contractor’s inability to perform its obligations due to a Relevant Cause exceeds 45 Business Days, AusAID may:
- (a) notify the Contractor that the Contract is suspended for a specified period of time; or
 - (b) delete part of the Services; or
 - (c) immediately or thereafter terminate the Contract in whole or in part by providing notice in writing to the Contractor.
- 13.7 A notice of suspension, deletion or termination of the Contract under **Clause 13.6** above takes effect on the date that the notification is received by the Contractor.
- 13.8 In the event of suspension, deletion or termination of Services or the Contract under **Clause 13.6** above the Contractor may claim, Fees for Services performed as payable under **Schedule 2**, prior to the date of suspension, deletion or termination, on a pro rata basis and Costs that are reasonably and properly incurred by the Contractor in connection with the Contract to the extent to which those Costs are unavoidable as a direct consequence of the suspension, deletion or termination of the Contract in accordance with this clause. Any Cost must be substantiated to AusAID and must not include loss of profits or any other form of expectation loss.
14. **HANDOVER**
- 14.1 The Contractor must within 12 months of the Project Start Date draft a Handover Plan which includes all the functions to be performed to hand over Contract Material, Supplies, information, documents and other materials to the Partner Country in a manner which ensures the Partner Country is able to benefit from the Project and in particular enables the Partner Country to manage ongoing maintenance requirements, as well as any other matters specified in **Schedule 1**. The Contractor must provide a copy of the Draft Handover Plan to AusAID within 12 months of the Project Start Date.
- 14.2 The Contractor must make changes to the Handover Plan as reasonably requested by AusAID and update the Handover Plan as necessary during the Project but at least annually and 6 months before the end of the Contract.
- 14.3 The Contractor must ensure that a finalised Handover Plan is provided to AusAID within seven (7) days of any early termination of the Project, or one month prior to the expected completion of the Project.

14.4 The Contractor must provide all reasonable assistance and cooperation necessary, on expiration or termination of the Contract, to facilitate the provision of further maintenance by AusAID or an alternative service provider. In particular the Contractor must:

- (a) deliver to AusAID or its nominee complete copies of all the Data and Contract Material, in a form and on a media approved by AusAID, and any other AusAID property including the Supplies;
- (b) either destroy or deliver to AusAID all copies of AusAID Confidential Information as required by AusAID;
- (c) if requested by AusAID, facilitate the assignment to AusAID, AusAID's nominee or to the Partner Country of sub-contracts relating to Supplies, including for licensing and support of information technology and any construction work maintenance;
- (d) vacate the Project Office where this has been supplied by AusAID or the Partner Country;
- (e) co-operate with AusAID and, if requested, AusAID's nominee, and provide reasonable assistance relating to the transfer of any contracts to AusAID, its nominee or the Partner Country;
- (f) provide to AusAID or, if requested, to AusAID's nominee all information, including Data and Contract Material, necessary for an alternative service provider to assume provision of the Services;
- (g) continue the provision of the Services for as long as reasonably requested by AusAID on the terms and conditions of the Contract;
- (h) cooperate with AusAID and any other service provider in the ongoing provision of services similar to the Services; and
- (i) allow AusAID to audit compliance with this clause..

15. ACCOUNTS AND RECORDS

15.1 The Contractor must at all times maintain full, true, separate and up-to-date accounts and records in relation to the Fees, Supplies and the Services. Such accounts and records must:

- (a) record all receipts and expenses in relation to the Supplies and Services, including those involving foreign exchange transactions;
- (b) be kept in a manner that permits them to be conveniently and properly audited;
- (c) enable the extraction of all information relevant to this Contract;
- (d) contain details of the disposition of Supplies as agreed to by AusAID such as replacement, write-off or transfer to the Partner Country; and
- (e) the Contractor shall provide to AusAID a statement of Project expenditure on a regular basis for the duration of the Project. The details of the timing and content

of the statement of expenditure are defined in Part A Project Specific Contract Conditions.

- 15.2 Accounts and records must be provided for inspection by AusAID immediately upon the request of AusAID.
- 15.3 The accounts and records must be held for the term of this Contract and for a period of seven (7) years from the date of expiry or termination of this Contract..

16. **REPORTS**

- 16.1 The Contractor must ensure that all reports required in accordance with **Schedule 1**, provide the information required and conform with the quality and format requirements specified.
- 16.2 The Contractor is responsible for any extra costs occasioned by any clarifications, discrepancies, errors or omissions in reports provided to AusAID or other information supplied in writing by the Contractor, provided such discrepancies, errors or omissions are not due to inaccurate information supplied in writing to the Contractor by AusAID.
- 16.3 AusAID may reject and withhold payment of Fees for any report which does not conform to the requirements of the Contract until the Contractor rectifies the report.

17. **REVIEWS**

- 17.1 For the purpose of ensuring that this Contract is being properly performed, AusAID may itself, or may appoint an independent person or persons to assist in the performance of, or to perform, a review of this Contract at the frequency and in relation to any matter specified by AusAID.
- 17.2 The Contractor must participate cooperatively in any reviews conducted by AusAID or its nominees. In addition the Contractor must respond in writing to any draft review report within 28 days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.
- 17.3 Reviews may be conducted of:
 - (a) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services, including procurement and risk management procedures;
 - (b) the accuracy and reliability of the Contractor's financial management systems;
 - (c) the Contractor's compliance with their obligations under the Contract in relation to foreign exchange transactions;
 - (d) the accuracy of the Contractor's reports in relation to the provision of the Services;
 - (e) the Contractor's compliance with AusAID's *Child Protection Policy* and child protection compliance standards (Attachment 1 to the policy);
 - (f) the Contractor's compliance with its Contractor Personnel, confidentiality and privacy obligations; or

- (g) any other matters relevant to the performance of any Services including user satisfaction.

17.4 Each Party must bear its own costs of any such reviews conducted by or on behalf of AusAID.

17.5 The requirement for, and participation in, reviews does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

18. AUDITS

18.1 Where AusAID has reasonable concerns regarding the Contractor's financial management systems AusAID must provide the Contractor with written notification of those concerns and what action is required of the Contractor. This may include:

- (a) that the Company Director must provide a Statutory Declaration confirming that they have sighted the necessary supporting documentation and confirm the veracity of the claim for payment;
- (b) providing AusAID with additional documentation to support the claim for payment; or
- (c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including invoicing procedures and practices.

18.2 The Contractor must respond to any notice received under **Clause 18.1** above within 14 days.

18.3 Where the Contractor does not respond within 14 days, or the response does not alleviate AusAID's concern, AusAID reserves the right, if it has not already done so, to direct the Contractor to provide AusAID with certification from an independent auditor as described in **Clause 18.1(c)** above.

18.4 If AusAID directs the Contractor to undertake an independent audit under this clause:

- (a) the terms of reference must be agreed in writing by AusAID;
- (b) the audit must be undertaken according to the standards of the professional body relevant to the particular audit and those standards must be detailed in the terms of reference;
- (c) the Contractor will bear the total cost of the audit; and
- (d) AusAID will not make any further payments owed to the Contractor pending certification of the reliability of the Contractor's financial management systems and the veracity of the invoicing procedures and practices.

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

19.1 The Contractor must grant AusAID and/or its nominees (including the Auditor-General or the Privacy Commissioner or their delegates), access to the Contractor's premises, the

Data, records, accounts and other financial material or material relevant to the Services, however and wherever stored, in the Contractor's or its sub-contractors' custody, possession or control, for inspection and copying.

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

- (a) during the hours of 9 am and 5 pm on a Business Day;
- (b) except in the case of a breach of this Contract, subject to reasonable prior notice; and
- (c) at no additional charge to AusAID.

19.3 In the case of documents or records stored on a medium other than in writing, the Contractor must make available on request such reasonable facilities as may be necessary to enable a legible reproduction to be created at no additional cost to AusAID.

19.4 This clause applies for the term of this Contract and for a period of seven (7) years from the date of its expiration or termination.

20. PAYMENT

20.1 AusAID must make payment of the Fees within 30 days of:

- (a) AusAID's acceptance of the satisfactory completion of the Services or relevant Payment Milestone as specified in **Schedule 2**; and
- (b) receipt of a correctly rendered invoice.

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

20.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.

20.4 The Contractor must make all foreign exchange transactions at arms length and at commercially competitive rates. Supporting documentation must be retained in accordance with Standard Contract Conditions **Clause 15.1** (Accounts and Records) and may be audited by AusAID in accordance with Standard Contract Conditions **Clause 17** (Reviews).

20.5 Where the Contractor is entitled to reimbursement for expenditure in a currency other than Australian dollars under this Contract, the Contractor must invoice AusAID for the equivalent Australian dollar amount as recorded by the Contractor in their general ledger converted at an exchange rate which is calculated in accordance with appropriate accounting standards.

20.6 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.

- 20.7 Subject to the Contract AusAID shall pay Reimbursable Costs within 30 days of receipt of a correctly-rendered invoice.
- 20.8 An invoice is correctly rendered if:
- (a) the invoice details all Services provided against the Fees and records the amount payable in respect of each category of Services described in the Contract;
 - (b) the invoice details the Contractor's monthly contribution toward Project Vehicles in accordance with **Clause 9.2**;
 - (c) the invoice is based upon the calculation of Fees referred to in **Schedule 2**; and
 - (d) a company director of the Contractor, or their delegate has certified that the invoice:
 - (i) has been correctly calculated;
 - (ii) that the Services included in it have been performed in accordance with this Contract; and
 - (iii) in the case of Reimbursable Costs that these costs have been paid.
- 20.9 If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Contractor, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due from AusAID to the Contractor.
- 20.10 A payment by AusAID is not an admission of liability. In the event that AusAID makes a payment for the completion of a Payment Milestone or the procurement of Supplies or inputs that AusAID subsequently learns have not been completed to the quality or performance specifications required or provided as required, the payment shall be deemed an overpayment and recoverable from the Contractor. Without limiting recourse to other available remedies, the overpayment may be offset against any amount subsequently due to the Contractor.
- 20.11 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.
- 20.12 AusAID need not pay any amount due to the Contractor until the Contractor delivers to AusAID a written statement which satisfies the requirements of section 127 of the *Industrial Relations Act 1996* (NSW) or the requirements of similar State or Territory legislation, in relation to the payment of employees or sub-contractors of the Contractor who were engaged in the performance of the Contract.
- 20.13 Except as otherwise specified in this Contract, the Fees are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Contractor in providing the Services.
- 20.14 If the Contractor does not have an Australian Business Number (ABN), AusAID, in accordance with the relevant provisions of the Pay as You Go (PAYG) legislation, shall be required to withhold a prescribed proportion of the amount payable to the Contractor under the Contract, unless the exceptions under Division 12 of the PAYG legislation apply.

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

21. GOODS AND SERVICES TAX

- 21.1 Except as provided by this clause, all taxes, duties and charges imposed or levied in Australia in connection with the performance of this Contract shall be borne by the Contractor or its sub-contractor(s), as the case requires.
- 21.2 The amount shown against each item in **Schedule 2** is the 'value' of the 'periodic supplies' to be made under this Contract, as these terms are used in the *A New Tax System Act 1999* (Cth).
- 21.3 The amount payable under the Contract for each supply listed in **Schedule 2** is the value of that supply plus any GST payable by the Contractor under the GST legislation. Payment by AusAID to the Contractor of the GST shall be subject to the Contractor providing AusAID with a valid Tax Invoice issued in accordance with the relevant provisions of the GST legislation and regulations.
- 21.4 The total amount of GST payable by the Contractor, and for which the Contractor seeks payment from AusAID, in respect of any supply shall be shown as a separate item on the Tax Invoice.
- 21.5 AusAID shall not pay to the Contractor any amount referable to GST, except as provided in this clause.

22. INTELLECTUAL PROPERTY RIGHTS

- 22.1 Subject to **Clause 22.2**, the title to all Intellectual Property rights in or in relation to Contract Material shall vest upon its creation in AusAID. If required by AusAID, the Contractor must bring into existence, sign, execute or otherwise deal with any document which may be necessary to enable the vesting of such title or rights in AusAID.
- 22.2 **Clause 22.1** does not affect the ownership of Intellectual Property in any Prior Material incorporated into the Contract Material, but the Contractor grants to AusAID a permanent, irrevocable, royalty-free worldwide, non-exclusive licence to use, reproduce, adapt and otherwise exploit such Prior Material in conjunction with the Contract Material. The licence granted under this **Clause 22.2** includes the right of AusAID to sub-licence any of its employees, agents or contractors to use, reproduce, adapt and otherwise exploit the Prior Material incorporated into the Contract Material for the purposes of performing functions, responsibilities, activities or services for, or on behalf of, AusAID.
- 22.3 The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.
- 22.4 The Contractor must deliver all Contract Material to AusAID or to the Partner Government counterpart agency as may be directed in writing by AusAID.

23. **INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

- 23.1 The Contractor must at all times indemnify AusAID, its employees and agents and the Partner Country (“**those indemnified**”) from and against any Loss or liability whatsoever incurred by any of those indemnified or arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such Loss or liability arose out of an infringement, or an alleged infringement, of the Intellectual Property rights of any person, which occurred by reason of the performance or use of the Services.

24. **MORAL RIGHTS**

- 24.1 The Contractor warrants or undertakes that the author of any Contract Material, other than Prior Material, has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the benefit of AusAID in relation to such material used, reproduced, adapted and exploited in conjunction with the other Contract Material..

25. **CONFIDENTIALITY**

- 25.1 Subject to this clause, the Contractor must not, without the prior written approval of AusAID, make public or disclose to any person any AusAID Confidential Information. In giving written approval, AusAID may impose such terms and conditions as in AusAID’s opinion are appropriate.
- 25.2 The Contractor must take all reasonable steps to ensure Contractor Personnel do not make public or disclose the AusAID Confidential Information and must promptly notify AusAID of any unauthorised possession, use or disclosure of AusAID Confidential Information.
- 25.3 The Contractor must ensure that any Contract Personnel who will have access to AusAID Confidential Information complete a written undertaking in the form set out at **Schedule 3**, relating to the non-disclosure of that information.
- 25.4 The Contractor may disclose AusAID Confidential Information:
- (a) to its legal advisers in order to obtain advice in relation to its rights under this Contract, but only to the extent necessary for that purpose;
 - (b) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the first-mentioned party; or
 - (c) if required in connection with legal proceedings,
- but in the case of (b) and/or (c) above, subject to the Contractor giving AusAID sufficient notice of any proposed disclosure to enable AusAID to seek a protective order or other remedy to prevent the disclosure.
- 25.5 The Contractor must not transfer AusAID Confidential Information outside Australia, except to the Partner Country, or allow parties outside Australia to have access to it, without the prior approval of AusAID.

25.6 The Contractor must use AusAID Confidential Information held, acquired or which the Contractor may have had access to in connection with this Contract only for the purposes of fulfilling its obligations under this Contract. Upon expiry or earlier termination of this Contract the Contractor must either destroy or deliver to AusAID all AusAID Confidential Information, as required by AusAID.

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

26. **PRIVACY**

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

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

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

- (a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;
- (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
- (d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Information Officer 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.
- 26.4 The Contractor agrees to ensure that any sub-contract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the sub-contractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to sub-contracts.
- 26.5 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause, or a sub-contractor under the sub-contract provisions referred to in **Clause 26.4** above.
- 26.6 This clause shall survive expiration or termination of this Contract.
27. **ACCESS TO DOCUMENTS**
- 27.1 In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 27.2 The Contractor acknowledges that this Contract is a Commonwealth contract.
- 27.3 If AusAID receives a request for access to a document created by, or in the possession of, the Contractor or any subcontractor that relates to the performance of this Contract (and not to the entry into the Contract), AusAID may at any time by written notice require the Contractor to provide the document to AusAID and the Contractor must, at no additional cost to AusAID, promptly comply with the notice.
- 27.4 The Contractor must include in any subcontract relating to the performance of this Contract provisions that will enable the Contractor to comply with its obligations under this **Clause 27**.
- 27.5 This clause shall survive expiration or termination of this Contract.
28. **AusAID USE OF CONTRACT INFORMATION**
- 28.1 AusAID may disclose matters relating to the Contract, including the Contract and the names of sub-contractors as specified in **Clause 11.1 (f)** above, except where such information may breach the *Privacy Act 1988*, to Commonwealth governmental departments and agencies, Commonwealth Ministers and Parliamentary Secretaries, and to the Commonwealth Parliament, including responding to requests for information from Parliamentary committees or inquiries.

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

29. **PUBLICITY**

29.1 The Contractor must identify and implement appropriate opportunities for publicising the Project.

29.2 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.

29.3 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.

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

30. **WARRANTIES**

30.1 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.

30.2 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.

30.3 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.

31. PERSONNEL SECURITY

- 31.1 The Contractor is responsible for the security of Contractor Personnel and for taking out and maintaining appropriate insurances in respect of Contractor Personnel.
- 31.2 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.
- 31.3 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
- 31.4 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
- 31.5 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.

32. TERMINATION FOR CONTRACTOR DEFAULT

- 32.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor terminate this Contract, with effect from the date in the notice, if the Contractor:
- (a) commits a breach of this Contract and:
 - (i) that breach is not capable of remedy;
 - (ii) fails to remedy that breach within **[10]** Business Days (or such further time as AusAID may, in its absolute discretion, specify), after receiving a notice from AusAID requiring the Contractor to remedy the breach; or
 - (iii) does not commence to remedy that breach, within a reasonable time (having regard to the nature of the breach) after being given notice by AusAID requiring the Contractor to remedy the breach;

- (b) becomes, or in AusAID's reasonable opinion is likely to become, bankrupt, insolvent or otherwise financially unable to fulfil its obligations under this Contract;
- (c) becomes subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act 2001*;
- (d) is wound up by resolution or an order of the court;
- (e) ceases to carry on business;
- (f) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;
- (g) suffers any execution against its assets having, or which in AusAID's reasonable opinion is likely to have, an adverse effect on its ability to perform this Contract;
- (h) ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Contract (except to the extent that this is outside the Contractor's reasonable control);
- (i) assigns its rights otherwise than in accordance with the requirements of this Contract;
- (j) suffers a change in Control which in AusAID's reasonable opinion may adversely affect the Contractor's ability to perform the Services under this Contract;
- (k) is in breach of any of the warranties, regarding pre-listing proceedings, temporary suspension from tendering or listing on a World Bank List or Relevant List, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (l) is, during the term of this Contract, listed on a World Bank List or Relevant List;
- (m) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, bribery of a public official, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (n) is in breach of the warranty, regarding unsettled judicial decisions relating to employee entitlements, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (o) is, during the term of this Contract, convicted of an offence of, or relating to, bribery of a public official. In this **Clause 31.1(o)** the Contractor includes Contractor Personnel;
- (p) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, child abuse, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract; or

- (q) is in breach of the warranty, regarding the good fame and character of Contractor Personnel, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract.

32.2 If this Contract is terminated under this **Clause 32**:

- (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).

33. **TERMINATION FOR CONVENIENCE**

33.1 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.

33.2 Where notice is given under **Clause 33** 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 33**.

33.3 In the event of termination or reduction in scope under this **Clause 33**, subject to **Clause 33**, 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.

33.4 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 33**.

34. **INDEMNITY**

34.1 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.

34.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 34.1** above for the benefit of each of such persons in the name of AusAID or of such persons.

34.3 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.

34.4 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.

34.5 This indemnity shall survive termination or expiration of this Contract.

35. **INSURANCE**

35.1 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 **AUD5,000,000** 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 1974* (Cth), 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.
- 35.2 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.
- 35.3 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.
- 35.4 In the event of an insurance claim any deductible/excess payable shall be the responsibility of the Contractor.

36. CONFLICT OF INTEREST

Conflict of Interest

- 36.1 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.
- 36.2 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 36.3** below, that may result in a conflict of interest arising or continuing.
- 36.3 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

- 36.4 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 Contract Conditions **Clause 32** (Termination for Contractor Default) by notice from AusAID.

37. FRAUD

- 37.1 For the purpose of this Contract, 'fraud' or 'fraudulent activity' means dishonestly obtaining a benefit by deception or other means, and includes suspected, alleged or attempted fraud.
- 37.2 This clause applies to any fraud which relates to the Project or this Contract.
- 37.3 The Contractor must not, and must ensure that its subcontractors do not, engage in any fraudulent activity.
- 37.4 Within one month of the Project Start Date, the Contractor must prepare a fraud risk assessment and zero tolerance fraud control strategy. The risk assessment and strategy must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures that comply with the Commonwealth Fraud Control Guidelines.
- 37.5 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 the Project. The Contractor must ensure that Contractor Personnel are responsible and accountable to the Contractor for preventing and reporting any fraud as part of their routine responsibilities.
- 37.6 If the Contractor becomes aware of a fraud, it must report the matter to AusAID in writing within 5 Business Days. The written report to AusAID must include the following (where known):

- (a) the name of the Project under which AusAID funding is being provided;
 - (b) name of any personnel or subcontractors involved;
 - (c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);
 - (d) the names of the suspected offender(s) (where known);
 - (e) details of witnesses;
 - (f) copies of relevant documents;
 - (g) references to any relevant legislation;
 - (h) a nominated contact officer;
 - (i) any other relevant information (eg, political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and
 - (j) the current status of any inquiries commenced by the Contractor.
- 37.7 If the Contractor becomes aware of a fraud, the Contractor must, in consultation with AusAID, develop and implement a strategy to investigate the fraud based on the principles set out in the *Australian Government Investigations Standards*.
- 37.8 The Contractor must investigate any fraud at the Contractor's cost and in accordance with any directions or standards required by AusAID. If the Contractor appoints an investigator to conduct an investigation, the investigator 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.
- 37.9 AusAID reserves the right to appoint its own investigator, conduct its own investigation or report fraud to the appropriate law enforcement agencies or any other person or entity AusAID deems appropriate in Australia or in the Partner Country for investigation. If AusAID exercises its rights under this clause, the Contractor must provide all reasonable assistance that may be required at its sole expense.
- 37.10 After the investigation is finished, if a suspected offender has been identified, the Contractor must promptly report the fraud to the local police and any other appropriate law enforcement agency in the country where the incident has occurred, unless the Director of AusAID's Fraud section agrees otherwise in writing.
- 37.11 If the investigation finds the Contractor or Contractor Personnel have engaged in fraudulent activity, the Contractor must:
- (a) if AusAID funds have been misappropriated, pay to AusAID or the Project the full value of the AusAID funds that have been misappropriated; or

- (b) if AusAID-funded property has been misappropriated, either return the property to AusAID or the Project or, if the property cannot be recovered or has been damaged so that it is no longer usable, replace the property with property of equal quality.
- 37.12 If the investigation finds that a person other than the Contractor or Contractor Personnel has engaged in fraudulent activity, the Contractor must, at the Contractor's cost, take all reasonable action to recover any AusAID funds or AusAID-funded property acquired or distributed through fraudulent activity, including 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.
- 37.13 The Contractor must keep AusAID informed, in writing, on a monthly basis, of the progress of its efforts to recover the AusAID funds or AusAID-funded property, including any recovery action.
- 37.14 If the Contractor considers that all reasonable action has been taken to recover the AusAID funds or AusAID-funded property and 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 give AusAID all information, records and documents required by AusAID to enable AusAID to decide whether to approve the request.
- 37.15 If an investigation finds that the Contractor or Contractor Personnel have engaged in fraudulent activity, or if AusAID discovers that a fraud has not been reported to AusAID in accordance with **Clause 37.6**, AusAID reserves the right to:
- (a) terminate this Contract by giving the Contractor notice in writing specifying the date on which the termination will take effect (in which case **Clause 32.2** shall apply); and / or
 - (b) not enter into any further agreements 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 fraud to AusAID; and / or
 - (c) consider the fraud or the failure to report the fraud in evaluating future tenders submitted to AusAID by the Contractor.
- 37.16 Without limitation to AusAID's rights pursuant to **Clauses 32** and **37.15**, if the Contractor fails to comply with its obligations under this **Clause 37** with respect to a Contract Fraud, the Director of AusAID's Fraud Section may give the Contractor a written notice which specifies:
- (a) the obligation(s) with which the Contractor has not complied;
 - (b) the action that the Contractor must take to rectify the failure; and

- (c) the date by which the Contractor must rectify the failure.
- 37.17 If the Contractor does not comply with a notice issued pursuant to **Clause 37.16**, AusAID reserves the right to:
- (a) terminate this Contract in accordance with **Clause 32**; and / or
 - (b) exercise its rights pursuant to **Clause 37.9**; and / or
 - (c) withhold payments (or parts of payments) due to the Contractor under this Contract until the Contractor has complied with the notice.
- 37.18 This **Clause 37** shall survive termination or expiration of this Contract in relation to:
- (a) any fraud which was not detected by the Contractor before the date of termination or expiry of this Contract;
 - (b) any fraud detected by the Contractor before the date of termination or expiry of this Contract but which the Contractor had not begun to investigate under **Clause 37.8** before that date,
 - (c) any investigation commenced by the Contractor under **Clause 37.8**, but not completed, before the date of termination or expiry of this Contract, and
 - (d) any investigation commenced by AusAID under **Clause 37.9**, but not completed, before the date of termination or expiry of this Contract.
38. **COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES**
- 38.1 The Contractor must at all times have regard to and comply with, and as far as practicable must ensure that all Contractor Personnel comply with, the laws in Australia, the Partner Country and applicable laws of other countries.
- 38.2 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 38.1**.
- 38.3 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>.
- 38.4 Notwithstanding paragraph 4.3 on page 4 of the Fair Work Principles User Guide, the Contractor must comply with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at www.deewr.gov.au/fairworkprinciples), including by:
- (a) complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;

- (b) informing AusAID of any adverse court of tribunal decision for a breach of workplace relations law, occupational health and safety laws, or workers' compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
 - (c) providing AusAID any information AusAID reasonably requires to confirm that the Contractor (and any subcontractor) is complying with the Fair Work Principles;
 - (d) participate in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.
- 38.5 Compliance with the Fair Work Principles shall not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.
- 38.6 If the Contractor does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Commonwealth, the Commonwealth shall be entitled to publish details of the Contractor's failure to comply (including the Contractor's name) and to otherwise provide those details to other Commonwealth agencies.
- 38.7 As far as practicable, the Contractor must:
- (a) not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and
 - (b) ensure that all subcontractors impose obligations on subcontractors equivalent to the obligations under **Clauses 38.4 to 38.7** in this **Part B** of this Contract.
- 38.8 In addition to any other rights or remedies it has at law or in equity, or under this Contract, AusAID may, by notice in writing to the Contractor, terminate this Contract, with effect from the date in the notice, if the Contractor is in breach of **Clause 38.4** above in this **Part B** of this Contract.
- 38.9 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 38**.
- 38.10 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 33**.
- 38.11 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.

38.12 The Contractor and all Contractor Personnel must when providing any Services and procuring the Supplies have regard to and operate in accordance with Australian policies on developmental aid to foreign countries including:

- (a) the policy Gender Equality in Australia's Aid Program – Why and How (March 2007);
- (b) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014', and in particular the strategy's six guiding principles, located at http://www.aid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;
- (c) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child protection policy*;
- (d) *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.aid.gov.au/keyaid/health.cfm>);
- (e) Environment. AusAID is bound by the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:
 - (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.aid.gov.au/keyaid/envt.cfm>.

39. INVESTIGATION BY THE OMBUDSMAN

- 39.1 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.
- 39.2 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.
- 39.3 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.
- 39.4 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.
- 39.5 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.
- 39.6 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.
- 39.7 This clause shall survive expiration or termination of this Contract.

40. RESOLUTION OF DISPUTES

- 40.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Contract. Subject to **Clause 20.11** (Payment) and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Contract.
- 40.2 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.

- 40.3 If the Parties have not been able to resolve the dispute in accordance with **Clause 40.2** 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.
- 40.4 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.
- 40.5 Nothing in this clause prevents either Party from seeking urgent injunctive relief.

41. **NOTICES**

- 41.1 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).

42. **ADVISER REMUNERATION**

- 42.1 The Contractor must ensure that:
- (a) all Adviser positions are assigned a Job Level and Professional Discipline Category in accordance with the Adviser Remuneration Framework; and
 - (b) all Advisers are engaged and remunerated in accordance with the relevant classification specified in the Adviser Remuneration Framework.
- 42.2 The Contractor shall ensure that Advisers provide a written declaration prior to confirming their eligibility for allowances under the Adviser Remuneration Framework. The written declaration shall be substantially in accordance with the declaration at **Schedule 10**.
- 42.3 If the Contractor is unsure whether a particular position falls within the definition of Adviser, it must ask AusAID to determine whether the person who fills the position will be an Adviser. If AusAID determines that the position is an Adviser position, the Contractor must comply with this **Clause 42** in relation to that position.
- 42.4 Unless approved in writing by AusAID, if the Contractor pays an Adviser more than the rate specified in the Adviser Remuneration Framework for the relevant Job Level and Professional Discipline:

- (a) the Contractor will not be entitled to seek reimbursement of the excess from AusAID; and
 - (b) if the Contractor discovers the excess payment after it has received reimbursement from AusAID, it must promptly advise AusAID of the excess and deduct the amount of the excess from its next invoice.
- 42.5 The Contractor must 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 42**, including the requirement in relation to sub-contracts.
- 43. **ADVISER INFORMATION**
- 43.1 In this **Clause 43**, “**Adviser Information**” means the information which the Contractor must give AusAID in accordance with **Clause 43.2**, if requested to do so by AusAID. Adviser Information may be Personal Information.
- 43.2 The Contractor must give AusAID the following information about each Adviser on 15 January and 15 July of each year:
 - (a) position title;
 - (b) gender;
 - (c) nationality;
 - (d) work location;
 - (e) contract start and end date;
 - (f) number of days worked in time period specified by AusAID preceding the receipt of the request;
 - (g) Monthly or Daily Remuneration Rate;
 - (h) Mobility Allowance, if any;
 - (i) Special Location Allowance, if any;
 - (j) Adviser Support Costs including Housing Cost, if any; and
 - (k) any other information regarding remuneration or costs associated with Advisers and identified by AusAID in the request.
- 43.3 In addition to the reporting requirements in **Clause 43.2**, the Contractor must provide the information specified in **Clause 43.2(a) – (k)** within ten (10) Business Days of receiving a written request from AusAID.
- 43.4 AusAID will use the Adviser Information to ensure that the Australian Government’s official overseas aid program achieves value for money and to meet its reporting requirements.

43.5 AusAID may disclose Adviser Information in accordance with **Clause 28**.

43.6 The Contractor must ensure that Advisers, before they are engaged:

- (a) consent in writing to AusAID using the Adviser Information which may be collected under **Clause 42.2** for the purposes described in **Clause 42.3**;

are aware that:

- (b) AusAID may request, and the Contractor may provide to AusAID, the Adviser Information;
- (c) AusAID may disclose the Adviser Information to Commonwealth governmental departments and agencies, Commonwealth Ministers and Parliamentary Secretaries, and to the Commonwealth Parliament; and
- (d) they are entitled to access their own Personal Information which is held by AusAID, unless AusAID has a lawful right to refuse access.

43.7 The Contractor shall 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 43**, including the requirement in relation to sub-contracts.

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

44. **CONTRACTOR PERFORMANCE**

44.1 The Contractor acknowledges and agrees that AusAID may issue:

- (a) a Contractor performance assessment;
- (b) Adviser performance assessments;
- (c) subcontractor performance assessments; and
- (d) subcontractor key personnel performance assessments,

in relation to this Contract.

44.2 The performance assessments will be substantially in accordance with the assessment sheet in **Schedule 8**. Within 28 days of receiving a performance assessment from AusAID, the Contractor must:

- (a) sign and return to AusAID the Contractor Performance Assessment together with any response; and
- (b) ensure that all other performance assessments together with any response the subcontractor or any personnel wishes to include are signed and returned to AusAID.

44.3 The Contractor must undertake Adviser, subcontractor and subcontractor personnel assessments as required by AusAID.

44.4 The Contractor must insert clauses in any subcontracts relating to the Contract that require the subcontractor to agree that:

(a) AusAID or the Contractor may issue:

(i) a subcontractor performance assessment; or

(ii) subcontractor key personnel performance assessments,

in relation to the subcontract;

44.5 the performance assessments will be substantially in accordance with the assessment sheet in **Schedule 8**; and

44.6 the subcontractor will sign and return the subcontractor performance assessment together with any response within 28 days of receipt and will ensure that subcontractor personnel performance assessments together with any response any personnel wishes to include are signed and returned within 28 days of receipt.

45. **MISCELLANEOUS**

Waiver

45.1 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.

Liability of Party

45.2 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.

Entire agreement

45.3 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.

Severance

45.4 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.

Assignment

45.5 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.

Governing Law and Jurisdiction

- 45.6 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.

Contra Proferentem

- 45.7 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.

False and Misleading Information

- 45.8 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

Papua New Guinea Health and HIV/AIDS Implementation Services Provider

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

1. DEFINITIONS

1.1 In this Scope of Services, unless the context otherwise requires:

“**Capacity Development**” means the process by which people, organisations and society as a whole develop competencies and capabilities that will lead to sustained and self-generating performance improvement;

“**CBSC**” means Capacity Building Services Centre;

“**CSOs**” means Civil Society Organisations;

“**DPLGA**” means the Department of Provincial and Local Government Affairs;

“**HHISP**” means the Health and HIV/AIDS Implementation Services Provider;

“**HSCDP**” means the Health Systems Capacity Development Program;

“**HSPC**” means the Health Sector Partnership Committee;

“**NAC**” means the National AIDS Council;

“**NACS**” means the National AIDS Council Secretariat;

“**NDoH**” means the PNG National Department of Health;

“**NHP**” means the PNG National Health Plan 2011-2020;

“**NHS**” means the PNG National HIV and AIDS Strategy 2011-2015;

“**PLLSMA**” means the Provincial and Local Level Service Monitoring Authority;

“**Provincial Health Authority**” means the new pilot system to integrate hospital and rural health care services under a single command and control structure allowing more effective approaches to all aspects of service delivery in PNG; and

“**Technical Assistance**” or “**TA**” means the provision of expertise in the form of personnel, training and research. It comprises activities that augment the level of knowledge, skills, technical ability or productive aptitudes of people in developing countries. It may include scholarships, institutional twinning and mentoring as well as services (e.g. consultancies, technical support or the provision of expertise).

2. BACKGROUND

2.1 The Government of Papua New Guinea (GoPNG) has launched the *National Health Plan 2011-2020* (NHP) and the *National HIV and AIDS Strategy 2011-2015* (NHS). These strategic documents focus GoPNG resources on primary health care and a targeted HIV/AIDS response, with a clear focus on strengthening services delivery to rural and disadvantaged urban communities. This is a strong national policy framework within which to position Australia’s health and HIV/AIDS sectoral support under the PNG-Australia Partnership for Development.

- 2.2 The integrated Health and HIV/AIDS Schedule to the PNG-Australia Partnership for Development agreed in 2011 commits GoPNG and the Australian Government to support six high-level outcomes in maternal and child health and disease prevention, vaccination and treatment:
- (a) Increase the percentage of 1 year old children nationally vaccinated with 3 doses of pentavalent vaccine from 51 (in 2010) to 80 per cent and measles vaccinations from 50 (in 2010) to 80 per cent by 2015;
 - (b) Increase the percentage of deliveries supervised by a trained nurse, midwife or doctor from 40 (in 2010) to 44 per cent by 2015;
 - (c) Increase the availability of essential medical supplies, including drugs and testing equipment for HIV, tuberculosis and malaria, through reducing stock outs from 53 per cent (in 2010) to 15 per cent by 2015;
 - (d) Increase the percentage of condom use by males and females at last high risk sex from 40 per cent (2010) to 60 per cent in 2015;
 - (e) Increase the percentage of HIV positive pregnant women who receive antiretroviral drugs to prevent transmission from 3.4 per cent (2008) to 80 per cent in 2015; and
 - (f) Increase the percentage of the population (both men and women) in need of antiretroviral drugs who receive those drugs from 59 per cent (2009) to 68 per cent in 2015.
- 2.3 AusAID has finalised the *Australia-PNG Health Delivery Strategy 2011–2015* (the “**Delivery Strategy**”), which is aligned with the NHP and includes the health sector elements of the HIV response. The aim is to improve maternal and child health outcomes and deliver increased services to the rural majority in support of the Partnership for Development outcomes (see **Clause 2.2** above). The Delivery Strategy identifies six priority results areas where Australian aid can make a difference in achieving these outcomes. These are health financing, medical supplies, infrastructure, health workforce, public health, and community mobilisation. The priority provinces for the Delivery Strategy and the Health Systems Capacity Development Program (HSCDP) are: Western Province, Milne Bay, Eastern Highlands, Western Highlands, and also include the Autonomous Region of Bougainville.
- 2.4 Australia’s support for HIV is aligned with the NHS, which aims to intensify HIV prevention and expand testing, treatment and care with a greater focus on high risk populations and high risk sites. The priority provinces for the HIV/AIDS Program are: Western Highlands, Eastern Highlands, Southern Highlands, Morobe, Enga and Simbu, and also include the Autonomous Region of Bougainville.
- 2.5 Australia’s strategy for addressing HIV in PNG is three-fold. Firstly, in line with the global shift from responding to HIV as an emergency to a part of the broader public health agenda, a more integrated approach with the health sector in *key* areas is needed. This includes better integration of HIV components into health programming, such as sexually transmitted infections initiatives, prevention of mother to child transmission within antenatal care, financing, medical supplies and health worker training. Secondly, there is also a need to maintain a separate HIV program to address the *multi-sectoral aspects* of the

epidemic (such as education and law reform) which extend beyond the health sector. Thirdly, Australia's strategy involves greater targeting of support to high risk groups and high prevalence provinces.

Structure

- 2.6 The PNG Health and HIV/AIDS Implementation Services Provider (the “**HHISP**”) encompasses implementation support for two programs:
- (a) health – the **Health Systems Capacity Development Program (HSCDP)**; and
 - (b) HIV/AIDS – the **HIV/AIDS Program**.
- 2.7 By combining these two programs under one contract, it is envisaged that greater efficiency and integration of health and HIV/AIDS capacity development and service delivery assistance in PNG will be achieved. This will be primarily via capacity building assistance, grants management and research.

Objectives

- 2.8 The purpose of the HHISP is to support the implementation of the health and HIV/AIDS programs on behalf of AusAID and GoPNG.
- 2.9 The overarching objectives for both programs are to improve maternal and child health outcomes and deliver increased health and HIV/AIDS services to the rural majority and high risk populations in support of the Partnership for Development outcomes (see **Clause 2.2** above). More detailed program-specific objectives and outcomes will be defined in 2012 as part of a broader M&E framework.
3. **GOVERNANCE ARRANGEMENTS FOR THE HEALTH SYSTEMS CAPACITY DEVELOPMENT PROGRAM**

Health Sector Partnership Committee

- 3.1 The Health Sector Partnership Committee (HSPC) is the existing central governance body for PNG's health sector. It will also be the primary governance and decision-making body for the HSCDP and is expected to meet on a quarterly basis. All major new investments must be approved by the HSPC. The HSPC is chaired by the Secretary for Health and consists of:
- (a) NDoH representative;
 - (b) Department of Finance representative;
 - (c) Department of Treasury representative;
 - (d) Department of National Planning and Monitoring representative;
 - (e) Department of Provincial and Local Government Affairs (DPLGA) representative;
 - (f) Representatives from the provinces;

- (g) Development partner representative;
 - (h) Representatives from churches; and
 - (i) Representatives from the private sector.
- 3.2 The Contractor may participate in the HSPC as an observer.
- 3.3 The HSPC is responsible for:
- (a) Providing advice and reviewing sector-wide budget priorities and expenditure performance including grants and supplementary budgets;
 - (b) Discussing strategic issues arising from quarterly expenditure and performance reviews;
 - (c) Reviewing internal and external audit reports on health spending by NDoH, provinces and Provincial Health Authorities;
 - (d) Reviewing action and progress on the stated health sector policy agenda arising from NHP policies, implementation and review;
 - (e) Discussing and agreeing an annual health sector Capacity Development Plan and recommendations in conjunction with the HSCDP to address requests for Technical Assistance (TA);
 - (f) Monitoring progress of the Capacity Development Plan against mutually agreed outcomes;
 - (g) Discussing requirements for analytical work;
 - (h) Engaging the DPLGA and Provincial and Local Level Service Monitoring Authority (PLSSMA) mechanisms for coordinating with provinces and supporting the NHP;
 - (i) Reviewing reports submitted by provincial and local level governments (pursuant to Section 119 of the PNG Organic Law on Provincial and Local Level Governments), the Churches Medical Council, central agency and Development Partner reports and their recommendations on sector Capacity Development support priorities;
 - (j) Evaluating the performance of the sector-wide approach to the health sector by all partners (government, Development Partners, civil society and private sector); and
 - (k) Providing a forum for discussion and advocacy across the health sector.

Strategic Policy Division of NDoH

- 3.4 The HSPC is supported by the Strategic Policy Division (SPD) of NDoH. The SPD is staffed by NDoH and currently receives technical support from development partners including AusAID. One of the roles of the SPD is to undertake all activities necessary for HSPC to perform its function according to its terms of reference, including facilitating collaboration and coordination of information sharing across the entire health sector.

3.5 Specific tasks of the SPD may include:

- (a) Preparing documentation and briefing papers, and ensuring availability of reports for quarterly HSPC meetings;
- (b) Establishing an overview of health sector programming in connection with the budget;
- (c) Maintaining an overview of all activities undertaken by development partners in the health sector, including an overview of aid modalities used, and developing a registry system;
- (d) Compiling inventories and maintaining a library of analytical work and consultant reports sponsored by development partners; and
- (e) Organising and supporting the Independent Annual Health Sector Review and health summits.

Sector Resource Allocation and Review and Capacity Development Coordination Working Groups

- 3.6 In collaboration with, and supported by the SPD, the Sector Resource Allocation and Review (SRAR) working group and the Capacity Development Coordination (CDC) working group will undertake the technical tasks associated with the HSPC. These working groups will be established in 2011-12. Representation will involve a mix of NDoH and other GoPNG central agencies and development partners. The working groups will meet periodically to progress key issues as needed.
- 3.7 The SPD and CDC working group will be the primary points of engagement on all operational discussion with the Contractor, including the development of technical proposals.
- 3.8 The CDC working group, in partnership with the SPD, is responsible for:
- (a) Development of a draft annual Capacity Development Plan based on the Independent Annual Health Sector Review and capacity diagnostics;
 - (b) Development of recommendations for requests from the health sector to NDoH for TA; and
 - (c) Coordination of commissioned analytical work, including health sector performance reviews and evaluations, carried out by short-term technical advisers and national/international resource institutions.
- 3.9 A performance management review for all advisory support to the health sector is expected to be undertaken on a regular basis by the HSPC. Terms of reference will be developed and submitted to the HSPC for approval in early 2012. It is expected that at a minimum, all short and long-term advisory support provided through the HSCDP will be subject to this review process, and include participation from the Contractor and AusAID.

4. GOVERNANCE ARRANGEMENTS FOR THE HIV/AIDS PROGRAM

National AIDS Council Secretariat

- 4.1 The National AIDS Council Secretariat (NACS) is the primary strategic counterpart for the HIV/AIDS Program, but is not the sole HIV/AIDS Program implementation counterpart or strategic partner. AusAID may use other implementing and funding mechanisms, such as the NDoH, Provincial Health Authorities and agencies, civil society and private sector partners, as part of a wider process of engagement in the HIV/AIDS response. These arrangements will be identified and agreed as an integral part of the joint GoPNG and AusAID HIV/AIDS annual planning processes as set out in **Clauses 4.3 – 4.10** below, and further details defined by the HSPC in agreement with NACS.

Civil Society Grants Program

- 4.2 The HIV/AIDS Program will continue to use the joint GoPNG-AusAID planning framework for the HIV response established under the first phase of the HIV/AIDS Program (*Sanap Wantaim* 2006-2012). A National HIV Strategy Steering Committee (the “**Steering Committee**”) was appointed as a sub-committee of the National AIDS Council to coordinate the annual planning process for implementation of the NHS. The Steering Committee consists of representatives from:
- (a) National AIDS Council;
 - (b) AusAID;
 - (c) National Department of Health;
 - (d) Department of National Planning and Monitoring;
 - (e) Department of Provincial and Local Government Affairs;
 - (f) UNAIDS; and
 - (g) Civil Society Organisations (CSOs).
- 4.3 The objectives of the NHS annual planning process are to:
- (a) Work within GoPNG systems to develop a coordinated plan and budget to support implementation of the NHS;
 - (b) Strengthen coordinated implementation of the NHS; and
 - (c) Include all stakeholders (GoPNG, CSOs and development partners) in determining priorities and activities for funding.
- 4.4 Under the current process, the NACS Director writes to CSOs inviting them to submit HIV annual activity plans for the GoPNG fiscal (calendar) year. The individual activity plans are submitted to NACS and then assessed jointly by AusAID and NACS (as key members of the Steering Committee) for consistency with NHS priorities and against key criteria for technical and financial soundness. The AusAID HIV/AIDS team and technical advisers

provide assistance to the CSOs to strengthen their activity plans. The plans are then endorsed and finalised by the Steering Committee.

- 4.5 Finalised activity plans are consolidated within an overall NHS annual implementation plan with recommended funding allocations under the development budget for NACS, which includes donor-funded and GoPNG-funded activities. This implementation plan is then submitted for approval to the National AIDS Council before submission to the Department of National Planning and Monitoring.
- 4.6 The AusAID HIV/AIDS team produces its own Annual Program Plan for approval by the AusAID Minister Counsellor and the NAC to ensure that AusAID's internal quality requirements are met and to provide greater commentary on the specific elements of Australia's contribution to the national response.
- 4.7 The AusAID HIV/AIDS team is responsible for engagement with GoPNG and CSOs on this annual planning process. From 2012, there will be greater engagement with NDoH, Provincial Health Authorities and the HSPP on the health elements of CSO activities given the significant elements of HIV/AIDS care and treatment being supported. AusAID will issue Tasking Notes (refer to Annex 2 to this Schedule) to the Contractor tasking technical advisers engaged under this Contract to provide technical input to the assessment and strengthening of CSO activity plans and to conduct Quality at Entry (QAE) assessments using the AusAID QAE template to ensure AusAID's internal quality requirements are met.
- 4.8 Following approval of the NHS annual implementation plan and budget and the AusAID HIV/AIDS Annual Program Plan, AusAID will issue a Tasking Note to the Contractor with instructions to contract the approved CSOs. The Contractor will be directly responsible for CSO contracting and performance management, capacity building, financial monitoring and reporting (including auditing), collection of basic M&E data and establishment of a Quality at Implementation (QAI) database for the HIV/AIDS civil society grants program.
- 4.9 AusAID staff will undertake analyses to determine:
 - (a) if the HHISP outputs are reliable indicators of HIV/AIDS Program progress and how they can be improved or not; and
 - (b) whether CSOs are eligible or not to receive ongoing funding under the HIV/AIDS Program.
- 4.10 AusAID staff also monitor effectiveness and impact of CSO activities in contributing to higher level HIV/AIDS Program goals and objectives and determine whether or not CSOs are meeting quality and value for money criteria. AusAID staff will be responsible for CSO stakeholder relationships and dialogue on performance and quality issues. AusAID will seek assistance as required from the Contractor.

Research Grants

- 4.11 The governance arrangements for research grants for both programs may be further defined. AusAID will issue Tasking Notes to the Contractor to commission research and/or to contract individual researchers or research organisations to conduct specified research. This may involve twinning arrangements between international and PNG research

organisations and/or researchers. The Contractor must draw upon international research networks and expertise, and partner where appropriate with organisations who can access and deliver services based on international experience and best practice models.

5. **ROLE OF AUSAID AND GoPNG**

AusAID

5.1 AusAID is responsible for:

- (a) Policy engagement with GoPNG;
- (b) Stakeholder dialogue and program governance functions;
- (c) Oversight of capacity diagnostics, and preparation, authorisation and management of Tasking Notes released to the Contractor;
- (d) Detailing the services required, timing and performance criteria for all Tasking Notes;
- (e) Oversight and monitoring of the Contractor's implementation of AusAID's gender policy and approach to addressing violence against women;
- (f) Appraising HHISP Quarterly, Annual and Exception Reports on a timely basis and providing direction, as needed; and
- (g) Appraising the quality of HHISP performance. Appraisals will be considered by AusAID, and where applicable, the HSPC.

Government of Papua New Guinea

5.2 GoPNG will be responsible for staff, resources and lead participation of its representatives on the following health and HIV/AIDS sector governance bodies:

- (a) Health Sector Partnership Committee (HSPC);
- (b) Strategic Policy Division (SPD) of the NDoH;
- (c) Sector Resource Allocation and Review (SRAR) working group;
- (d) Capacity Development Coordination (CDC) working group; and
- (e) National AIDS Council and National AIDS Council Secretariat.

5.3 As well as the responsibilities outlined in **Clauses 3 and 4** above, these bodies will be responsible for reviewing, coordinating and authorising the Health Sector Annual Capacity Development Plan, which includes all HSCDP inputs, other requests for health program assistance and the NHS annual implementation plan.

6. **CONTRACTOR'S ROLE**

6.1 The Contractor will provide services to GoPNG national and provincial level departments and agencies, CSOs, NGOs, the private sector, high HIV prevalence provinces and most at

risk HIV population groups and/or the health and HIV program priority provinces listed in **Clauses 2.3 and 2.4** above.

- 6.2 The Contractor must facilitate the commissioning of independent capacity development diagnostics, either by commissioning the diagnostics and/or providing support and information to those conducting the diagnostics, as required, to define the need for development assistance and the most appropriate form of aid to meet that need.
- 6.3 The Contractor must support, including commissioning the design, implementing and/or providing support and information for any designs based on diagnostic findings as required.
- 6.4 Under the HHISP, the Contractor will manage at least, but not limited to, three main forms of aid: TA, grants and research.
- 6.5 Under the HIV/AIDS Program, the Contractor will manage the civil society grants program, research grants and support for information education and communications activities, including but not limited to contracting, capacity building, financial management, auditing, monitoring and evaluation, and reporting of grant activities in accordance with Commonwealth Grant Guidelines and reporting requirements of this Contract.
- 6.6 The Contractor will draw upon international and local networks and experience to identify and sub-contract suitable research, twinning and training organisations, systems diagnostic and process improvement expertise and design expertise for HSCDP and the HIV/AIDS Program.
- 6.7 The Contractor will also provide events management, logistics and security including but not limited to meetings, workshops, conferences and high level visits, and other procurement as required and in accordance with the Commonwealth Procurement Guidelines for HSCDP and the HIV/AIDS Program. This may involve arranging domestic and international travel for stakeholders supported by the two programs.
- 6.8 To support donor harmonisation, increase coordination and ease the burden on GoPNG where possible, the Contractor must support request from AusAID and development partners for information sharing, be open in providing information in regards to timelines and processes and provide services to development partners where there is no costs other than specified personnel or other HHISP office and staff resources.
- 6.9 The Contractor will ensure the provision of capacity development support will be guided by the principles informed by the recently published AusAID Technical Adviser Review recommendations, AusAID policy on the Use of Advisers, the Development Cooperation Treaty Review and any other policy deemed relevant by AusAID from time to time. Emphasis will be given to greater use of non-adviser forms of TA, utilising good quality diagnostics and strengthening PNG's own capacity development programs and institutions.
- 6.10 The Contractor will assist in contracting and managing independent expertise for monitoring and evaluating health sector activities not sub-contracted by the Contractor. This may involve, but will not be limited to auditing and performance assessments of development partners or other AusAID implementing partners, as tasked by AusAID.

7. SERVICES

7.1 In addition to the above responsibilities, the Contractor will perform the following Services in accordance with the terms and conditions of this Contract:

- (a) Prompt and timely responses, and provision of adequate services to Tasking Notes, supported by regular status updates and financial reports;
- (b) Maintain a registry of Tasking Notes. The register will capture all relevant and key details of the Tasking Note;
- (c) Implementation of the HHISP Annual Plan;
- (d) Timely and accurate collation and reporting of gender disaggregated M&E data (based on agreed M&E framework) for all activities;
 - (i) Undertake Quality At Entry assessments (AusAID to provide templates for this) for all HIV/AIDS civil society grants managed by HHISP; and
 - (ii) Maintain a Quality at Implementation (AusAID to provide templates and guidance for this) database for HIV/AIDS civil society grants linked to the registry of Tasking Notes that captures all performance reports for grants, advisers, and activities managed by the HHISP.
- (e) **Program Management and Administration:** with respect to Program Management and Administration, the Contractor shall:
 - (i) be flexible and able to scale up and down by mobilising/demobilising resources as requests emerge;
 - (ii) develop effective and efficient planning and business processes for the implementation of the HHISP;
 - (iii) establish and maintain an effective Support Office in Port Moresby with appropriate administrative and financial systems and ensure the office is sufficiently resourced (including Personnel, security, logistics and communications). Both programs of the HHISP will be located in the same office;
 - (iv) manage the performance of sub-contractors and service providers required in the implementation of activities under the two programs; and
 - (v) document all processes (including financial processes) in Program Procedures Manuals which are readily available and used by all relevant program staff (see **Clauses 9.4, 9.5 and 10.1(h)** below).
- (f) **Human Resource Management:** with respect to Human Resource Management, the Contractor shall:

Recruitment:

- (i) draw on key partners, international experience and networks to recruit advisers;
- (ii) Specified Personnel to be provided by the Contractor (see Terms of Reference at Annex 1) under the terms and conditions of the Adviser Remuneration Framework include:
 - (A) HHISP Director;
 - (B) HSCDP (Health) Coordinator;
 - (C) HIV/AIDS Program Coordinator;
 - (D) Health Institutions and Systems Specialist;
 - (E) Finance and Audit Management Specialist; and
 - (F) Human Resources Development Manager;
 - (G) Support staff such as grants management, accountancy/audit, HR logistics and recruitment support, security, IT, etc. (NB: No ToRS have been provided);
- (iii) recruit other staff as required to support and implement activities and manage their performance;
- (iv) Where a request for an adviser is approved, the Contractor is to recruit, mobilise, demobilise, logistically support and administer all advisers in accordance with this Scope of Services. The Contractor must ensure GoPNG and AusAID are consulted when recruiting advisers in their workplace;
- (v) In recruiting advisers, staff and sub-contractors, the Contractor must conduct rigorous, value-for-money recruitment exercises in accordance with the principles of the Commonwealth Procurement Guidelines. The Contractor must utilise recruitment methods that are innovative, flexible and tailored to meet AusAID and GoPNG's needs;
- (vi) The Contractor must ensure that a wide search for technical expertise is conducted and that the most appropriate candidates are identified for short-listing and possible interview by AusAID and GoPNG. Interview arrangements and all selection processes will be facilitated by the Contractor, although the majority of key decisions and deliberations on candidate selection procedures will be the responsibility of AusAID and GoPNG unless otherwise stated in a Tasking Note;
- (vii) The recruitment process must incorporate promotion of the opportunities using a cross section of methods and media, in order to fully test the local, regional and international market. The Contractor must keep data on where applicants viewed opportunities and make recommendations to AusAID and GoPNG on advertising placement;

- (viii) ensure that all advisers and staff have Terms of Reference and adhere to the Adviser Remuneration Framework (ARF) where applicable;
- (ix) ensure that all advisers and staff have annual work plans that contain explicit capacity building strategies appropriate to the positions;
- (x) ensure that all advisers, staff and sub-contracted personnel behave ethically and appropriately at all times including ensuring that all personnel are briefed on and comply with AusAID's policies on cross-cutting issues including gender, disability, fraud and anti-corruption, HIV and AIDS, child protection and environmental issues;
- (xi) The Contractor must have thorough selection processes and documentation in place to ensure:
 - (A) the identification and selection process is planned and managed in ways that provide AusAID and GoPNG with forward notice and certainty of recruitment dates and processes;
 - (B) selected adviser personnel are thoroughly briefed on security, living conditions, contract terms and conditions etc.;
 - (C) referee and police checks are conducted with acceptable findings;
 - (D) selected adviser personnel have cleared health checks;
 - (E) appropriate and timely notification of selection outcomes and written feedback where requested, is provided to successful and non-successful applicants;
 - (F) appropriate audit trails and documentation of processes and outcomes; and
 - (G) selected adviser personnel enter into agreements/contracts with the Contractor prior to arrival in country;
- (xii) The Contractor must ensure that adviser personnel who are selected are suitable for the assignment, agreed to by AusAID and GoPNG, and have:
 - (A) the necessary technical qualification and skills to fulfil the objectives of the assignment;
 - (B) cultural awareness and sensitivity;
 - (C) an understanding of the challenges and demonstrated capacity to work in a diverse cross-cultural environment;
 - (D) excellent communication and interpersonal skills;
 - (E) a strong commitment to and understanding of capacity building and gender equity; and

- (F) a clear understanding and acceptance of their entitlements and their limitations; and
- (xiii) If the Contractor has any concerns about the recruitment process or outcome, AusAID must be advised immediately.

Preparation, Orientation and Repatriation of Adviser Personnel:

- (xiv) The Contractor must provide appropriate preparation for all adviser personnel (and their dependants) prior to their placement overseas including arranging travel, mobilisation and briefings covering:
 - (A) fees and allowances;
 - (B) the HIV/AIDS and/or the HSCDP and how the placement fits within the health sector and AusAID Program;
 - (C) key objectives and outputs/outcomes of the assignment;
 - (D) cross cultural issues;
 - (E) gender issues;
 - (F) security issues, including emergency procedures and response to disasters;
 - (G) health and medical issues;
 - (H) OH&S issues;
 - (I) insurances arrangements;
 - (J) passport and visa requirements;
 - (K) the rights and responsibilities of all parties to their assignment;
 - (L) performance monitoring arrangements; and
 - (M) local living conditions including but not limited to accommodation, banking, local domestic staff, communication facilities, private transport arrangements including licences, schools and recreational facilities;
- (xv) The Contractor must assess the need for language training and arrange appropriate training either prior to placement or on arrival in-country;
- (xvi) On arrival, the Contractor must provide an in-country orientation reiterating all information provided prior to the placement, arrange introductory meetings with GoPNG and AusAID, assist with locating appropriate accommodation, ensure adequate medical, security and wellbeing measures are provided and understood;

- (xvii) During the placement, the Contractor will monitoring individuals' security and welfare and at the end of the placement, arrange exit interviews with AusAID;
- (xviii) The Contractor must evaluate the effectiveness of the briefings, orientation and in-country support and adviser personnel satisfaction of them and report to AusAID as part of the formal reporting requirements; and
- (xix) The Contractor may be required to provide other people management services as required and agreed with AusAID.

Security:

- (xx) The Contractor must develop security procedures for all staff and sub-contractors; maintain up-to-date lists of all personnel and their location; and ensure all staff and sub-contractors (including adviser personnel) are briefed and remain up to date on security and emergency procedures.

In-Country Monitoring of Adviser Personnel:

- (xxi) The Contractor must manage, contact and regularly liaise with each Adviser personnel in country to:
 - (A) maintain an understanding of the context within which the adviser personnel are working;
 - (B) assess and manage the specific risks and the security issues associated with the location where the adviser personnel are placed;
 - (C) support the development of a work plan if an advisor is not working with a PNG partner organisation, which is regularly reviewed to assess and manage the performance of the adviser personnel against assignment objectives;
 - (D) ensure advisers and sub-contractors have adequate resources to complete their tasks and if not, establish a mechanism that allows advisers and sub-contractor to access funds and procure items to support their objectives. All funds must be approved by AusAID in the relevant Tasking Note;
 - (E) ensure adviser personnel have access to information and local resources to perform their duties and that, during the initial phase of the deployment (i.e. the first 2 months) support is provided to enable them to settle into secure, appropriate accommodation with appropriate levels of security, transport and communications; and
 - (F) ensure regular liaison and reporting to AusAID on adviser personnel performance; and
- (xxii) Leave for all adviser personnel must be approved in consultation with AusAID or the GoPNG.

Performance Management of Advisers:

- (xxiii) Performance management of HSCDP Advisers and HIV Program Advisers located in GoPNG agencies will be the responsibility of the GoPNG or relevant stakeholder, in consultation with AusAID, in the majority of cases subject to **Clause 3.9** of this Scope of Services. Whilst the Contractor is not responsible for performance management, AusAID will endeavour to consult the Contractor on performance management issues which give cause for concern;
 - (xxiv) Performance management of HIV/AIDS Program Advisers based in the HHISP office who are providing technical support to external partners and grant recipients will be the responsibility of the Contractor, in consultation with AusAID;
 - (xxv) In response to a request from the Stakeholder, AusAID may request the Contractor's assistance in performance-managing an adviser who is underperforming. If requested by AusAID, the Contractor must:
 - (A) withhold payment of professional fees as directed; and/or
 - (B) terminate the employment of an Adviser; and/or
 - (C) apply any other remedy as directed by AusAID;
 - (xxvi) Although performance management will rest with GoPNG and AusAID in most cases, the Contractor will conduct performance assessment of each adviser at times to be agreed with AusAID. The Contractor will liaise with the GoPNG or relevant stakeholder and AusAID on performance of the adviser. At least annually or at the completion of an assignment, this assessment must comply with AusAID's adviser performance assessment process and must be registered on AusAID's central database;
 - (xxvii) Assessments will be coordinated by the Contractor to reduce reporting burdens on GoPNG. Performance reports should be summarised and submitted to AusAID with formal quarterly reporting. The Contractor will also have three month probation reviews of all advisers and sub-contractors; and
 - (xxviii) Performance management arrangements may change if agreed with AusAID, the Contractor and the relevant GoPNG governance group or be determined in a Tasking Note.
- (g) **Financial Management and Procurement:** the Contractor shall be accountable for accurate and transparent accounting and financial reporting, and shall perform the following financial management and procurement functions:
- (i) establish and manage a financial management system that supports monthly and quarterly financial reporting in a format acceptable to AusAID;

- (ii) develop and implement systems for managing, disbursing and acquitting all funds necessary for the implementation of the HHISP services;
 - (iii) provide an acquittal of expenditures against budget and a forward projection of funding on a quarterly basis;
 - (iv) establish an audit regime and organise an independent annual financial audit of the HHISP as a whole;
 - (v) manage the procurement of all assets procured through the HHISP; and
 - (vi) ensure that all financial and procurement processes comply with Australian Government Commonwealth Grant and Procurement Guidelines.
- (h) **Web-based Resource:** the Contractor must develop and maintain a web-based resource for access by GoPNG, advisers, sub-contractors, grant recipients and AusAID at a minimum. AusAID require a staged development of the web-based resource and full maturity must be achieved by the Contractor no later than 4 months after the contract start date. The Contractor will encourage the use of this resource and ensure it is relevant, up-to-date and promoted to stakeholders. AusAID may reasonably request additional information to be available via this resource. The web-based resource will perform the following functions:
- (i) store current relevant and frequently used documents on the site including but not limited to report templates, orientation briefings, forms and policies;
 - (ii) allow networking and information sharing between advisers facilitating capacity building and lessons learned, examples of good practice, information on impact and effectiveness and any research outcomes will be available on the site;
 - (iii) incorporate a password-protected section that enables nominated AusAID staff to monitor expenditure, the amount of adviser personnel planned and utilised, grant recipients and status of grants, the number and value of all Tasking Notes, and other management information;
 - (iv) capture the range of information relating to the implementation and performance management;
 - (v) use relevant IT and networks to manage and report on the two program activities. Historical data may be made available to the Contractor where possible for migration to the new system to form base-line information; and
 - (vi) be highly secure, of strong capacity and be backed up to avoid any potential risks of catastrophic system failure or damage. The complete data and information must be automatically saved regularly and backed-up in secure locations away from the office. All IT equipment / software must be of high quality and high capacity. All staff must be trained in the use of the system and in the need to continually backup the data and information so that risks of information loss are minimised.

- (i) **Relationship Management and Communication:** with respect to relationship management and communication, the Contractor shall:
- (i) have access to international partners and networks in research, academia and training, twinning arrangements and consultants in the health and HIV/AIDS fields, and related sectors such as public sector administration and financial management;
 - (ii) maintain effective and ongoing communication with GoPNG and other donors to ensure that donor activities are harmonised;
 - (iii) commit to HHISP program objectives by ensuring that all key stakeholders are involved in planning and implementation in ways that are consistent with their various roles;
 - (iv) respond quickly to requests for information from AusAID and/or GoPNG; and
 - (v) work with AusAID and the Australian High Commission to identify media opportunities and assist in clearing media releases, launches and communication opportunities.
- (j) **Monitoring and Evaluation:** with respect to Monitoring and Evaluation, the Contractor shall:
- (i) Collect gender disaggregated baseline and outputs level data to report against AusAID's Monitoring and Evaluation (M&E) Frameworks for HSCDP and the HIV/AIDS Program, based upon the principles as set out in the Design Documents (and revised thereafter), that will enable quantitative and qualitative assessment and reporting of results and contribution to desired HHISP program outcomes. It is expected that information should be firstly sought through GoPNG existing information systems and additional data collection done in consultation with key stakeholders;
 - (ii) assist HIV/AIDS Program civil society grants program recipients with collection of gender disaggregated baseline and outputs level data for civil society grants program which will enable verification of civil society partners' Quality at Implementation reporting and quantitative and qualitative assessment and reporting of results and contribution to desired HIV/AIDS program outcomes; ;
 - (iii) ensure that all data collected and M&E analysis undertaken by HHISP is gender disaggregated;
 - (iv) ensure results and lessons learned from M&E are incorporated into HHISP service provision, civil society and other activities as appropriate;
 - (v) actively participate in external review processes (e.g. independent mid-term and final reviews) as requested by AusAID; and
 - (vi) meet with AusAID as required to discuss progress and any aspects of this Contract.

- (k) **Ownership and Sustainability:** the Contractor shall promote ownership and management of activities by GoPNG and promote sustainability by:
 - (i) facilitating and promoting the transfer of knowledge and skills of Advisers and staff to GoPNG personnel and other key stakeholders; and
 - (ii) ensuring that all HHISP activities are developed through the appropriate sector planning processes and implemented in direct response to these plans.
- (l) **Cross Cutting Development Issues:** with respect to cross cutting development issues, the Contractor shall:
 - (i) ensure that the Accra Agenda and Paris Principles of Aid Effectiveness are followed as appropriate; and
 - (ii) implement AusAID's gender, disability, fraud and anti-corruption, HIV and AIDS, child protection and environment policies including:
 - (A) ensuring the HHISP Annual Plan is actively monitored to ensure it addresses gender, disability, fraud and anti-corruption, HIV and AIDS, child protection, the environment and other cross-cutting development issues.

8. TASKING THE CONTRACTOR

- 8.1 The primary mechanism for operationalising HHISP activities will be Tasking Notes. The HSPC and AusAID will issue Tasking Notes for the HSCDP. HSCDP Tasking Notes may contain health sector elements of HIV/AIDS. AusAID will issue Tasking Notes for the HIV/AIDS civil society grants program and the HIV/AIDS research grants. A Tasking Note is attached at Annex 2 of this Schedule 1.
- 8.2 The respective governance arrangements are detailed in Annex 3 of this Schedule 1.
- 8.3 In the event of ad hoc requests for support from unallocated funds outside the annual planning cycle, the HHISP may be tasked via a Tasking Note to conduct diagnostics and recommend the most appropriate capacity development option and may be tasked to deliver the preferred option.
- 8.4 The Tasking Note template and tasking authorities may be amended from time to time with agreement by AusAID and the Contractor.

9. TRANSITION ARRANGEMENTS

- 9.1 The Contractor must commence all Services on 1 April 2012 unless otherwise stated in this Contract. However, prior to this and from the contract start date (**Part A, Clause 2.2**), there will be a transition period where the Contractor will work with AusAID Port Moresby and the previous HIV/AIDS Program (*Sanap Wantaim*) and Health Program contractors (CBSC). This transition is to support and introduce the Contractor to key GoPNG and other stakeholders, build the Contractor's knowledge of the two programs, transition subcontracts and any other resources to the Contractor and to commence preparation of planning reports.

- 9.2 During this transition period, the Contractor will be responsible for the following:
- (a) Ensure appropriate advisers and staff are available to participate in briefings and planned handover activities;
 - (b) Prepare to provide continuous support for implementing agencies activities, advisers and subcontractors without disruption to their services or financial payments from 1 April 2012;
 - (c) Finalise office and staffing plans (in consultation with AusAID Port Moresby and Contractor staff, as appropriate); and
 - (d) Undertake any other transition tasks as required by AusAID.
- 9.3 During the transition period, AusAID will confirm the grant recipients, subcontracts and advisers that are to be novated to the Contractor by 1 April 2012.
- 9.4 AusAID will extend the current funding agreements with all HIV/AIDS Program civil society grants program recipients to 30 June 2012. The Contractor is required to issue contracts for the period from 1 July 2012 and release funding to the AusAID-identified recipients no later than 1 July 2012, subject to acquittal of 75% of previous tranches and relevant grant contract terms and conditions.
- 9.5 AusAID will provide the Contractor with electronic copies of the following *Sanap Wantaim* operating documents:
- (a) Implementing Partner Funding Contract and reporting templates;
 - (b) Security Plan;
 - (c) Finance and Accounting Procedures Manual. The provisions regarding the imprest account will not apply to this Contract;
 - (d) Procurement Procedures Manual;
 - (e) Logistics and Administration Manual;
 - (f) Human Resources Management Manual; and
 - (g) Communications Strategy.
- 9.6 AusAID may also provide operating documents from CBSC, the previous Health Program. The Contractor may use and amend any operating documents provided by AusAID from previous implementation of both programs as required.

10. REPORTING REQUIREMENTS

- 10.1 The Contractor must also provide the following reports by the date, in the format and the number of copies indicated:
- (a) **HHISP Annual Plan:** to be submitted within three (3) months of the contract start date and annually thereafter. The approved Annual Plans for each program will

determine the HHISP's Annual Plan and be aligned to the Health Sector Capacity Development Plan and AusAID HIV Program Annual Plan (see **Clause 5.3** above) which will identify the specific deliverables the Contractor is responsible for, and clear linkages with GoPNG planning. The annual planning processes for the two programs under HHISP will be done separately by the Contractor but there will be a single HHISP Annual Plan. The HIV/AIDS Program Annual Plan will be approved by AusAID and the NAC at the start of the PNG fiscal year. The annual planning process for HSCDP will be done in consultation with the relevant provinces and NDoH and will contribute to the broader health sector annual Capacity Development Plan.

- (b) The single HHISP Annual Plan will include separate components/sections for HSCDP and the HIV/AIDS Program which can be provided separately to NDoH and NAC/S separately for consideration. The single HHISP Annual Plan will allow the Contractor to manage one set of financial and human resources.
- (c) The Annual Plan must succinctly identify the key activities, outputs and short-term results for both programs and detail the level of resources needed to effectively support Program activities.
- (d) The Annual Plan must include:
 - (i) an Annual Program Timetable consistent with Health and HIV/AIDS Sector Plans clearly identifying all milestones in program planning, authorisation, implementation and reporting and agreed with both HSPC and NAC; and
 - (ii) an Initial Cash Flow Projection.
- (e) **Program Performance Reports:**
 - (i) On a six-monthly basis, **Implementation Performance Reports** for HSCDP and HIV/AIDS Program are to be submitted to AusAID, HSPC and NAC. These reports should be focused on implementation progress and identify any key issues;
 - (ii) On an annual basis, **M&E Performance Reports** for HSCDP and HIV/AIDS Program are to be submitted to AusAID, HSPC and NAC. These reports should focus specifically on progress against stated activities, outputs and results to be achieved in that year, and their contribution to medium-term outcomes.
- (f) **Financial Reports:**
 - (i) **Monthly Financial Reports** must show the summary and details of HHISP monthly finances and any expected changes to the annual Cash Flow Projection. This is to be prepared and submitted to AusAID. The first Report is due one month from the contract start date and monthly thereafter;
 - (ii) **Six-monthly Financial Reports** must contain the status of HHISP finances to be submitted as an annex to the Implementation Performance Reports outlined in **Clause 10.1(e)(i)** above.

- (g) **Program Procedures Manuals:** draft Program Procedures Manuals, including but not limited to, the Security Manual, Human Resources and Administration Manual, Financial and Accounting Procedures Manual, Procurement Procedures Manual and Logistics and Administration Manual, within three (3) months of the contract start date. The Manuals must include a Reporting Protocol to inform the HHISP of emerging issues, including performance reporting of partners and advisers and to be approved and signed-off on by AusAID. The Manuals must be reviewed alongside existing AusAID guidance, including, but not limited to, the *Use of Advisors in the Australian Aid Program – Operational Policy* and the *Adviser Remuneration Framework*. The Manuals must be finalised for use no later than six (6) months after the contract start date.
- (h) **Tasking Note Completion Reports:** to be completed following completion of each Tasking Note. This is to be submitted within one week of completion of the assigned task.
- (i) **Exception Reports:** containing urgent or emerging items, or any non-performing implementation partners or advisers or issue that may impact adversely on the HHISP. Exception Reports are to be submitted to AusAID and the HSPC, submitted in accordance with the Reporting Protocol as outlined in Program Procedures Manuals and must be submitted as soon as issues arise.
- (j) AusAID may request changes to all reports and resubmission as required.

10.2 All reports must:

- (a) be provided in accordance with the specification under the Standard Conditions Clause titled Reports;
- (b) be accurate and not misleading in any respect;
- (c) be prepared as directed in writing by AusAID;
- (d) allow AusAID 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; and
- (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.

11. **CONTRACTOR PERFORMANCE ASSESSMENT**

Assessment

- 11.1 The Contractor will be assessed by AusAID every six (6) months from the Contract Start Date using the assessment form at **Schedule 8**.

- 11.2 The criteria used to assess the Contractor's performance are detailed in **Schedule 8**. In revising assessment criteria and in making assessments of the Contractor's performance AusAID will consult with GoPNG and the Contractor as appropriate. Performance ratings will not be averaged.
- 11.3 At the conclusion of the Six-monthly review AusAID will notify the Contractor of the performance assessment outcomes. Where the Contractor receives two (2) performance assessments in a row in which the ranking is "unsatisfactory rating on two (2) or more criterion" for each assessment, AusAID may conduct an additional performance assessment. The additional assessment will be conducted two months after the second of the two (2) unsatisfactory performance assessments. If the additional assessment determines that the Contractor's performance is still rated "unsatisfactory rating on more than one (1) criterion", AusAID may terminate the Contract in accordance with Clause 32 of Part B of the Contract.

Disputes

- 11.4 In the event of a dispute between AusAID and the Contractor over the Contractor's performance, the standard Dispute Resolution Clause of the Contract (**Clause 40 of Part B**) will be utilised.

LIST OF ANNEXES

1. Terms of Reference for Key Personnel Positions
2. Model Tasking Note
3. Governance Arrangements for the HIV/AIDS and Health Programs

HEALTH AND HIV/AIDS IMPLEMENTATION SERVICE PROVIDER

(HHISP) DIRECTOR

Job Level and Professional Discipline Category: C4

Reports to: AusAID Program Directors of Health and HIV/AIDS

Location: Port Moresby, Papua New Guinea, with travel to priority provinces

Duration: Full-time

Position Description:

The HHISP Director will be responsible for all operational aspects of the HHISP team's outputs and management of capacity building assistance, Technical Assistance (TA), grants and research and supply key deliverables to achieving the goals of the HSCDP and HIV/AIDS Programs. The HHISP Director will be the principal liaison point between the Contractor, AusAID Health and HIV Program Directors and other stakeholders (such as the Government of Papua New Guinea at national and provincial levels and civil society partners). The HHISP Director will be ultimately responsible for the performance of both the HHISP team and individual HIV Advisors who are based in the HHISP office with clear accountability to performance management of all aspects of the HHISP Contract.

Key Responsibilities and Tasks:

Team management

- a) Ensure timely and effective mobilisation of the HHISP staff, offices and support facilities including logistics and security;
- b) Create and maintain a positive, supportive and team focused work environment;
- c) Lead the HHISP team and monitor team members' and HIV advisers' (based in HHISP office) performance in their area of responsibility;
- d) Manage performance related matters assertively, promptly and fairly and document these;
- e) Establish collegial relationships between HHISP team, the AusAID Health and HIV Program teams and technical advisers including regular communications, meetings, workshops and information sharing; and
- f) Establish effective and efficient working relationships with the HHISP stakeholders (including the National Department of Health, National AIDS Council Secretariat, provincial health authorities, civil society grant recipients and private sector) to ensure that roles and responsibilities are understood.

Overall HHISP management

- a) Manage in-country operational performance and regular communications with the AusAID Health and HIV Program Directors on proposed plans, procedures, systems and deficiencies requiring remedial action;
- b) Provide timely advice to the AusAID Health and HIV Program Directors on program implementation matters and provide regular updates on program implementation;
- c) Provide prompt and timely responses to all Tasking Notes, supported by regular status updates and financial reports;

- d) Maintain an Automated Registry of Tasking Notes to support HHISP Quarterly Reviews;
- e) Maintain a Quality At Implementation database for HIV/AIDS civil society grants linked to the Automated Registry of Tasking Notes that captures all performance reports for grants, advisers, and activities managed by HHISP;
- f) Provide services in accordance with performance criteria, as set out in Tasking Notes;
- g) Ensure the HHISP Annual Plan is aligned with, and contributes directly towards, AusAID Health and HIV Program Annual Plans;
- h) Address AusAID's gender policy and approach to addressing violence against women appropriately in all HHISP activities;
- i) Prepare Program Procedures Manuals in accordance with Schedule 1 (Scope of Services) and consistent with AusAID guidelines;
- j) Develop Exception Reporting protocols to address any urgent and emerging issues in a manner consistent with the governance structures for both Health & HIV Programs;
- k) Provide a Performance Assessment Framework (using AusAID template), Risk Management Strategy and Communications Strategy;
- l) Implement approved plans and procedures ensuring quality assurance processes and strategies are adopted; and
- m) Ensure availability, participation and cooperation in reviews, audit or other Program review endorsed by AusAID.

Capacity development and research

- a) Ensure effective contribution to AusAID capacity diagnostics and options analysis and identification of most appropriate forms of capacity building to meet needs; and
- b) Ensure high quality targeted capacity development support in accordance with AusAID operational guidance.

Skill Requirements:

- a) Demonstrated professional leadership and high level management experience of at least 10-15 years and a proven ability to lead and manage a team of professionals in an international development context;
- b) Demonstrated experience in design and implementation of capacity development approaches;
- c) Strong knowledge and experience in areas of Health and HIV/AIDS;
- d) Demonstrated experience in working with a range of development modalities and development partners;
- e) Links with Australian and international professional networks in Health and HIV;
- f) Experience of working in PNG and/or the Pacific and of partnership approaches;
- g) Experience in design and implementation of quantitative and qualitative approaches to monitoring of results; and
- h) Key personal attributes include:
 - o Collaborative and partnership style of working;
 - o Flexibility and responsiveness;
 - o Team leader and team builder;
 - o High level problem solving skills;
 - o Highest level of integrity and ethics; and
 - o Excellent communications skills.

HSCDP (HEALTH) COORDINATOR

Job Level and Professional Discipline Category: C3

Reports to: HHISP Director, AusAID Program Directors of Health and HIV/AIDS

Location: Port Moresby, Papua New Guinea

Duration: Full-time

Position Description:

The HSCDP (Health) Coordinator will manage and coordinate high level HHISP services to deliver operational solutions for the efficient and effective use of AusAID resources (ensuring value for money) to maximize achievement of Health and HIV Program results and incorporate health considerations into strategic and operational program activities.

Key Responsibilities and Tasks:

- a) Provide prompt and timely responses to all Tasking Notes, supported by regular status updates. Record the responsible Tasking Note adviser and HHISP support staff in the Tasking Note Registry and the completion date and regularly monitor Tasking Note status for regular updates and reporting;
- b) Coordinate and manage Health capacity building, technical assistance and grants and research management in accordance with the Adviser Remuneration Framework and Commonwealth Grants Guidelines;
- c) Be the operational link between the AusAID Health Program and the HHISP in respect of any issues on the health side of the program requiring attention by the AusAID Programs;
- d) Provide timely advice to the AusAID Health and HIV teams on program implementation matters and provide regular updates on program implementation;
- e) Attend meetings with the AusAID Health and HIV teams as required;
- f) Coordinate the HSCDP components of the HHISP Annual Plan following AusAID approval;
- g) Provide support to the HHISP Director to ensure the Contractor's responsibilities are met in supporting the AusAID Programs in the implementation of activities in a timely manner, within budget framework and according to AusAID Program policies and procedures;
- h) Ensure timely contribution to reporting on the health program; and
- i) Report regularly to the AusAID Health Program Office, in line with contractual requirements.

Skill Requirements:

- a) Demonstrated management experience (5-10 years) in managing a team of professionals including performance management;
- b) Demonstrated experience in sourcing and managing high quality capacity building/technical assistance;
- c) Demonstrated experience in managing quality processes;
- d) Demonstrated experience in grants management; and
- e) Key personal attributes include:
 - Collaborative and partnership style of working;
 - Strong communication and liaison skills;
 - Flexibility and responsiveness;

- Good management and coordination skills;
- Team building and coordination; and
- High level problem solving skills;
- Highest level of integrity and ethics.

HIV/AIDS PROGRAM COORDINATOR

Job Level and Professional Discipline Category: C3

Reports to: HHISP Director, AusAID Program Directors of Health and HIV/AIDS

Location: Port Moresby, Papua New Guinea

Duration: Full-time

Position Description:

The HIV/AIDS Coordinator will manage and coordinate HHISP services to deliver operational solutions for the efficient and effective use of AusAID resources (ensuring value for money) to maximize achievement of Health and HIV Program results and incorporate HIV/AIDS considerations into strategic and operational program activities.

Key Responsibilities and Tasks:

- a) Provide prompt and timely responses to all Tasking Notes, supported by regular status updates. Record the responsible adviser and HHISP support staff in the Tasking Note Registry and the completion date and regularly monitor Tasking Note status for regular updates and reporting;
- b) Coordinate and manage HIV/AIDS capacity building/technical assistance and grants and research management in accordance with the Adviser Remuneration Framework;
- c) Ensure effective and timely management of HIV civil society and research grants and ISP staff assisting with management of these grant programs in accordance with the Commonwealth Grants Guidelines;
- d) Be the operational link between the AusAID HIV Program and the HHISP in respect of any issues on the HIV side of the program requiring attention by the AusAID Programs;
- e) Provide timely advice to the AusAID Health and HIV teams on program implementation matters and provide regular updates on program implementation;
- f) Attend meetings with the AusAID Health and HIV teams as required;
- g) Coordinate the HIV components of the HHISP Annual Plan following AusAID approval;
- h) Provide support to the HHISP Director to ensure the Contractor's responsibilities are met in supporting the AusAID Programs in the implementation of activities in a timely manner, within budget framework and according to AusAID Program policies and procedures;
- i) Ensure timely contribution to reporting on the HIV program; and
- j) Report regularly to the AusAID Health Program Office, in line with contractual requirements.

Skill Requirements:

- a) Demonstrated management experience (5-10 years) in managing a team of professionals including performance management;
- b) Demonstrated experience in sourcing and managing high quality capacity building/technical assistance;
- c) Demonstrated experience in managing quality processes;
- d) Demonstrated experience in grants management; and
- e) Key personal attributes include:
 - Collaborative and partnership style of working;
 - Strong communication and liaison skills;
 - Flexibility and responsiveness;
 - Good management and coordination skills;
 - Team building and coordination; and
 - High level problem solving skills;
 - Highest level of integrity and ethics.

FINANCE AND AUDIT MANAGEMENT SPECIALIST

Job Level and Professional Discipline Category: C3

Reports to: HHISP Director, AusAID Program Directors of Health and HIV/AIDS

Location: Port Moresby, Papua New Guinea

Duration: Full-time

Position Description:

The Finance and Audit Management Specialist will be responsible for providing overall advice, supervision and leadership to establish and maintain financial, audit, contracting, general procurement, accounting and reporting systems for HHISP's non-government partners and co-funded agencies and activities. In conjunction with the HHISP Health and HIV Coordinators, the Finance and Audit Management Specialist will work closely with AusAID and other key stakeholders regarding the financial reporting, audit and risk management requirements of the HHISP.

Key Responsibilities and Tasks:

Team management

- a) Facilitate effective and efficient working relationships with HHISP stakeholders to ensure that roles, responsibilities and outputs within the finance and audit functions are understood and achieved;
- b) Contribute to a positive, supportive and team focused work environment; and
- c) Ensure other HHISP finance staff are up-to-date with knowledge and skills in order to perform their roles effectively and efficiently.

Overall HHISP financial and audit management

- a) Ensure that all HHISP activities and grants conform with the principles of the Commonwealth Grant Guidelines, the Commonwealth Procurement Guidelines, good practice in sub-contracting and the AusAID Fraud Policy;
- b) Ensure prompt reporting and management of fraud cases in accordance with the AusAID Fraud Policy and through the Exception Reporting protocols;
- c) Facilitate the implementation of appropriate programs for internal and external audit of funded partners, including preparation of terms of reference and spot-check programs and schedules;
- d) Participate and cooperate in any reviews or audits arranged by AusAID in relation the HHISP;
- e) Communicate audit findings, procedures and compliance issues clearly to HHISP partners, stakeholders and AusAID as requested, and address all issues in a timely manner (and no later than 3 months post audit);
- f) Take appropriate remedial action including capacity building to rectify any non-compliance and/or deficiencies;
- g) Maintain financial oversight of NGOs and other bodies funded by the HHISP to ensure effective use of HHISP resources;
- h) Contribute to the development and implementation of the HHISP Risk Management Strategy;
- i) Conduct a financial systems assessment to be included in Quality at Entry assessments of potential and funded partners and provide recommendations on appropriate capacity building assistance;
- j) On request from the NDoH and/or NACS and upon approval by AusAID, provide financial management advice or assistance to NDoH and/or NACS;
- k) Manage and update the Financial and Accounting Procedures Manual to the satisfaction of the HHISP Director and AusAID;
- l) Develop and manage budgets for each Annual Implementation Plan, Program Office establishment and operations for review and approval by the HHISP Director and AusAID Health and HIV Program Directors;
- m) Contribute to HHISP Quarterly and Annual reports conforming to AusGUIDE;
- n) Ensure timely and accurate reporting of grants financial administration and use by recipients to AusAID;
- o) Update the Tasking Note Registry for all progress on financial management activities and support the HHISP Director with finance inputs to quarterly, six-monthly and annual reporting.

Skill Requirements:

- a) Relevant tertiary qualifications in accounting and auditing;
- b) More than ten years relevant experience in financial, audit and risk management including of non-government organizations or similar enterprises
- c) Understanding of the Public Finance Management Act and experience in the PNG public sector, or the ability to quickly acquire that knowledge;
- d) Understanding of the links between financial audit and broader performance audit and value for money;
- e) Experience in the development and implementation of financial systems in complex and high risk environments;

- f) Experience working in management or advisory positions in an international development setting;
- g) Demonstrated understanding of the Commonwealth Grant Guidelines, Commonwealth Procurement Guidelines, the Central Supply and Tender Board and PNG Department of Finance requirements and regulations;
- h) High level skills in capacity building of counterparts and other stakeholders including civil society in finance and audit;
- i) Experience working in a cultural setting, specifically in developing countries or environments;
- j) Experience in consultation with senior management, preferably in the PNG public sector and with other donor representatives; and
- k) Key personal attributes include:
 - o Collaborative and partnership style of working;
 - o Strong communication skills;
 - o Flexibility and responsiveness;
 - o Team-based approaches;
 - o High level problem solving skills; and
 - o Highest level of integrity and ethics.

HEALTH INSTITUTIONS AND SYSTEMS SPECIALIST

Job Level and Professional Discipline Category: C3

Reports to: HHISP Director, AusAID Program Directors of Health and HIV/AIDS

Location: Port Moresby, Papua New Guinea

Duration: Full-time

Position Description:

The Health Institutions and Systems Specialist will be responsible for capacity diagnostic activities to determine priority areas for the HHISP.

Key Responsibilities and Tasks:

- a) Facilitate capacity diagnostics and analyses in response to AusAID Tasking Notes to recommend the most appropriate form of capacity building/technical assistance in the health and HIV/AIDS field to meet needs;
- b) Source and mobilise appropriate capacity building/technical assistance in response to AusAID Tasking Notes and in accordance with the Adviser Remuneration Framework within agreed timeframes;
- c) Report regularly to the AusAID Health Program office, in line with contractual requirements.

Skill Requirements:

- a) Demonstrated project/program management experience (10+ years) in an international development context;
- b) Experience in working in PNG and/or the Pacific and in partnership approaches;

- c) Experience in the use of quantitative and qualitative approaches to monitoring of results;
- d) Demonstrated experience in design and implementation of capacity development approaches;
- e) Strong knowledge and experience in areas of technical understanding of Health and HIV/AIDS; and
- f) Key personal attributes include:
 - Collaborative and partnership style of working;
 - Flexibility and responsiveness;
 - Team leader and team builder;
 - High level problem solving skills;
 - Highest level of integrity and ethics; and
 - Excellent communications skills.

HUMAN RESOURCES DEVELOPMENT MANAGER

Job Level and Professional Discipline Category: B3

Reports to: HHISP Director, AusAID Program Directors of Health and HIV/AIDS

Location: Port Moresby, Papua New Guinea

Duration: Full-time

Position Description:

The Human Resources Development Manager will be responsible for overseeing the Human Resources (HR) Development management activities and HR staff of the HHISP, working in close consultation with the HHISP team.

Key Responsibilities and Tasks:

- a) Identify the Human Resources (HR) requirements for the HHISP and develop a recruitment plan;
- b) Ensure the timely identification, recruitment, installation, security and logistics support and on-going human resources and performance management for any HHISP personnel, consistent with terms and conditions under the Adviser Remuneration Framework and AusAID's *Use of Advisers in the Australian Aid Program: Operational Policy*;
- c) Identify and sub-contract suitable research, twinning and training organisations;
- d) Identify and sub-contract suitable systems diagnostic and process improvement expertise;
- e) Coordinate all locally engaged recruitment from advertising to mobilization and orientation to demobilization and exit;
- f) Liaise with the HHISP team and senior health sector partners to develop, finalise and obtain agreement on terms of reference and conduct interviews with health sector partners;
- g) Coordinate and liaise with the HHISP team on visa processing for all international advisers and core personnel;
- h) Coordinate exit interviews at the conclusion of international adviser contracts;

- i) Provide oversight and liaise with the HHISP team to manage the smooth demobilization of exiting international advisers;
- j) Promote a supportive work environment for all technical advisers;
- k) Provide support to the HHISP Director on any performance issues that may arise;
- l) Liaise with the HHISP team for technical training and support to assist staff to remain up-to-date with technical knowledge and skills in order for them to perform well in their roles;
- m) Provide fortnightly HR updates to all HHISP personnel and revise and publish a HR and Administration Manual at least once a year;
- n) Support the HHISP Director where required on other activities related to HHISP administration and assistance such as the contractor performance, internal reviews and other AusAID requests; and
- o) Support and facilitate, where appropriate, HIV mainstreaming and gender development.

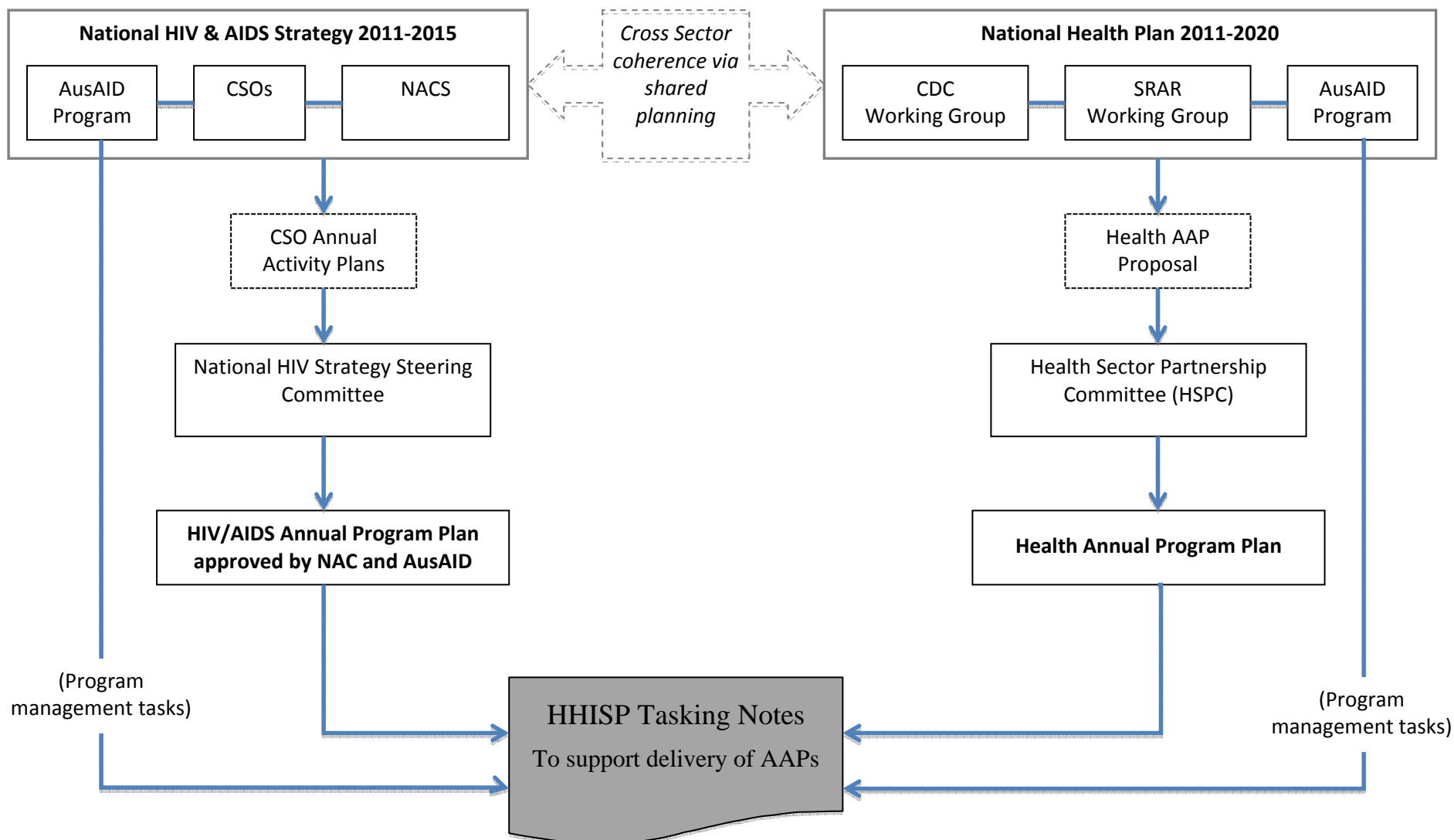
Skill Requirements:

- g) Demonstrated experience (5-10 years) in managing a team of professionals including performance management;
- h) Demonstrated experience in sourcing and managing high quality capacity building/technical assistance;
- i) Demonstrated experience in HR; and
- j) Key personal attributes include:
 - o Collaborative and partnership style of working;
 - o Strong communication and liaison skills;
 - o Flexibility and responsiveness;
 - o Good management and coordination skills;
 - o Team building and coordination; and
 - o High level problem solving skills;
 - o Highest level of integrity and ethics.

Model Tasking Note

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Governance Arrangements for the HIV/AIDS and Health Programs



SCHEDULE 2 - BASIS OF PAYMENT

Papua New Guinea Health and HIV/AIDS Implementation Services Provider

1. MAXIMUM AMOUNT PAYABLE

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

1.2 The maximum amount payable is comprised of the following elements:

- (a) **Management Fees**, in accordance with **Clause 2** of this Schedule 2, up to a maximum of **AUDXXX**;
- (b) **Reimbursable Costs** as follows:
 - (i) Long Term Adviser Costs, in accordance with **Clause 4** of this Schedule 2, up to a maximum of **AUDXXX**;
 - (ii) Short Term Adviser Costs, in accordance with **Clause 5** of this Schedule 2 up to a maximum of **AUDXXX**;
 - (iii) Other Personnel Costs, in accordance with **Clause 6** of this Schedule 2, up to a maximum of **AUDXXX**;
 - (iv) Adviser Support Costs, in accordance with **Clause 7** of this Schedule 2, up to a maximum of **AUDXXX**;
 - (v) Operational Costs, in accordance with **Clause 8** of this Schedule 2, up to a maximum of **AUDXXX**;
 - (vi) Program Costs, in accordance with **Clause 9** of this Schedule 2, up to a maximum of **AUDXXX**; and
 - (vii) Grant Costs, in accordance with **Clause 10** of this Schedule 2, up to a maximum of **AUDXXX**.

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

2. MANAGEMENT FEES

2.1 The maximum amount payable to the Contractor in Management Fees shall not exceed the sum of **AUDXXX** (excluding GST).

2.2 The Management Fee is comprised of the following:

- (a) profits, including commercial margins and mark-up for personnel and project management;
- (b) financial management costs, including the cost of an independent annual audit of the Project and financing costs, if any;

- (c) costs of Contractor administrative and head office staff, including the cost of a Contractor Representative, if any;
- (d) costs associated with establishing and maintaining premises and equipment, including utilities;
- (e) insurance costs as required by this Contract, but exclusive of the costs of medical insurance for Advisers;
- (f) taxation, as applicable;
- (g) costs of complying with the Contractor's reporting and liaison obligations under this Contract;
- (h) costs associated with all personnel briefings in Australia or in-country;
- (i) costs associated with any subcontracting and procurement of goods and services;
- (j) costs, including domestic and international travel, accommodation, per diems, and local transport costs where required for Contractor Head Office personnel;
- (k) any other overheads required to perform the Services in accordance with this Contract;
- (l) all escalators for the term of this Contract; and
- (m) any allowance for risks and contingencies.

2.3 AusAID shall pay the Management Fees as specified in **Table 1** of this Schedule 2 as follows within thirty (30) days of its receipt of a correctly rendered invoice:

- (a) **Performance Payments:** At the end of each six (6) month period and subject to receiving a rating of 4 to 6 as part of the Contractor's Performance Assessment in accordance with Schedule 8, up to twenty per cent (20%) of the Management Fee for the preceding six (6) months will be paid. This amount, totalling **AUDXXX** ([insert number of] payments of **AUDXXX**), will be payable based on Schedule 8. If a rating of 1 to 3 is given for three or more of the Assessment Criteria, AusAID will withhold fifty per cent (50%) of the Performance Payment (i.e. 10% of the total Management Fee payable for the six month period);
- (b) **Milestone Payments:** Eighty per cent (80%) of the Management Fee (**AUDXXX**) will be payable on the achievement of milestones as set out in **Table 2** of this Schedule 2.

3. REIMBURSABLE COSTS

3.1 The maximum amount payable by AusAID to the Contractor is **AUDXXX** (excluding GST) for Reimbursable Costs.

3.2 Reimbursable Costs detailed in **Table 3** of this Schedule 2 will be paid by AusAID to the Contractor on a monthly basis and subject to a correctly rendered invoice. The Contractor must retain all receipts and all relevant documents such as time sheets for audit purposes.

- 3.3 Specified upper limits for each reimbursable component shall not be exceeded without prior written approval from AusAID.

4. **LONG TERM ADVISER COSTS**

- 4.1 AusAID shall reimburse the Contractor at actual cost up to a maximum of **AUDXXX** (excluding GST) for Long Term Adviser Costs.

- 4.2 For each Long Term Adviser, AusAID shall pay the Contractor in accordance with **Table 4** of this Schedule 2, monthly on a reimbursable basis in arrears, the following items:

- (a) the Monthly Remuneration Rate in accordance with the Job Level and Professional Discipline Category specified in the position Terms of Reference and calculated in accordance with the Adviser Remuneration Framework. The Monthly Remuneration Rate shall be:
 - (i) inclusive of base salary;
 - (ii) inclusive of superannuation levy, if any;
 - (iii) inclusive of paid annual leave allowances of up to twenty (20) days per annum, to accrue on a pro rata basis per twelve (12) months' continuous engagement on the Project;
 - (iv) inclusive of any locally recognised public holidays; and
 - (v) exclusive of any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor;
- (b) Mobility Allowance, if any; and
- (c) Special Location Allowance, if any.

- 4.3 Leave accrued during the assignment for Long Term Advisers shall be deemed to be taken in the 12 month period it falls due and cannot be accumulated or paid out.

5. **SHORT TERM ADVISER COSTS**

- 5.1 AusAID shall reimburse the Contractor at actual cost up to a maximum of **AUDXXX** (excluding GST) for Short Term Adviser Costs.

- 5.2 For each Short Term Adviser, AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears in accordance with **Table 5** of this Schedule 2, the following items:

- (a) the Daily Remuneration Rate in accordance with the Job Level and Professional Discipline Category specified in the position Terms of Reference and calculated in accordance with the Adviser Remuneration Framework. The Daily Remuneration Rate shall be:
 - (i) inclusive of base salary; and
 - (ii) inclusive of superannuation levy, if any; BUT

- (iii) exclusive of any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor.

5.3 If AusAID decides to exercise its option under Clause 2.3 of Part A Project Specific Contract Conditions the rates specified in **Table 5** of this Schedule 2 will be applied. All escalators have already been applied.

6. **OTHER PERSONNEL COSTS**

6.1 AusAID shall reimburse the Contractor at actual cost up to a maximum of **AUDXXX** (excluding GST) for Other Personnel Costs related to personnel **not** classified by the Adviser Remuneration Framework.

6.2 AusAID shall pay the Contractor in accordance with **Table 6** of this Schedule 2, monthly on a reimbursable basis in arrears for Other Personnel Costs including the following items:

- (a) Monthly Remuneration Rate. This rate shall be:
 - (i) inclusive of base salary and any entitlements in accordance with local labour laws; and
 - (ii) inclusive of all escalators for the term of this Contract; BUT
 - (iii) exclusive of any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor.

7. **ADVISER SUPPORT COSTS**

7.1 AusAID shall reimburse the Contractor at actual cost up to a maximum of **AUDXXX** (excluding GST) for Adviser Support Costs for Long Term and Short Term Advisers.

7.2 AusAID shall pay the Contractor monthly on a reimbursable basis in arrears for Adviser Support Costs including the following items:

- (a) any reasonable costs related to security;
- (b) reasonable costs for medical insurance;
- (c) expenses associated with Housing Costs for Long Term Advisers. Long Term Advisers with spouses or partners who are already in receipt of an expatriate accommodation allowance will not be eligible to reimbursement for Housing Costs;
- (d) fixed, non-acquittable per diems in accordance with the rates agreed by AusAID for the relevant location for Short Term Advisers; and
- (e) mobilisation/demobilisation costs for Long Term Advisers including all reasonable one-off costs associated with mobilisation and demobilisation including any necessary medical clearances and inoculations; uplift of effects; passport and visa costs; storage; and the cost of one return international flight from home location for the Long Term Adviser and dependents.

- 7.3 The cost of any airfares will be reimbursed at the cost of economy class for each flight sector of four (4) hours or less and business class for each flight sector greater than four (4) hours duration. Any travel undertaken at cheaper rates (e.g. discount fares) does not entitle the Contractor to reimbursement of the cost of any higher class of travel. Travel must be via the most direct and cost effective route. A 'flight sector' means from any one flight departure point to any one flight landing point.
- 7.4 Adviser Support Costs will be reimbursed at cost on a monthly basis in arrears within thirty (30) days of AusAID's receipt of a correctly rendered invoice.
- 7.5 Adviser Support Costs for the Option period will be negotiated with the Contractor if AusAID exercises its option under Clause 2.3 of Part A Project Specific Contract Conditions.

8. OPERATIONAL COSTS

- 8.1 The total amount payable for Operational Costs by AusAID to the Contractor shall not exceed the maximum sum of **AUDXXX** (excluding GST).
- 8.2 The Operational Costs are provided to cover the direct costs of running the Support Office.
- 8.3 The Operational Costs comprise the following:
- (a) work related travel and accommodation costs for personnel at the rates agreed with AusAID from time to time;
 - (b) office and utilities costs;
 - (c) office security costs;
 - (d) office domestic and consumable supplies;
 - (e) office telecommunications and internet costs;
 - (f) office equipment minor repairs and maintenance; and
 - (g) vehicles running costs (including but not limited to petrol, servicing and repairs and vehicle insurances).
- 8.4 The Contractor should invoice AusAID monthly for Operational Costs and must retain all receipts for all expenditure items claimed for reimbursement for audit purposes.
- 8.5 The Operational Costs detailed in **Table 7** of this Schedule 2 will be paid within (30) days of AusAID receipt of a correctly rendered invoice.
- 8.6 Funds may be moved within line items in **Table 7** with AusAID's written approval provided the amount in **Clause 8.1** above is not exceeded.
- 8.7 If AusAID decides to exercise its option under Clause 2.3 of Part A Project Specific Contract Conditions the rates in **Table 7** will be used. All escalators have already been applied.

9. **PROGRAM COSTS**

- 9.1 The total amount payable for Program Costs by AusAID to the Contractor shall not exceed the maximum sum of **AUD3,000,000** for the HIV/AIDS Program and **AUD33,600,000** for the HSCDP (excluding GST).
- 9.2 AusAID will reimburse the Contractor, at cost, up to the financial limit specified in **Table 8** of this Schedule 2, for Program Costs.
- 9.3 Specified upper limits as described in **Table 8** shall not be exceeded without prior written approval from AusAID. When expenditure reaches 80% of the limits in any year, the Contractor will advise AusAID of the remaining commitments and whether the upper limits are likely to be exceeded.
- 9.4 Any adviser specified under Program Costs above must be specified in accordance with the Adviser Remuneration Framework and **Clauses 4, 5 and 7** of this Schedule 2.
- 9.5 The Contractor must invoice AusAID monthly for Program Costs and must retain receipts for all items to be reimbursed.
- 9.6 The Program Costs will be paid monthly in arrears within (30) days of AusAID receipt of a correctly rendered invoice.

10. **GRANT COSTS**

- 10.1 AusAID shall reimburse the Contractor at actual cost up to a maximum of **AUD56,900,000** (excluding GST) for Grant Costs (see **Table 8**). AusAID shall pay the Contractor in advance so that grant recipients can be paid by the Contractor in advance. Grant Costs will only be paid on acquittal of previous payments and certification from the Contractor that grant recipients have acquitted funds and met all obligations under their contracts, and within 30 days of its receipt of a correctly rendered invoice.

11. **CLAIMS FOR PAYMENT**

- 11.1 The Contractor's tax invoice must be submitted when due pursuant to this **Schedule 2** in a form identifiable with the Services.
- 11.2 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 this Contract.

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

Chief Finance Officer

Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601

11.4 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

11.5 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>

Table 1: Management Fee

Year	Escalator (%)	Management Fees
Year 1 (1/3/12 – 30/6/12)		
Year 2 (1/7/12 – 30/6/13)		
Year 3 (1/7/13 – 30/6/14)		
Year 4 (1/7/14 – 30/6/15)		
Total (Year 1-4)		
Year 5 (1/7/15 – 30/6/16)		
Year 6 (1/7/16 – 30/6/17)		
Total (Year 5-6) (option period)		
Total (Year 1-6)		

Table 2: Milestone Payments

MS No:	Reference: Schedule 1	Milestone Description	Means of Verification for Payment	Estimated Claim Period	Payment Value (AUD)
1					
2					
3					
4					
5					
6					
7					
8					
9					
Total Milestone Payment Management Fees					

Table 3: Reimbursable Component Costs

REIMBURSABLES COSTS	Upper Limits Year 1 (1/3/12 – 30/6/12) (AUD)	Upper Limits Year 2 (1/7/12 – 30/6/13) (AUD)	Upper Limits Year 3 (1/7/13 – 30/6/14) (AUD)	Upper Limits Year 4 (1/7/14 – 30/6/15) (AUD)	Total Costs (Years 1 to 4) (AUD)
Long Term Adviser Costs (see Clause 4)					
Short Term Adviser Costs (see Clause 5)					
Other Personnel Costs (see Clause 6)					
Advisor Support Costs (See Clause 7)					
Operational Costs (see Clause 8)					
Program Costs (see Clause 9)					
Total Annual Upper Limit					

Table 4: Long Term Adviser Costs

Name and Position	ARF Group & Job Level	Monthly Fee Year 1 - 4 (1/3/12 – 30/6/15) (AUD)	Inputs Year 1 - 4 (Months)	Annual Leave Allowance (up to 20 days per annum) (AUD)	Escalator (to apply once only to any extension period)	Mobility Allowance (if any) (AUD)	Total (Years 1-4) (AUD)
HHISP Director	C4						
HSCDP Health Coordinator	C3						
HIV/AIDS Program Coordinator	C3						
Health Institutions and Systems Specialist	C3						
Finance and Audit Management Specialist	C3						
Human Resources Development Manager	B3						
<i>Tenderers to specify other LTAs as required</i>							
TOTAL							

Table 5: Short Term Adviser Costs

Name and Position	ARF Group & Job Level	Daily Fee Year 1 - 4 (1/3/12 – 30/6/15)	Inputs (Days)	Escalator (to apply once only to any extension period)	Total (Years 1-4)
<i>Tenderers to specify STAs as required</i>					
TOTAL					

Table 6: Other Personnel Costs

Position	Monthly Fee (AUD)	Daily Fee (AUD)	Inputs (Months or days)	Escalator (to apply once only to any extension period)	Total (AUD)
<i>Tenderers to insert rows as required</i>					
Total					

Note that either a daily or monthly fee and inputs apply, not both

Table 7: Operational Costs

OPERATIONAL COSTS	Financial Limitation (AUD)
Work related Travel	
Accommodation	
Office Lease and Utilities	
Office Security	
Office Domestic and Consumable Supplies	
Office Telecommunications and Internet	
Office Equipment Minor Repairs and Maintenance	
Vehicles Running Costs	
TOTAL	

Table 8: Program and Grants Costs

Item	Unit	No. of Units	Cost per Unit (AUD)	Financial Limitation (AUD)
HIV/AIDS				
Unallocated technical assistance				3,000,000
Civil Society grants, research and information, education and communications				48,500,000
Health				
Unallocated technical assistance				27,300,000
Research				6,300,000
HSCDP grants				8,400,000
Total Costs				93,500,000

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**”).

BY [Insert name and address of Recipient] (the “**Recipient**”).

RECITALS

1. AusAID and **Contractor’s Name** (the “**Contractor**”) have entered into a Contract for the purpose of a project in **Country**.
2. The Recipient has been engaged by the Contractor to work on the project.
3. The Recipient will, in carrying out that work, be given access to Confidential Information.
4. AusAID requires the Recipient to enter into this Deed in relation to use of Confidential Information.

THE RECIPIENT DECLARES AS FOLLOWS:

1. INTERPRETATION

- 1.1 In this Deed, unless the contrary intention appears:

“**Confidential Information**” means information that:

- (a) is designated by AusAID as confidential; or
- (b) the Recipient knows or ought to know is confidential,

but does not include information which:

- (c) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality; or

“**Personal Information**” has the same meaning as in the *Privacy Act 1988*.

2. CONFIDENTIAL INFORMATION

- 2.1 The Recipient acknowledges and agrees that:

- (a) the Confidential Information is confidential and that any Confidential Information disclosed to the Recipient is disclosed to the Recipient only pursuant to the terms of this undertaking;
- (b) it must not, other than with the prior written approval of the Commonwealth, use, disclose, divulge or deal with any Confidential Information, nor allow any act, matter or thing to be done or occur whereby any Confidential Information may be

- ### 3. RESTRICTIONS ON USE

- (a) keep the Confidential Information, and all documents containing, or referring to, any Confidential Information, under effective control of the Recipient;
- (b) not use or reproduce any document containing, or referring to, any Confidential Information, nor allow any other person to use or reproduce any such document;
- (c) take all reasonable steps to ensure that Confidential Information, and all documents containing, or referring to, any Confidential Information, are protected at all times from any unauthorised use, disclosure or access and immediately notify the Commonwealth if the Recipient becomes aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (d) if required at any time by the Commonwealth to do so, deliver up to the Commonwealth, or destroy, all Confidential Information, including all documents containing, or referring to, any Confidential Information, in the possession, custody or control of the Recipient; and
- (e) if required by the Commonwealth:
 - (i) permit the Commonwealth reasonable access to the Recipient's premises and information management systems to ensure or check compliance with this undertaking; and
 - (ii) provide to the Commonwealth a statutory declaration of an officer of the Recipient stating that **Clause 3.1(e)** has been complied with.

4.1 The Recipient agrees, with respect to all Personal Information acquired by it during the performance of the Contract, to abide by the provisions of the *Privacy Act 1988* as if the Recipient were an “Agency” as defined by that Act.

5.1 The obligations in this Deed are perpetual.

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

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 (“**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 32** and **33** 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 32** and **33** 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 32 or 33** of the Contract.

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

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

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

4. **RELEASE**

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

5. **FURTHER ASSURANCES**

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

6. DISCHARGE

- 6.1 Neither the Subcontractor nor the Contractor are discharged or released or excused from this Deed by an arrangement made between the Contractor and the Subcontractor prior to the issue of a notice of substitution with, by any change to the Subcontract, or by any forbearance whether as to payment, time or otherwise.
- 6.2 The Contractor undertakes to notify AusAID of any alterations to the Subcontract or other matter referred to in **Clause 3** of this Schedule. A failure of the Contractor to notify AusAID under this clause does not alter the Subcontractor's obligations under this Deed.
- 6.3 This Deed by the Subcontractor for AusAID to assume the obligations of the Contractor is discharged in relation to the Subcontract only on completion by the Subcontractor of all its obligations under the Subcontract in respect of the Subcontractor Services, or, in the event of the issue of a notice of substitution, on the due and proper performance of the Subcontract by the Subcontractor.
- 6.4 The obligations of AusAID under this Deed in its application to the Subcontract must not exceed the obligations of the Contractor under the Subcontract.

7. NOTICES

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

Address of Party

- 7.2 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: **Contractor's Name**
Attention:
Address: **Contractor's Address**

Facsimile: **Contractor's Fax**
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**

Counterparts

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

Attorneys

- 10.2 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.

Further Assurance

- 10.3 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.

Assignment

- 10.4 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 (“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 [] (“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 [to be inserted] 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. 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

Signature of witness

Name of attorney
(*Print*)

Name of witness
(*Print*)

Date of power of attorney

SCHEDULE 6 – PERFORMANCE GUARANTEE

THIS DEED OF GUARANTEE is made the [] day of [] 20 []
BETWEEN **COMMONWEALTH OF AUSTRALIA** represented by the
Australian Agency for International Development (**'AusAID'**)
AND [] ABN []
(**'Guarantor'**)

RECITALS

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

AGREEMENT

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

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

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

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

.....
Name of witness (print)

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

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

SCHEDULE 7 – CONFIDENTIAL INFORMATION

Confidential Information identified by AusAID

Description	Period of Confidentiality
<insert clause reference and brief description or insert “not applicable”>	

Confidential Information identified by Contractor

Description	Period of Confidentiality
<insert clause reference and brief description or insert “not applicable”>	

SCHEDULE 8 –PERFORMANCE ASSESSMENT

Schedule 8A - CONTRACTOR PERFORMANCE ASSESSMENT

NOTE TO USER: Contractor Performance Assessments are mandatory for all aid-related AusAID contracts valued at AUD10,000 or more and must be completed either annually (for contracts longer than one year) or on completion (for shorter contracts). This form is intended to assist and record the assessment of a contractor firm. It is intended for completion by AusAID staff only.

The Contractor and Adviser Performance Assessments Guideline provides further information on this process, including who in AusAID should conduct the assessment.

Do not use this form to assess the performance of an individual Adviser. A separate Adviser Performance Assessment form for these assessments is available [here](#).

The completed Contractor Assessment must be provided to the Contractor and the Contractor must be provided at least 28 days in which to make written comment and sign the form. Where a Contractor disputes any part of the assessment, refer to the section “Disputes” below.

There are 18 questions in the assessment sheet. Only answer questions that are relevant for the contract under assessment. To obtain an average score in the final question, add all scores together and divide by the number of questions answered. If a score for all 18 questions was entered, the entry for Overall Rating would be the total divided by 18. Answers of “N/A” are not counted – for example, if a score was entered for 14 questions and “N/A” for four, the Overall Rating would be the total divided by 14.

The original of the completed assessment can be kept on the activity file. A copy must be sent to ASPP either by internal mail or to contractor.performance@ausaid.gov.au

NOTE AND PRIVACY STATEMENT FOR CONTRACTOR: You are required to sign this assessment within 28 days of receipt, and are entitled to respond to any issues raised in it. Any responses must be in writing and returned to the AusAID within 28 days together with the signed copy of the assessment. Failure to respond within 28 days is deemed to indicate your acceptance of the assessment.

AusAID may seek the views of Partner Government personnel involved in the activity in making this assessment.

A copy of this assessment and your response (if you choose to make one) will be provided to the relevant section of AusAID for placement on your performance file and on a performance register available to AusAID staff. Information from the assessment, including your response, can be used by AusAID as part of any future contractor selection process including consideration by Tender Assessment Panels convened by AusAID to evaluate tender proposals. The assessment is considered current for a period of five (5) years from the date of signature and may be referred to within that period.

Information from the assessment, including your response, may also be provided to relevant Partner Government personnel, only for the purpose of a Partner Government managed procurement exercise using AusAID funds.

A consistent record of *Very Good* to *Outstanding* performance will be considered highly in future AusAID adviser selections.

A record of underperformance (defined as an overall rating of “Less than Satisfactory” or below in any AusAID activity over the past five (5) years or equivalent assessments from other referees/clients) will be taken into account if you are considered for future work with AusAID.

DISPUTES: Where contractor disputes any ratings or comments, the AusAID Agreement Manager will escalate the assessment to the responsible AusAID Director or Counsellor. AusAID will make all reasonable attempts to resolve disputes at this level before the assessment is finalised. AusAID’s complaints policy may be used where attempts to resolve disputes are unsuccessful.

Further information on handling disputes is available for AusAID staff in the Contractor and Adviser Performance Assessments Guideline.

CONTRACTOR PERFORMANCE ASSESSMENT

Contractor/Project:	
Agreement No.:	Activity:
Activity Manager:	Country:
Contract Period from until	Date of Assessment:
Nature of Assignment:	

Contractor Performance Ratings:

1	<i>Very Weak</i>	Serious underperformance, not meeting most contract/terms of reference deliverables
2	<i>Weak</i>	Major effort needed to improve delivery of core responsibilities identified in the contract/terms of reference; AusAID very hands on in managing areas where contractor is not delivering
3	<i>Less than satisfactory</i>	Effort needed to improve delivery of one or more core responsibilities identified in the contract/terms of reference
4	<i>Satisfactory</i>	Minor effort needed to improve delivery of some areas of responsibility identified in the contract/terms of reference
5	<i>Very Good</i>	All responsibilities identified in the contract/terms of reference delivered efficiently and effectively
6	<i>Outstanding</i>	All responsibilities identified in the contract/terms of reference delivered with a high degree of efficiency and effectiveness, efficiently, and proactive steps taken to achieve outcomes above and beyond identified responsibilities

Assessment Criteria	Performance Rating*	Comments
1. In-Australia management and administrative support – includes: ability to plan and administer activities in accordance with the contract, Support services provided to the in-country team; Regular monitoring and engagement with the in-country team		
2. In-country management and administrative support – includes: Management responsiveness, particularly to policy change and development context; Appropriate planning and monitoring of activities; Quality of advice to AusAID and other stakeholders, where appropriate		
3. Relationship with AusAID – includes: Cooperation in all matters relating to the contract; Open and honest in addressing problems; Regular communication and updates		
4. Activity financial management – includes: Responsiveness to AusAID's requests for financial information; Ability to deliver services within budget; Accuracy of financial information, including invoices, acquittals and forward estimates		
5. Risk management – includes: Proactively and promptly identifies and informs AusAID of substantive issues likely to adversely affect timing, cost or quality of services; Provides recommendations for actions to manage risks		
6. Quality of stakeholder communication – includes: Feedback received from partner government (& other development partners where appropriate) on satisfaction with consultation and services provided; Time and effort invested in developing relationships with counterparts and key stakeholders		
7. Continuous improvement – includes: Proactively identifies areas for improvement of activity and applies lessons learnt		

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8. Quality of planning documentation – includes: <i>Timely submission of documentation which meets counterpart/stakeholder requirements; Documentation does not require multiple re-writes</i>				
9. Attention to AusAID’s policies – includes <i>Evidence of plans, monitoring and results which show progress towards AusAID’s aid policy commitments (e.g. gender, environment, child protection)</i>				
10. Performance of team leader – includes <i>Effective communication and leadership; Achieves results against contracted responsibilities; Relationship with stakeholders; Management of team</i>				
11. Performance of other key activity personnel – includes: <i>Achieves results against contracted responsibilities; Relationship with stakeholders</i>				
12. Ability to maintain quality project personnel – includes: <i>Suitability of staff; Staff turnover levels</i>				
13. Timeliness in replacing activity personnel – includes: <i>Minimal disruption; Proactively informs AusAID of staff changes; Satisfactory recruitment process</i>				
14. Managing underperformance, where appropriate – includes: <i>Quality of management control of personnel performance; Timely identification of issues with personnel and proactively proposing solutions; Willingness to replace personnel where necessary</i>				
15. Quality and timeliness of activity milestones/ deliverables – includes: <i>Achieves milestones/deliverables within the set timeframe; Strategies for managing delays; Documentation supplied (e.g. milestone reports, M&E frameworks) meets quality standards set by AusAID</i>				
16. Quality of monitoring and evaluation (M&E) – includes: <i>Effectively measures and reports on activity progress; M&E framework (or equivalent) has clearly defined and measurable objectives; M&E framework (or equivalent) has effective quantitative and qualitative indicators</i>				
17. Appropriately addressing sustainability (i.e., continuation of benefits/outcomes after external support is removed) – includes <i>Understanding of key factors promoting or inhibiting sustainability and a strategy for promoting sustainability; Appropriately preparing for transition following completion of the activity; Where appropriate, demonstrates strengthening of partner government systems</i>				
18. Responsiveness to AusAID – includes: <i>Timely response to AusAID requests and instructions; Ability to respond to unexpected requests; Acceptance of AusAID decisions</i>				
Overall Rating (average of all scores)	Choose from list - round to nearest figure			

<p style="text-align: center;">AusAID Activity Manager Name</p> <p style="text-align: center;">Date:</p> <p style="text-align: center;">Signature</p> <p style="text-align: center;">_____</p>	<p style="text-align: center;">Company/Project Representative Name</p> <p style="text-align: center;">Date:</p> <p style="text-align: center;">Signature</p> <p style="text-align: center;">_____</p>
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SCHEDULE 8B – ADVISER PERFORMANCE ASSESSMENT

NOTE TO USER: Adviser Performance Assessments are mandatory for all AusAID Adviser engagements, and must be conducted either annually (for engagements longer than one year) or on completion (for shorter engagements). This form is intended to assist and record the assessment of an Adviser.

The Contractor and Adviser Performance Assessments Guideline provides further information on this process for AusAID staff.

This form may be used by AusAID staff or by a Managing Contractor (MC), depending on who is responsible under the Contract for managing the Adviser's performance. Where an MC conducts the assessment, the AusAID officer responsible for managing the activity must receive a copy and sign it. Where an AusAID officer assesses an Adviser engaged by an MC, the MC must receive a copy and sign it.

In all cases, the completed Adviser Assessment must be provided to the Adviser and the Adviser must be given 28 days in which to make written comment and sign the form.

Do not use this form to assess the performance of the firm or facility for which an adviser may be working for or contracted to. A separate form for these assessments is available here.

There are 6 questions in the assessment sheet. Only answer questions that are relevant having regard to the Adviser's terms of reference. To obtain an average score in the final question, add all scores together and divide by the number of questions answered. If a score for all 6 questions was entered, the entry for Overall Rating would be the total divided by 6. Answers of "N/A" are not counted – for example, if a score was entered for 5 questions and "N/A" for one, the Overall Rating would be the total divided by 5.

The original of the completed assessment can be kept on the activity file. A copy must be sent to ASPP either by internal mail or to contractor.performance@ausaid.gov.au

NOTE AND PRIVACY STATEMENT FOR ADVISER: You are required to sign this assessment within 28 days of receipt. You are entitled to respond to any issues raised in this assessment. Any responses must be in writing and returned to the party responsible for conducting the assessment (ie AusAID or your Managing Contractor) within 28 days of receipt together with the signed copy of the assessment. Failure to respond within 28 days of receipt is deemed to indicate your acceptance of the assessment.

AusAID or the Managing Contractor may also seek the views of Partner Government personnel involved in the activity in making this assessment.

A copy of this assessment and your response (if you choose to make one) will be provided to the relevant section of AusAID for placement on your performance file and on a performance register available to AusAID staff. Information from the assessment, including your response, can be used by AusAID as part of any future adviser selection process including but not limited to consideration by Tender Assessment Panels convened by AusAID to evaluate tender proposals. The assessment is considered current for a period of five (5) years from the date of signature and may be referred to within that period.

Information from the assessment, including your response, may also be provided to relevant Partner Government personnel, only for the purpose of a Partner Government managed procurement exercise using AusAID funds.

A consistent record of *Very Good* to *Outstanding* performance will be considered highly in future AusAID adviser selections.

A record of underperformance (defined as an overall rating of "Less than Satisfactory" or below in any AusAID activity over the past five (5) years or equivalent assessments from other referees/employers) will be taken into account if you are considered for future work with AusAID.

DISPUTES: If an adviser disputes any ratings or comments, the AusAID Agreement Manager or Managing Contractor who conducted the assessment will escalate the assessment to the responsible AusAID Director or Counsellor. AusAID will make all reasonable attempts to resolve disputes at this level before the assessment is finalised. AusAID's complaints policy may be used where attempts to resolve disputes are unsuccessful.

Further information on handling disputes is available for AusAID staff in the Contractor and Adviser Performance Assessments Guideline.

Adviser Name:	Adviser Firm or Project:	
Activity:	Agreement No.:	ARF level: Choose from list
Activity Manager:	Country:	
Engagement Period from until	Assessment date:	
Nature of Assignment:		

Adviser performance ratings

1	<i>Very Weak</i>	Serious underperformance, not meeting most contract/terms of reference deliverables
2	<i>Weak</i>	Major effort needed to improve delivery of core responsibilities identified in the contract/terms of reference; AusAID very hands on in managing areas where contractor is not delivering
3	<i>Less than satisfactory</i>	Effort needed to improve delivery of one or more core responsibilities identified in the contract/terms of reference
4	<i>Satisfactory</i>	Minor effort needed to improve delivery of some areas of responsibility identified in the contract/terms of reference
5	<i>Very Good</i>	All responsibilities identified in the contract/terms of reference delivered efficiently and effectively
6	<i>Outstanding</i>	All responsibilities identified in the contract/terms of reference delivered with a high degree of efficiency and effectiveness, efficiently, and proactive steps taken to achieve outcomes above and beyond identified responsibilities

Assessment Criteria		Performance Rating*	Comments*		
1.	Understanding of the requirements of Terms of Reference or Scope of Services				
2.	Awareness and response to assignment risks, issues and problems				
3.	Effectiveness of communications with counterparts, AusAID and other stakeholders				
4.	Responsiveness to requests and instructions				
5.	Quality of contract milestones & deliverables (including reports, assessments & advice)				
6.	Assignment completed within time and budget				
7.	Overall rating (average of all scores)				

* Ratings of 1 (Very Weak), 2 (Weak), 3 (Less than Satisfactory) or 6 (Outstanding) **must** be supported by further comments.

AusAID Activity Manager Name	Company/Project Representative Name (where applicable)	Assessor Name
_____	_____	_____
Date:	Date:	Date:

SCHEDULE 9 - ADVISER REMUNERATION FRAMEWORK

1. How to use the Framework:

- 1.1 Determine whether a short term (< 6 consecutive months) or long term (> 6 consecutive months) advisory input is needed.
- 1.2 Identify the expertise – the professional discipline – required (see table A below).
- 1.3 Identify the level of responsibility – the job level – the adviser will have (see table B below).
- 1.4 Examine the candidate's CV and any past contractor performance assessments/references.
- 1.5 Go to table C (short term rates) or table D (long term rates) to determine the appropriate pay point for the preferred candidate – this should fall between the Entry Rate and the Market Reference Point (MRP) – the MRP is the competitive point for each discipline and job level. The approval of a DDG is required to negotiate a pay point above the MRP.

Note:

- the remuneration tables strictly comprise the monthly or daily remuneration component of the adviser and do not include overheads, allowance, support costs or profit.
- the Long Term Rates and short term rates detailed in Tables C and D are inclusive of superannuation guarantee contribution, if any
- the Long Term Rates are inclusive of up to twenty (20) days leave per 12 month period.

A. Professional Discipline Categories

Discipline Group A		Discipline Group B	
General Administration and Corporate Services	Data and Information Services	Agriculture/Rural Development	Information Systems
Administrative Services	Documentation and Records Management	Agricultural Extensions	Communications
Contracting and purchasing	Computers/Communications & Technical Support, incl:	Agro	Data Communications and Infrastructure, incl:
Facilities/Travel	<i>Hardware, software and training</i>	Industry/Agribusiness Management	<i>Network administration</i>
Program Budgeting	Web maintenance/Homepage design	Agronomy	<i>Voice communications</i>
Administrative Services		Fisheries	Systems software design & implementation
Printing/Graphics & Cartography	Accounting, Audit and Statistics	Forestry	Large scale data management
Program Budgeting	Accounting	Livestock	- <i>System design</i>
Human resources administration	Internal Audit	Natural Resource Management	IT Engineering
Financial management	Statistics	Tree Crops	
Public affairs and communication		Public Health	Logistics
		Nutrition	Education
		Nursing	Education
		Occupational Health	Training
		Social and Political Science	
		Gender/Women in Development	
		Public sector management/public policy	
		Social sciences/anthropology	
		Social/Political sciences	
		Sociology, incl:	
		<i>Gender</i>	
		<i>Indigenous People</i>	
		<i>Public Administration</i>	
		<i>Resettlement/reconstruction</i>	
		<i>Social Assessment & Participation</i>	
		Human Resources Development	

Discipline Group C		Discipline Group D	
<i>Biological Sciences and Ecology</i>	Economics/financial analysis	<i>Finance and Investment (specialised)</i>	<i>Legal (specialised)</i>
Biological Sciences and ecology	Economics/financial analysis, incl:	Banking	Deregulation
Biotechnology	<i>Project feasibility study</i>	Build Operate Transfer (sectoral/country level)	Judicial Strengthening & Regulation
Environmental Management, incl:	<i>Sector study</i>	Capital Markets	<i>Institutional reform</i>
<i>Assessment/Monitoring</i>	Econometrics modelling	Finance/Fund Management/Cofinance	Organisational planning and management
<i>Biodiversity</i>	Environmental economics	Guarantee/Insurance	Strategy development
<i>Climate change</i>	Fiscal	International trade	Private sector development and restructuring
<i>Waste</i>	International trade/Finance	Investment	Private Sector Development/Privatisation
<i>Natural resources</i>	Labour economics/employment	Public/Private Partnerships	Public enterprise management and restructuring
<i>Pollution</i>	Macro-economics (including policy)	Sector Pricing/Tariffs	
	Management accounting	Specialised Finance (insurance, social security, pension schemes)	
	Micro-economics		
	Monetary		
	Poverty		
	Procurement / Public Financial Management		
<i>Project Management</i>	<i>Industry</i>		
Country Operations Management	Mining		
Project monitoring, operations & evaluation	Geology		
Design	Petroleum Gas		
	Power		
	Telecommunications		
<i>Legal (General)</i>			
<i>Medicine (General)</i>			
<i>Engineering</i>			
Architecture	Transportation, incl:		
Chemistry	<i>Highways, Ports, Railway</i>		
Carbon market	Water/Sanitation/Environmental Services, incl:		
Clean development mechanisms	<i>Environmental Services</i>		
Energy	<i>Rural Water and Sanitation</i>		
Environmental engineering	<i>Sector Reform (Regulation & Policy)</i>		
	<i>Urban water & sanitation, utility management</i>		

B. Job Level Descriptions

Level	Description	Indicative requirements
1	Performs a variety of research and analytical tasks requiring independent initiative. However, the overall direction of the work is clearly defined and forms a component of a larger project. Work is performed under guidance. Contacts with counterparts predominantly at the administrative level.	<ul style="list-style-type: none"> - Up to 5 years relevant experience in one or more professional disciplines, or equivalent combination of relevant education and experience. - Theoretical base in subject area, with ability to translate theory into practice - Thematic/regional knowledge (where required)
2	Performs professional level analysis or research requiring technical skills and independent initiative within a well defined program of work. Works with limited supervision. Contacts with counterparts predominantly at a working level.	<ul style="list-style-type: none"> - 5 or more years relevant experience in one or more professional disciplines, or equivalent combination of relevant education and experience. - Thorough knowledge of functional area, combining a broad grasp of relevant theory and principles - Ability to participate in multi disciplinary teams and to work independently. - Strong thematic/regional knowledge (where required)
3	Provides informed technical or policy advice and or advises on complex program. Ability to coordinate contributions of other specialists to complete a joint project. Recognised as an expert in the field with appropriate academic qualifications and substantial professional experience. Contacts with counterparts predominantly at strategic/management level.	<ul style="list-style-type: none"> - 10 or more years relevant experience in one or more professional disciplines, or equivalent combination of relevant education and experience. - Strong theoretical base in subject area, with ability to translate theory into practice - Leadership with ability to function as team leader and ability to coach and mentor more junior staff. - Thematic/regional expertise (where required)
4	Acts as a senior adviser on major policy work or is responsible for leading complex projects/programs, usually involving the participation of one or more multidisciplinary teams. Strong academic background and or internationally recognised professional status in the field. Extensive relevant professional experience including at senior advisory or managerial levels. Contacts with counterparts predominantly at strategic/management level.	<ul style="list-style-type: none"> - 10 or more years professional experience or equivalent combination of education and experience. - Outstanding theoretical base in subject area, with ability to conceptualise, design and implement major projects and to produce major/complex reports or studies. - Outstanding thematic/regional expertise (where required) - Demonstrated professional leadership and ability to lead a team of professionals and ability to coach and mentor more junior staff.

C. Short-term Adviser Remuneration Tables

Discipline Group A

Job level	AUD - daily remuneration rates				Premium rates	Maximum
	Entry rate	Years of relevant experience	Years of relevant experience	MRP		
1	308	Up to 2	347	>2 to 5	385	462
2	408	Up to 5	459	>5 to 10	510	612
3	540	Up to 10	607	>10 to 15	674	809
4	618	Up to 15	696	>15	773	928

Discipline Group B

Job level	AUD - daily remuneration rates				Premium rates	Maximum
	Entry rate	Years of relevant experience	Years of relevant experience	MRP		
1	302	Up to 2	340	>2 to 5	378	454
2	436	Up to 5	490	>5 to 10	545	654
3	565	Up to 10	636	>10 to 15	707	848
4	649	Up to 15	730	>15	811	973

Discipline Group C

Job level	AUD - daily remuneration rates				Premium rates	Maximum
	Entry rate	Years of relevant experience	Years of relevant experience	MRP		
1	318	Up to 2	358	>2 to 5	398	478
2	433	Up to 5	487	>5 to 10	541	649
3	593	Up to 10	667	>10 to 15	742	890
4	682	Up to 15	768	>15	853	1024

Discipline Group D

Job level	AUD - daily remuneration rates				Premium rates	Maximum
	Entry rate	Years of relevant experience	Years of relevant experience	MRP		
1	354	Up to 2	399	>2 to 5	443	531
2	491	Up to 5	553	>5 to 10	614	737
3	679	Up to 10	764	>10 to 15	849	1018
4	774	Up to 15	871	>15	968	1161

D. Long-term Adviser Remuneration Tables

Discipline Group A

Job level	AUD - monthly remuneration rates				Premium rates	Maximum
	Entry rate	Years of relevant experience	Years of relevant experience	MRP		
1	5,658	← Up to 2 →	← >2 to 5 →	7,073	← →	8,488
2	7,482	← Up to 5 →	← >5 to 10 →	9,353	for advisers with an outstanding performance history	11,224
3	9,918	← Up to 10 →	← >10 to 15 →	12,398		14,878
4	11,322	← Up to 15 →	← >15 →	14,152	← →	16,983

Discipline Group B

Job level	AUD - monthly remuneration rates				Premium rates	Maximum
	Entry rate	Years of relevant experience	Years of relevant experience	MRP		
1	5,590	← Up to 2 →	← >2 to 5 →	6,988	← →	8,386
2	8,061	← Up to 5 →	← >5 to 10 →	10,076	for advisers with an outstanding performance history	12,091
3	10,412	← Up to 10 →	← >10 to 15 →	13,015		15,619
4	11,907	← Up to 15 →	← >15 →	14,883	← →	17,860

Discipline Group C

Job level	AUD - monthly remuneration rates				Premium rates	Maximum
	Entry rate	Years of relevant experience	Years of relevant experience	Maximum		
1	5,887	← Up to 2 →	← >2 to 5 →	7,358	← →	8,830
2	8,026	← Up to 5 →	← >5 to 10 →	10,032	for advisers with an outstanding performance history	12,039
3	10,946	← Up to 10 →	← >10 to 15 →	13,683		16,419
4	12,545	← Up to 15 →	← >15 →	15,682	← →	18,818

Discipline Group D

Job level	AUD - monthly remuneration rates				Premium rates	Maximum
	Entry rate	Years of relevant experience	Years of relevant experience	MRP		
1	6,601	← Up to 2 →	← >2 to 5 →	8,251	← →	9,901
2	9,156	← Up to 5 →	← >5 to 10 →	11,445	for advisers with an outstanding performance history	13,734
3	12,620	← Up to 10 →	← >10 to 15 →	15,774		18,929
4	14,335	← Up to 15 →	← >15 →	17,918	← →	21,502

2. Treatment of Allowances and Expenses

2.1 AusAID pays the following allowances and expenses to Long Term Advisers:

Mobility allowance: intended to even out the effect of cost of living differences and to compensate expatriates for other impacts associated with agreeing to leave their home country. This allowance is calculated as a percentage of salary using the Adviser Remuneration Calculator. The Mobility Allowance will also vary depending on whether the adviser is accompanied or unaccompanied. This allowance is paid at AusAID's discretion where the adviser has demonstrated that they do not usually reside in the country where they will be required to work.

Special Location allowance: this is a country specific income supplement for locations specified by AusAID in its overseas conditions of service. Eligible locations are currently Baghdad, Kabul, Oruzgan Province, Islamabad and remote localities outside capital cities as determined by AusAID. Rates are paid in accordance with the Adviser Remuneration Calculator.

Adviser Support Costs: cover work related expenses and will be payable as specified in the Basis of Payment.

Housing Costs for Long Term Advisers

Housing Costs for Long Term Advisers are capped and reimbursed **at cost**. Housing Costs are **not** payable if a spouse/partner is already receiving reimbursement for housing costs from AusAID or another employer.

Housing Costs are not paid to Short Term Advisers, who instead are able to charge for the costs of short term travel in accordance with the rates specified by AusAID from time to time.

The table below sets out maximum monthly accommodation rates by city, and is updated annually based on location-specific market data for rental accommodation. The rates reflect the monthly rental cost of an expatriate-standard mid-range three bedroom apartment.

For a number of locations, reliable market data for rental accommodation is not available. For these locations, advisers should obtain at least three quotes demonstrating a reasonable effort to obtain accommodation at the standard described above. The lowest-cost quote can be approved. Records must be kept to allow verification that this process has been followed.

Advisers may choose to rent accommodation at a higher rate than appears in the chart for the relevant location. Excess rental costs will be at the adviser's own expense and will not be reimbursed.

Country	City	Local Currency	Cap – local Currency Per month
Cambodia	Phnom Penh	USD	2,500
China	Beijing	USD	4,400
Fiji	Suva	FJD	4,250
Ghana	Accra	USD	1,900
India	New Delhi	INR	125,000
India	Calcutta	INR	120,000
India	Mumbai	INR	220,000
Indonesia	Jakarta	USD	3,000
Kenya	Nairobi	KES	85,000
Maldives	Male	MVR	30,000
Nepal	Kathmandu	NPR	110,000
Papua New Guinea	Port Moresby	PKG	25,000
Philippines	Manila	PHP	145,000
Senegal	Dakar	XOF	930,000
Solomon Islands	Honiara	SBD	25,000
South Africa	Johannesburg	ZAR	16,000
South Africa	Pretoria	ZAR	18,000
Sri Lanka	Colombo	USD	1,300
Thailand	Bangkok	THB	100,000
Tonga	Nuku'alofa	TOP	3,000
Trinidad & Tobago	Port of Spain	USD	4,500
Vanuatu	Port Vila	VOV	250,000
Vietnam	Hanoi	USD	3,200
Vietnam	Ho Chi Minh City	USD	3,050
Zimbabwe	Harare	USD	1,200

SCHEDULE 10 – DECLARATION OF STATUS

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

in favour of **COMMONWEALTH OF AUSTRALIA** represented by the Australian Agency for International Development (“**AusAID**”).

BY [Insert name and address of Adviser] (the “**Adviser**”).

RECITALS

- A. AusAID and **Contractor’s Name** (the “**Contractor**”) have entered into a Contract for the purpose of a project in **Country**.
- B. The Adviser has been engaged by the Contractor to work on the project.
- C. AusAID requires the Adviser to enter into this Deed in order to confirm their eligibility to receive allowances under AusAID’s Adviser Remuneration Framework.

THE ADVISER DECLARES AS FOLLOWS:

1. INTERPRETATION

1.1 In this Deed:

“**Dependant**” means a person who:

- (a) has a close personal relationship with an Adviser;
- (b) shares accommodation or housing with an Adviser; and
- (c) who is provided with financial or domestic support by the Adviser.

“**Partner**” means a person who:

- (a) has a close personal relationship with an Adviser;
- (b) shares accommodation or housing with an Adviser; and
- (c) who provides the Adviser with financial or domestic support.

2. ADVISER STATUS

- 2.1 The Adviser [does / does not] usually reside in the location where they will be working on the project.
- 2.2 The Adviser [is / is not] accompanied by dependants.

- 2.3 The Adviser's dependants and/or partner **[are / are not]** in receipt of an expatriate housing allowance from the Commonwealth of Australia or any other employer.
- 2.4 The Adviser's dependants and/or partner:
- a. **[are / are not]** currently employed by AusAID or on an AusAID funded project; and
 - b. **[are / are not]** in receipt of an allowance that recognises their accompanied status from the Commonwealth of Australia.
- 2.5 The Adviser must inform AusAID or the Contractor promptly if their status as described in this **Clause 2** changes.
3. **PROOF OF STATUS**
- 3.1 AusAID may, at any time, request the Adviser to give AusAID reasonable evidence to confirm the Adviser's status as described in **Clause 2**.
- 3.2 If AusAID makes a request under **Clause 3.1**, the Adviser must promptly comply with the request.

EXECUTED as a deed poll.

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

.....

Signature of witness

.....

Name of witness
(*Print*)

Please attach the appropriate EFT Direct Credit Payment Form here

Domestic:

<http://newintranet.ausaid.gov.au/sites/contracttemplates/documents/1/AUTHORITY%20FOR%20EFT%20DIRECT%20CREDIT%20PAYMENT%20-%20DOMESTIC.dot>

International:

<http://newintranet.ausaid.gov.au/sites/contracttemplates/documents/1/AUTHORITY%20FOR%20EFT%20DIRECT%20CREDIT%20PAYMENT%20INTERNATIONAL.dot>