



Australian Government

AusAID

20 February 2010

Request for Tender

**Philippines-Australia Human Resource and Organisational
Development Facility**

REQUEST FOR TENDER

Philippines-Australia Human Resource and Organisational Development Tender

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

STRUCTURE OF THE RFT

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

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

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

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

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

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

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

AusAID Contracts Charter

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

SECTION 1 – PROJECT SPECIFIC TENDER AND CONTRACT CONDITIONS

PART 1 – PROJECT SPECIFIC TENDER CONDITIONS

1. TENDER PARTICULARS

Closing Time: (Clauses 1.11 and 1.15, Part 5)	2.00 pm local time in Canberra Australian Capital Territory, Wednesday 7 April 2010
Mode of submission: (Clause 1.1, Part 5)	Electronically, via AusTender at https://tenders.gov.au before the tender Closing Time ; or in hard copy, by depositing by hand in the Canberra Tender Box before the tender Closing Time .
Electronic Tender Lodgement Address: (Clause 1.11, Part 5 and Annex C to Part 5)	Via AusTender at http://tenders.gov.au Tenderers are advised to allow sufficient time to upload their tender documents.
Canberra Tender Box Address: (Clause 1.15, Part 5)	Tender Box, Ground Floor AusAID 255 London Circuit Canberra ACT 2601 AUSTRALIA.
Business Hours for hard copy lodgement: (Clause 1.15, Part 5)	Monday to Friday, 8.30 am to 5.00 pm local time in Canberra, Australian Capital Territory, excluding Public holidays.
File Format for Electronic Tenders: (Clause 4.3, Annex C to Part 5)	PDF (Portable Document Format)
Number of Copies of Tender: (Clause 1.6, Part 5)	<u>For electronic tender lodgement</u> The Tenderer's contact name, position and contact details (phone, email and fax) must be listed on the front cover of each Tender Schedule. Tenderer Declaration: One (1) electronic copy in a separate file. Tender Schedule A - Technical Proposal: One (1) electronic copy containing all parts and annexes. Tender Schedule B – Specified Personnel: One (1) electronic copy in a separate file. Tender Schedule C - Financial Proposal: One (1) electronic copy in a separate file. Tender Schedule D - Financial Assessment material: One (1) electronic copy in a separate file.

For hard copy tender lodgement

The Tenderer's contact name, position and contact details (phone, email and fax) must be listed on the front cover of each Tender Schedule.

Tenderer Declaration: One (1) signed original, to be included with the Financial Proposal.

Tender Schedule A - Technical Proposal: One (1) printed Original containing all parts and annexes.

Tender Schedule B – Specified Personnel: One (1) printed Original.

Tender Schedule C - Financial Proposal: One (1) printed Original in a separate, sealed envelope.

Tender Schedule D - Financial Assessment material: One (1) printed copy in a separate sealed envelope.

One CD, containing all the files specified as for electronic lodgment.

Endorsement of hard copy Tenders:
(Clause 1.17, Part 5)

“Tender for the Philippines-Australia Human Resource and Organisational Development Facility”

Tender Validity Period:
(Clause 1.8, Part 5)

One hundred and eighty (180) days

Contact Person:
(Clause 2.1, Part 5)

Catherine Ross
Fax: +612 6206 4885
Email HRODF@ausaid.gov.au

Last date for tenderer enquiries:
(Clause 2.2, Part 5)

Wednesday 24 March 2010

Page limits:
(Clauses 7.15 and 7.17, Part 5)

Responses to tenderer enquiries will be issued no later than Wednesday 31 March 2010 (ie 7 days prior to the **Closing Date** (Clause 2.3, Part 5))

Tender Schedule A: Technical proposal 12 pages plus annexes.
Tender Schedule B: Curriculum Vitae - 5 pages each, including declaration and signature.

Information:

The following documents are attached:

- Philippines-Australia Human Resource and Organisational Development Facility Design Document
- Tenderer Declaration (in Word format)
- Tables for Financial Proposal (in Word format)

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

2. **INDUSTRY BRIEFING**

- 2.1 AusAID intends to hold a briefing for interested tenders on Wednesday 17 March 2010 at the Australian Embassy, Level 22-24, Tower 2, RCBC Plaza, 6819 Ayala Avenue, Makati City, Metro Manila, Philippines.
- 2.2 Tenderers planning to attend the briefing are requested to send advance notification to the Contact Officer by e-mail: HRODF@ausaid.gov.au or facsimile (+612 6206 4885), indicating the name of the organisation and the number of people planning to attend, by **COB Friday 26 February 2010**.

Note to Tenderers: The Australian Embassy in Manila 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. **ALTERNATIVE TENDERS**

- 3.1 AusAID reserves the right to accept and consider alternative Tenders providing they:
- (a) are submitted with a conforming Tender;
 - (b) clearly identify the differences and improvements offered in the alternative Tender;
 - (c) are fully costed; and
 - (d) are clearly marked with the name of the Project and the words “Alternative Tender”.
- 3.2 Alternative Tenders will be considered only after completion of the technical assessment of conforming Tenders.
- 3.3 Only the alternative Tender of the preferred tenderer (following TAP assessment of conforming Tenders) will be assessed.
- 3.4 Alternative Tenders will be technically assessed against the selection criteria contained in this RFT.

4. **TENDER ASSESSMENT**

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

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

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

- 4.3 The TAP may conduct interviews of tenderers' contractor representative and the tenderers' nominated Facility Director in accordance with Clause 7.4 of Part 5 of the RFT. Tenderers to be invited to interview will be given up to 10 days notice in writing by AusAID regarding time and location of any interview.
- 4.4 The like-for-like price assessment will represent **20%** of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

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

- 4.5 Following the final assessment and calculation of the final aggregate scores, confirmation of the Tenderer's financial capacity to meet the contractual obligations referred to in **Clause 8 of this Part** and consideration of other factors referred to in **Clause 7.8, Part 5**, a recommendation for further action will be made to the appropriate AusAID delegate. Tenderers should be aware that the delegate is not bound to accept the TAP recommendation and may direct that other action be taken in accordance with this RFT.

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

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

- (a) a technical proposal that substantively and individually addresses the selection criteria provided in **Clause 5.2 of this Part** taking into consideration "other factors" under **Clause 7.8, Part 5**; and
- (b) the required annexes included in **Clause 5.3 of this Part**.

5.2 **Selection Criteria**

A	Response to the Design Document	50%
	<ul style="list-style-type: none"> • Demonstrated understanding of the Facility, its strategic approach to delivering on objectives, and its role in supporting the overall Australian aid program in the Philippines (15%); • Proven experience in successful implementation of large and complex capacity development projects, including responsiveness to changing operating contexts and ability to develop and maintain effective management and reporting systems (15%); • Demonstrated understanding of approaches and international best practice on human resource development and organisational development (10%); • Proven ability to identify, source, contract and manage technical expertise across a variety of sectors (10%) 	

B	Facility Director	25%
	<ul style="list-style-type: none"> • Demonstrated appropriate skills and experience 	
C	Other Nominated Personnel	25%
	<ol style="list-style-type: none"> 1. Deputy Facility Director (7%); 2. Organisational Development Adviser (6%); 3. Human Resource Development Adviser (6%); 4. Monitoring and Evaluation Adviser (6%) 	

5.3 Annexes

Annex 1 – Past Experience Form

Details of relevant activities or projects in which the Tenderer has been involved which demonstrate the Tenderer's ability to fulfil the objectives of the Project must be presented in the format outlined below. This annex must not contain more than 4 examples and details of each activity must not exceed one (1) A4 page.

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

PAST EXPERIENCE FORM

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

Annex 2 – Mobilisation Plan

A detailed Mobilisation Plan for the first three (3) months from Contract Start Date. The Mobilisation Plan must include provision for:

- (a) establishment of communication channels with AusAID, the Australian Diplomatic Mission and Stakeholders;
- (b) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including but not limited to;
 - (i) establishment of report preparation and delivery mechanisms;
 - (ii) establishment of financial control procedures;
 - (iii) establishment of all other management and administration requirements; and
- (c) any other matters specified in the Scope of Services, **Part 3** of this RFT.

Annex 3 – Team Member Inputs (Bar Charts)

One bar chart will show the proposed inputs per team member for this project and indicate total person months or person 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 second bar chart will show the proposed inputs by each team member and indicate the total person months or person days **for each component** for the duration of the Project. Both charts should clearly indicate inputs of team members in Australia, in-country and in total. This chart must be presented on A3 paper.

Annex 4 – Risk Management Plan

A detailed Risk Management Plan of no more than five (5) pages in tabular form that must identify:

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

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

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

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

Annex 6 – Commonwealth Government Policies Compliance

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

6. TENDER SCHEDULE B – SPECIFIED PERSONNEL

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

- (a) a list of proposed team members in the table (in landscape) format provided and in accordance with the instructions included in **Clauses 6.2-6.3** below;
- (b) a skills matrix providing a summary illustration of the skills of the proposed Project team as a whole (broken down by individual team members) in the key skill areas required for the Project's implementation; and
- (c) a curriculum vitae for each proposed team member that conforms with the requirements outlined in **Clauses 7.16 and 7.17, Part 5**.

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

6.3 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.

6.4 Tenderers are reminded of the requirements of **Clause 8, Part 6** particularly in relation to the availability of specified personnel. AusAID will consider as materially inaccurate, and will therefore reject, any Tender which does not disclose the fact that a proposed team member has an existing and continuing commitment to another AusAID project.

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

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

- (a) Tenderers must request the required criminal record checks in sufficient time to ensure that police clearance certificates can be provided in accordance with **Clause 19.2, Part 5**.
- (b) Tenderers should note that in Australia, national criminal record checks are available through the Australian Federal Police and take around 20 working days. The type of employment should be specified as 'overseas employment.' Overseas, different checking procedures apply in each country and may take six weeks or longer. Individuals need to give their consent to a criminal record check and should be informed of the purpose for which it will be used, including sighting by AusAID.

SPECIFIED PERSONNEL

None of these positions has been identified as working with children.

Position	Name	Total Inputs in person months		Referee Contact Details		Commitments
		Home Base	O/s	#1	#2	
Facility Director						
Deputy Facility Director						
Organisational Development Adviser						
Human Resource Development Adviser						
Monitoring and Evaluation Adviser						

7. TENDER SCHEDULE C - FINANCIAL PROPOSAL

7.1 Tender Schedule C - the financial proposal must contain the information required and in the format detailed in this clause.

7.2 It must:

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

- (i) escalation and any allowance for foreign exchange rate variations;
 - (ii) necessary insurances required by the Contract Conditions and for the performance of the Services;
 - (b) be expressed in Australian dollars; and
 - (c) include detailed information on assumptions used in preparing the pricing.
- 7.1 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.
- 7.2 Information provided in the tables will be used for any financial assessment and for the like-for-like price assessment.
- 7.3 The Contractor will be paid according to the following categories of payments as detailed in Part 4 of the RFT:
- (a) A Fixed Management Fee (FMF). Thirty per cent (30%) of the FMF will be paid on AusAID acceptance of milestones, and the remaining 70% will be paid quarterly within 30 days of AusAID receipt of a correctly rendered invoice;
 - (b) Personnel costs, paid on a reimbursable basis quarterly in arrears. Mobilisation and demobilisation costs will be reimbursed at cost;
 - (c) Administration, equipment and operational costs, paid on a reimbursable basis to a maximum of A\$1,645,000; and
 - (d) Payments to an Imprest Account to a maximum of A\$22,600,000.

Fixed Management Fee

- 7.4 These costs are defined in **Part 4 – Draft Basis of Payment** and must be included in the FMF detailed in Table 2 of the financial proposal.
- 7.5 The FMF must also include the tenderer’s costs to provide an Unconditional Financial Undertaking to the value of A\$2 million to AusAID in respect of the Imprest account.

Other Personnel Costs that may be included in the FMF

- 7.6 If the tenderer identifies a need for additional management or technical positions to deliver the Services set out in the Part 3 of this RFT, the tenderer must provide the costs for these additional positions in Table 2A of the financial proposal. Tenderers should note that additional personnel required to deliver the services as specified in the draft Scope of Services WILL NOT be funded from the Imprest Account. Tenderers are also advised to include a brief description of the role and function of additional personnel required to deliver the Services in their response to Selection Criterion A. Subject to negotiation, the costs for these additional management or technical positions may be included in the Personnel Costs, rather than incorporated in the Fixed Management Fee.

Personnel Costs

- 7.7 Tenderers must detail in the financial proposal in Table 3, the leave entitlements of nominated Specified Personnel. Where annual recreation leave entitlements exceed 4 weeks per 12 month period, a justification must also be provided along with a narrative description of how the Tenderer will ensure, during Specified Personnel absences, the continued quality of Services.

Reimbursable Administration, equipment and operational costs

- 7.8 These costs will be paid on a reimbursable basis as set out in Annex 3 of Part 4 Draft Basis of Payment, and will not be taken into consideration in the financial assessment.

8. TENDER SCHEDULE D – FINANCIAL ASSESSMENT

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

Option 1

This option is mandatory for:

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

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

- 1. the name of the tendering entity and its ultimate owner(s).
- 2. the names and financial relationships between the tendering entity, its parent entity (if relevant) and other related entities within the group.
- 3. the previous three years' annual financial statements for the tendering entity. These annual financial statements must be prepared in accordance with Generally Accepted Accounting Standards applicable to the Tenderers country of residence (audited if available). The annual financial statements for each year must include:
 - (a) a balance sheet;
 - (b) a profit and loss statement; and
 - (c) a cashflow statement

each prepared on an accrual accounting basis.

An auditor's statement of financial viability or short form financial statements are not acceptable.

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

Option 2

This option may be considered by a Tenderer where:

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

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

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

Where a Tenderer considers itself exempt from the need to provide the full financial information (Option 1) and chooses instead to supply with the information in Option 2 AusAID reserves the right to subsequently require the Tenderer to provide the information required in Option 1.

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

Tenderers should be aware that AusAID may wish to contact the nominated financial accountant to obtain further information to assess the financial capacity of the Tenderer to undertake the Contract.

AusAID reserves the right to engage appropriate external expertise to assist with the analysis of the financial information. A report on the financial capacity of the Tenderer to undertake the Contract may be provided to either the delegate or the TAP.

The financial information of Tenderers will be treated confidentially.

TENDER SCHEDULE C – FORMAT FOR FINANCIAL PROPOSAL

TABLE 1 – SUMMARY

	1 July 2010 to 30 June 2015
Totals from Table 2	
Totals from Tables 3A and 3B – Specified Personnel	
Total for Like-for-Like Assessment	
Totals from Tables 2A and 2B – Additional Management and Technical Positions	

TABLE 2 – FIXED MANAGEMENT FEE

	1 July 2010 to 30 June 2015
All aspects of profit, including commercial margins/mark-up for all personnel	
All overheads	
All management and support costs for Facility Personnel.	
Financial management costs and financing costs, including management costs associated with the management and reporting for Imprest Account funds	
Cost of independent annual audit of imprest account funds for the period of the contract.	
Costs of complying with the Contractor's monitoring and evaluation, reporting and liaison obligations under the	
Security costs for all Program personnel engaged by the Contractor	
Insurance costs (including but not limited to, professional indemnity, health, medivac, worker's compensation, public liability, indemnity and any other insurances as required under the Contract or deemed necessary by the Contractor) in accordance with Clauses 33 and 34 of Part B (Standard Contract Conditions) of the Contract	
Taxation, as applicable	
All escalators for FMF costs for the Term of the Contract, including allowances for risks and contingencies	
Unconditional Financial Undertaking for A\$2,000,000 in relation to Imprest Account funds.	

	1 July 2010 to 30 June 2015
All other costs for Management and Technical positions not specifically identified as Reimbursable Personnel Costs (costs from Table 2A)	
All other costs not specifically identified as Reimbursable Program Administration and Equipment Costs (costs from Table 2B)	
TOTAL	

Assumptions relating to Fixed Management Fees

(Tenderer to list assumptions)

TABLE 2A – ADDITIONAL MANAGEMENT AND TECHNICAL POSITIONS REQUIRED TO DELIVER THE SERVICES

If the tenderer identifies a need for additional management or technical positions to deliver the Services set out in the Part 3 of this RFT, the tenderer must provide the costs for these additional positions in the table below. Tenderers should note that additional personnel not specifically identified as reimbursable required to deliver the services as specified in the draft Scope of Services WILL NOT be funded from the Imprest Account. Subject to negotiation, the costs for these additional management or technical positions may be included in the Reimbursable Personnel Costs, rather than incorporated in the Fixed Management Fee.

Tenderers are advised to include a description of the role and function of additional personnel required to deliver the Services in their Technical Proposal.

Additional management and technical positions required for the period 1 July 2010 to 30 June 2015

Position	Monthly Fee A\$	Inputs (Months)	Mobilisation Costs A\$	Demobilisation Costs A\$	Annual Leave Entitlement (Weeks)	Total A\$
<i>Tenderer to specify</i>						

**TABLE 2B – ALL OTHER COSTS NOT SPECIFICALLY IDENTIFIED AS
REIMBURSABLE COSTS**

If the tenderer identifies additional Program Administration and Equipment costs associated with delivering the Services set out in the Part 3 of this RFT, the tenderer must provide the costs for these additional items in the table below. Tenderers should note that additional costs not specifically identified as reimbursable required to deliver the services as set out in the draft Scope of Services WILL NOT be funded from the Imprest Account. Subject to negotiation, the costs for additional Program Administration and Equipment may be included as reimbursable items in the Program Administration and Equipment Costs, rather than incorporated in the Fixed Management Fee.

	1 July 2010 to 30 June 2015 A\$
Item	
<i>Tenderer to specify</i>	
TOTAL	

TABLE 3 – SPECIFIED PERSONNEL COSTS (1 July 2010 to 30 June 2015)

Position	Name	Monthly Fee A\$	Inputs (Months)	Mobilisation and Demobilisation Costs A\$	Annual Leave Entitlement (Weeks)	Financial Limitation A\$
Facility Director			60		4	
Deputy Facility Director			60	0	4	
Organisational Development Adviser			60	0	4	
Human Resource Development Adviser			60	0	4	
Monitoring and Evaluation Adviser			60	0	4	
TOTAL						

PART 2 – PROJECT SPECIFIC CONTRACT CONDITIONS

This Part 2 of the Request for Tender will appear as Part A of the Contract Conditions in the consolidated contract.

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

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

"Partner Country" means the country/countries in which the services are to be delivered in, as specified in Schedule 1.

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

"Related Corporation" 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, organization or governmental authority in the Partner Country or non-government organization having any interest in the Project, including but not limited to AusAID's Development Assistance Strategy (DAS) key and strategic partners.

"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 earlier notice of termination under this Contract.

- 2.2 The Contractor must commence the Services in the Partner Country no later than (date to be agreed with preferred tenderer) and must complete the Services by 30 June 2015.

3. ACCOUNTS AND RECORDS

- 3.1 The statement of Project expenditure referred to in Standard Conditions **Clause 15.1(e)** (Accounts and Records) must be provided on a 3 monthly basis and must indicate:
- (a) total expenditure under the Contract to date;
 - (b) disaggregated expenditure under the Contract to date identifying all categories of expenditure including the Fees component, Reimbursable items and Imprest Account;
 - (c) total expenditure for the previous three (3) month period; and
 - (d) forward expenditure by category for the period of 3 months.

4. NOTICES

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

AusAID

To: AusAID Philippines
Attention: Agreement Manager Name

Postal Address: PO Box 1071 MCPO
1250 Makati City,
Metro Manila, Philippines

Street Address: Australian Embassy
Level 22-24, Tower 2, RCBC Plaza
6819 Ayala Avenue ,Makati City,
Metro Manila, Philippines

Facsimile: 63 2 7578 265

Contractor:

To: Contractor's Name
Attention: Title First Name Surname

Postal Address: Postal Address

Street Address: Street Address

Facsimile: **xxx**

5. MANAGEMENT SERVICES

- 5.1 The Contractor must provide all Management Services necessary for the provision of the Services. In addition to the other requirements specified by the Contract, at a minimum the Contractor must provide the following Management Services:
- (a) provide pre-mobilisation briefings to Contractor Personnel, including but not limited to security, medical/health situation, cultural environment, detail on project objectives, relevant contract obligations and individual terms of reference.
 - (b) decision-making within the Contractor's organisation and the advising of AusAID of decisions required by AusAID;
 - (c) pro-actively identifying and rectifying problems or recommending strategies to AusAID on how to rectify problems, which may arise in, or during the performance of, the Services;
 - (d) managing those risks which are the Contractor's responsibility under the Contract in accordance with the Risk Management Plan including in relation to Supplies after delivery and before their incorporation into the Project;
 - (e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID;

6. MONITORING AND REVIEW TEAM (MRT)

- 6.1 AusAID may engage a Monitoring and Review Team (MRT) whose purpose is 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.
- 6.2 The Contractor must:
- (a) attend and participate in those MRT meetings which AusAID directs it in writing to attend;
 - (b) when required by AusAID, consult with the MRT 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 MRT 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 MRT in the performance of its monitoring and review;
- (d) co-operate with and assist the MRT 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 MRT copies of all reports, notices, information or other Project material which the MRT 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.

7. ANNUAL PLAN

- 7.1 The Contractor must provide to AusAID, within three (3) months of the Project Start Date, and by 31 March in each following year of the Project, an Annual Plan, including activities to be financed through the Imprest Account which, before it is implemented, must be approved by the Facility Coordinating Committee.
- 7.2 The Annual Plan should be prepared in accordance with directions provided in writing by the Facility Coordinating Committee, must be consistent with this Contract and must include the following matters:
 - (a) the Contractor's plan for performance of the Services required for the period of the Annual Plan;
 - (b) the Contractor's proposed strategy for coordinating any Third Party Issues and for providing the Services in a flexible manner as is appropriate;
 - (c) a detailed budget for the period of the Annual Plan for activities financed through the Imprest Account;
- 7.3 The Contractor must make amendments to the Annual Plan as reasonably requested by the Facility Coordinating Committee.
- 7.4 Within 30 days of receipt of the Annual Plan in accordance with **Clause 7.1 above** AusAID shall notify the Contractor in writing when a decision is likely to be made to reject or accept the Annual Plan. If such Annual Plan has not been approved or rejected within the stated period of 30 days AusAID shall give fair and reasonable consideration to granting an extension of time to the Contractor in respect of the performance of the Services.
- 7.5 Acceptance by the Facility Coordinating Committee of an Annual Plan does not represent a change to the Contract. The Contract may only be varied in accordance with the Standard Conditions **Clause 12** (Contract Amendments).

8. SUB-CONTRACTING

- 8.1 In addition to the Standard Conditions **Clause 11** (Sub-Contracting) the following conditions apply to sub-contracts entered into by the Contractor for sub-contracts for personnel or activities that are not funded through the Imprest Account:

- (a) the Contractor must obtain the prior written approval of AusAID to sub-contracts with any party, except Specified Personnel, to the value of A\$100,000 or more. In granting its approval AusAID may impose such conditions, in AusAID's opinion are appropriate, in relation to a proposed sub-contract; and
 - (b) if AusAID objects to the Contractor's recommended sub-contractor, or AusAID nominates a particular sub-contractor, the Contractor must enter into an agreement with such other sub-contractor as directed by AusAID on the basis of remuneration approved by AusAID and provide AusAID with a copy of the executed sub-contract.
- 8.2 Standard Conditions **Clauses 11.1** (Sub-contracting) **(d)** and **(e)** will only apply to sub-contracts valued at A\$100,000 or more.
- 8.3 The Contractor must not enter into any contract for the procurement of any Supplies or services from any Related Corporation without AusAID's prior approval.

9. GRANT ADMINISTRATION

- 9.1 In administering the Philippines-Australia Human Resource and Organisational Development Facility, 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.

10. RIGHT OF AusAID TO RECOVER MONEY

- 10.1 Without limiting AusAID's rights under any provision of the Contract, any payment or debt owed by the Contractor to AusAID in relation to the Contract may be deducted by AusAID from the amount of payment of any claim for Fees, including Reimbursable Costs or from any other moneys payable or due to the Contractor or may be recovered in any court of competent jurisdiction.
- 10.2 AusAID may review any payments made to the Contractor at any time and:
- (a) if the total of the amount paid to the Contractor is greater than AusAID determines by review to be payable under the Contract, then AusAID must notify the Contractor in writing of the amount of refund it has determined to be repayable;
 - (b) the Contractor must within 28 days after receipt of AusAID's notification:
 - (i) refund the excess to AusAID; or
 - (ii) provide AusAID with evidence supporting the Contractor's opinion concerning the amount of the refund;
 - (c) failure by the Contractor to provide evidence as required in **Clause 10.2(b)(ii) above** will, in the absence of payment in full of the refund claimed, be deemed to

be evidence of the Contractor's acceptance that the amount of refund is correct and payable to AusAID on demand or deductible from subsequent payments due under the Contract; and

- (d) AusAID must, within 28 days of receipt after the Contractor's evidence supporting its opinion concerning the amount of the refund, consider the Contractor's evidence and give the Contractor written notice either:
 - (i) calling for payment within 28 days of the refund determined by AusAID's review; or
 - (ii) calling for payment within 28 days of the refund as re-determined following its consideration of the Contractor's evidence; or
 - (iii) of AusAID's agreement that there is no refund payable.

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

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

11. GOVERNMENT TAXES, DUTIES AND CHARGES

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

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

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

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

- (a) the Contract, the Project, and any sub-contracts entered into for the performance of the Services;
- (b) the sale, purchase, lease, assignment, licence or transfer of any property under the Contract;

- (c) the obtaining of any approvals, consents or authorisations in respect of the Project; and
- (d) any instrument or transaction contemplated by or necessary to give effect to the Contract.

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

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

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

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

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

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

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

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

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

12. INSURANCES

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

- (a) AusAID is notified immediately the Contractor becomes aware of any actual, threatened or likely claims under all of the insurances required by this Contract or any act or omission by the Contractor which could materially reduce the available limit of indemnity;
 - (b) AusAID is notified in writing whenever the insurer gives the Contractor a notice of cancellation of project-related insurances;
 - (c) in respect of public liability insurance and property insurance that:
 - (i) all insurance agreements and endorsements (with the exception of limits of liability) name, and operate as if there was a separate policy of insurance covering, AusAID, the Contractor and sub-contractors; and
 - (ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;
 - (d) where AusAID is a joint insured under an insurance policy, the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against AusAID; and
 - (e) all premiums are promptly paid.
- 12.2 The Contractor undertakes that it shall use its best endeavours to ensure that it commits no act or omission which renders any of the insurances required by this Contract to be effected by it, null and void or of less value.
- 12.3 In respect of the public liability insurance, Standard Conditions **Clause 34.1(a)** is amended as follows: the Contractor must ensure that the limit for each and every claim is \$20 million.

13. **IMPREST ACCOUNT**

- 13.1 The Contractor shall establish an Imprest Account in accordance with this **Clause 13**.
- 13.2 The Contractor must undertake a selection process in order to recommend a commercial banking institution which represents value for money for AusAID approval, with which to establish the separate Imprest Account.
- 13.3 The Imprest Account will be titled Philippines Australia Human Resource and Organisational Development Facility Imprest Account. In correspondence with AusAID the Imprest Account will be referred to by title.
- 13.4 Money in the Imprest Account is the money of the Contractor and is not held by the Contractor on trust for AusAID or as agent for AusAID.
- 13.5 The Contractor agrees that the money in the Imprest Account is to be used for the purpose of funding approved Project activities. No money paid into the Imprest Account, or paid to the Contractor for the purposes of the Imprest Account shall be intermingled with the Contractor's other money.

- 13.6 The Contractor is responsible for the management of (including scheduling, acquittal and disbursement) and reporting on the Imprest Account.
- 13.7 The Contractor must produce and submit to AusAID for approval within six (6) weeks of the Project Start Date a Manual of Operations which details the management arrangements and operational procedures for the Imprest Account. Where appropriate the Manual of Operations must be developed in consultation with counterparts using counterpart systems, forms and processes as much as possible.
- 13.8 The Contractor in consultation with the Partner Government, where appropriate, will appoint two personnel from one or both of their respective organisations as principal signatories to the Imprest Account. In the case of the Contractor, the personnel shall be Specified Personnel. Both are to sign withdrawals. In circumstances where one of the principal signatories is absent from the Project, a third approved nominee may act as an alternative signatory to the Imprest Account. All principal and alternative signatories will be named in the Manual of Operations for the Imprest Account and approved by AusAID.
- 13.9 The funds held in the Imprest Account shall be used solely for the purpose of funding approved Annual Plan activities (see **Clause 7**).
- 13.10 Bank charges relating to the Imprest Account shall be paid with monies from the Imprest Account and acquitted in the same way other expenditure is acquitted.
- 13.11 Interest earned on the Imprest Account shall remain in the Imprest Account and shall be used for Project purposes and acquitted to AusAID as such.
- 13.12 The Contractor must provide AusAID prior to the deposit by AusAID of monies into the Imprest Account, financial security in accordance with **Clause 14**.
- 13.13 Subject to **Clause 13.14** and **13.15** below, monies for the Imprest Account will be paid by AusAID to the Contractor on a three (3) monthly basis.
- 13.14 The first payment is payable following AusAID approval of the Manual of Operations and each subsequent payment is payable following AusAID approval of the Contractor's:
- (a) acquittal of the previous payment; and
 - (b) cashflow projection of funds required for each subsequent payment, over the next twelve month period as set out in the Annual Plan (see **Clause 7**).
- 13.15 Amounts payable in accordance with **Clause 13.13** above, will be paid within 10 days of notification received by AusAID's Finance Section.
- 13.16 The balance of the Imprest Account must be reported as at 30 March, 30 June, 30 September and 31 December each year, within 10 days of the end of each period, to the AusAID officer specified for the purposes of Standard Conditions **Clause 40** (Notices), with a copy of the balance provided to AusAID's Chief Finance Officer by:

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

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

- 13.17 On every anniversary of the Commencement Date, an audit of the Imprest Account and all documentation relating to the Imprest Account for the previous twelve months must be conducted by an independent external auditor. The audit must be completed within 28 days of each anniversary of the Commencement Date and three copies of each audit report sent to AusAID within 7 days of the Contractor's receipt of the audit report. One copy must be sent to the relevant AusAID officer specified for the purposes of Standard Conditions **Clause 40** (Notices), one copy must be sent to the Director, Audit and the third copy sent to the Chief Finance Officer at the following address:

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

- 13.18 A final independent audit of the Imprest Account and all documentation relating to the Imprest Account must be provided with the Project Completion Report for the period since the last independent audit provided in accordance with **Clause 13.17** above.
- 13.19 The cost of an audit conducted in accordance with **Clauses 13.17 and 13.18** is included in the fees payable to the Contractor, and the cost of any corrections or remedial work required to the Imprest Account pursuant to audit findings is to be borne by the Contractor.
- 13.20 The Imprest Account and all documentation relating to the Imprest Account, including documentation related to the use of the Imprest Account funds may be subject to audit by or on behalf of AusAID at any time and from time to time.
- 13.21 If, upon the premature termination of the Contract or at the end of the Contract, money remains in the Imprest Account, the Contractor shall pay to AusAID an amount equal to the total amount of money (including any accrued interest) remaining in the Imprest Account.
- 13.22 In the event that AusAID becomes aware that any money cannot be accounted for by the Contractor in the Imprest Account including upon premature termination of the Contract, AusAID has the right to recover the amount in question (plus interest equal to the interest that would have been earned on the funds had they remained in the Imprest Account) from monies due and owing to the Contractor under this Contract or as a debt due to the Commonwealth or by calling in the Unconditional Financial Undertaking referred to in **Clause 14** whichever AusAID in its absolute discretion considers appropriate.
- 13.23 This clause shall survive expiration or termination of this Contract.

14. UNCONDITIONAL FINANCIAL UNDERTAKING

Inclusion of this clause is subject to negotiation with the preferred tenderer.

- 14.1 The Contractor must, on or before the Project Start Date, provide to AusAID a performance security in respect of the Services in the form of an unconditional and irrevocable financial undertaking from a financial institution authorised to carry on banking business under the *Banking Act 1959* (Cth) in Australia and approved by AusAID.
- 14.2 The performance security provided must be in the form appearing in **Schedule 5** and must be provided at the Contractor's cost, for the maximum aggregate sum of **A\$2,000,000** and be available for the term of the Contract.
- 14.3 AusAID is not obliged to make any payments under the Contract, whether or not such payments are due, prior to receipt of the performance security duly executed and, where applicable, stamped, in accordance with **Clause 14.1 above**.
- 14.4 If AusAID becomes entitled to exercise all or any of its rights to recover moneys under or in relation to the Contract, AusAID may exercise all or any of its rights under the performance security.

15. PERFORMANCE GUARANTEE

Inclusion of this clause is subject to negotiation with the preferred tenderer.

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

PART 3 - SCOPE OF SERVICES

Philippines-Australia Human Resource and Organisational Development Facility

Note to Tenderers: This Part 3 of the Request for Tender will appear as Schedule 1 in the consolidated contract. It reflects the most current version of the Services required of the Contractor and may be amended by AusAID in accordance with offers included in the Tenderer's response to the RFT.

1. BACKGROUND

- 1.1 The Philippines-Australia Human Resource and Organisational Development Facility (PAHRODF) follows and builds on the Philippines-Australia Human Resource Development Facility (PAHRDF) (2004 - 30 June 2010).
- 1.2 PAHRDF assisted selected government agencies and private sector institutions to review their Human Resource Development (HRD) needs and prepare plans for improvements in HRD and service delivery. The Facility supported the plans with funding for customised interventions in identified learning areas and provision of short-term and long-term training (i.e. scholarships) to targeted individuals where key skills were needed. Training was directly linked to the institution's needs and recipients developed 're-entry action plans' to facilitate effective use of their new learning. It was expected that the objectives for institutional HRD improvement were achieved when the training and scholarship outputs were widely used in the workplace and properly resourced by management.
- 1.3 In 2007, an AusAID-commissioned Strategic Review indicated that PAHRDF was performing strongly against its stated objectives and was developing and enhancing capacity of targeted organisations. The Review recommended that Australia continue providing assistance after the Facility ends and that the PAHRDF be repositioned to support broader capacity development.
- 1.4 The Facility has been re-structured through a shift in orientation from a primary focus on individual capacities under PAHRDF to a more explicit emphasis on organisational capacity, to encourage thinking about a continuum of options or entry points for capacity development from individual competencies to broader organisational capacities that are key for enhanced performance. This shift is the rationale for re-naming the Facility to Philippines Australia Human Resource and Organisational Development Facility (PAHRODF).

2. FACILITY DESCRIPTION

Goal

- 2.1 The Goal of PAHRODF is to enhance the effectiveness of selected programs and reform agenda under the Australia-Philippines Development Assistance Strategy (DAS).

Objectives

2.2 The **Development Objectives** (relating to intermediate outcomes to be achieved by the Facility) are:

- (a) To develop or strengthen HRD, HRM, planning, management, administration competencies and organisational capacities of targeted individuals, organisations and groups of organisations and support systems for service delivery.
- (b) To enable targeted individuals and organisations make better use of HRD, HRM, planning, management, administration and support systems for service delivery competencies and organisational capacities.
- (c) To enable individuals and organisations build and maintain relationships, share and build on enhanced competencies and capacities and lessons learnt from research and knowledge synthesis initiatives.

2.3 The **Management Objectives** (relating to strategic planning, management and implementation) are:

- (a) To ensure efficient and effective targeting of organisations and delivery of human resource and organisational development assistance in support of the implementation of the DAS.
- (b) To ensure effective engagements with strategically selected organisations, groups of organisations and individuals to identify their needs with respect to development of PAHRODF targeted competencies and capacity in relation to DAS.
- (c) To ensure that selected organisations, groups of organisations and individuals receive appropriate types and quality of support from the Facility

Component Descriptions

2.4 **Component 1: Strategic Planning**

- (a) The first component is concerned with the development and implementation of strategies to support the operation of the Facility. Sub - Components are:
 - (i) Facility Strategy Paper;
 - (ii) Organisational Assessment of Partner Organisations;
 - (iii) Support to Partner Organisations to develop Human resource (HR)/ Organisational Development (OD) proposals; and
 - (iv) Endorsement of HR/ OD proposals.

2.5 **Component 2: Delivery of HR/OD Support**

- (a) The second component is concerned with the provision of integrated packages of capacity development support to Partner Organisations through a variety of short and long-term training options. Sub – Components are:
 - (i) Long Term Training, including management of Australia Development Scholarships and Australia Leadership Awards Scholarships and other discrete AusAID scholarship programs where required and piloting flexible delivery modes; and
 - (ii) Other HR/ OD Support, including support to the Philippines Australia Alumni Association (PA3i)

2.6 **Component 3: Research, Knowledge Synthesis, Management and Dissemination**

- (a) Component 3 will focus on synthesis of learnings, management and diffusion of research and knowledge relating to HR/OD activities as well as supporting research institutions to, among other things, conduct research or undertaking policy analysis, on issues relevant to PAHRODF's mandate. Sub – Components are:
 - (i) Synthesis and diffusion of research on activities of PAHRODF and its partners and informing and influencing government policy relating to HR/ OD; and
 - (ii) Enhancing the organisational capacity of Filipino research, academic and policy groups.

2.7 Attached as Annex A is a Glossary of Terms used in this Scope of Services.

3. **GOVERNANCE STRUCTURE AND IMPLEMENTATION ARRANGEMENTS**

- 3.1 The **Facility Board (FB)** has overall responsibility for setting the strategic direction and approach of the Facility and maintaining strategic oversight of the outcomes of the Program. The FB is composed of senior representatives of AusAID and the National Economic and Development Authority (NEDA) and may invite personnel from other Philippine government, private or academic institutions as observers. The FB meets twice a year. The Contractor is accountable to the FB at the strategic level and acts as Secretariat for the FB.
- 3.2 The **Facility Co-ordinating Committee (FCC)** has operational oversight of the Facility under the direction of the FB. The FCC will be responsible for, among others, endorsing organisational assessments and HR/OD proposals, approving HR/OD delivery, providing guidance on research and KM activities to be pursued, and approving Annual Plans and Budgets. The FCC is composed of representatives from AusAID and NEDA and may invite personnel from other Philippine government, private or academic institutions as observers. The FCC will meet approximately 2-3 times a year (or as needed). The Contractor is accountable to the FCC at the operational level and acts as Secretariat for the FCC.

3.3 The **Contractor** has day-to-day operational and management responsibility for the Facility and is accountable to **AusAID** for its obligations outlined in this Contract.

3.4 AusAID is responsible for managing the Contract and certifying payments to the Contractor.

3.5 Detailed Roles and Responsibilities of the FB and FCC are described in Annex B.

4. **SERVICES**

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

5. **FACILITY COMPONENTS**

5.1 In implementing **Component 1 – Strategic Planning**, the Contractor will:

- (a) prepare and submit a Facility Strategy Paper (Sub-Component 1.1) to the Facility Board for approval within three (3) months of contract commencement and an updated Paper annually thereafter (in September of each year);
 - (i) The Strategy Paper will include:
 - priority DAS programs requiring human resource or organisational capacity development support in a given year (including consolidating assistance given to some AusAID legacy programs);
 - the types of organisational capacity (in broad terms) that need to be developed to support implementation of particular DAS programs and wider DAS reform agenda and that are within the scope of the Facility's mandate (i.e. focusing on HRD, HRM, Planning and Policy).
 - potential Key Partner Organisations (KPOs), and types of Strategic Partner Organisations (SPOs); and
 - the expected budget to achieve Facility objectives.
 - (ii) The Contractor shall ensure that succeeding Strategy Papers are informed by outputs and activities under Component 3 as well as lessons from monitoring and evaluation reports.
- (b) facilitate, conduct or update Organisational Assessments for selected Key Partner Organisations (KPOs) (Sub-component 1.2) for the purpose of identifying needs that could be supported by the Facility and for endorsement by the FCC; the Contractor will ensure that at the minimum, the organisational assessments are:
 - (i) conducted by the Contractor in partnership with the KPOs and in consultation with AusAID Manila Post and other delivery organisations for AusAID programs

- (ii) developed within the past 24 months from the FCC's decision to engage with the KPO
- (c) develop HR/ OD proposals (Sub-component 1.3) for KPOs and identify activities for selected Strategic Partner Organisations (SPOs) suitable for inclusion and support from Facility resources; the Contractor will ensure that at the minimum, the HR/OD proposals and activities are:
 - (i) tailored to the specific needs of the partner organisation
 - (ii) based on appropriate and innovative solutions to identified needs
 - (iii) based on analysis (including cost-benefit) of options for HR/OD solutions and documented discussion between the Contractor and KPOs and SPOs
 - (iv) developed by the Contractor in partnership with the KPOs and SPOs and in consultation with AusAID Manila Post and other delivery organisations for AusAID programs
- (d) facilitate endorsement of HR/OD proposals (Sub-component 1.4) for KPOs and activities for SPOs by the FCC
- (e) Enter into Partnership Agreements with KPOs and SPOs to formalise engagement and outline respective roles, responsibilities and bases for continued engagement or disengagement by the Facility; and
- (f) prepare the Annual Plan and Budget for the Facility submitted within three (3) months of contract commencement and annually thereafter (in March of each year), for approval by the FCC.
 - (i) The Annual Plan and Budget will include, among others:
 - strategic planning activities for Component 1 such as the preparation of the Strategy Paper; organisational assessments and development of HR/OD proposals;
 - approved HR/OD proposals and activities for Component 2, including applicant profiles for scholarships, and proposed pilot activities for flexible delivery modes of LTT/scholarships and short-term awards;
 - research and knowledge synthesis projects to be undertaken on Component 3
 - distribution of Imprest Account funds across programs and partner organisations under each Component; and
 - cross-program thematic capacity development projects that the Facility is to facilitate, manage or conduct;

- reports on implementation progress against the previous year's Annual Plan, providing an overview of progress of (qualitative and quantitative) achievements, budgets of activities conducted, as well as identifying any risks and issues that have arisen in the previous year.
- (ii) The Contractor shall ensure the Annual Plan and Budget is in accordance with Clause 7 (Annual Plan) and Clause 13 (Imprest Account) of Part A – Project Specific Contract Conditions.
- (iii) The Annual Plan and Budget must not contain any activities or personnel where costs are covered by the Contractor's Fixed Management Fee or by Specified Personnel Costs as set out in Schedule 2. The Budget may include Reimbursable Costs in accordance with Schedule 2, Clause 7.
- (g) prepare and submit to AusAID within six (6) months of contract commencement the following strategies which should be in line with the respective AusAID Policy and Philippines-specific Action Plans:
 - (i) Gender Strategy;
 - (ii) Anti-Corruption Strategy
 - (iii) Disability Strategy, including special measures to encourage disabled applicants;
- (h) report on progress against annual Strategy Papers and Annual Plans.

5.2 In implementing **Component 2 – Delivery of Human Resource and Organisational Development Support**, the Contractor will:

- (a) provide Long Term Training (LTT) (Sub-component 2.1), based on approved HR/OD proposals of KPOs and approved activities for SPOs including:
 - (i) management of Australian Development Scholarships (ADS), in accordance with the ADS Handbook and in regular consultation with AusAID Manila Post, including use of and updating information on AusAID scholarships databases (e.g. SIMON, OASIS);
 - (ii) providing support to AusAID in the promotion, selection and mobilisation of the Australian Leadership Awards Scholarships (ALAS) in accordance with the ALA Scholarships Handbook and as directed by AusAID Manila Post;
 - (iii) providing administrative support for the Australian Awards Initiative and other Australian Scholarships, if any, as directed by AusAID Manila Post;
 - (iv) using applicant profiles, as approved by the FCC, to solicit, identify and select LTT awardees; and

- (b) provide Other HR/OD support (Sub-Component 2.2), other than overseas long term training, according to approved KPO HR/OD proposals and approved SPO activities, and procure goods and services for this purpose;
- (c) examine the feasibility of flexible delivery modes for LTTs and short term awards in consultation with Australian Scholarships Group and AusAID Manila Post, including:
 - (i) assuming management and monitoring of pilot activities on flexible modes initiated by PAHRDF;
 - (ii) developing new proposals for consideration by the FCC, and implementing and documenting approved proposals;
 - (iii) evaluating outcomes and providing recommendations to the FCC; and
 - (iv) ensuring activities related to flexible delivery modes do not exceed \$5 million over the life of the Facility.
- (d) engage with the Philippines-Australia Alumni Association (PA3i) by:
 - (i) involving alumni members in PAHRODF activities as appropriate
 - (ii) providing and supporting activities to strengthen the association
 - (iii) supporting association activities to strengthen bilateral relationships between the Philippines and Australia
- (e) provide in-country short-term capacity development activities for Local Service Providers
- (f) monitor and evaluate LTT and Other HR/OD support; and
- (g) report on progress against the Annual Plan and Budget to the FCC.

5.3 In implementing **Component 3 – Research and Knowledge Synthesis, Management and Dissemination**, the Contractor is to:

- (a) draw out emerging lessons learned about practices and methodologies on HR/OD and disseminating these to stakeholders and engaging in dialogue and collaborate with Philippine institutions (e.g. universities and research organisations) and other donors (e.g. Philippines Development Forum) to facilitate sharing of lessons in the sector (Sub-component 3.1);
- (b) develop activities and proposals to support research organisations, think tanks, academic institutions and government agencies (Sub-component 3.2) for approval by the FCC and inclusion in the Annual Plans;
- (c) ensure that Facility research activities are consistent with the AusAID and Philippines-specific Research Strategy; and

- (d) report on progress against Annual Plan and Budget to the FCC.

6. FACILITY MANAGEMENT

6.1 In supporting the **Governance Structure of the Facility** (Facility Board and Facility Coordinating Committee), the Contractor will:

- (a) consult with AusAID, other delivery organisations for AusAID programs, Government of the Philippines agencies and Philippine private sector and civil society organisations to prepare the Strategy Paper for FB approval;
- (b) prepare high-level reports for the FB (e.g. outcome reporting; key findings from Component 3 activities; analysis of external national and local HR/OD policy issues facing Facility implementation);
- (c) report to the FCC and obtain its approval for Annual Plans, Organisational Assessments, HR/OD proposals and activities including ADS scholarship recommendations, six-monthly and annual M&E reports and research outputs;
- (d) implement approved activities in the Annual Plan and regularly report to FCC;
- (e) ensure that the documents used by the FB and FCC are in accordance with the gender mainstreaming standards indicated in AusAID's gender policy and in GOP's Harmonized Gender and Development Guidelines and AusAID's Development for All policy; and
- (f) act as Secretariat for the FB and FCC, including, but not limited to: organising FB and FCC meetings, preparing briefing/other materials, recording, distributing (and revising as necessary) the minutes of the meetings, and reporting against progress on action items from previous FB and FCC meetings.

6.2 In supporting **AusAID oversight of the Facility**, the Contractor will:

- (a) consult AusAID's Manila Post (Program Enabling Unit and Sectoral Teams, HR/OD Specialist) in identifying potential KPOs and SPOs for the Strategy Paper;
- (b) inform AusAID Manila Post (Program Enabling Unit, sectoral teams, HR/OD Specialist) and other managing contractors and delivery organisations for other AusAID initiatives of the outcomes of organisational assessments for KPOs;
- (c) work with the KPOs and SPOs, AusAID Manila Post (Program Enabling Unit, Sectoral Teams, HR/OD Specialist) and other managing contractors and delivery organisations for AusAID initiatives to identify activities to be delivered by the Facility to complement activities to be conducted by other AusAID initiatives during the preparation of HR/OD proposals for KPOs and activities for SPOs;
- (d) undertake publicity activities in accordance with the Communications and Publicity strategy and provide administrative support to AusAID Manila Post for selection and mobilisation for ALA Scholarships, for the Australia Award Initiative and other Australian Scholarships if available; and

- (e) facilitate existing and potential linkages between Philippine and Australian organisations for ALA Fellowships.

6.3 In implementing **activities under Components 1, 2 and 3**, the Contractor shall:

- (a) establish, manage and operate an **Imprest Account** in accordance with Clause 13 of Part A – Project Specific Conditions. The Imprest Account will be used to fund activities in accordance with the approved Annual Plan.

6.4 For **effective management of the Facility**, the Contractor shall:

- (a) establish two offices (one in Manila and one field office) with sufficient communications, logistics, security and equipment for efficient management of the Facility in accordance with this Schedule 1 – Scope of Services;
- (b) submit an Inception Report to AusAID within six (6) weeks of contract commencement, including:
 - (i) review of initial stakeholder consultations;
 - (ii) implications of new targeting and other principles and requirements in the Design Document for the implementation strategy;
 - (iii) project coordination mechanisms;
 - (iv) an outline of the approach to be used in the development of the M&E Framework
 - (v) offices setup;
 - (vi) systems established for project management, financial management, accounting, and procurement, as appropriate; and
 - (vii) progress on the establishment of the database for scholarships and systems for data collection for reporting and the M&E plan,
- (c) establish and maintain PAHRODF systems for financial management, human resource management, contract management, quality assurance, project planning and review, and resource allocation and articulate these in a Quality Systems Manual (QSM) to be submitted to AusAID and the FCC for approval within three (3) months of contract commencement, and updated annually; the QSM will include:
 - (i) organisation chart;
 - (ii) targeting and annual planning strategy;
 - (iii) management of long term training;
 - (iv) management of other HR/OD, including support for local service providers;

- (v) administrative handbook, including guidelines for engaging technical assistance;
 - (vi) Risk Management Matrix;
 - (vii) anti-discriminatory, environmental, gender and disability policies;
 - (viii) Procurement Guidelines, consistent with Commonwealth Procurement Guidelines and relevant GOP legislation;
 - (ix) Asset Management Plan;
 - (x) M&E Framework;
 - (xi) Information Communication Technology (ICT) Plan;
 - (xii) Roles & Responsibilities of the FB & FCC as per Annex B;
 - (xiii) Duty Statements of Specified Personnel;
 - (xiv) Quality Assurance procedures; and
 - (xv) Security Plan in accordance with Clause 30 (Personnel Security) of Part B – Standard Contract Conditions
- (d) manage Specified Personnel, ensuring performance meets standards outlined in their Terms of Reference (TOR) and provide training to Specified Personnel as required;
 - (e) establish and maintain a set of accounts and an assets register;
 - (f) liaise with AusAID staff and key personnel from AusAID-funded activities to inform the annual planning process;
 - (g) establish a communications system including a website, within three (3) months of contract commencement and updated regularly, including:
 - (i) information on the Facility;
 - (ii) aspects of the Quality Systems Manual;
 - (iii) copies of Annual Plans and progress reports;
 - (iv) an M&E database (including the ability for target organisations and recipients to access and update their information as appropriate);
 - (v) a link to the PA3i website; and
 - (vi) other information that may be required.
 - (h) develop a Communications and Publicity Strategy to advertise and promote the activities and objectives of the Facility to *inter alia* GOP agencies, prospective

scholarship recipients, prospective KPOs and SPOs, and AusAID to be submitted to AusAID within six months of contract commencement which must be in line with AusAID and Philippines-specific Communications Strategy and in accordance with Clause 28 (Publicity) of Part B – Standard Contract Conditions.

- (i) provide support to pilot scholarship programs upon mobilisation for management of on-going Australian Scholarships (e.g. ADS, ALAS, CMU) to ensure continuity of on-going awardee management, selection and mobilisation processes and activities to meet required timelines (as described in Annex D)

6.5 The Contractor shall maintain relationships with key stakeholders – including Government agencies, other AusAID-funded activities, other donors, multilateral agencies and development partners – in a collaborative and effective manner, including but not limited to:

- (a) organising meetings with team leaders (or other staff) and Philippine counterparts (government, private sector, academe) from other AusAID facilities/projects within the DAS on a regular basis; and
- (b) liaising with other donors to help ensure complementarities and to avoid duplication of activities.

7. PERSONNEL

7.1 The Contractor will provide the following Specified Personnel. Terms of Reference are at Annex C to this Schedule 1:

- (a) Facility Director
- (b) Deputy Facility Director
- (c) Organisational Development Adviser
- (d) Human Resource Development Adviser
- (e) Monitoring and Evaluation Adviser

7.2 The Contractor shall ensure that all Specified Personnel receive regular training on gender, anti-corruption, basic disability sensitivity and other AusAID cross cutting themes/principles as they arise.

7.3 The Contractor shall:

- (a) deploy local administrative, finance, information and communication technology (ICT), logistics and other support staff necessary for the efficient and effective management and administration of the Facility;
- (b) support the team and operations of the Facility to ensure the quality of activity outcomes.

8. MONITORING AND EVALUATION (M&E)

Monitoring and Evaluation Framework

- 8.1 The Contractor shall, within six (6) months of commencement, review and update the draft PAHRODF Monitoring and Evaluation Framework (MEF) and submit to AusAID for approval. The MEF should include, among others:
- (a) baseline data requirements, including disaggregation of data by gender and data on vulnerable groups;
 - (b) indicators on which the Facility will be monitored and assessed, including outcomes (expected within the five year period of implementation) and longer-term impacts, including gendered indicators and indicators for vulnerable groups;
 - (c) indicators on which the quality of the Facility's management and coordination can be assessed, including gendered indicators and indicators for vulnerable groups;
 - (d) for each of the above, who will collect the required information, when the information will be collected, and from where; and who will use the information and
 - (e) the reporting schedule for presenting and analysing the above information.
- 8.2 As part of the MEF updating process, the Contractor shall introduce improvements to: (a) make better use of existing PAHRDF data collection methods and types; and (b) develop new methods and types.
- 8.3 The Contractor shall ensure that the MEF is closely linked to and contributes information for the Performance Assessment Framework of the Australia-Philippines Development Assistance Strategy 2011-2014 (expected to be released in 2011).
- 8.4 The Contractor shall review the MEF annually and recommend improvements for approval by the FCC as necessary.

M&E Database

- 8.5 The Contractor shall, as part of updating the M&E Framework, develop an M&E Database. The M&E Database should record, among others, all information and decisions relating to:
- (a) the selection of organisations, proposal assessment, contracting strategies, the type of assistance provided, costs, and performance assessments;
 - (b) the number of long term training nominations offered, applications received, eligible applications, the ranking of nominees, placement success, and training performance;
 - (c) the number of short term awards and training nominations offered, applications received, eligible applications, the ranking of nominees, placement success, and training performance;

- (d) the number of other OD support nominations offered, applications received, eligible applications, successful applications, and training performance.
- 8.6 The Contractor shall ensure that the database will build on and use as much as possible the existing information in the PAHRDF database.

M&E Reports

- 8.7 The Contractor shall produce Six-monthly M&E Reports to be submitted to AusAID within two (2) months of the end of each 6-month period (July to December and January to June) that:
- (a) report on implementation progress during the six-month period against approved Annual Plan activities, including:
 - (i) providing an overview of progress of achievements and budgets of activities conducted
 - (ii) identifying any risks and issues that have arisen,
 - (iii) providing primarily quantitative data about activities, descriptions of activities to comply with the QSM, milestones in relation to management plans, Facility outputs and participant outputs; and
 - (iv) including an annex that reports FB and AusAID conclusions on progress
 - (b) report on implementation progress to date, including:
 - (i) providing an overview of progress of achievements and budgets of activities conducted since the start of the Facility;
 - (ii) reporting on achievement of outcomes against Facility objectives where possible;
 - (iii) incorporating data from previous Six-monthly M&E Reports as well as several other types of qualitative data, further analyses of quantitative data
 - (c) structured according to the headings 1 to 9 in the AusAID Guideline for a Quality at Implementation report (November 2008 or as updated) and as agreed by AusAID
- 8.8 The frequency of submission of Six-monthly M&E reports may be revised subject to the quality of reports received by AusAID, the frequency of FB and FCC meetings or any changes to AusAID guidelines.
- 8.9 The Contractor shall regularly analyse the data collected to identify patterns of effectiveness, reflection and action research.

9. OTHER REPORTING REQUIREMENTS

- 9.1 The Contractor shall undertake Thematic Evaluations (one evaluation every year) that will report on achievements in relation to cross-cutting themes (such as gender, anti-corruption or disability) agreed upon and commissioned by the FCC and included in the Annual Plan.
- 9.2 The Contractor shall produce Exception Reports to be submitted to AusAID only when any unforeseen problems arise that may have a detrimental effect on the Facility, particularly in relation to the achievement of the objectives, or when progress varies from that outlined in the current Annual Plan.
- 9.3 The Contractor shall produce a Facility Completion Report (FCR) and submit to AusAID two (2) months prior to completion of the Contract at year five:
- (a) that documents activity achievement and lessons, Managing Contractor compliance with contractual terms and obligations, information on location of key activity documents, assets and staff, on-going needs and recording agreements for continuing support;
 - (b) structured according to AusAID Guidelines for Completing an Activity Completion Report and as agreed by AusAID.
- 9.4 The Contractor shall prepare a draft Handover Plan for submission to AusAID twelve months prior to completion of the Contract. The Handover Plan must document assets and processes that will be handed over to (but not limited to) the Partner Government, PA3i and to AusAID as required on completion of the Contract. The Contractor must also provide an updated Handover Plan 6 months and 3 months prior to Contract completion.

10. SUMMARY OF REPORTS

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

Reference	Output	Indicative Due Date <i>(to be agreed during contract negotiation)</i>
Part A, Clause 13	Imprest Account Manual of Operations	Six (6) weeks of Project Start Date
Scope of Services Clause 5.1(a)	Strategy Paper	three (3) months from contract commencement, and updated annually (in September of each year)
Scope of Services Clause 5.1(e)	Annual Plan and Budget	three (3) months from contract commencement and annually thereafter (in March of each year)
Scope of Services, Clause 5.1(g)(i)	Gender Strategy	Six (6) months from Contract commencement, and updated annually

Reference	Output	Indicative Due Date (<i>to be agreed during contract negotiation</i>)
Scope of Services, Clause 5.1(g)(ii)	Disability Strategy	Six (6) months from Contract commencement, and updated annually
Part A, Clause 3.1	Statement of Project Expenditure (Quarterly Financial Reports)	Three (3) months from Contract commencement, and quarterly thereafter
Scope of Services, Clause 6.4(b)	Inception Report	Within six (6) weeks of Contract commencement
Scope of Services, Clause 6.4(b)	Quality Systems Manual (QSM)	Within three (3) months of Contract commencement, and updated annually
Scope of Services, Clause 6.4 (g)	Communications system including website	Within three (3) months of Contract commencement and updated regularly.
Scope of Services, Clause 6.4(h)	Communications and Publicity Strategy	Within six (6) months of Contract commencement,.
Scope of Services, Clauses 8.1 and 8.4	Update draft Monitoring and Evaluation Framework (MEF)	Within six (3) months of Contract commencement, and updated annually
Scope of Services, Clause 8.5	M&E Database	Within six (6) months of Contract commencement
Scope of Services, Clause 8.7	Six-monthly M&E Reports	Within two (2) months of the end of each 6-month periods (from July to December and from January to June)
Scope of Services, Clause 9.1	Annual Thematic Evaluation	As directed by the FCC and approved in the Annual Plan
Scope of Services, Clause 9.2	Exception Reports	As needed
Scope of Services, Clause 9.3	Facility Completion Report	Two (2) months prior to completion of the Contract at year five.
Scope of Services, Clause 9.4	Handover Plan	Twelve (12) months prior to Contract completion and updated 6 months and 3 months prior to Contract completion.

10.2 All reports must:

- (a) be provided in accordance with the specification under Clause 16 (Reports) of Part B – Standard Contract Conditions;
- (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. **AusAID M&E**

11.1 AusAID will conduct Independent Evaluations (e.g. Independent Progress Reviews) for the Facility as required to provide AusAID with independent technical and other advice on any aspects of the Facility and/or to assist AusAID to assess the performance of the Services. One of these independent evaluations will be a Mid-Term Review of the Facility and the Contract (see Part A Clause 10 [Mid-Term Review] and Part B Clause 17 [Reviews]). In relation to these independent evaluations, the Managing Contractor must:

- (a) provide logistical advice (as required);
- (b) attend and participate in meetings with independent evaluation team(s) which AusAID directs it in writing to attend;
- (c) co-operate with and assist the evaluation team(s) in the performance of its independent evaluation;
- (d) provide all necessary information and Contractor Personnel and ensuring its Contractor Personnel are available and able to respond to requests for information in respect of the performance of the Services;
- (e) provide copies of all reports, information or other Facility material which the evaluation team(s) reasonably requires to fully and efficiently perform its independent evaluation as soon as practicable after such material is produced or received by the Managing Contractor.

11.2 AusAID prepares Quality at Implementation (QAI) reports at least once a year. The QAI Report provides AusAID with information on the quality of activity implementation, and provides an opportunity for AusAID Initiative Managers to periodically reflect on the key issues relating to quality. The Contractor shall provide AusAID with updated information as requested.

11.3 The Contractor shall liaise with AusAID in relation to Scholarship Surveys conducted by the Australian Scholarships Group (ASG). Relevant data from the ASG-commissioned surveys will be made available to the Contractor for M&E Reports and for continuous improvement, e.g:

- (a) Pre-departure survey (awardee satisfaction on placement and pre-departure briefing);
- (b) Academic progress survey;
- (c) Survey on course relevancy; and
- (d) Tracer studies of graduates

ANNEX A – GLOSSARY OF TERMS

AusAID and Philippines-specific – Refers to situations where guidelines have been issued by AusAID applicable to the whole agency and similar guidelines/action plans have been developed by AusAID Philippines Program.

Development Assistance Strategy (DAS) – The Australia-Philippines Development Assistance Strategy 2007-2011 implements the Government of Australia's (GOA) priorities, themes and strategies for overseas development assistance. It also reflects joint GOA-Government of the Philippines (GOP) priority objectives: Economic Growth, Basic Education and National Stability and Human Security. Note that a new Strategy will be developed in 2010 and these objectives will almost certainly change though the role of the Facility is not expected to change.

Key Partner Organisations (KPOs) will include organisations (public and private, and to some extent NGOs) associated with a sub-set of DAS programs agreed to by GOP and AusAID, operating at various levels (e.g. sub-national Local Government Units to National Government agencies). They could include individual organisations (e.g. bureaus/agencies, provincial governments) or clusters of organisations (e.g. associations, business councils, leagues of LGUs, formal and informal partnerships amongst organisations.) KPOs will have access to the full range of capacity building support provided by the Facility. The total of KPOs for a given year is expected to be 10 – 15 organisations. All KPOs should have implemented or are committed to implement Philippine gender policies, including having GAD plans and budgets that could be leveraged by the Facility for creating gender-responsive competencies and organizational capacities.

Strategic Partner Organisations (SPOs) will include a smaller number of strategically important Filipino organisations whose mandates are aligned with the DAS but who are not necessarily involved directly in AusAID sectoral initiatives. SPOs are those deemed by GOP and GOA as key to realisation of objectives associated with the DAS priority themes. SPOs will have access to fewer types of capacity building support than KPOs, and support provided to SPOs will not require Facility-endorsed organisational assessments or HR/OD Plans. However, like KPOs, public sector SPOs will be required to have GAD plans and budgets.

Human Resource Development (HR/HRD) – The development of individual competencies within organisations through, but not limited to, formal education and training.

Organisational Development (OD) – Organisational development is the process through which organisations develop the competencies and capacities to deliver on their mandate in an effective and sustainable manner.

Legacy Program – An AusAID initiative based on the current Australia Philippines Development Assistance Strategy (DAS) 2007-2011 which will finish by 2010 and not expected to be continued under the forthcoming country strategy.

Local Service Providers (LSP) – Individuals or firms sub-contracted by PAHRODF Contractor to deliver Other HR/OD activities in the approved Annual Plan.

Long Term Training activity (LTT) – An HRD activity, usually for mid-career adults, involving an accredited and formal course of study of more than six months duration.

Australian Short Term Awards – Opportunities for formal study or training, generally less than 3 months duration, delivered by an approved Australian higher education provider or an Australian Registered Training Organisation that will at least result in either a formal transcript of a complete unit (or subject) offered within a course under the Australian Qualifications Framework or a formal Statement of Attainment in relation to a skill or competency covered by Australian nationally-registered Vocational Education or Training material.

Other Delivery Organisations for AusAID Programs – Organisations that are responsible for implementing AusAID-funded activities in the Philippines, such as commercial Managing Contractors, multilateral donors or Philippine government agencies.

ANNEX B: ROLES AND RESPONSIBILITIES OF FACILITY BOARD AND FACILITY COORDINATING COMMITTEE

Facility Board (FB)

The FB will take overall responsibility for setting the strategic direction of, and approach taken by, the Facility. The FB will be composed of senior level representation from AusAID (Minister Counsellor) and the GOP (NEDA Deputy Director General) and may invite personnel from other Philippine government, private or academic institutions as observers. The FB will meet twice a year.

In particular, the FB will:

1. Review and endorse an annual Strategy Paper that identifies:
 - Priority programs requiring organisational capacity development in a given year (including consolidating some assistance given to legacy programs)
 - Key Partner Organisations and types of Strategic Partner Organisations
 - In broad terms, the types of organisational capacity that need to be developed to support implementation of particular DAS programs and wider DAS agenda and that are within the scope of the Facility's mandate, and
 - Monitor progress and initiate changes in the operational processes or targeting strategies as required.
2. Oversight the achievements of the Facility in relation to the higher goal and higher level objectives of the Facility around organisational changes and their impacts on program and service delivery. The FB will also oversight and review the allocation of Imprest Account resources for Facility activities. This oversight will be at a strategic rather than operational level and will feed back into its planning process.
3. Review the findings of Research and Knowledge synthesis and management activities to identify any implications for setting strategic directions for the following year.

Recommendations relating to the strategy and target organisations are expected to reflect the focus and objectives identified in the DAS. As these decisions will set the framework for the Facility, they will be fully transparent and documented in the Annual Plans (and Progress Reports as necessary). The Contractor will submit to the FB (after review by the FCC) the draft Strategic Plan for FB approval.

For the second meeting (around March), the discussion will focus on #2 (strategic oversight) and #3 (research & KM findings) including policy issues relevant to the HR/OD sector arising from Facility implementation.

The Facility Director will attend FB meetings and the Contractor will provide secretariat services to the FB, including:

- organising meetings (including arranging meeting venues);

- preparing briefing/other materials and distributing to members one or two weeks prior to the meeting (including the Minutes of the previous meeting, any relevant progress reports, etc.);
- recording the Minutes of the meeting and distributing these, as a draft, within three working days (seeking comment/alterations); and
- revising the Minutes and re-distributing within three weeks of the meeting.

The Contractor will also provide advice to the FB concerning strategic direction and appropriate organisations to target.

Facility Co-ordinating Committee (FCC)

The Facility Coordinating Committee will include representation from AusAID (including the HR/OD specialist in an advisory capacity) and NEDA, and may invite personnel from other Philippine government, private or academic institutions as observers to provide guidance and input as required (e.g. matters such as scholarships, research institutes for institutional twinning, knowledge management, etc). To fulfil these roles, the FCC will meet 2-3 times a year (or as needed). The timing of the meetings should consider the schedule of the two FB meetings.

In particular, the FCC will:

- endorse the organisational assessments for KPOs and the subsequent HR/OD proposals for KPOs;
- approve the main categories of applicant profiles for scholarships and ensuring that the applicant profiles are applied and that scholarships for KPOs are situated within an organisational capacity development strategy;
- provide guidance in relation to new modes of delivery such as twinning, short-course awards, public-private sector partnerships and on research and KM activities to be pursued;
- provide guidance for planning annual Imprest Account allocations, under direction of the FB
- approve annual activities and budgetary commitments through approval of the Annual Plan and Budget (which includes finalising the selection of organisations and the level of engagement and types of HR/OD support, applicant profiles; Research and Knowledge Management activities) around April;
- ensure that transparency, probity, equity and fairness has been observed and implemented with respect to selection of scholarship applicants;
- approve ADS nominees;
- review six-monthly and annual M&E reports and Research and Knowledge Management outputs;

- review the draft Strategy Paper and other high-level reports and updates prior to submission to the FB; and
- provide or commission technical expertise especially in relation to research initiatives.

In addition to its approval roles as identified above, the FCC has some additional advisory roles in relation to the Contractor. These include:

- reviewing the draft Quality Systems Manual (which will outline all operational aspects of the Facility, the roles and responsibilities of all parties concerned, the budget and other parameters), provide input/suggestions for change, then endorse the Manual when completed;
- recommendations for subsequent changes to the Manual, and endorse these/other changes;
- procedures relating to scholarships, noting that the advice would need to be in line with Australian Scholarships Group requirements;
- specific promotional strategies for use with organisations to implement the applicant profiles established for scholarships and to market Australian Leadership Awards (Scholarships and Fellowships)
- how to make best use of SPO category including how to identify potential SPOs and market the Facility to them
- how to ensure that issues such as gender, anti-corruption and disability have been adequately addressed at all points of the scholarship management process.
- how to engage applicants from sub-groups that have been difficult to attract and, as needed, provide support for them to reach criteria (e.g. language training; practical support for applicants with families)

ANNEX C: TERMS OF REFERENCE

Position: Facility Director

Reports to: Facility Coordinating Committee

Duties

The Facility Director will:

- propose effective targeting strategies to the FB;
- make recommendations to the FB concerning the selection of target organisations;
- oversee the preparation and implementation of annual work programs; the selection and placement of long term trainees; and other HR/OD support, including support for Local Service Providers;
- oversight and lead the establishment and operations of offices in Manila and a field office, procure equipment, recruit staff, and provide training/orientation on: the Facility; AusAID's program in the Philippines; the roles and responsibilities of all parties concerned; anti-discrimination, anti-corruption, environmental, gender and disability policies; monitoring, reporting and accounting requirements; and other aspects as required;
- oversight and manage all procurement and contract management for the Facility, including activities funded from the Imprest Account;
- oversee the finalisation of the QSM, in consultation with members of the FCC and others;
- establish (or oversee) the establishment of financial systems;
- oversee the establishment of a website for the Facility;
- ensure secretariat services are provided to the FB and FCC;
- maintain good working relationships with AusAID and GOP counterparts
- ensure coordination with DAS partners, other delivery organisations for AusAID programs and with other donors;
- represent the Facility public meetings, fora, events and/or as directed by AusAID
- supervise the preparation of all reports;
- take responsibility for the M&E Framework and monitoring and evaluation activities;
- liaise with and provide support to review teams, as required; and
- take overall responsibility for quality control at all stages and in all aspects of the Facility.

Qualifications & Experience

(A) Essential:

1. Five years experience in strategic and operational management of development programs preferably in human resource development, organisational development or capacity

building, including demonstrated experience in the provision of strategic advice to policy formulating bodies.

2. Demonstrated effective recent experience in leading teams in the implementation of ODA programs in cross- cultural environments.
3. Demonstrated excellent oral and written cross cultural communication skills including the ability to produce timely, lucid and concise reports.
4. Demonstrated experience on Gender and Development and Disability issues.

(B) Desirable:

1. Working knowledge of Filipino.
2. Recent working experience in South East Asia in a similar position.
3. Knowledge of Australian tertiary education systems and processes.
4. Qualifications in adult education and experience in training needs analysis, training design, delivery and evaluation.

Location

Manila, with frequent travel to Mindanao and any other area of PAHRODF programming.

Duration

Five years total

Position: Deputy Facility Director

Reports to: Facility Director

Duties

The Deputy Director will:

- provide support to the Facility Director;
- establish and maintain a sound working relationship with HRD staff in the participating targeted organisations;
- develop a strategy to provide HRD planning assistance to participating organisations in support of their organisational development strategies and plans, consistent with Facility objectives;
- assist participating organisations to carry out training needs assessments (TNAs);
- work with organisations in the preparation of training specifications;
- assist organisations to determine their HRD needs and assist in the development of course specifications to address these needs;
- liaise and coordinate with relevant partners to establish and implement selection processes for long and short-term training;
- liaise with AusAID, other bilateral and multilateral projects and NGOs with a view to training cooperation;
- review training needs and priorities and conduct necessary consultations to prepare training plans;
- work with participating organisations and those nominated to attend training to develop initial plans related to the training proposed. Assist in planning appropriate and realistic re-entry plans (REAPs) for trainees to maximise transfer of knowledge and competencies to the organisations;
- work with organisations to establish a process to achieve formal agreements concerning the organisations' commitments to implementing plans for the transfer of trainee knowledge and competencies;
- oversight and manage all procurement and contract management for the Facility, including activities funded from the Imprest Account;
- monitor organisation and participant inputs to the M&E system;
- advise on strategies to use feedback data from M&E processes to improve all aspects of the professional and administrative performance of the HRD planning functions of the Facility; and
- provide professional advice on the design and content of information and publicity to participating organisations and the Facility website.

Qualifications & Experience

(A) Essential:

1. Demonstrated senior experience in a training or HRD role and working with diverse public and private sector organisations in skill-formation programs.
2. Demonstrated leadership in project management and/or training management or equivalent experience.
3. Tertiary qualifications (preferably post-graduate) and significant and relevant experience in an area such as human resource development or training.
4. Demonstrated experience in carrying out Training Needs Analysis and designing courses/curricula to meet these needs.
5. Familiarity with Commonwealth Procurement Guidelines and relevant Philippines procurement legislation.
6. Excellent inter-personal and liaison skills and experience in working in a cross-cultural setting.
7. Demonstrated experience on Gender and Development and Disability issues.
8. Excellent presentation and communication skills.
9. Competence in work processing and use of spreadsheets and internet.
10. Fluency in written and spoken English.

(B) Desirable:

1. Fluency in Filipino and/or other Philippine languages.

Location

Field Office location to be determined, with frequent travel throughout the Philippines, in particular, the Southern Philippines.

Duration

Five years

Position: Organisational Development Adviser

Reports to: Facility Director

Duties

The OD Adviser will:

- work with the Facility Director and the PAHRODF team to provide OD advice to partner organisations (e.g. assist them to identify their needs with respect to development of organisational capacity and, as needed and appropriate, to develop their plans for organisational development.)
- establish and maintain a sound working relationship with key people from the partner organisations;
- develop a strategy to provide OD assistance to partner organisations to contribute to the achievement of their development and change agenda;
- work with partner organisations and those nominated to attend training to develop OD specifications related to proposed OD issues;
- assist the partner organisations develop appropriate and realistic focus of re-entry action plans for trainees to maximize transfer of knowledge and skills to the organisations;
- work with partner organisations to establish a process to achieve formal agreement concerning the organisations' (supervisors, top management, other key stakeholders) commitments to implement the re-entry action plans, specifically in relation to organisational change;
- assist in the preparation of documents relating to the sub-contracting of OD solutions;
- assist in the management of training sub-contractors in line with prepared plans in the Philippines;
- provide briefings to sub-contracted OD consultants and Local Service Providers to maximize the effectiveness of OD solutions;
- monitor sub-contracted Local Service Providers in the conduct of OD solutions;
- assist in strengthening the role of local training service providers;
- monitor partner organisations and trainees outputs to the M&E system;
- assist in research, knowledge synthesis, management and diffusion activities;
- advise on strategies to use feedback data from M&E processes to improve all aspects of the professional and administrative performance of the HR/OD planning functions of the Facility; and provide professional advice on the design and content of information and publicity to participating organisations and the Facility website.

Qualifications & Experience

(A) Essential:

1. Demonstrated senior experience in a training or OD role and working with diverse public and private sector organisations in skill-formation programs.
2. Demonstrated leadership in project management and/or training management or equivalent experience.
3. Tertiary qualifications (preferably post-graduate) and significant and relevant experience in an area such as organisational development or training.
4. Demonstrated experience in carrying out Training Needs Analysis and designing courses/curricula to meet these needs.
5. Demonstrated successful experience as a mentor to those with whom he or she works.
6. Excellent inter-personal and liaison skills and experience in working in a cross-cultural setting.
7. Demonstrated experience on Gender and Development and Disability issues.
8. Excellent presentation and communication skills.
9. Competence in work processing and use of spreadsheets and internet.
10. Fluency in written and spoken English and Filipino.

(B) Desirable:

1. Fluency in other Philippine languages (e.g. Cebuano).

Location

Manila, with frequent travel to Mindanao and any other area of PAHRODF programming.

Duration

Five years

Position: Human Resource Development Adviser

Reports to: Facility Director

Duties

The HR Adviser will:

- work with the Facility Director and the PAHRODF team to provide HRD advice to partner organisations, e.g. assist them to identify their needs with respect to development of competencies and capacity and, as needed and appropriate, to develop their plans for organisational development.
- establish and maintain a sound working relationship with key people from the partner organisations;
- develop a strategy to provide HRD assistance to partner organisations to contribute to the achievement of their development and change agenda;
- work with partner organisations and those nominated to attend training to develop HR Specifications related to proposed HR issues;
- assist the partner organisations develop appropriate and realistic focus of re-entry action plans for trainees to maximize transfer of knowledge and skills to the organisations;
- work with partner organisations to establish a process to achieve formal agreement concerning the organisations' (supervisors, top management, other key stakeholders) commitments to implement the re-entry action plans for the transfer of learning of the trainees;
- assist in the preparation of documents relating to the sub-contracting of HR solutions;
- assist in the management of training sub-contractors in line with prepared plans in the Philippines;
- provide briefings to sub-contracted HR consultants and Local Service Providers to maximize the effectiveness of HR solutions;
- monitor sub-contracted Local Service Providers in the conduct of HR solutions;
- assist in strengthening the role of Local Service Providers;
- monitor partner organisations and trainees outputs to the M&E system;
- assist in research, knowledge synthesis, management and diffusion activities;
- advise on strategies to use feedback data from M&E processes to improve all aspects of the professional and administrative performance of the HRD planning functions of the Facility; and provide professional advice on the design and content of information and publicity to participating organisations and the Facility website.

Qualifications & Experience

(A) Essential:

1. Demonstrated senior experience in a training or HRD role and working with diverse public and private sector organisations in skill-formation programs.
2. Demonstrated leadership in project management and/or training management or equivalent experience.
3. Tertiary qualifications (preferably post-graduate) and significant and relevant experience in an area such as human resource development or training.
4. Demonstrated experience in carrying out Training Needs Analysis and designing courses/curricula to meet these needs.
5. Demonstrated successful experience as a mentor to those with whom he or she works.
6. Excellent inter-personal and liaison skills and experience in working in a cross-cultural setting.
7. Demonstrated experience on Gender and Development and Disability issues.
8. Excellent presentation and communication skills.
9. Competence in work processing and use of spreadsheets and internet.
10. Fluency in written and spoken English and Filipino.

(B) Desirable:

1. Fluency in other Philippine languages (e.g. Cebuano).

Location

Manila, with frequent travel to Mindanao and any other area of PAHRODF programming.

Duration

Five years

Position: Monitoring and Evaluation Adviser

Reports to: Facility Director

Duties

The M&E Adviser will:

1. re-design or update (as necessary) and implement the PAHRODF M&E framework and systems that links to AusAID performance assessment matrix of the new Country Program Strategy and maximises the use of Philippine government reporting systems;
2. strengthen, as necessary, and implement a high quality M&E strategy and associated web-based business systems process for implementation by PAHRODF;
3. provide focus for the team on issues relating to monitoring & evaluation for PAHRODF;
4. ensure establishment of baseline data for partner organisations, and regular updating of data
5. develop and implement the M&E training and coaching activities to partner organisations;
6. provide high quality M&E reporting as per the head contract (bi-annual)
7. supervise and quality assure data collection and reporting;
8. Participate in, or contribute towards, the preparation of the AusAID Quality at Implementation (QAI) and Annual Program Pillar Reports (APPR)
9. Ensure the Facility M&E system complies with GOP reporting requirements.

Qualifications & Experience

(A) Essential:

1. Experience in the development and management of M&E frameworks on donor assisted programs and projects.
2. Demonstrated experience in M&E of HR/OD solutions
3. A good understanding of Philippine government national and sub-national M&E systems
4. An understanding of the cross-cutting themes (poverty alleviation, gender equity, health and HIV/AIDS, anti-corruption, environmental management, peace and conflict) and experience incorporating these in M&E system..
5. Demonstrated experience on Gender and Development and Disability issues.
6. Excellent presentation and communication skills.
7. Competence in work processing and use of spreadsheets and internet.
8. Fluency in written and spoken English and Filipino

(B) Desirable:

1. Fluency in other Philippine languages (e.g. Cebuano).

Location

Manila, with frequent travel to Mindanao and any other area of PAHRODF programming.

Duration

Five years

ANNEX D – INDICATIVE TIMELINES AND PROCESSES FOR ADS AND ALAS

(Year 1, to be updated in accordance with new timelines and processes developed as part of the Quality Systems Manual)

	ADS/ Other Scholarships	ALAS
June	<p>Contractor to facilitate IELTS and medical examinations for incoming January intake nominees</p> <p>Contractor to mobilise remaining 2010 intake (second semester scholars, if any)</p> <p><i>*Contractor to assume on-award administration of ADS and CMU students already studying in Australia</i></p>	<p>Applications to close (30 June)</p> <p><i>*Contractor to assume on-award monitoring of ALAS students already studying in Australia</i></p>
July	Contractor to provide course counselling for incoming January 2011 intake nominees	Contractor to review applications and identify shortlist for interview
August	Contractor to seek FCC endorsement of incoming January 2011 intake	<p>Whole-of-Government Selection Panel interviews for Philippines applicants</p> <p>Contractor to organise external panel member and provide secretariat support</p>
September	Contractor to facilitate placement in Australian universities	
October		Contractor will be informed by AusAID of final global ALAS results
November	Mobilisation activities for incoming January 2011 intake conducted by Contractor (e.g. pre-departure briefings, tickets)	Mobilisation activities for incoming January intake conducted by Contractor (e.g. pre-departure briefings, tickets)
December	Departure of students	Departure of students

PART 4 – DRAFT BASIS OF PAYMENT

Philippines-Australia Human Resource and Organisational Development Facility

Note to Tenderers: This Part 4 of the Request for Tender will appear as Schedule 2 in the consolidated contract.

1. TOTAL AMOUNT

- 1.1 The total amount payable by AusAID to the Contractor shall not exceed the sum of A\$xxx plus GST, if any to a maximum of A\$xxx.
- 1.2 AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.
- 1.3 This Basis of Payment does not include payments for in-Australia Australian Scholarships (e.g. ADS, ALAS) costs. These costs are the responsibility of AusAID.

2. PAYMENT STREAMS

- 2.1 For the performance of the Services described in the Contract, AusAID shall pay the Contractor as follows to a maximum amount specified in Clause 1.1 above:
 - (a) Fixed Management Fee (FMF) in accordance with Clause 3 of this Schedule 2, up to a maximum amount of A\$xxx. The FMF will be paid as:
 - (i) Milestone Payments in accordance with Clause 4 of this Schedule 2, up to a maximum amount of A\$xxx.
 - (ii) Regular Payments in accordance with Clause 5 of this Schedule 2, up to a maximum amount of A\$xxx.
 - (b) Personnel Costs in accordance with Clause 6 of this Schedule 2, up to a maximum amount of A\$xxx; and
 - (c) Reimbursable Administration, Equipment and Operational Costs in accordance with Clause 7 of this Schedule 2, up to a maximum amount of A\$1,645,000.
 - (d) Imprest Account in accordance with Clause 8 of this Schedule 2, up to a maximum amount of A\$22,600,000.

3. FIXED MANAGEMENT FEES

- 3.1 The total amount for Fixed Management Fees shall not exceed A\$xxx.
- 3.2 The FMF will comprise (but will not be limited to):
 - (a) All aspects of profit, including commercial margins for all personnel

- (b) All overheads
- (c) All management and administrative support costs for Specified Personnel.
- (d) Financial management costs and financing costs, including management costs associated with the management and reporting for Imprest Account funds.
- (e) Cost of annual independent audits of Imprest Account funds for the period of the Contract.
- (f) Costs of complying with the Contractor's monitoring and evaluation, reporting and liaison obligations under the Contract.
- (g) Allowances for risks and contingencies.
- (h) Costs associated with Unconditional Financial Undertaking for A\$2,000,000 in relation to Imprest Account funds (subject to negotiation with the preferred tenderer).
- (i) All other costs not specified as Reimbursable Costs (subject to negotiation with the preferred tenderer).

4. **MILESTONE PAYMENTS**

- 4.1 The total amount for Milestone Payments shall not exceed A\$xxx. This amount reflects 30% of total Fixed Management Fees.
- 4.2 Milestone Payments payable to the Contractor will be paid progressively, within thirty (30) days of AusAID's acceptance of the satisfactory completion of identified outputs and a correctly rendered invoice.
- 4.3 The criteria for "satisfactory completion" of an identified output will be as specified in Annex 1 - **Summary of Milestone Payments** as the "means of verification".
- 4.4 Where a Milestone Payment is to follow acceptance of a report, AusAID shall not be obliged to make payment until all of the outputs to be achieved by the Contractor in the period covered by the report have been achieved.
- 4.5 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.

5. **REGULAR PAYMENTS**

- 5.1 The total amount for Regular Payments shall not exceed A\$xxx. This amount reflects 70% of total Fixed Management Fees.
- 5.2 Regular Payments payable to the Contractor will be paid progressively in equal instalments on a quarterly basis within thirty (30) days of AusAID's receipt of a correctly rendered invoice as required by the contract.

6. SPECIFIED PERSONNEL COSTS

- 6.1 AusAID shall reimburse the Contractor up to a maximum total amount of A\$xxx for Specified Personnel Costs.
- 6.2 The Contractor will be entitled to reimbursement at cost of the monthly fee at cost for the following, but excluding profit and management fees:
- (a) All items of salary and salary on-costs, taxation and superannuation payable to personnel
 - (b) Local cost of living allowances; and
 - (c) All personnel-related insurance costs, including insurance for health, medical and medical evacuation, worker's compensation, liability and indemnity.
- 6.3 AusAID shall pay the Contractor quarterly on a reimbursable basis in arrears up to the maximum amounts specified in Annex 2 of this Schedule 2.
- 6.4 Mobilisation and demobilisation costs will be reimbursed at cost up to the maximum one-off amount for the Facility Director as set out in Annex 2 of this Schedule 2.
- 6.5 For the purpose of calculating part months where necessary, a full month is deemed to be 30 days. Part months will be pro rated on a daily basis.
- 6.6 Leave accrued during the assignment for Specified Personnel shall be deemed to be taken in the year it falls due and cannot be accumulated or paid out.

7. REIMBURSABLE PAYMENTS: ADMINISTRATION, EQUIPMENT AND OPERATIONAL COSTS

- 7.1 AusAID shall reimburse the Contractor up to a maximum of A\$1,645,000 for Administration, Equipment and Operational Costs.
- 7.2 AusAID shall reimburse the Contractor on the basis of the actual cost incurred for items identified as Reimbursable Administration, Equipment and Operational Costs, up to the maximum amounts specified in Annex 3 of this Schedule 2, within thirty (30) days of AusAID's receipt of a correctly rendered invoice submitted on quarterly basis.
- 7.3 When expenditure of any line item reaches 80% of the limits specified in Annex 3 of this Schedule 2, the Contractor must advise AusAID of the remaining commitments and must ensure that the maximum limits of each line item is not exceeded.
- 7.4 The Contractor must notify AusAID in writing of any intended changes to the descriptions of individual line items. Any changes will be subject to AusAID written approval. Such changes will not require an amendment to this Contract.
- 7.5 The Contractor must maintain a Register of Assets in accordance with Clause 10 (Procurement Services) of Part B Standard Contract Conditions in the format described in Annex 4 to this Schedule 2.

- 7.6 Costs charged to AusAID for sub-contractor services shall be the actual costs billed by the sub-contractor and paid by the Contractor for those services and shall not include the cost of managing the sub-contract. The cost of managing sub-contracts shall be paid through Fixed Management Fees.
- 7.7 At the end of the Contract or on termination of the Contract, any remaining Reimbursable funds will remain the property of AusAID. The Contractor will have no claim for any remaining reimbursable funds.
8. **IMPREST ACCOUNT**
- 8.1 The maximum amount payable by AusAID into the Imprest Account will be A\$22,600,000 including GST, if any.
- 8.2 The Contractor will establish and manage the Imprest Account for the purpose of funding approved activities as set out in the Annual Plan and in accordance with Clause 13 of Part A Project Specific Contract Conditions. The funds in the Imprest Account will not be reallocated for any other purpose under this Basis of Payment.
- 8.3 AusAID will make the first payment on its written acceptance of the Manual of Operations for the Imprest Account and approval of the “Initial” Annual Plan. AusAID will make subsequent payments into the Imprest Account on a quarterly basis. The amount of each subsequent payment will be determined by consideration of the approved forward financial projections provided by the Contractor in the Annual Plan and Budget and of the balance of the Imprest Account. The Contractor will acknowledge receipt of each tranche of funds immediately upon their receipt.
9. **CLAIMS FOR PAYMENT**
- 9.1 The Contractor’s tax invoice must be submitted when due pursuant to this **Schedule** in a form identifiable with the Services.
- 9.2 All tax invoices must include a certification by a Company director of the Contractor, or their delegate:
- (a) that the invoice has been correctly calculated; and
 - (b) that the Services included in it have been performed in accordance with the Contract.
- 9.3 All claims for payment must be **made out to:**
- Chief Finance Officer**
Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601
- 9.4 Tax invoices should be sent to the above address. Alternatively, AusAID will accept electronic tax invoices. These can be sent to accountsprocessing@ausaid.gov.au, and a copy provided to the Activity Manager nominated by AusAID.

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

ANNEX 1 – SUMMARY OF MILESTONES and PAYMENTS

No.	Ref.	Milestone description	Due Date	Means of verification	Value	Payment Event Number
1	Scope of Services Clause 6.4	Inception Report	After six (6) weeks of commencement – August 2010	Written acceptance by AusAID		
2	Scope of Services Clause 5.1	“Initial” Annual Plan (FY10/11)	After three (3) months from commencement – October 2010	Written acceptance by FCC		
3	Scope of Services Clause 8.7	Six-Monthly M&E Report (June – Dec 2010)	February 2011	Written acceptance by AusAID		
4	Scope of Services Clause 5.1	Annual Plan (FY11/12)	March 2011	Written acceptance by FCC		
5	Scope of Services Clause 8.7	Six-Monthly M&E Report (Jan – June 2011)	August 2011	Written acceptance by AusAID		
6	Scope of Services Clause 5.1	Annual Plan (FY12/13)	March 2012	Written acceptance by FCC		
7	Scope of Services Clause 8.7	Six-Monthly M&E Report (Jan – June 2012)	August 2012	Written acceptance by AusAID		
8	Scope of Services Clause 5.1	Annual Plan (FY13/14)	March 2013	Written acceptance by FCC		
9	Scope of Services Clause 8.7	Six-Monthly M&E Report (Jan – June 2013)	August 2013	Written acceptance by AusAID		
10	Scope of Services Clause 5.1	Annual Plan (FY14/15)	March 2014	Written acceptance by FCC		
11	Scope of Services Clause 9.4	Initial draft Handover Plan	January 2014	Written acceptance by AusAID		
12	Scope of Services Clause 8.7	Six-Monthly M&E Report (Jan – June 2014)	August 2014	Written acceptance by AusAID		
13	Scope of Services Clause 9.3	Facility Completion Report	January 2015	Written acceptance by AusAID		
Sub Total (insert claim period value for period)						
TOTAL: (insert total value of Milestones)						

ANNEX 2 – SPECIFIED PERSONNEL

Position	Name	Inputs (Months)	Monthly Fee (A\$)	Mobilisation	Demobilisation	Annual Leave Entitlement (Weeks)	Financial Limitation
Facility Director		60				4	
Deputy Facility Director		60		0	0	4	
Organisational Development Adviser		60		0	0	4	
Human Resource Development Adviser		60		0	0	4	
Monitoring and Evaluation Adviser		60		0	0	4	
TOTAL							

ANNEX 3 – REIMBURSABLE ADMINISTRATION, EQUIPMENT AND OPERATIONAL COST

Item	Unit	No. Of Units	Cost Per Unit (A\$)	Financial Limitation (A\$)
Office Rent and Utilities				475,000
Office Furniture and Equipment	N/A	N/A	N/A	550,000
Office Supplies and Materials				140,000
Vehicles		4		180,000
Vehicle Maintenance				100,000
Communications and Publicity	N/A	N/A	N/A	200,000
TOTAL REIMBURSABLE BUDGET				1,645,000

ANNEX 4 – ASSET REGISTER

Identification Number	Description of Asset	Purchase Reference	Purchase Date	Purchase Price	Date & Location Received	Remarks – Including Disposal Action & Price Received

SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

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PART 5 – STANDARD TENDER CONDITIONS

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

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

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

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

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

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

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

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

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

Conditions Applying to Electronic Tender Lodgement

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

Conditions Applying to Hard Copy Tender Lodgement

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

2. TENDERER ENQUIRIES

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

2.2 If a Tenderer:

- (a) finds any discrepancy, error or omission in the terms and conditions of the RFT, including of the Contract Conditions; or
- (b) wishes to make any enquiry, including seeking clarification, of the RFT, including of the Contract Conditions,

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

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

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

3. **LATE TENDERS**

Conditions Applying to Tenders Lodged Electronically

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

Conditions Applying to Tenders Lodged in Hard Copy

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

4. **NON-CONFORMING TENDERS**

- 4.1 Subject to **Clause 3 (Late Tenders) of this Part**, Tenders will be regarded as non-conforming if they fail to conform with one or more of the requirements of the RFT.
- 4.2 AusAID reserves the right to seek clarification of non-conforming Tenders in accordance with **Clause 5 of this Part**.
- 4.3 Subject to **Clause 3 (Late Tenders) of this Part**, AusAID may, at its absolute discretion, assess or reject a non-conforming Tender.
- 4.4 AusAID will not enter into correspondence about a decision to assess or reject a non-conforming Tender.

5. **CLARIFICATION OF TENDERS**

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

6. **AMENDMENT OF THE RFT**

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

7. **ASSESSMENT OF TENDERS**

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

Technical Assessment

- 7.3 The technical assessment will be undertaken by the Technical Assessment Panel (the “**TAP**”) comprising AusAID representative(s) and independent specialists appointed at AusAID’s sole discretion. Representatives of the Partner Government may also participate. The TAP will assess Tenders based on the technical selection criteria specified in **Part 1**.
- 7.4 AusAID may invite a Tenderer (shortlisted or otherwise) to give AusAID a short presentation and be interviewed by the TAP. Specified Personnel, such as the proposed in-country team leader and the project director, will be required to attend at the presentation. If Specified Personnel are unable to attend, a teleconference presentation may be arranged. Specified Personnel will be required to answer any questions asked by the TAP. The TAP will be convened in Canberra and the costs of the Tenderer's (and its personnel's) attendance must be borne by the Tenderer.
- 7.5 Tenderers should note that failure by a Tenderer or proposed Specified Personnel to attend the presentation (either in person or via teleconference) may disadvantage the Tender.
- 7.6 TAP members are required to maintain the “commercial-in-confidence” nature of the proceedings of the TAP meeting. TAP members must not discuss matters relating to the technical assessment of any tender with any party. Tenderers must not make contact with any members of the TAP, outside any TAP meeting, and any such contact will be considered a breach of confidentiality and may result in AusAID rejecting the tender of the Tenderer concerned.
- 7.7 AusAID reserves the right to take into account in the assessment of this Tender the past performance of the Tenderer or any proposed personnel contained in the Tender in accordance with **Annex A of this Part**.
- 7.8 In making its assessment the TAP or AusAID may have regard to other factors relevant to the suitability, capacity and qualifications of a Tenderer including but not limited to:
- (a) the Tenderer's ability to comply with AusAID policies referred to in this RFT and the Tenderer's ability to comply with the **Contract Conditions**;
 - (b) the resourcing of Tenders;
 - (c) information obtained from any source which is relevant to the capacity of the Tenderer or any proposed personnel to perform the Services and achieve the Project goals and objectives. Such information may be the result of inquiries made by AusAID; and
 - (d) the Tenderer’s demonstrated understanding of the cultural environment of the Project.

These other factors have not been allocated any specific weightings.

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

Goods and Services Tax

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

Insurances

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

Project Vehicles

- 7.12 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 primarily for Contractor Personnel use 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.
- 7.13 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute \$250.00 for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor’s invoices.
- 7.14 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.

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

Technical proposal format

7.15 The technical proposal must:

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

Curricula vitae

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

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

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

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

- (a) the information provided in this CV is accurate and hereby authorise the Commonwealth to make whatsoever inquiries it may consider reasonable and necessary to undertake in the course of the Tender assessment in relation to the information I have provided in this CV or any other matter which may relate to my suitability for the position for which I have been nominated;
- (b) I am available to participate in the Project in the role in which I have been nominated in the Tender for the period or periods indicated in the Tender;
- (c) I am a person of good fame and character; and

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

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

Referees

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

8. JOINT VENTURES AND CONSORTIUMS

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

9. ASSOCIATES AND OTHER SUB-CONTRACTORS

- 9.1 Tenders involving two or more parties who have not formed a single legal entity will only be accepted if the Tender is submitted on the basis that one party, the Tenderer, is intended to act as the prime contractor and any other party becomes a sub-contractor known as an “Associate”.
- 9.2 Tenders involving Associates will be assessed on the basis of that arrangement. Tenders must include:
- (a) details on the activities to be performed and responsibilities assumed by each party where Associates are involved must be described in the body of the text of **Tender Schedule A**; and
 - (b) assurance to AusAID from an authorised representative of the Associate of their corporate commitment to and involvement in the Project in the form of a single page Letter of Association in a separate annex to **Tender Schedule A**.

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

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

10. OWNERSHIP OF TENDERS AND RFT

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

11. CONFLICT OF INTEREST

- 11.1 Tenderers must:
- (a) identify any actual or potential conflict of interest; and

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

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

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

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

12. TENDERING CONDUCT

- 12.1 Each Tenderer warrants that it has not engaged in collusive or anti-competitive practices with any other Tenderer in the preparation of its Tender.
- 12.2 If a Tenderer is found to have made false or misleading claims or statements, or receives improper assistance or improperly obtains confidential information, AusAID reserves the right to reject at any time, any Tender lodged by or on behalf of that Tenderer.

13. INELIGIBILITY TO TENDER

- 13.1 A Tenderer is ineligible to tender where the Tenderer or any subcontractor of the Tenderer is listed by the World Bank in its “Listing of Ineligible Firms” or “Listings of Firms, Letters of Reprimand” posted at www.worldbank.org (the “**World Bank List**”).
- 13.2 Tenderers warrant by submitting a tender that the Tenderer, and any subcontractor of the Tenderer, are not listed on a World Bank List. Tenderers must also state in their tender whether the Tenderer or any subcontractor of the Tenderer is listed on any similar list maintained by any other donor of development funding (“**Relevant List**”) or are subject to any proceedings which could lead to listing on a World Bank List or listing on any Relevant List. Tenderers must also immediately notify AusAID where the Tenderer or any of their subcontractors becomes listed on a World Bank List or Relevant List, or subject to proceedings which may lead to such a listing, after the tender is submitted to AusAID.
- 13.3 AusAID will exclude any tender where the Tenderer is in breach of the warranty, or does not disclose any circumstance required under **Clause 13.2**. AusAID also reserves the right to exclude any tender, where the Tenderer or a subcontractor of the Tenderer becomes listed on a World Bank List or Relevant List, or is subject to proceedings which could lead to such a listing.
- 13.4 Tenderers should note that if they tender in breach of this **Clause 13**, or are subsequently listed on a World Bank List or Relevant List, AusAID may terminate any contract subsequently entered into with that Tenderer.

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

14. **AusAID's RIGHTS**

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

- 14.2 AusAID reserves the right to:

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

15. **TENDERER'S ACKNOWLEDGEMENT**

- 15.1 A Tender is submitted on the following basis:

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

16. **DEBRIEFING OF TENDERERS**

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

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

17.1 Freedom of Information

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

17.2 Privacy

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

17.3 Access by Australian National Audit Office

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

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

17.4 Access by Ombudsman

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

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

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

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

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

17.7 Other Australian Government and AusAID Policies

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

18. FURTHER REQUIREMENTS

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

19. CONTRACT NEGOTIATIONS

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

- 19.2 The preferred Tenderer(s) must within 14 days of written notification from AusAID that it has been selected as preferred Tenderer, provide AusAID with originals of Police Clearance Certificates for all Personnel nominated in their Tender in positions specified in the Specified Personnel Table (**Clause 7, Part 1**) as working with children.
- (a) Police Clearance Certificates must be provided for each country in which the individual has lived for 12 months or longer over the last five years, and for the individual's country of citizenship;
 - (b) Police Clearance Certificates must be dated no earlier than 12 months before the Tender Closing Time;
 - (c) If any required Police Clearance Certificates are not provided to AusAID in accordance with **Clause 18.2** above, AusAID may exercise its right, specified at **Clause 14.2** above, to terminate negotiations with the preferred Tenderer and commence negotiation with any other Tenderer. AusAID recognises that in limited instances it may prove impossible to obtain a reliable Criminal Record Check, and will take non-provision of a Criminal Record Check into account upon request;
 - (d) AusAID reserves the right to require the preferred Tenderer(s) to replace any Personnel whose Police Clearance Certificate shows conviction of criminal offences of, or relating to, child abuse where AusAID, in its absolute discretion, considers that the Personnel poses an unacceptable risk to children's safety or well-being. Nominated replacement Personnel must have qualifications and experience equal to or better than those of the personnel being replaced, and must be acceptable to AusAID.
- 19.3 It is AusAID's intention to contract on the basis of the Contract Conditions contained in this RFT. Following the selection of a preferred Tenderer AusAID may enter into negotiations with the preferred Tenderer in respect of the Scope of Services and the Basis of Payments of the contract. Such negotiations will be strictly limited to matters of detail rather than substance.
- 19.4 If the Scope of Services is reduced as a result of constraints imposed on AusAID before or after the **Closing Time**, AusAID and the preferred Tenderer must negotiate, in good faith, a proportionate reduction, if necessary, to the fixed price quote.
- 19.5 Enhancements to the Scope of Services included in the Tender in accordance with the selection criteria should be costed into the fixed price quote for the purposes of the like-for-like price assessment. Where AusAID has instructed that the like-for-like price assessment is to be based on indicative values, the Tenderer must clearly specify all cost implications of enhancements proposed in the Tenderer's technical proposal.
20. **CONTRACT PLANS**
- 20.1 The preferred Tenderer may be required to convert the Technical Proposal submitted in its Tender into appropriate schedules for the Contract based on the Contract Conditions. The Tenderer must take into account the outcome of any negotiations and give effect to amendments agreed with AusAID.

21. **APPLICABLE LAW**

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

ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION

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

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

ANNEX B – TENDERER DECLARATION

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

1. DEFINITIONS

1.1 In this declaration:

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

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

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

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

2. BASIS OF DECLARATION

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

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

3. THE OFFER

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

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

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

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

3.5 I acknowledge that if the Tenderer is found to have made false or misleading material claims or statements in the Tender or in this declaration, or to have used confidential information, or

received improper assistance, AusAID will reject at any time any Tender lodged by or on behalf of the Tenderer.

- 3.6 I acknowledge and agree to the matters specified in **Clauses 14** (AusAID's Rights) and **15** (Tenderer's Acknowledgement) of **Part 5**.
- 3.7 I agree:
- (a) that the Tenderer will be bound by this Tender for the Tender Validity Period of 180 days after the **Closing Time**; and
 - (b) that this Tender may be accepted by AusAID at any time before the expiration of that period or any additional period to which we may agree.
- 3.8 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.
- 3.9 I understand that AusAID is not bound to accept the lowest priced or any Tender.
- 3.10 I warrant that in preparing the Tender for the Services the Tenderer did not act in any way which did or could have had the effect of reducing the competitiveness of the tender process for the Services. In particular I warrant that the Tenderer did not engage in:
- (a) any discussion or correspondence with other tenderers concerning the amount of the Tender;
 - (b) any collusive tendering or other anti-competitive practices with any of the other Tenderers or any other person; or
 - (c) any conduct or have any arrangement or arrive at any understanding with any of the other Tenderers.
- 3.11 **[This clause applies to government owned Tenderers only.]** I warrant that in preparing the Tender, the Tenderer has complied with the principles of competitive neutrality.
- 3.12 I warrant that the Tenderer, and any subcontractor of the Tenderer are not:
- (a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of this RFT;
 - (b) listed on any similar list maintained by any donor of development funding (Relevant List), or;
 - (c) subject to any proceedings which could lead to listing on a World Bank List or listing on a Relevant List.
- 3.13 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.
- 3.14 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.

- 3.15 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.
- 3.16 Neither the Tenderer nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.
- 3.17 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.
- 3.18 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**.
- 3.19 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.
- 3.20 The Tenderer is genuinely competing for the Contract and its Tender is not a “cover bid”.
- 3.21 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.
- 3.22 I acknowledge that each party constituting the Tenderer is bound jointly and severally by this Tender.

4. **ADDENDA TO TENDER DOCUMENTS**

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

Number _____ Dated _____ Number _____ Dated _____

Number _____ Dated _____ Number _____ Dated _____

5. **ADDRESS OF TENDERER**

Address or Registered Office of Tenderer

Address for service of notices (NOT PO. BOX)

Telephone Number: Fax Number:

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

insert name and title

Signature

ANNEX C – TENDERER’S SUBMISSION CHECKLIST

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

	Checked
Tenderer’s Declaration	
Has the Tenderer’s Declaration been completed and signed?	
For electronic lodgement has one (1) electronic copy in a separate file been submitted?	
For hard copy lodgement, has one (1) printed original been submitted?	
Tender Schedule A: Technical Proposal and Annexes	
Is the Technical Proposal within the specified page limit?	
Does the Technical Proposal address each of the selection criteria individually?	
Does the Technical Proposal indicate the Tenderer’s nominated contact person and contact details on the cover page?	
Are the required annexes included and within the specified page limit(s)?	

	Checked
<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? 	
<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 CV's within the specified page limit and certified and signed by the nominated personnel?	
Do the CV's include the name and personal contact details of the nominated personnel?	
Do the CV's include the nationality and permanent residency, if relevant, status of the nominated personnel?	
Do the CV's include details of the professional qualifications of nominated personnel (if relevant), including institution and date of award?	

	Checked
Do the CV's include details of recent relevant professional and development work experience, including the duration and extent of inputs?	
<p>Have at least two (2) referees been nominated on each of the CV's 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 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?	

	Checked
Tender Schedule D: Financial Proposal (Option 1 or 2 is to be selected by Tenderers in accordance with the terms detailed in the RFT).	
Option 1	
Have the names of the tendering entity and its ultimate owners been provided?	
Have the names and financial relationships between the tendering entity, its parent entity (if relevant) and other related entities within the group been provided?	
Have the previous three (3) years annual financial statements for the tendering entity been provided including: <ul style="list-style-type: none"> (a) a balance sheet? (b) a profit and loss statement? (c) a cashflow statement? (d) contact name and telephone number of the Tenderer's financial accountant? (e) a statement detailing any other tendering opportunities being pursued by the tendering entity or the group and the likely impact of such tendering opportunities on the financial capacity of the Tenderer to discharge its potential contractual obligations to AusAID under this RFT ? 	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed copy been provided in a separate sealed envelope?	
Option 2	
Has the date of the most recent financial assessment and the name of the Tender for which this assessment was undertaken been provided?	
Has an explanation of why the Tenderer believes a further financial assessment is not necessary been provided?	

	Checked
Has a statutory declaration declaring that the Tenderer's financial position has not altered materially since the date of the previous assessment been provided?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed copy been provided in a separate sealed envelope?	

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

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

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

2. REGISTERED TENDERERS AND NOTICES

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

3. AUSTENDER HELP DESK

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

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

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

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

Virus Checking

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

Tender File Formats, Naming Conventions and Sizes

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

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

Scanned or Imaged Material, including Statutory Declarations

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

5. ELECTRONIC LODGEMENT PROCESS

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

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

6. LATE TENDERS, INCOMPLETE TENDERS AND CORRUPTED FILES

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

7. PROOF OF LODGEMENT

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

8. AUSTENDER SECURITY

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

PART 6 – STANDARD CONTRACT CONDITIONS

Note to Tenderers: This Part 6 of the RFT will appear as Part B of the consolidated contract.

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

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

"AusAID Confidential Information" means information that:

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

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

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

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

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

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

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

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

"Document" includes:

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

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

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

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

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

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

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

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

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

"NAA" means National Archives of Australia.

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

"Party" means AusAID or the Contractor.

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

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

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

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

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

"Project Specific 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.

"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:

General

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

- (a) the contractual obligations of the Parties must be interpreted and performed in accordance with the Contract as a whole;
- (b) Contract clause headings are for convenience only and shall not be taken into consideration in the interpretation or construction of the Contract;
- (c) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- (d) a word denoting the singular number includes the plural number and vice versa;
- (e) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;
- (f) a word denoting a gender includes all genders;
- (g) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Contract;
- (h) where used in the Contract the words “including” or “includes” will be read as “including, without limitation” or “includes, without limitation” (as the case may be);
- (i) a reference to any contract or document is to that contract or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (j) “shall” and “must” denote an equivalent positive obligation;
- (k) a reference to any Party to this Contract, or any other document or arrangement, includes that Party's executors, administrators, substitutes, successors and permitted assigns; and
- (l) a reference to "dollars" or "\$" is to an amount in Australian currency.

1.2 Counterparts of the Contract

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

1.3 Contract prevails

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

1.4 **Inconsistency**

If there is any inconsistency (whether expressly or to be implied from the Contract or otherwise) between the Project Specific 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 6 below**. The Contractor must also ensure the Risk Management Plan contains provisions for advance notification of AusAID of risks that may lead to disruption or delay of the Project;
- (k) liaise with, and obtain all necessary consents, approvals and authorisations from any public and other authorities in the Partner Country;
- (l) provide adequate support resources to secure the aims and objectives of the Project;
- (m) be responsive to the changing needs and environment of the Partner Country; and
- (n) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity.

5.2 Without limiting its other obligations and liabilities under this Contract, the Contractor must remedy at its cost any failure to comply with its obligations to perform the Services in accordance with this Contract as soon as practicable after becoming aware of the failure.

5.3 The Parties recognise that the performance of the Services may be affected by changes to relevant policy in the Partner Country, and that some flexibility in the performance of the Services shall be required.

6. **EARLY NOTIFICATION**

6.1 The Contractor must report immediately, and in any event within seven (7) days, to AusAID on any actual, perceived or anticipated problems or risks that may have a significant effect on the achievement of the aims and objectives of the Project, on the cost to AusAID or on the delivery or operation of the Services. If the report is first given orally, the Contractor must promptly confirm the report in writing to AusAID. The Contractor must recommend to AusAID options to prevent or mitigate the impact of problems on the Project.

7. **CONTRACTOR PERSONNEL**

7.1 The Contractor must ensure that Contractor Personnel are aware of, and must use its best endeavours to ensure Contractor Personnel comply with, the requirements of the Contract.

7.2 The Contractor must use its best endeavours to ensure that all Contractor Personnel are of good fame and character.

7.3 The Contractor must use its best endeavours to ensure that all Contractor Personnel conduct themselves in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct*.

7.4 The Contractor must use its best endeavours to ensure that all Contractor Personnel and their accompanying family members while in-country:

- (a) are aware of local laws, culture and customs in the Partner Country; and
- (b) act in a fit and proper manner.

7.5 The Contractor must use its best endeavours to ensure that no Contractor Personnel or their accompanying family members:

- (a) become involved in the political affairs of the Partner Country (unless citizens of the Partner Country);
- (b) interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country); or
- (c) share information known as a result of their work on, or relationship to, the Project,

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

- 7.6 The Contractor must not employ a currently serving Commonwealth employee in any capacity in connection with the Services without the prior written approval of AusAID.
- 7.7 The Contractor must ensure that media advertisements placed by the Contractor for personnel to fill a Project position acknowledge that the Project is funded by AusAID as part of the Australian Government's official overseas aid program.
- 7.8 AusAID may give notice to the Contractor requiring the Contractor to remove any Contractor Personnel from work in respect of the Services. The Contractor must promptly arrange for the removal of such Contractor Personnel from work in respect of the Services and their replacement (if required) with Contractor Personnel acceptable to AusAID.
- 7.9 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Contractor Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.
- 7.10 The Contractor must advise AusAID immediately in writing if any Contractor Personnel is arrested for, or convicted of, criminal offences relating to child abuse, or for accessing or possessing child pornography. AusAID may require Contractor Personnel under formal investigation in relation to such criminal offences to be suspended from duty or transferred to other duties during the investigation.
- 7.11 AusAID may give notice to the Contractor requiring the Contractor to temporarily suspend from duty, or transfer to other duties, any Contractor Personnel who are under criminal or internal investigation in relation to child abuse or accessing or possessing child pornography. The Contractor must comply promptly with any such notice.
8. **SPECIFIED PERSONNEL**
- 8.1 The Contractor must provide all Specified Personnel for the Project and for the minimum periods specified in **Schedule 1**.
- 8.2 During the minimum periods specified in **Schedule 1**, the Long Term Advisers included in the Specified Personnel must be exclusively dedicated to the Project and only perform the duties required under this Contract unless otherwise agreed in writing by AusAID.
- 8.3 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:
- (a) are properly qualified for the tasks they are to perform;
 - (b) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner; and
 - (c) are adequately briefed and understand the environment and culture of the Partner Country.
- 8.4 The Contractor must use its best endeavours to secure the availability of Specified Personnel for the term of the Contract. If a change to Specified Personnel is required the Contractor must provide AusAID with not less than 3 months prior written notice of such

change except where circumstances beyond the reasonable control of the Contractor make the giving of such notice impracticable. Any proposed change to the Specified Personnel must only be made after written consent from AusAID and in accordance with the procedure set out in **Clause 8.8 below**.

- 8.5 Subject to **Clause 8.4 above**, Specified Personnel may be temporarily absent from the Project. Where Specified Personnel are unavailable for work in respect of the Contract, for any period in excess of 2 weeks, the Contractor must notify AusAID in writing immediately and, if requested, must provide replacement personnel acceptable to AusAID and the Partner Government at no additional charge and at the earliest opportunity and for the duration of the absence.
- 8.6 The costs incurred by the Contractors in providing temporary substitute personnel due to the absence of Specified Personnel are the responsibility of the Contractor.
- 8.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Specified Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.
- 8.8 Before appointing Specified Personnel to the Project, the Contractor must obtain AusAID's written approval. In seeking approval of proposed Specified Personnel the Contractor must provide to AusAID:
- (a) the full names, dates of birth, and nationalities of proposed personnel and their accompanying dependants;
 - (b) a statement demonstrating that the proposed personnel has the demonstrated skills and capacity to undertake the job specification of the position and duration of the proposed appointment;
 - (c) a copy of the proposed person's curriculum vitae certified as accurate by the person and showing recent and relevant experience and formal qualifications including dates of award; and
 - (d) assurances that the nominated personnel has no existing commitments (defined in relation to the commitments of the position and not the individual's commitment to a particular organisation), to other AusAID projects that will suffer detriment if accepted on this Project. If this is not the case AusAID may require further information before assessing the individual's suitability.
- 8.9 If the Contractor is unable to provide acceptable replacement Specified Personnel with equivalent qualifications and experience AusAID may seek a reduction in fees.
- 8.10 This clause is a fundamental term of the Contract, such that breach shall entitle AusAID to terminate the Contract in accordance with **Clause 31** and sue for damages.

9. PROJECT VEHICLE CONTRIBUTION

- 9.1 For the purposes of this clause, "Project Vehicles" are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Project and that are provided for Project activities. Vehicles purchased by the Project, but handed over to the Partner Country immediately (where maintenance and insurance are Partner Country

responsibilities and Contractor Personnel do not use the vehicles or only use them on an exceptional basis) are not considered Project Vehicles for the purposes of requiring a financial contribution by the Contractor.

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

10. PROCUREMENT SERVICES

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

- 10.2 The Contractor shall bear the loss or damage in respect of Supplies until handover of Supplies to the Partner Government.
- 10.3 The Contractor must use its best endeavours to ensure all Supplies are free from defects in design, material, manufacture or workmanship. The Contractor must replace defective Supplies under warranty provisions or at its own cost.
- 10.4 The Contractor shall establish and maintain a Register of Assets which shall record any non-consumable Supplies valued at \$2,000 or more, which at a minimum contains the following information: reference identification number (which may be for example, a serial number, engine number or chassis number); description of the asset; date of procurement; cost; location; current status; and disposal or handover details.
- 10.5 The Register of Assets and associated documentation such as import documents, invoices and warranties shall be subject to audit by or on behalf of AusAID at any time and from time to time.
- 10.6 The Contractor must use the Supplies for purposes permitted under this Contract only and must ensure that the Supplies at all times remain free from any Encumbrance.

11. SUB-CONTRACTING

- 11.1 The Contractor may not sub-contract the whole of the Services. The sub-contracting of parts or elements of the performance of the Services is subject to compliance with the following requirements:
- (a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;
 - (b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;
 - (c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:
 - (i) comply with relevant and applicable laws, regulations and development policies, including AusAID's *Child protection policy* (<http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>) and child protection compliance standards (Attachment 1 to the policy), both in Australia and in the Partner Country, and also *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.ausaid.gov.au/keyaid/health.cfm>);
 - (ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;
 - (iii) be bound by the same obligations regarding **Clauses 15** (Accounts and Records), **18** (Audits), **19** (Access to Premises), **26** (Privacy), and **35.4**

(Anti-corruption) **below** and as required by Project Specific 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 11.1 above** apply equally to Associates.

11.3 Despite any consent or approval given by AusAID, the Contractor shall remain at all times responsible for ensuring the suitability of Associates and sub-contractors and for ensuring that the Services are performed in accordance with the Contract.

12. **CONTRACT AMENDMENT**

12.1 The Contractor must not do anything that amounts to a variation of this Contract in whole or in part otherwise than in accordance with this clause.

12.2 Changes to the Contract shall not be legally binding upon either party unless agreed in writing and signed by both Parties in the form of a "Deed of Amendment".

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

- 12.4 The Contractor must prepare an “Amendment Proposal” for any change sought by AusAID, or the Contractor, at no extra cost to AusAID and this must be submitted to AusAID in a timely manner.
- 12.5 The Amendment Proposal must include specific identification of the proposed change, associated cost implications, a cost/benefit and risk analysis, including of developmental impact improvements, a general plan for implementation of the change and a projected time schedule.
- 12.6 AusAID may, at its sole discretion, accept or reject the Amendment Proposal submitted by the Contractor.
13. **EXTENSION OF TIME**
- 13.1 Subject to **Clause 13.6 below** neither AusAID nor the Contractor shall be in breach of the Contract to the extent that performance of their Contract obligations is prevented by any of the following causes (“**Relevant Causes**”) that arise during the term of the Contract:
- (a) a Force Majeure Event;
 - (b) a significant change in circumstances beyond the control of the Contractor;
 - (c) an Australia-wide or Partner Country-wide industrial dispute; or
 - (d) a change in the laws of Australia or the Partner Country that directly impacts on the provision of the Services.
- 13.2 Where in the Contractor’s reasonable opinion there is likely to be a delay in the Contractor’s discharging an obligation under the Contract because of a Relevant Cause the Contractor must:
- (a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;
 - (b) give details of the likely effect on the Project and any Contractual implications;
 - (c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;
 - (d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances in the form of an Amendment Proposal in accordance with **Clause 12.5 above**; and
 - (e) use its best endeavours to continue to perform its obligations under the Contract.
- 13.3 AusAID must give consideration to the Contractor’s recommendations and request for an extension of time and as soon as practicable after receiving the request notify the Contractor in writing whether it has determined that a Relevant Cause has occurred and whether all or part of the request has been granted. AusAID’s approval of a request may be granted subject to conditions.

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

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

15. ACCOUNTS AND RECORDS

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

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

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

15.3 The accounts and records must be held for the term of this Contract and for a period of seven (7) years from the date of expiry or termination of this Contract.

16. **REPORTS**

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

16.2 The Contractor is responsible for any extra costs occasioned by any clarifications, discrepancies, errors or omissions in reports provided to AusAID or other information supplied in writing by the Contractor, provided such discrepancies, errors or omissions are not due to inaccurate information supplied in writing to the Contractor by AusAID.

16.3 AusAID may reject and withhold payment of Fees for any report which does not conform to the requirements of the Contract until the Contractor rectifies the report.

17. **REVIEWS**

17.1 For the purpose of ensuring that this Contract is being properly performed, AusAID may itself, or may appoint an independent person or persons to assist in the performance of, or to perform, a review of this Contract at the frequency and in relation to any matter specified by AusAID.

17.2 The Contractor must participate cooperatively in any reviews conducted by AusAID or its nominees. In addition the Contractor must respond in writing to any draft review report within 28 days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.

17.3 Reviews may be conducted of:

- (a) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services, including procurement and risk management procedures;
- (b) the accuracy and reliability of the Contractor's financial management systems;
- (c) the Contractor's compliance with their obligations under the Contract in relation to foreign exchange transactions;
- (d) the accuracy of the Contractor's reports in relation to the provision of the Services;
- (e) the Contractor's compliance with AusAID's *Child protection policy* and child protection compliance standards (Attachment 1 to the policy);
- (f) the Contractor's compliance with its Contractor Personnel, confidentiality and privacy obligations; or

- (g) any other matters relevant to the performance of any Services including user satisfaction.
- 17.4 Each Party must bear its own costs of any such reviews conducted by or on behalf of AusAID.
- 17.5 The requirement for, and participation in, reviews does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.
18. **AUDITS**
- 18.1 Where AusAID has reasonable concerns regarding the Contractor's financial management systems AusAID must provide the Contractor with written notification of those concerns and what action is required of the Contractor. This may include:
- (a) that the Company Director must provide a Statutory Declaration confirming that they have sighted the necessary supporting documentation and confirm the veracity of the claim for payment;
 - (b) providing AusAID with additional documentation to support the claim for payment; or
 - (c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including invoicing procedures and practices.
- 18.2 The Contractor must respond to any notice received under **Clause 18.1 above** within 14 days.
- 18.3 Where the Contractor does not respond within 14 days, or the response does not alleviate AusAID's concern, AusAID reserves the right, if it has not already done so, to direct the Contractor to provide AusAID with certification from an independent auditor as described in **Clause 18.1(c) above**.
- 18.4 If AusAID directs the Contractor to undertake an independent audit under this clause:
- (a) the terms of reference must be agreed in writing by AusAID;
 - (b) the audit must be undertaken according to the standards of the professional body relevant to the particular audit and those standards must be detailed in the terms of reference;
 - (c) the Contractor will bear the total cost of the audit; and
 - (d) AusAID will not make any further payments owed to the Contractor pending certification of the reliability of the Contractor's financial management systems and the veracity of the invoicing procedures and practices.
19. **ACCESS TO THE CONTRACTOR'S PREMISES, DATA AND RECORDS**
- 19.1 The Contractor must grant AusAID and/or its nominees (including the Auditor-General or the Privacy Commissioner or their delegates), access to the Contractor's premises, the Data,

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

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

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

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

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

20. **PAYMENT**

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

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

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

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

20.4 The Contractor must make all foreign exchange transactions at arms length and at commercially competitive rates. Supporting documentation must be retained in accordance with Standard 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 Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to 10) where that section or NPP is applicable to the Contractor, unless:
 - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or
 - (ii) in the case of a NPP – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorized by this Contract is inconsistent with the NPP;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with a NPP binding a party to this Contract;

- (g) to immediately notify AusAID if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any sub-contractor;
 - (h) not to transfer such information outside Australia, except to the Partner Country, or to allow parties outside Australia or the Partner Country to have access to it, without the prior approval of AusAID; and
 - (i) to ensure that any employee of the Contractor who is required to deal with Personal Information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause.
- 26.4 The Contractor agrees to ensure that any sub-contract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the sub-contractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to sub-contracts.
- 26.5 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause, or a sub-contractor under the sub-contract provisions referred to in **Clause 26.4 above**.
- 26.6 This clause shall survive expiration or termination of this Contract.
27. **AusAID USE OF CONTRACT INFORMATION**
- 27.1 AusAID may disclose matters relating to the Contract, including the Contract and the names of sub-contractors as specified in **Clause 11.1 (f) above**, except where such information may breach the *Privacy Act 1988*, to Commonwealth governmental departments and agencies, Commonwealth Ministers and Parliamentary Secretaries, and to the Commonwealth Parliament, including responding to requests for information from Parliamentary committees or inquiries.
- 27.2 This clause shall survive termination or expiration of the Contract.
28. **PUBLICITY**
- 28.1 The Contractor must identify and implement appropriate opportunities for publicising the Project.
- 28.2 The Contractor must not make any press, media or other announcements or releases relating to this Contract and the Services without the prior approval of AusAID Public Affairs Group as to the form, content and manner of the announcement or release.
- 28.3 The Contractor must only use the Australian Government/AusAID logo (in-line version) to denote association with Australia, the Australian Government or AusAID in any publicity or other project related materials. The Contractor must comply with the “AusAID Logo Guidelines for Managing Contractors” at all times, including when advertising for sub-contractors or personnel. The Guidelines are available from the AusAID Business website.
- 28.4 The Contractor shall, if appropriate, erect a sign at each Project site that acknowledges the contributions of the Australian and Partner Governments. Such signs shall in all cases be

discussed and agreed between AusAID and the Partner Government. Signs should use the Australian Government/AusAID logo (in-line version). No independent project or program logos or emblems are to be used. Contractor signs may also be displayed, but not in greater number or prominence than acknowledgments to either the Australian or Partner Governments.

29. WARRANTIES

- 29.1 The Contractor represents and warrants that it has made its own assessment of all information made available to the Contractor in respect of the Services and sought appropriate professional advice concerning:
- (a) any information, statements or representations;
 - (b) the regulatory regime applicable to the delivery of the Services both in Australia and in the Partner Country;
 - (c) the assumptions, uncertainties and contingencies which may affect the future business of the Services; and
 - (d) the impact that a variation in future outcomes may have on any Services.
- 29.2 Subject to any law to the contrary, and to the maximum extent permitted by law, AusAID, its employees, agents and advisers each disclaim all liability for any Losses (whether foreseeable or not) suffered by any other person acting on any part of the information made available to the Contractor in respect of the Service, whether or not the loss arises in connection with any negligence, default or lack of care on the part of AusAID, its employees, agents or advisers or any other person or any misrepresentation or any other cause.
- 29.3 The Contractor warrants that it shall have full corporate power and authority to enter into, perform and observe its obligations under this Contract and that the execution, delivery and performance of this Contract shall be duly and validly authorised by all necessary corporate action.

30. PERSONNEL SECURITY

- 30.1 The Contractor is responsible for the security of Contractor Personnel and for taking out and maintaining appropriate insurances in respect of Contractor Personnel.
- 30.2 The Contractor is responsible for the immediate development and implementation of a Security Plan to ensure the safety and security of Contractor Personnel. The Security Plan should incorporate prevention strategies and response plans, including evacuation plans where appropriate. The Contractor shall submit a copy of the Security Plan to AusAID prior to mobilisation in the Partner Country. The Contractor shall review and update the Security Plan whenever considered necessary by the Contractor and shall submit the revised document to AusAID.
- 30.3 The Contractor must keep abreast of the security situation in the Partner Country including where relevant having regard to travel advisories and notices including those issued by the Australian Department of Foreign Affairs and Trade. The Australian advisories and notices are available at: www.dfat.gov.au

- 30.4 The Contractor acknowledges and confirms that, notwithstanding any other provisions of the Contract:
- (a) it is not the function or responsibility of AusAID or any person acting or purporting to act on behalf of AusAID, to comment on or approve the Contractor's Security Plans; and
 - (b) the Contractor has not entered the Contract based on any representation, statement or assurance by AusAID or any person acting or purporting to act on behalf of AusAID, in respect of the safety or security of the Contractor, Contractor Personnel or any person acting on behalf of the Contractor, in the Partner Country or in any other location.

31. TERMINATION FOR CONTRACTOR DEFAULT

- 31.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor terminate this Contract, with effect from the date in the notice, if the Contractor:
- (a) commits a breach of this Contract and:
 - (i) that breach is not capable of remedy;
 - (ii) fails to remedy that breach within **[10]** Business Days (or such further time as AusAID may, in its absolute discretion, specify), after receiving a notice from AusAID requiring the Contractor to remedy the breach; or
 - (iii) does not commence to remedy that breach, within a reasonable time (having regard to the nature of the breach) after being given notice by AusAID requiring the Contractor to remedy the breach;
 - (b) becomes, or in AusAID's reasonable opinion is likely to become, bankrupt, insolvent or otherwise financially unable to fulfil its obligations under this Contract;
 - (c) becomes subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act 2001*;
 - (d) is wound up by resolution or an order of the court;
 - (e) ceases to carry on business;
 - (f) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;
 - (g) suffers any execution against its assets having, or which in AusAID's reasonable opinion is likely to have, an adverse effect on its ability to perform this Contract;
 - (h) ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Contract (except to the extent that this is outside the Contractor's reasonable control);

- (i) assigns its rights otherwise than in accordance with the requirements of this Contract;
- (j) suffers a change in Control which in AusAID's reasonable opinion may adversely affect the Contractor's ability to perform the Services under this Contract;
- (k) is in breach of the warranty, regarding listing on a World Bank List or Relevant List, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (l) is, during the term of this Contract, listed on a World Bank List or Relevant List;
- (m) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, bribery of a public official, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (n) is in breach of the warranty, regarding unsettled judicial decisions relating to employee entitlements, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (o) is, during the term of this Contract, convicted of an offence of, or relating to, bribery of a public official. In this Clause 31.1(o) the Contractor includes Contractor Personnel;
- (p) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, child abuse, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract; or
- (q) is in breach of the warranty, regarding the good fame and character of Contractor Personnel, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract.

31.2 If this Contract is terminated under this **Clause 31**:

- (a) subject to this Contract, the parties are relieved from future performance of this Contract, without prejudice to any right of action that has accrued at the date of termination;
- (b) subject to this Contract, all licences and authorisations granted to the Contractor by AusAID under this Contract terminate immediately despite anything to the contrary contained in the relevant licence or authorisation;
- (c) the AusAID Confidential Information, Supplies and any other property supplied or given to the Contractor by AusAID pursuant to this Contract must be immediately returned to AusAID;
- (d) AusAID is not obliged to make any further payments (including the payment of Fees) to the Contractor. However, AusAID may, in its absolute discretion, consider making a payment to the Contractor in such amount and upon such terms as AusAID determines is appropriate in the circumstances; and

- (e) the Contractor will indemnify and hold AusAID harmless against any Losses, costs and expenses arising out of or in connection with the termination or any breach of this Contract by the Contractor (including those arising from affected sub-contracts).

32. TERMINATION FOR CONVENIENCE

32.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor, terminate or reduce the scope of this Contract from the time specified in the notice (and without the need to give further notice) and, in that event, AusAID may give to the Contractor such directions as it thinks fit in relation to subsequent performance of this Contract.

32.2 Where notice is given under **Clause 32.1** the Contractor must:

- (a) comply with all directions given by AusAID;
- (b) cease or reduce (as applicable) the performance of work under the Contract; and
- (c) immediately do everything possible to mitigate its Losses, and all other loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination (including those arising from affected sub-contracts) arising in consequence of termination of this Contract under this **Clause 32**.

32.3 In the event of termination or reduction in scope under this **Clause 32**, subject to **Clause 32.4**, AusAID will only be liable to the Contractor for:

- (a) Fees, as payable under **Schedule 2**, for Services performed prior to the termination, on a pro rata basis; and
- (b) Costs that are:
 - (i) directly attributable to the termination or reduction in scope of this Contract; and
 - (ii) in AusAID's opinion, reasonably and properly incurred by the Contractor in connection with the Contract,

to the extent that such Costs are substantiated to AusAID.

32.4 AusAID is not liable for any loss of profits or any other form of expectation loss arising out of, or in connection with, the termination or reduction in scope of this Contract under this **Clause 32**.

33. INDEMNITY

33.1 The Contractor must at all times indemnify AusAID, its employees, agents and contractors (except the Contractor) ("**those indemnified**") from and against any Loss or liability whatsoever suffered by those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such Loss or liability was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent

act or omission of the Contractor, or any Contractor Personnel in connection with this Contract.

- 33.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 33.1 above** for the benefit of each of such persons in the name of AusAID or of such persons.
- 33.3 The indemnity in this clause is reduced to the extent that the Loss or liability is directly caused by AusAID, its employees or contractors (except the Contractor), as substantiated by the Contractor.
- 33.4 The Contractor is responsible for all risks associated with the Data, the Supplies and any AusAID property while in the possession or control of the Contractor.
- 33.5 This indemnity shall survive termination or expiration of this Contract.

34. **INSURANCE**

- 34.1 The Contractor must arrange and maintain for the duration of the Contract unless otherwise specified:
 - (a) public liability insurance with a limit of at least \$5 million for each and every claim which covers:
 - (i) loss of, or damage to, or loss of use of any real or personal property; or
 - (ii) personal injury to, illness (including mental illness) or death of any person arising from the performance of the Contract;
 - (b) motor vehicle third party property damage insurance;
 - (c) workers' compensation insurance:
 - (i) which fully insures the Contractor for any amount it becomes liable to pay under any statute relating to workers' or accident compensation or for employer's liability at common law;
 - (ii) to be effected in the Partner Country as well as every state or territory in Australia where the Contractor Personnel normally reside or in which their contract of employment was made; and
 - (iii) which, where possible at law extends to indemnify AusAID as principal for AusAID's liability to persons engaged by the Contractor.

Where there is no workers compensation legislation in force in the Partner Country the Contractor should arrange adequate personal accident and illness insurance (accidental death and weekly benefits) for any Contractor Personnel not otherwise covered for the duration of the Contract;

 - (d) property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value;

- (e) professional indemnity insurance to cover the Contractor's obligations under this Contract. The Contractor's professional indemnity policy must respond to claims arising under the *Trade Practices Act (Cth)* 1974, in regard to this Contract. The Contractor may obtain the insurance on an annual basis if necessary, but must maintain the necessary insurance each year until the expiration of three (3) years after the full Term of the Contract or earlier termination of the Contract;
 - (f) adequate medical and dental insurance for Contractor Personnel who are engaged to operate outside their country of permanent residence; and
 - (g) adequate insurance for medical evacuation and evacuation resulting from an insured event for all Contractor Personnel.
- 34.2 The Contractor must, within 14 days after a request by AusAID, provide for any insurance policy: a certificate of currency, a list of exclusions; and the amount of excess payable.
- 34.3 Neither the effecting of insurance nor any failure to effect such insurance shall in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the other provisions of this Contract or at law.
- 34.4 In the event of an insurance claim any deductible/excess payable shall be the responsibility of the Contractor.

35. CONFLICT OF INTEREST

Conflict of Interest

- 35.1 The Contractor warrants that, at the date of signing this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.
- 35.2 The Contractor must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. The Contractor must not engage in any activity, subject to **Clause 35.3 below**, that may result in a conflict of interest arising or continuing.
- 35.3 Where a conflict of interest arises in the performance of the Contractor's obligations under this Contract, the Contractor must notify AusAID immediately, and may request permission from AusAID to undertake the work despite that conflict of interest.

Anti-Corruption

- 35.4 The Contractor warrants that the Contractor shall not make or cause to be made, nor shall the Contractor receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt act, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Contract. In addition, the Contractor shall not bribe public officials and shall ensure that all Contractor Personnel comply with this provision. Any breach of this clause shall be grounds for immediate termination of this Contract under Standard Contract Conditions **Clause 31** (Termination for Contractor Default) by notice from AusAID.

36. **FRAUD**

- 36.1 For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means.
- 36.2 The Contractor and its sub-contractors must not engage in any fraudulent activity.
- 36.3 The Contractor must prepare a fraud risk assessment and zero tolerance fraud control strategy. These must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures that comply with the *Commonwealth Fraud Control Guidelines*.
- 36.4 The Contractor is responsible for preventing and detecting fraud including fraud within those functions outsourced / performed by a sub-contractor or under any other arrangement established by the Contractor relating to the management or administration of AusAID provided funds. The Contractor is responsible for ensuring that its staff and its subcontractors' staff are responsible and accountable to the Contractor for preventing and reporting any fraud or suspected fraud as part of their routine responsibilities.
- 36.5 The Contractor must report in writing within 5 working days to AusAID any detected, suspected, or attempted fraudulent activity involving AusAID provided funds. Where a matter is reported in writing to AusAID by a Contractor, the advice must provide where known:
- (a) the name of the Project under which AusAID funding is being provided;
 - (b) name of any personnel or subcontractors involved;
 - (c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);
 - (d) the names of the suspected offender(s) (where known);
 - (e) details of witnesses;
 - (f) copies of relevant documents;
 - (g) references to any relevant legislation;
 - (h) a nominated contact officer;
 - (i) any other relevant information (eg, political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and
 - (j) the current status of any inquiries commenced by the Contractor.
- 36.6 The Contractor must, in consultation with AusAID, develop and implement a strategy to investigate the detected, suspected or attempted fraud based on the principles set out in the *Australian Government Investigations Standards* which are available from AusAID when a demonstrated need to distribute them exists. The Contractor will be responsible for the conduct of the investigation. Any investigator appointed by the Contractor should possess the minimum qualifications specified in the *Commonwealth Fraud Control Guidelines*. Before engaging a qualified investigator, the Contractor may consult with AusAID regarding the appointment and may request assistance from AusAID in meeting the actual costs of a qualified investigator. Provided that the Contractor has consulted with AusAID before engaging an investigator, AusAID may in its absolute discretion agree to meet some or all of those costs.

- 36.7 AusAID reserves the right to appoint its own investigator, conduct the investigation, conduct a concurrent investigation or refer the allegations to the appropriate law enforcement agencies or any other person or entity AusAID deems appropriate in Australia or in the partner countries for investigation. In this instance the Contractor shall provide all assistance that may be required at the Contractor's sole expense.
- 36.8 Following the conclusion of an investigation, where a suspected offender has been identified, the Contractor must report all alleged, suspected or detected cases of fraud to the local police and any other appropriate law enforcement agency in the country where the incident has occurred, unless the Director of the Audit section of AusAID agrees otherwise in writing.
- 36.9 Following the conclusion of an investigation, where the investigation finds the Contractor, an employee of the Contractor or a subcontractor of the Contractor has acted in a fraudulent manner, the Contractor shall:
- (a) where money has been misappropriated, pay to AusAID or the project the full value of the AusAID funds that have been misappropriated; or
 - (b) where an item of property has been misappropriated, either return the item to AusAID or the project or if the item cannot be recovered or has been damaged so that it is no longer usable, replace the item with one of equal quality.
- 36.10 Following the conclusion of an investigation, where the investigation finds that a party other than the Contractor, an employee of the Contractor or a subcontractor of the Contractor, has acted in a fraudulent manner, the Contractor shall at the Contractor's cost make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, taking recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country. Before commencing any recovery action, the Contractor may consult with AusAID regarding the proposed course of action and may request assistance from AusAID in meeting the costs of the recovery action. Provided that the Contractor has consulted with AusAID before commencing recovery action, AusAID may in its absolute discretion agree to meet some or all of those costs.
- 36.11 The Contractor must keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.
- 36.12 If the Contractor considers that after all reasonable action has been taken to recover the funds or funded property and full recovery has not been achieved or recovery has only been achieved in part, the Contractor may seek approval from AusAID that no further recovery action be taken. The Contractor must provide to AusAID all information, records and documents required by AusAID to enable the AusAID delegate to make a decision on whether to approve non-recovery of funds or funded property.
- 36.13 In the event that any investigation finds that the contractor, an employee of the Contractor or a subcontractor of the Contractor has been involved in any fraudulent activity, or in the event that AusAID discovers that a suspected, attempted or detected fraud has not been reported to AusAID, AusAID, at AusAID's sole discretion, reserves the right to:

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

36.14 **Clauses 36.6, 36.7, 36.8, 36.9, 36.10, 36.11 and 36.12** shall survive termination or expiration of this Contract in relation to:

- (a) any fraud detected by the Contractor before the date of termination or expiry of this Contract but the Contractor had not commenced an investigation under **Clause 36.6** before that date,
- (b) any investigation commenced by the Contractor under **Clause 36.6**, but not completed, before the date of termination or expiry of this Contract, and
- (c) any investigation commenced by AusAID under **Clause 36.7**, but not completed, before the date of termination or expiry of this Contract.

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

37.1 The Contractor must at all times have regard to and comply with, and use its best endeavours to ensure that all Contractor Personnel comply with, the laws in Australia, the Partner Country and applicable laws of other countries.

37.2 A list, as amended from time to time, of Australian laws that may apply to the delivery of developmental aid to foreign countries can be found on the AusAID website:
<http://www.aisaid.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 37.1**.

37.3 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.aisaid.gov.au/business/contracting.cfm>.

37.4 The Contractor must notify AusAID of any material breach by the Contractor or Contractor Personnel of a law or guideline referred to in this **Clause 37**.

37.5 On becoming aware of a material breach by the Contractor or Contractor Personnel of a law or guideline, whether or not such a breach is notified to AusAID by the Contractor, AusAID may, in addition to any other rights available to AusAID, terminate this Contract under **Clause 31**.

- 37.6 The Contractor must in carrying out its obligations under this Contract comply with those laws in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the *Criminal Code Act 1995 (Cth)* and listed in regulations made under that Act and regulations made under the *Charter of the UN Act 1945 (Cth)*. The Contractor must ensure that funds provided under this Contract do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform AusAID immediately.
- 37.7 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.aisaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;
 - (c) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child protection policy*;
 - (d) *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.aisaid.gov.au/keyaid/health.cfm>);
 - (e) Environment. AusAID is bound by the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:
 - 1. ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;
 - 2. comply with AusAID's Environmental Management System outlined in the *Environmental Management Guide for Australia's Aid Program*, including:
 - a. assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;
 - b. report regularly on any such impacts as required by the Scope of Services; and
 - 3. comply with all relevant environmental laws and regulations of the Partner Country.

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

38. INVESTIGATION BY THE OMBUDSMAN

- 38.1 In carrying out the Services, the Contractor, and an employee or subcontractor of the Contractor, may be a “Commonwealth service provider” under section 3BA of the Ombudsman Act 1976.
- 38.2 The Contractor must use its best endeavours, and must ensure that employees and subcontractors of the Contractor use their best endeavours, in undertaking the Services, not to engage in conduct that:
- (a) would, if the Contractor or an employee or subcontractor were an officer of AusAID, amount to a breach of duty or to misconduct; or
 - (b) should be brought to the attention of the principal officer of AusAID.
- 38.3 If the Commonwealth Ombudsman commences an investigation of conduct of the Contractor, as a Commonwealth service provider, the Contractor, at the cost of the Contractor, must cooperate with the investigator including:
- (a) providing all documentation required by the investigator,
 - (b) making Contractor Personnel available to assist the investigator and
 - (c) allowing the investigator, at any reasonable time of the day, to enter a place occupied by the Contractor and carry on the investigation at that place.
- 38.4 If the Ombudsman brings evidence to the notice of AusAID concerning the conduct of the Contractor, or of an employee or subcontractor of the Contractor, the Contractor must, at the cost of the Contractor, take whatever remedial action is required by AusAID or by the Ombudsman to rectify the situation.
- 38.5 The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including this requirement in relation to subcontracts.
- 38.6 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID, due to conduct of the Contractor or of an employee or subcontractor, which arise directly or indirectly, as a result of an investigation carried out by the Ombudsman.
- 38.7 This clause shall survive expiration or termination of this Contract.

39. RESOLUTION OF DISPUTES

- 39.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Contract. Subject to **Clause 20.11** (Payment) and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Contract.
- 39.2 A Party may give the other Party a notice of dispute ("**dispute notice**") in connection with this Contract. Following the giving of a dispute notice, the dispute must be referred to a

senior officer of AusAID and a senior officer of the Contractor, who must use reasonable endeavours to resolve the dispute within 20 Business Days or such other period as is agreed by the Parties.

- 39.3 If the Parties have not been able to resolve the dispute in accordance with **Clause 39.2 above**, then the Parties may agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation.
- 39.4 In the event that the dispute, controversy or claim has not been resolved within 50 Business Days (or such other period as agreed between the Parties in writing) after the dispute notice has been received in accordance with clause headed 'Notices' in Part B (Standard Contract Conditions) of this Contract, then either Party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.
- 39.5 Nothing in this clause prevents either Party from seeking urgent injunctive relief.

40. **NOTICES**

- 40.1 A notice required or permitted to be given by one Party to another under this Contract must be in writing and is treated as having been duly given and received:
- (a) when delivered (if left at that Party's address);
 - (b) on the third Business Day after posting (if sent by pre-paid mail); or
 - (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

41. **MISCELLANEOUS**

41.1 **Waiver**

The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon that Party by this Contract does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under this Contract.

41.2 **Liability of Party**

If any Party to this Contract consists of more than one person then the liability of those persons in all respects under this Contract is a joint liability of all those persons and a separate liability of each of those persons.

41.3 **Entire agreement**

This Contract constitutes the sole and entire agreement between the Parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Contract is of no force or effect.

41.4 **Severance**

If any provision of this Contract is invalid and not enforceable in accordance with its terms, other provisions that are self-sustaining and capable of separate enforcement with regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.

41.5 Assignment

No Party may assign or transfer any of its rights or obligations under this Contract without the prior consent in writing of the other Party.

41.6 Governing Law and Jurisdiction

This Contract is governed by, and is to be construed in accordance with, the law of the Australian Capital Territory and the Parties submit to the exclusive jurisdiction of the courts of the Australian Capital Territory and any court hearing appeals from those courts.

41.7 Contra Proferentem

No rule of construction shall apply in the interpretation of this Contract to the disadvantage of one Party on the basis that such Party put forward or drafted this Contract or drafted any provision of this Contract.

41.8 False and Misleading Information

The Contractor acknowledges that it is aware that, in relation to section 137.1 of the *Commonwealth Criminal Code*, giving false or misleading information is a serious offence.

SCHEDULE 1 –SCOPE OF SERVICES

See Part 3 of this RFT

SCHEDULE 2 – BASIS OF PAYMENT

See Part 4 of this RFT.

SCHEDULE 3 - DEED OF CONFIDENTIALITY

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

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

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

RECITALS

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

THE RECIPIENT DECLARES AS FOLLOWS:

42. INTERPRETATION

In this Deed:

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

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

- (e) the Data; and
- (f) personal information under the *Privacy Act 1988*;
but does not include information which:
 - (g) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality; or
 - (h) has been independently developed or acquired by the Recipient as established by written evidence.

43. NON DISCLOSURE

44. RESTRICTION ON USE

45. DELIVERY UP OF DOCUMENTS

46. SURVIVAL OF OBLIGATIONS

EXECUTED as a deed poll.

.....

Signature of witness

.....

Name of witness
(Print)

SCHEDULE 4 – DEED OF NOVATION AND SUBSTITUTION

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

BETWEEN:

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

AND:

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

AND:

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

WHEREAS:

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

NOW THIS DEED WITNESSES AS FOLLOWS:

47. **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.

48. **APPLICATION OF DEED**

48.1 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.

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

49. **NOVATION**

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

49.2 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.

49.3 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.

50. **RELEASE**

50.1 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.

51. **FURTHER ASSURANCES**

- 51.1 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.

52. **DISCHARGE**

- 52.1 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.
- 52.2 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.
- 52.3 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.
- 52.4 The obligations of AusAID under this Deed in its application to the Subcontract must not exceed the obligations of the Contractor under the Subcontract.

53. **NOTICES**

- 53.1 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).

54. **Address of Party**

- 54.1 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:

55. LAWS

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

56. WARRANTY

- 56.1 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.

57. GENERAL**58. Counterparts**

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

59. **Attorneys**

59.1 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.

60. **Further Assurance**

60.1 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.

61. **Assignment**

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

EXECUTED as a Deed.

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

.....

Signature of witness

.....

Name of witness
(*Print*)

SIGNED for and on behalf of)
[*Subcontractor*] by:)
)

.....

Director
Name of Director
(*Print*)

.....

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

SIGNED for and on behalf of)
[*Contractor*] by:)
)

.....

.....

Director
Name of Director
(Print)

Director/Secretary
Name of Director/Secretary
(Print)

SCHEDULE 5 - UNCONDITIONAL FINANCIAL UNDERTAKING

THIS DEED POLL made

20

BY:

[]

(the “**Guarantor**”)

FOR THE BENEFIT OF:

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

RECITALS:

- A. AusAID and *[to be inserted]* (hereinafter called the “**Contractor**”) have agreed to enter into a contract for the provision of services in [] (“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:

.....

Signature of witness

.....

Name and Position
(Print)

.....

Name of witness (print)

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

.....

Director
 Name
(Print)

.....

Director/Secretary
 Name
(Print)