



Australian Government

AusAID

11 February 2011

<h2>Request for Tender</h2>

Philippines-Australia Public Financial Management Program

REQUEST FOR TENDER

Philippines-Australia Public Financial Management Program

AusAID is seeking proposals from organisations interested in providing services for the Philippines-Australia Public Financial Management Program (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.aid.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, **Tuesday 29 March 2011.**

Mode of submission:

(Clause 1.1, Part 5)

Either:

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

or

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

Electronic Tender Lodgement

Address:

(Clause 1.11, Part 5)

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

Canberra Tender Box Address:

(Clause 1.15, Part 5)

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

Business Hours

for hard copy lodgement:

(Clause 1.15, Part 5)

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

File Format for Electronic Tenders:

(Clause 2.3, Annex D to Part 5)

PDF (Portable Document Format). If compressing files, please do not use electronic format.

Number of Copies of Tender:

(Clause 1.6, Part 5)

For electronic Tender lodgement

Technical Proposal (Schedules A and B and Tenderer Declaration): One (1) electronic copy.

Tenderer's Submission Checklist: One (1) electronic copy.

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

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

For hard copy Tender lodgement

Tenderer Declaration: One (1) signed original, to be included with Tender Schedule C 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 Original copy in a separate sealed envelope.
Tenderer’s Submission Checklist: One (1) printed Original.
One CD, containing all the files specified as for electronic lodgement.

Endorsement of hard copy Tenders:

(Clause 1.17, Part 5) “Tender for the Philippines-Australia Public Financial Management Program.”

Tender Validity Period:

(Clause 1.8, Part 5) 180 days

Contact Person:

(Clause 2.1, Part 5) Contact Person: Catherine Ross
 Fax: +61 02 6206 4885
 Email address: PFMP@ausaid.gov.au

AusTender Help Desk:

(Clause 1.2, Annex D, Part 5) Telephone: +61 2 6215 1558/1300 651 698 (9am – 5pm AEST)

Last date for Tenderer enquiries:

(Clause 2.2, Part 5) **Tuesday 15 March 2011**
 Responses to Tenderer enquiries will be issued no later than **Tuesday 22 March 2011** (ie. 7 days prior to the **Closing Date (Clause 2.3, Part 5)**)

Page limits:

(Clauses 7.15 and 7.17, Part 5) **Tender Schedule A:** Technical Proposal - 12 pages plus annexes.
Tender Schedule B: CurriculumVitae - 5 pages each, including declaration and signature.

Information:

The following documents are attached:
 1. Philippines-Australia Public Financial Management Program Design Document;
 2. Tenderer Declaration (in Word format)
 3. 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. PRE-TENDER BRIEFING

2.1 AusAID intends to hold a briefing for interested tenderers on **Wednesday 23 February 2011** 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 pre-tender briefing are requested to send advanced notification to the Contact Officer by email: PFMP@ausaid.gov.au or facsimile (+61 2 6206 4885), indicating the name of the organisation and the names of people planning to attend, by COB on **Friday 18 February 2011**.

Note to Tenderers: The Australian Embassy 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 Following an initial consideration of the technical merit of Tenders, the Technical Assessment Panel (TAP) may shortlist and invite selected tenderers’ key personnel to interview. If invited to interview, the following personnel will be required to attend: Contractor Representative, the tenderer’s nominated Program Manager and Monitoring and Evaluation Adviser in accordance with **Clause 7.4 of Part 5** of the RFT. Participation of the team at interview will be taken into account. Tenderers to be invited to interview will be given up to 10 days notice in writing by AusAID regarding time and location (Canberra or Manila) of any interview.
- 4.2 Tenderers not invited to interview will be notified that their bid will not be further considered.
- 4.3 The technical assessment of the proposal will account for **70%** of the overall score using the following formula:

$$\text{Technical Score} = \frac{\text{Tenderer's Weighted Technical Score (out of 100)}}{\text{Highest Weighted Technical Score (out of 100)}} \times 70$$

- 4.4 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 as technically suitable and recommended.

- 4.5 The like-for-like price assessment will represent **30%** of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

$$\text{Price Score} = \frac{\text{Bid Price of Lowest Priced Technically Suitable Bid}}{\text{Tenderer's Bid Price}} \times 30$$

- 4.6 Following the final assessment and calculation of the final aggregate scores, confirmation of the Tenderer's financial capacity to meet the contractual obligations referred to in **Clause 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**;
- (c) signed Tenderer Declaration as per **Annex B, Part 5** of this Request for Tender.

5.2 **Selection Criteria**

A. Management Capability (weighting 30%)

- Demonstrated organisational capacity and ability to provide appropriate project management and administrative support, including financial, procurement and grants administration; and
- Demonstrated dependability and flexibility in managing project risks and delivering quality outputs.

B. Proven Experience (weighting 35%)

- Demonstrated experience in managing similar public sector support projects in a developing country context, preferably in public financial management;
- Demonstrated experience in successfully implementing large and complex capacity development projects, including responsiveness to changing operating contexts; and
- Demonstrated experience in identifying, recruiting, contracting and managing technical expertise across a variety of public sector agencies.

C. Nominated Personnel (weighting 35%)

- Demonstrated appropriate skills and experience for each of the following positions:

- (i) Program Manager; and
- (ii) Monitoring and Evaluation Specialist.

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 four (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 2 must be presented on A4 paper (maximum 1 page).

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 (maximum 1 page).

Annex 4 – Risk Management Plan

A critique/response to the detailed Risk Management Plan contained in the Program Design Document (PDD) of no more than five (5) pages in tabular form that must identify:

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

Clause 17.6, Part 5 refers to the World Bank List and similar lists maintained by other donors of development funding. **Clause 13.4, Part 5** requires each Tenderer to disclose, in its Tender, the information specified in that clause regarding investigations, proceedings, informal processes, temporary suspension and listing by the World Bank or any other donor of development funding. Tenderers must disclose any relevant information in this annex.

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 format provided (in landscape) 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		Total Inputs in person months (Option Period)		Referee Contact Details		Commitments
		Home Base	O/s	Home Base	O/s	#1	#2	
Program Manager								
Monitoring and Evaluation Specialist (Technical Advisory Team)								

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.
- 7.3 Any escalators, foreign exchange rate variations, or other price risks, must be built into the fixed price proposal but separately disclosed as a single escalator factor. AusAID will not consider any “across the board” escalators subsequently applied to any rates or Project costs.
- 7.4 Information provided in the tables will be used for any financial assessment and for the like-for-like price assessment.
- 7.5 The successful Contractor will be paid according to the following categories of payments as detailed in **Part 4** of the RFT (Draft Basis of Payment):
- (a) **Fixed Management Fees (FMF).** Ninety per cent (90%) of the FMF will be paid progressively in equal instalments on a three monthly basis within thirty (30) days of AusAID’s receipt of a correctly rendered invoice, and the remaining 10% will be paid to the Contractor as an annual Contractor Performance Payment (subject to a ‘Satisfactory’ rating) within thirty (30) days of AusAID’s receipt of a correctly rendered invoice;
 - (b) **Personnel Costs**, including Specified Program Office and Technical Advisory Team (Long Term) Personnel, Unspecified Program Office (Long Term) Personnel, Unspecified Technical Advisory Team and Technical Assistance (Long Term, Short Term and Periodic Advisers) Personnel, paid on a reimbursable basis quarterly in arrears.
 - (i) Mobilisation and demobilisation costs will be reimbursed at cost.
 - (ii) Unspecified Technical Advisory Team and Technical Assistance (Long Term, Short Term and Periodic Adviser) Personnel Costs will be paid to a maximum of **AUD12,000,000**;
 - (c) **Adviser Support Costs for Program Office and Technical Advisory Team** paid on a reimbursable basis
 - (d) **Program Office Operational Costs**, paid on a reimbursable basis; and
 - (e) **Reimbursable Payments** (Accountable Cash Grants and Non-Adviser Implementation Activities) to a maximum of **AUD600,000**;

Fixed Management Fees

- 7.6 These costs are defined in **Part 4** – Draft Basis of Payment and must be included in the Fixed Management Fees (FMF) detailed in **Table 2** of the Financial Proposal.

Reimbursable Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel Costs

- 7.7 Tenderers must complete **Tables 3A, 3B, 3C, 3D (a) and (b) and 3E** and must detail in the Financial Proposal in **Tables 3A to 3D (a) and (b)** the leave entitlements of Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel. Where annual recreation leave entitlements include any trips and/or exceed a total of 4 weeks per 12 month period, Tenderers must provide a justification together with a narrative description of how the Tenderer will ensure, during

Specified Personnel absences, the continued quality of Services. Tenderers should note that leave entitlements and the management strategy may be assessed by the Technical Assessment Panel or AusAID as part of the Technical Assessment process.

- 7.8 Tenderers must detail in the Financial Proposal in **Tables 3A to 3D (a) and (b)** the Monthly Fee Rate and additional personnel costs such as mobilisation and demobilisation and Monthly allowances for Specified Personnel.

Reimbursable Unspecified Program Office (Long Term) Personnel Costs

- 7.9 Tenderers must complete **Tables 4A, 4B, 4C, 4D (a) and (b) and 4E** and must detail in the Financial Proposal in **Tables 4A to 4D (a) and (b)** the leave entitlements of Unspecified Program Office (Long Term Adviser) Personnel. Where annual recreation leave entitlements include any trips and/or exceed a total of 4 weeks per 12 month period, Tenderers must provide a justification together with a narrative description of how the Tenderer will ensure, during Unspecified Personnel absences, the continued quality of Services. Tenderers should note that leave entitlements and the management strategy may be assessed by the Technical Assessment Panel or AusAID as part of the Technical Assessment process.
- 7.10 Tenderers must detail in the Financial Proposal in **Tables 4A to 4D (a) and (b)** the Monthly Fee Rate and additional personnel costs such as mobilisation and demobilisation and Monthly allowances for Unspecified Program Office Personnel.

Reimbursable Unspecified Technical Advisory Team and Technical Assistance (Long Term, Short Term and Periodic) Personnel Costs

- 7.11 These costs will be paid on a reimbursable basis as detailed in **Clause 5 of Part 4** Draft Basis of Payment and will not be taken into account in the financial assessment for this Tender.

Reimbursable Adviser Support Costs

- 7.12 These costs will be paid on a reimbursable basis as set out in **Part 4** Draft Basis of Payment and must be detailed in **Table 5**

Reimbursable Program Office Operational Costs

- 7.13 These costs will be paid on a reimbursable basis as set out in **Part 4** Draft Basis of Payment, and must be detailed in **Table 6** of the Financial Proposal.

Reimbursable Payments (Accountable Cash Grants and Non-Adviser Implementation Activities)

- 7.14 These costs will be paid on a reimbursable basis as set out in **Part 4** Draft Basis of Payment and will not be taken into account in the financial assessment for this Tender.

Summary Table

- 7.15 Tenderers are to complete the following Tables in the Financial Proposal:
- (a) **Table 1** (Summary);
 - (b) **Table 2** (Fixed Management Fees);

- (c) **Tables 3A, 3B, 3C, 3D (a) and (b) and 3E** (Reimbursable Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel Costs;
- (d) **Tables 4A, 4B, 4C, 4D (a) and (b) and 4E** (Reimbursable Unspecified Program Office (Long Term) Personnel Costs;
- (e) **Table 5** (Reimbursable Adviser Support Costs)
- (f) **Table 6** (Reimbursable Program Office Operational Costs)

TABLE 1 – SUMMARY

	1 July 2011 to 30 June 2014	Option Period* (unfunded) 1 July 2014 – 30 June 2016
Totals from Table 2 – Fixed Management Fees		
Totals from Table 3E – Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel Costs		
Totals from Table 4E – Unspecified Program Office, (Long Term) Personnel Costs		
Totals from Table 5 – Adviser Support Costs		
Totals from Table 6 -Reimbursable Program Office Operational costs		
Total for Like-for-Like Assessment (Tables 2, 3E, 4E, 5 and 6)		

*These fees apply only in the event that AusAID exercises its Option to extend under **Clause 2.3 of Part A** to this Request for Tender.

TABLE 2 – FIXED MANAGEMENT FEES

	1 July 2011 - 30 June 2014	Option Period 1 July 2014 – 30 June 2016 (unfunded)
Item	AUD	
All aspects of profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor including commercial margins/mark-up for all personnel		
All high level management and management support costs for all Program personnel		
The cost of any Contractor office support, such as administrative, financial and management support.		
Costs, including domestic and international travel, accommodation, per diems, and local transport costs where required for all Contractor office personnel (other than those listed as Specified Personnel at Tables 1A-1D of Schedule 2 – Draft Basis of Payment).		
All domestic and international communication costs incurred within Australia and in the Philippines.		
Costs associated with all Personnel briefings in Australia or the Philippines.		
Recruitment costs		
Costs associated with any subcontracting and procurement of goods or services		
All management and administrative support costs for Specified Personnel and Short-Term Advisers		
Financial management costs and financing costs, if any		

Costs of complying with the Contractor's monitoring and evaluation, reporting and liaison obligations under the Contract.		
External audit and internal auditing and assurance costs.		
All allowances for risk and contingencies, including escalators, for the term of the Contract.		
Security costs for all Program personnel.		
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 (Indemnity) and 34 (Insurance) of Part B (Standard Contract Conditions) of the Contract		
Taxation, (other than personnel-related taxes and GST) as applicable.		
All other costs not specifically identified as Reimbursable Personnel Costs and Reimbursable Contractor Administration and Equipment Costs		

Tenderer's Notes and Assumptions:

Table 3A Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel for 1 July 2011 – 30 June 2012

Position Description and Status (National or International)	Name	Number of Months Input	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate (AUD)	Total
Program Manager							
Monitoring and Evaluation Specialist (Technical Advisory Team)							
TOTAL (1 JULY 2011 – 30 JUNE 2012)							

Tenderer's Assumptions and Notes:

Table 3B Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel for 1 July 2012 – 30 June 2013

Position Description and Status (National or International)	Name	Number of Months Input	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate (AUD)	Total
Program Manager							
Monitoring and Evaluation Specialist (Technical Advisory Team)							
TOTAL (1 JULY 2012 – 30 JUNE 2013)							

Tenderer's Assumptions and Notes:

Table 3C: Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel for 1 July 2013 – 30 June 2014

Position Description and Status (National or International)	Name	Number of Months Input	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation (AUD)	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate (AUD)	Total
Program Manager							
Monitoring and Evaluation Specialist							
TOTAL (1 JULY 2013 – 30 JUNE 2014)							

Tenderer's Assumptions and Notes:

Table 3D (a): Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel for 1 July 2014 – 30 June 2015 (Option Period - unfunded)

Position Description and Status (National or International)	Name	Number of Months Input	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation (AUD)	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate (AUD)	Total
Program Manager							
Monitoring and Evaluation Specialist							
TOTAL (1 JULY 2014 – 30 JUNE 2015)							

Tenderer's Assumptions and Notes:

Table 3D (b): Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel for 1 July 2015 – 30 June 2016 (Option Period - unfunded)

Position Description and Status (National or International)	Name	Number of Months Input	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation (AUD)	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate (AUD)	Total
Program Manager							
Monitoring and Evaluation Specialist							
TOTAL (1 JULY 2015 – 30 JUNE 2016)							

Tenderer's Assumptions and Notes:

Table 3E - Total Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel Costs

Table	Description	Amount (AUD)
Total from Table 3A	Specified Personnel Fees for 1 July 2011-30 June 2012	
Total from Table 3B	Specified Personnel Fees for 1 July 2012 – 30 June 2013	
Total from Table 3C	Specified Personnel Fees for 1 July 2013 – 30 June 2014	
Total from Tables 3D (a) and (b)	Specified Personnel Fees for 1 July 2014 – 30 June 2016 (unfunded)	
TOTAL		

Table 4A Unspecified Program Office (Long Term) Personnel for 1 July 2011 – 30 June 2012

Position Description and Status (National or International)	Name	Number of Months Input	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation (AUD)	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate (AUD)	Total
Project Officers (2)	N/A						
Finance Officer	N/A						
Administrative Officer	N/A						
Other							
TOTAL (1 JULY 2011 – 30 JUNE 2012)							

Tenderer's Assumptions and Notes:

Table 4B Unspecified Program Office (Long Term) Personnel for 1 July 2012 – 30 June 2013

Position Description and Status (National or International)	Name	Number of Months Input	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate (A\$)	Total
Project Officers (2)							
Finance Officer	N/A						
Administrative Officer	N/A						
Other							
TOTAL (1 JULY 2012 – 30 JUNE 2013)							

Tenderer's Assumptions and Notes:

Table 4C: Unspecified Program Office, (Long Term) Personnel for 1 January 2013 – 30 June 2014

Position Description and Status (National or International)	Name	Number of Months Input	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation (AUD)	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate (AUD)	Total
Project Officers (2)							
Finance Officer	N/A						
Administrative Officer	N/A						
Other							
TOTAL (1 JANUARY 2013 – 30 JUNE 2014)							

Tenderer's Assumptions and Notes:

Table 4D (a): Unspecified Program Office (Long Term) Personnel for 1 July 2014 – 30 June 2015 (Optional Period - unfunded)

Position Description and Status (National or International)	Name	Number of Months Input	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation (AUD)	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate (AUD)	Total
Project Officers (2)							
Finance Officer	N/A						
Administrative Officer	N/A						
Other							
TOTAL (1 JULY 2014 – 30 JUNE 2015)							

Tenderer's Assumptions and Notes:

Table 4D (b): Unspecified Program Office (Long Term) Personnel for 1 July 2015 – 30 June 2016 (Optional Period - unfunded)

Position Description and Status (National or International)	Name	Number of Months Input	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation (AUD)	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate (AUD)	Total
Project Officers (2)							
Finance Officer	N/A						
Administrative Officer	N/A						
Other							
TOTAL (1 JULY 2015 – 30 JUNE 2016)							

Tenderer's Assumptions and Notes:

Table 4E – Total Unspecified Program Office (Long Term) Personnel Costs

Table	Description	Amount (AUD)
Total from Table 4A	Unspecified Personnel Fees for 1 July 2011-30 June 2012	
Total from Table 4B	Unspecified Personnel Fees for 1 July 2012 – 30 June 2013	
Total from Table 4C	Unspecified Personnel Fees for 1 July 2013 – 30 June 2014	
Total from Table 4D (a) and (b)	Unspecified Personnel Fees for 1 July 2014 – 30 June 2016 (unfunded)	
TOTAL		

TABLE 5 – ADVISER SUPPORT COSTS

	1 July 2011 - 30 June 2014 AUD	Option Period (unfunded) 1 July 2011 – 30 June 2016 AUD
Item		
Personnel Security		
Travel and Accommodation costs		
Communications support costs		
Recruitment and induction costs		
Medical insurance		
Position specific learning and development		
Housing costs		
Per diems (meals and incidentals)		
Airfares		
<i>Other -Tenderer to specify</i>		
TOTAL		

TABLE 6 – REIMBURSABLE PROGRAM OFFICE OPERATIONAL COSTS

	1 July 2011 to 30 June 2014 AUD	Option Period (unfunded) 1 July 2014 – 30 June 2016 AUD
Item		
Office Rent and Utilities		
Office Materials and Supplies (including telephone, email, printing) and administrative costs		
Office Furniture and Equipment		
Two (2) 4WD Vehicles		
Vehicle Running and Maintenance		
Systems for events coordination, co-ordination and management of travel, accommodation, visa and itinerary requirements including software		
Provision of Secretariat Services for meetings including costs associated with planning and review workshops – venue hire, staff, materials		
<i>Other -Tenderer to specify</i>		
TOTAL		

Tenderer's Notes and Assumptions:

8. TENDER SCHEDULE D – FINANCIAL ASSESSMENT

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

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 cash flow 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:

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

- 8.2 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.
- 8.3 A Tenderer must respond to either Option 1 or Option 2 to satisfy the requirements of this Tender.
- 8.4 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.
- 8.5 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.
- 8.6 The financial information of Tenderers will be treated confidentially.

PART 2 - PROJECT SPECIFIC CONTRACT CONDITIONS

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

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.

"Mobilisation" means the date the Contractor commences the Services in-country.

"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.

"Program Manager" means the specified person filling the position of Program Manager.

"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, organisation or governmental authority in the Partner Country or non-government organisation having any interest in the Program.

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

"Technical Assistance" means expert consultants or advisers recruited and contracted by the Contractor in accordance with AusAID policies current at the time of recruitment.

"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 2014.
- 2.3 The Contractor grants to the Commonwealth an option to extend the period of the Services for a period of up to two years, subject to Parliamentary and funding approvals and the outcome of the Review to be conducted at the end of the second year of the Contract. The option must be exercised by notice in writing to the Contractor prior to the date of completion of the Services as specified in **Clause 2.2** above of this **Part A** of this Contract. If this option to extend is exercised, the Contractor shall continue to provide the Services for the extended period on the terms and conditions contained in this Contract, except that this **Clause 2.3** shall no longer apply.

3. ACCOUNTS AND RECORDS

- 3.1 The statement of Project expenditure referred to in Standard Conditions **Clause 15.1(e)** (Accounts and Records) must be provided on a **3 monthly** basis and must indicate:
- (a) total expenditure of the Project to date;
 - (b) disaggregated expenditure for the Project to date identifying all categories of expenditure including the Fees component and Reimbursable items;
 - (c) total expenditure for the previous three 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: Fax number

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
- (b) decision-making within the Contractor's organisation and the advising of AusAID of decisions required by AusAID;
- (c) pro-actively identifying and rectifying problems or recommending strategies to AusAID on how to rectify problems, which may arise in, or during the performance of, the Services;
- (d) managing those risks which are the Contractor's responsibility under the Contract in accordance with the Risk Management Plan including in relation to Supplies after delivery and before their incorporation into the Project; and
- (e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID.

6. MOBILISATION OF SERVICES

- 6.1 The Contractor must supply a detailed Mobilisation Plan for the first three (3) months of the Project within 28 days of the Program Start Date, in a form agreed with AusAID and for written approval by AusAID.
- 6.2 The Mobilisation Plan is subject to AusAID approval. It must include provision for:
- (a) the establishment of communication channels with AusAID, the Australian Diplomatic Mission and Stakeholders;
 - (b) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including without limitation:
 - (i) the supply and deployment of Long and Short Term Advisers and overall approach to their assignments, taking into account the fact that any future recruitment of Technical Assistance is subject to AusAID's policies current at the time of recruitment on the engagement of Technical Assistance;
 - (ii) the establishment of procedures relevant to the Procurement Services;
 - (iii) a planned approach to coordination of all aspects of implementation of the Services including identification of Suppliers, mobilisation of personnel and obtaining necessary approvals; and
 - (iv) a planned approach to coordination of all aspects of implementation and management of sub-contracts;
 - (c) the establishment of report preparation and delivery mechanisms;
 - (d) the establishment of financial control procedures;
 - (e) the establishment of all other management and administration requirements; and
 - (f) any other matters specified in **Schedule 1**.
- 6.3 The Contractor must make changes to the Mobilisation Plan as requested by AusAID. Both Parties shall give fair and reasonable consideration to changes in costs necessarily incurred by either Party as a consequence of such changes to the Mobilisation Plan.
- 6.4 Once approved in writing by AusAID the Mobilisation Plan will be deemed to be annexed to this Contract. Changes to the Mobilisation Plan will be subject to a Deed of Amendment as described in Standard Conditions **Clause 12** (Contract Amendment).

7. MONITORING AND REVIEW TEAM

- 7.1 AusAID may establish a Monitoring and Review Team (the "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.
- 7.2 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.

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:
- (a) the Contractor must obtain the prior written approval of AusAID to sub-contract with any party, except Specified Personnel, to the value of **AUD100,000** or more. In granting its approval AusAID may impose such conditions, in AusAID's opinion are appropriate, in relation to a proposed sub-contract;
 - (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; and
 - (c) all sub-Contracts entered into by the Contractor must be in accordance with AusAID's current policies on the engagement of Technical Assistance.
- 8.2 Standard Conditions **Clauses 11.1** (Sub-contracting) **(d)** and **(e)** will only apply to sub-contracts valued at **AUD100,000** 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.
- 8.4 The Contractor must keep a record of the performance of each subcontractor including details of non-compliance with Contract provisions or any other inappropriate action.

9. GRANT ADMINISTRATION

- 9.1 In administering the Philippines-Australia Public Financial Management Program, 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. MEETINGS

- 10.1 The Program Manager must attend meetings in Canberra or at Manila Post at times determined by AusAID, to review or discuss the Contract including the following matters:
- (a) the general progress of the Program;
 - (b) matters arising from the Contractor's reports to AusAID;
 - (c) any issues arising as a result of communication by either Party with Stakeholders;
 - (d) any other Third Party Issues and the Contractor's proposal for resolution of any issue referred to in (c) above;
 - (e) any amendments proposed to the Program including in relation to timing, whether or not any such variations have been agreed to by AusAID;
 - (f) Contract performance and management matters;
 - (g) the accuracy of invoices; and
 - (h) such other matters in relation to which either Party provides five (5) Business Days' notice in writing to the other Party.
- 10.2 AusAID may require an implementation briefing in Canberra prior to mobilisation. The Program Manager and the Monitoring and Evaluation Adviser who are included in the Specified Personnel must attend this meeting. AusAID may also require the Program Manager and other Specified Personnel to attend a meeting at the Australian Diplomatic Mission in or having responsibility for the Partner Country before commencement of implementation.
- 10.3 The Contractor acknowledges and agrees that the costs of any meetings under this clause are included in the Fees. AusAID may determine the length of the meetings required, but AusAID expects that such meetings shall be for approximately 8 hours (excluding meal breaks).
- 11. RIGHT OF AusAID TO RECOVER MONEY**
- 11.1 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.
- 11.2 AusAID may review any payments made to the Contractor at any time and:

Part A

- (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 11.2(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.

11.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 11.2**, 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.

11.4 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.

12. GOVERNMENT TAXES, DUTIES AND CHARGES

12.1 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.

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

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

12.3 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.

12.4 Subject to **Clause 12.8 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.

12.5 An increase in the Fees under **Clause 12.4 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.

12.6 A decrease in Fees under **Clause 12.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.

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

12.8 **Clause 12.4 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.

13. **INSURANCES**

13.1 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.

13.2 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.

13.3 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.

14. REDUCTION IN FEES FOR NON-PERFORMANCE

14.1 If the Contractor fails to supply the Services in accordance with the Contract, the Fees shall be reduced to cover the reduced level of Services rendered to AusAID or loss or damage suffered by AusAID (as appropriate) because of that failure in accordance with the formula set out in **Schedule 2 (Clause 10 (Contractor Performance Assessment) in Part 4 of the Draft Basis of Payment)**.

15. PERFORMANCE GUARANTEE

Note to Tenderers: This Clause may be negotiated with the preferred tenderer.

15.1 The Contractor must, at its expense, provide to AusAID within ten (10) Business Days of the Project Start Date, a performance guarantee executed by **[insert name of guarantor]**, guaranteeing the performance by the Contractor of its obligations under the Contract, which must be substantially in the form appearing in **Schedule 5**.

PART 3 - SCOPE OF SERVICES

Philippines-Australia Public Financial Management Program (PFMP)

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

PART 3 – DRAFT SCOPE OF SERVICES

Philippines-Australia Public Financial Management Program (PFMP)

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 Governments of Australia and the Philippines have agreed to embark on a long term partnership through the Public Financial Management Program (PFMP) to develop an efficient and effective Public Financial Management (PFM) system in the Philippines. The PFMP (the Program) will support the Philippines' emerging PFM reform roadmap and facilitate improvements in budget execution and accountability and transparency of public fund use to enable better service delivery.
- 1.2 Australia has supported PFM in the Philippines for many years, most recently through the *Partnership for Economic Governance Reforms* that operated from 2005 to 2010. Australia has an acknowledged comparative advantage in the PFM area, with technical resources at its disposal to identify and mobilise a broad range of expertise through diverse government, academic and industry contacts.
- 1.3 The PFMP is designed as a ten year Program implemented in two five-year phases: 2011 to 2016 (Phase I) and 2016 to 2021 (Phase II). The first three years of the Program (2011 to 2014) will be contracted out with a two-year option to extend the Contract subject to a review of the Program in early 2014 and funding approval for the option period. Phase II of the Program may be contracted out under a separate one-step open international Tender process, subject to Parliamentary and funding approvals.

Precedence of Contract over the PFMP Program Design Document

- 1.4 This Scope of Services outlines the role of the Contractor in supporting the implementation of the PFMP and must be read in conjunction with the PFMP Program Design Document (PDD). The PDD is the primary reference document from which to gain an understanding of the context, objectives and features of the Program. Where there is inconsistency between the PDD and the Contract, the Contract will take precedence.
- #### 2. DURATION
- 2.1 The duration of the Services to be provided by the Contractor under this Contract is for the initial three years (36 months) of the Program from 2011 to 2014, in accordance with **Clause 2.2 in Part A** of this Contract.

- 2.2 An **Independent Evaluation** of the effectiveness of the Program will be undertaken in the third year of Phase I to verify progress and inform whether the Program will be continued to years four and five of Phase 1.
- 2.3 In accordance with **Part A Project Specific Contract Conditions Clause 2.3**, AusAID may exercise an option to extend the Contract from the initial three year period for up to two years (24 months), subject to approval of funding for the additional two years.
3. **GOAL, OBJECTIVES AND FOCUS**
- 3.1 The overall Program goal is improvement in the efficiency, accountability and transparency in the use of public funds in the Philippines to enable better service delivery
- 3.2 The Program will pursue four strategic objectives that respond to the highest priority problem statements and address both the supply and demand sides of the Program goal. On the supply side, there is a need for government to better allocate and utilise public funds for service delivery and to deliver more timely and reliable reporting of the utilisation of those funds. On the demand side, there is a need to confirm, via both internal and external accountability mechanisms, that budgeted funds are being executed as intended.
- 3.3 The Program's four strategic objectives are:
- (a) **Strategic Objective 1:** Increase the efficiency and effectiveness of the allocation, utilisation and reporting of budgeted funds by oversight agencies.
 - (b) **Strategic Objective 2:** Improve PFM capability in select Philippines Government departments to enable more efficient utilisation and accountability of public funds for service delivery.
 - (c) **Strategic Objective 3:** Generate more timely, reliable and accessible public expenditure management information.
 - (d) **Strategic Objective 4:** Strengthen external oversight of public expenditure management linked to physical performance information.
- 3.4 These strategic objectives are the focus for PFMP activities. An Annual Action Plan of activities will be annually programmed in collaboration with a broad range of stakeholders from the Government of the Philippines (GOP), civil society and development partners. The type of activities covered in the Annual Action Plan may include:
- (a) long and short term Technical Assistance from both local and international advisers to advance PFM reforms and build institutional capacity;
 - (b) diagnostic studies around key aspects of the PFM system;

- (c) grants to civil society organisations to engage constructively with the bureaucracy and legislature; and
 - (d) co-financed initiatives with development partners.
- 3.5 Beneficiaries of the Program include national oversight agencies leading the PFM reform agenda, large spending GOP departments responsible for vital social services (in particular, the Departments of Education and Social Welfare and Development), and implementing partners such as civil society organisations and development partners.
- 3.6 There is potential for scalability in resourcing as demand for assistance increases or decreases over time. Actual Program expenditure and activities supported will depend on the extent to which effective use of the funding is demonstrated.

4. **GOVERNANCE STRUCTURE AND IMPLEMENTATION ARRANGEMENTS**

- 4.1 The PFMP Governance and Management Structure is provided at **Annex A** to this Schedule 1. It presents an overview of the governance and management arrangements for the Program.

Program Steering Committee

- 4.2 The Program Steering Committee (PSC) is the highest decision-making body of the PFMP and will provide strategic oversight for Program planning and implementation. Membership of the PSC is composed of one senior official from each of the following Agencies: the GOP Department of Budget and Management (DBM); Department of Finance (DOF); Commission on Audit (COA), National Economic and Development Authority (NEDA), and AusAID.
- 4.3 The PSC will meet three times a year, or as necessary, in line with the planning and reporting cycle each year which is composed of the following Program milestones:
- (a) Annual Action Plan approved by the PSC;
 - (b) Six-monthly Progress Report accepted by the PSC; and
 - (c) Annual Program Accomplishment Report accepted by the PSC.
- 4.4 The PSC is responsible for ultimate oversight of the implementation of the Program with the support of the Team Leader/Program Coordinator and the Contractor.

Philippine Technical Committees

- 4.5 Philippine Technical Committees (to be established as part of the GOP's PFM reform program) will provide technical advice and guidance through regular engagement with the Program. Existing GOP technical committees and non-government networks, and possibly additional ones, will form a cohort of Philippine Technical Committees. The mechanisms for engagement between the Committees and the Program will be agreed with the PSC.

Team Leader and Program Coordinator (AusAID)

- 4.6 The Program requires consistent, high-level liaison between Australia, the GOP, development partners and civil society to shape the Program in support of the GOP's PFM reform agenda. It is vital that Australia presents a consistent policy position throughout this dialogue, and that this message is delivered by an individual with clear authority to make that representation.
- 4.7 AusAID has direct leadership and management responsibility for PFMP programming and Program implementation, including preparation of the Annual Action Plans and the overall quality assurance of Program outputs. AusAID is also responsible for managing the Contract and certifying payments to the Contractor.
- 4.8 AusAID will appoint staff members to the Team Leader and Program Coordinator positions.
- 4.9 The Team Leader (TL), supported by the Program Coordinator (PC), has responsibility for providing a mix of strategic, technical, and managerial inputs to the Program. The TL has overall responsibility for Program level reporting to the PSC and AusAID. The Terms of Reference of the TL and PC are provided in **Annex B** to this Schedule 1.
- 4.10 The TL and the PC are responsible for issuing Tasking Notes outlining activities under the Annual Action Plans to be administered by the Contractor.
- 4.11 The TL is responsible for preparation of the Annual Action Plan and Budget for the Program for approval by the PSC

Service Provider (the Contractor)

- 4.12 To minimise the administrative burden to AusAID and the GOP, the Contractor is responsible for day-to-day management of the administration of the Program.
- 4.13 The Contractor is responsible for supporting programming decisions taken by AusAID and the GOP, which will be issued under formal Tasking Notes from the TL/PC.
- 4.14 The Contractor must formally refer any direct requests for Program assistance to the TL/PC.

Technical Advisory Team

- 4.15 The Contractor must recruit and contract a Technical Advisory Team (TAT) at Program implementation. All appointments to the TAT are subject to agreement between the Contractor, TL/PC and the GOP.
- 4.16 The TAT has responsibility for technical issues beyond the capacity of the TL or PC that are likely to be generated during the implementation of the Program.
- 4.17 The TAT will comprise a small number of experts in specific areas who can provide technical inputs to the Program, work closely with key stakeholders, and identify and mobilise a broad range of expertise through diverse contacts, possibly in consortia with other institutions. These Personnel may include full-time, part-time or periodic inputs.
- 4.18 The types of experts required for the TAT (with the exception of the Monitoring and Evaluation Specialist) will be specified in the Annual Action Plans and are not limited to experts within the PFM field. Subject to Program requirements, Personnel with expertise in other areas may be required such as public sector reform, capacity development and organisational management, political governance and management information systems.
- 4.19 TAT Personnel to be recruited by the Contractor must provide advice and assistance on the programming aspects of the Program including but not limited to:
- (a) assessment of the feasibility of proposals for specialist technical support under the Program;
 - (b) drafting of specialist Terms of Reference for Technical Assistance (TA) and Scopes of Services for sub-contractors;
 - (c) engagement of counterpart agencies and development partners on activity implementation in their area of expertise; and
 - (d) appraisal of specialist technical papers, reports and Technical Adviser outputs as part of the Program's quality assurance role.
- 4.20 The quality assurance of outputs produced by TAT Personnel will be the responsibility of the TL/PC in consultation with the Contractor.
- 4.21 The TAT to be recruited by the Contractor must include a full-time Monitoring and Evaluation (M & E) Specialist. The Terms of Reference for this position are provided in **Annex B** to this Schedule 1.

5. SERVICES

- 5.1 The Contractor must support the PFMP to achieve its goal and strategic objectives through the provision of administrative management services. In general, the Contractor must manage the administrative and logistic requirements of the Program.

- 5.2 The Contractor shall perform the following Services in accordance with the terms and conditions of this Contract:
- (a) establish a Program Office in Manila external to AusAID and the GOP in accordance with **Clause 6** (Program Office) of this Schedule 1;
 - (b) recruit, manage and support suitable long-term and short-term Program Office Personnel, including but not limited to a Program Manager, two Project Officers, a Finance Officer and an Administrative Officer in accordance with **Clauses 7** (Personnel) **and 9** (Human Resource Management) of this Schedule 1;
 - (c) recruit, manage and support suitable Technical Advisory Team Personnel, including a Monitoring and Evaluation Specialist in accordance with **Clauses 4** (Governance Structure and Implementation Arrangements) **and 9** (Human Resource Management) of this Schedule 1;
 - (d) provide procurement, management and support services to the Program as outlined in Tasking Notes issued by the TL and in accordance with **Clauses 8** (Program Inputs) **and 10** (Financial, Procurement and Logistic Support Management) of this Schedule 1;
 - (e) manage and report on the use of Program funds in accordance with **Clause 10** (Financial, Procurement and Logistic Support Management) of this Schedule 1;
 - (f) support communication of appropriate information between and across key partners and Program stakeholders in accordance with **Clause 11** (Communication, Knowledge and Information Management) of this Schedule 1;
 - (g) led by the Monitoring and Evaluation Specialist, manage the Monitoring and Evaluation of contracted Program inputs in collaboration with the TL/PC and implementing partners in accordance with **Clause 12** (Monitoring and Evaluation) of this Schedule 1;
 - (h) develop and implement the Program operational plans and manuals in accordance with **Clause 14** (Summary of Outputs and Reports) of this Schedule 1;
 - (i) provide administrative secretariat services to the PSC (and Philippine Technical Committees if required);
 - (j) identify and manage risks associated with the Services in support of the PFMP, including risks relating to the performance of the Technical Advisory Team and the safeguarding of Program funds; and
 - (k) perform other administrative tasks as reasonably required by AusAID and the TL for the effective delivery of the Contractor Services in support of the PFMP.

6. **PROGRAM OFFICE**

- 6.1 The Contractor must establish a Program Office in Manila, the Philippines within six (6) weeks of the Program Mobilisation Date. The Program Office will be headed by the Program Manager.
- 6.2 The Program Office must be established in accordance with **[insert details from successful Tenderer's Tender]** and be of sufficient size and contain adequate equipment, staffing, security and operating resources necessary to manage the PFMP for the duration of the Contract.
- 6.3 The location of the Program Office must be approved by AusAID and must allow safe and secure access for PFMP Personnel and Program stakeholders.
- 6.4 The Contractor must ensure that the Program Office contains adequate space and resources for location of the TAT together with the Contractor's Program Office Personnel.
- 6.5 The Contractor must ensure that the Program Office contains adequate space and resources for co-location of the TL and PC between the Program Office and the AusAID Manila Office.
- 6.6 The Contractor is to provide all necessary staff required to support the provision of the Services as agreed and specified in this Contract and manage all Program Office Personnel in accordance with **Clause 9** (Human Resource Management) of this Schedule 1.
- 6.7 The Contractor must finalise the detail of the Program Office structure and staffing by agreement with AusAID and the GOP.
- 6.8 All Program Office Personnel required for the first 12 months of the Contract must be recruited, contracted and mobilised by the Contractor within three (3) months of the Program Mobilisation Date.

7. **PERSONNEL**

- 7.1 The Contractor must provide the following full-time long-term Specified Program Office and Technical Advisory Team Personnel to perform the Services in accordance with the Duty Statements attached at **Annex C and Annex D** to this Schedule 1:
 - (a) One (1) Program Manager (Program Office); and
 - (b) One (1) Monitoring and Evaluation Specialist (Technical Advisory Team)
- 7.2 The Contractor must provide the following full-time long-term Unspecified Program Office Personnel to perform the Services in accordance with the Duty Statements attached at **Annex C** to this Schedule 1:

- (a) One (1) Finance Officer;

(b) Two (2) Project Officers;

(c) One (1) Administrative Officer.

7.3 The Contractor may propose additional Unspecified long-term and short-term Program Office Personnel who may be agreed to by AusAID at its sole discretion and at an agreed additional cost.

7.4 The Contractor must recruit Unspecified long-term and short-term Program Office Personnel in consultation with the TL/PC.

7.5 The Contractor must maintain a pre-qualified pool of consultants approved by the Team Leader for potential use on the Program including but not limited to the following technical areas:

- (a) public financial management;
- (b) public sector reform;
- (c) capacity development;
- (d) organisational management;
- (e) political governance;
- (f) management information systems;
- (g) information and communication;
- (h) monitoring and evaluation;
- (i) gender equity; and
- (j) training, learning and development.

8. RECRUITMENT PROCESSES

8.1 Where new or replacement staff are required, the Contractor must:

- (a) Undertake a rigorous, value-for-money selection exercise in accordance with the principles of the Commonwealth Procurement Guidelines including at least two (2) of the following advertising means:
 - (i) Targeted print advertising in relevant national and local press, technical publications, and other major periodicals;
 - (ii) Advertising on websites and other web-based means as relevant to the position; and
 - (iii) Word-of-mouth advertising through local, national and/or international networks.

- 8.2 The Contractor must comply with relevant local and Australian legislation. Non-discrimination policies (on basis of gender, religion, ethnicity, etc) must be clearly articulated and employed and wherever possible, the Contractor must endeavour to recruit national staff, including through using appropriate local recruitment strategies.
- 8.3 AusAID reserves the right to reject the Contractor's preferred specified personnel at AusAID's absolute discretion and to require the Contractor to undertake further recruitment activities at the Contractor's expense.

9. **PROGRAM INPUTS**

- 9.1 The Contractor must provide the following Program inputs in accordance with the goal, objectives and focus of the Program and the Annual Action Plans as directed by AusAID in accordance with **Clause 4.10** of this **Schedule 1**:
- (a) contracted Technical Assistance for Program activities;
 - (b) sub-contracted activities; and
 - (c) accountable cash grants to implementing partners.

Contracted Technical Assistance

- 9.2 Where a request for Personnel to provide Technical Assistance (TA) is approved by the PSC or the TL, the Contractor must directly recruit, contract, mobilise, demobilise, support and manage all TA in accordance with this Schedule 1 and AusAID policies current at the time of recruitment.
- 9.3 The Contractor must enable the GOP to have a significant role in the selection of TA Personnel and in the management of TA Personnel in their workplace.
- 9.4 TA Personnel recruited by the Contractor must report to the Program Office and also to the GOP agency or agencies with whom they are working. Specific reporting relationships will be specified in individual Terms of Reference.
- 9.5 The Contractor's Services for the management of TA Personnel under **Clause 9.2** must include the following:
- (a) recruitment and contracting;
 - (b) mobilisation and demobilisation;
 - (c) performance management;
 - (d) provision of ongoing logistic and other support; and
 - (e) provision of pastoral care to TA personnel and their families.

Sub-Contracted Activities

- 9.6 The Contractor may sub-contract activities for Program inputs. Typically, such activities will comprise multiple Program inputs packaged as a single activity and may include a team of TA personnel within an agency or working across agencies.
- 9.7 The Contractor must allow the GOP to have a significant role in the selection of sub-contractors.
- 9.8 In accordance with **Part A Project Specific Contract Conditions Clause 9.1(a)**, the Contractor must obtain the prior written approval of AusAID to sub-contracts with any party to the value of **AUD100,000** or more.

Accountable Cash Grants

- 9.9 The Contractor must implement procedures to manage the administration of accountable cash grants in the form of direct grants to implementing partners with the capacity and accountability measures to deliver the required Program outputs.
- 9.10 The Contractor will provide Program funds for the purpose of direct grants to implementing partners as identified in the Annual Activity Plans.
- 9.11 In administering accountable cash grants the Contractor must comply with the Commonwealth Grants Guidelines.

10. HUMAN RESOURCE MANAGEMENT

- 10.1 The Contractor is responsible for managing human resources for the PFMP, including Program Office Personnel, the Technical Advisory Team and TA Personnel.
- 10.2 The Contractor shall adopt an effective engagement strategy to attract and maintain a pre-qualified consultant pool of international and local experts, and firms, for potential deployment under the Program.
- 10.3 The Contractor must develop and implement a comprehensive Program briefing and support package to support the mobilisation of the Technical Advisory Team Personnel and TA Personnel.
- 10.4 The Contractor must prepare and submit a Human Resource Management Plan (the Plan) to the TL/PC within three (3) months of the Mobilisation Date. The Plan must outline how the Contractor will recruit, support and manage the performance of Program Office Personnel Technical Advisory Team and Technical Assistance Personnel.

11. FINANCIAL, PROCUREMENT AND LOGISTIC SUPPORT MANAGEMENT

Financial Management

- 11.1 The Contractor is responsible for the financial management of all Program funds as categorised in Schedule 2 -Basis of Payment. These funds will be used to support the implementation of the PFMP and its activities in accordance with the Annual Action Plans. The Contractor must:
- (a) prepare financial statements and forecasts including narrative analysis for submission to TL/PC on a monthly basis or as required by AusAID;
 - (b) provide summary financial reporting to the PSC when it meets. The format of financial reports shall be agreed with the Team Leader at the start of Program implementation;
 - (c) establish a financial management information system and procedures to facilitate monitoring and reporting on the use of Program funds. This must at a minimum include:
 - (i) eligibility criteria in consultation with the Team Leader for the use of Program funds;
 - (ii) financial acquittal procedures for all activities; and
 - (iii) responsibilities of all parties in relation to financial management.
 - (d) facilitate the timely and efficient provision of funds to implementing partners at the direction of the TL/PC;
 - (e) conduct briefings and basic financial training to implementing partner finance staff and managers, as necessary, in the application of Program financial management procedures; and
 - (f) formulate fraud control and audit procedures that set out how the Contractor will deal with instances of fraud or suspected fraud in accordance with AusAID requirements.

Procurement and Contract Management

- 11.2 The Contractor is responsible for the procurement of materials, equipment and services necessary for the provision of the Services and all Program-related procurement conducted by the Contractor must be consistent with the principles articulated in the Commonwealth Procurement Guidelines and in accordance with the requirements of this Contract.
- 11.3 In conducting Program-related procurement the Contractor may take into account the Philippines Procurement Guidelines as necessary for local procurement, insofar as those Guidelines are not inconsistent with the principles of the Commonwealth Procurement Guidelines.
- 11.4 In conducting Program-related procurement, the Contractor must provide the following Services:

- (a) purchase materials and equipment for the Program Office and Program personnel including the TL, PC and Technical Advisory Team. This shall include vehicles, office equipment and furniture;
- (b) prepare an Annual Procurement Plan that details the procurement requirements in accordance with the Annual Action Plan;
- (c) encourage, support and facilitate the involvement by GOP representatives in Contractor-managed procurements;
- (d) establish a system and procedures for procuring short-term, long-term and periodic TA personnel under the Program;
- (e) prepare guidelines on contract management that contain standard pro-forma sub-contract and agreement templates;
- (f) facilitate timely and efficient management of all sub-contracts and agreements with implementing partners;
- (g) develop and maintain a sub-contracts and agreements database that can extract and synthesise key operational data and report on compliance by sub-contractors and implementing partners;
- (h) provide timely advice to the TL/PC on outstanding contractual matters, particularly relating to the performance of the sub-contractors that may include implementation progress and financial acquittal; and
- (i) provide assessment, briefings and ongoing support to implementing partners, as necessary, to ensure they have the administrative systems to comply with agreement requirements.

Logistic Support Management

11.5 The Contractor must provide the following logistic support Services:

- (a) maintain the Program Office and equip it with furniture, equipment and materials for use by the Program Personnel, Technical Advisory Team and TL and PC;
- (b) maintain a system for events coordination to include organising and managing conferences and training programs, promotional events, and meetings, among others;
- (c) develop and implement standard templates for use by Program partner agencies and organisations to request assistance for all contracted Program inputs;
- (d) organise and provide Secretariat services to regular Program meetings, including the PSC, and Philippine Technical Committees if required, and facilitate the effective operations of the PSC; and

- (e) maintain a system for managing travel, accommodation, visa and itinerary requirements. This is to include managing both domestic and international travel, and support visits and missions of Program personnel, GOP officials and other Program stakeholders.
- 11.6 The Contractor must prepare and submit a Program Operations Manual to the TL/PC within three (3) months of the Mobilisation Date. The Manual must outline how the Contractor will provide the financial, procurement and logistical support Services outlined in this **Clause 10**, and identify and manage the fiduciary risks to Program funds.
- 12. **COMMUNICATION, KNOWLEDGE AND INFORMATION MANAGEMENT**
 - 12.1 The Contractor is responsible for all necessary communication, knowledge and information management for the Program.
 - 12.2 The Contractor must establish and maintain a functioning knowledge and information management system for the Program Office. The system established by the Contractor must include a user-friendly database of electronic and hard copies of all Program documents for monitoring and evaluation purposes.
 - 12.3 The Contractor must prepare and submit an Information and Communication Plan to the TL/PC within six (6) months of the Mobilisation Date. The Plan must outline how the Contractor will support communication of appropriate information between and across key partners and program stakeholders, and the delivery, advocacy and promotion of the Program and its activities.
- 13. **MONITORING AND EVALUATION**
 - 13.1 The Contractor must, led by the Monitoring and Evaluation Specialist (M&E Specialist) and under the direction of the TL/PC, provide the following Monitoring and Evaluation Services:
 - (a) within six (6) months of the Mobilisation Date, review and update the draft PFMP Monitoring and Evaluation Framework provided in the PFMP Program Design Document, and ensure that methodologies and strategies are be consistent across the Program;
 - (b) facilitate the timely submission to the Team Leader of quality activity implementation reporting;
 - (c) coordinate the collection of evidence on the progress and impact of the Program in collaboration with all Program stakeholders;
 - (d) prepare the Six-monthly Progress Reports (via the Contractor's M & E Specialist) for submission to the TL/PC and PSC; and
 - (e) prepare the Annual Program Accomplishment Reports for submission to the TL/PC and PSC.

13.2 The M & E Reports outlined in **Clause 13.1** above must:

- (a) report on the achievement of outcomes against Program strategic objectives where possible;
- (b) report on implementation progress during the reporting period against approved Annual Action Plan activities, including:
 - (i) provide an overview of progress of achievements and budgets of activities conducted;
 - (ii) identify any risks and issues that have arisen during the reporting period; and
- (c) be structured according to AusAID's requirements (for example as per AusAID's Performance Management and Evaluation Policy and updates thereof).

13.3 The frequency of submission of six-monthly M & E Reports may be revised subject to the quality of reports, the frequency of PSC meetings or any changes to AusAID Guidelines.

14. **REPORTING REQUIREMENTS**

14.1 In addition to the reports listed separately in **Clause 11.6**, **Clause 12.3** and **Clause 13.1** of this **Schedule 1**, the Contractor must prepare and submit the following reports to the TL/PC:

- (a) Mobilisation Report within six (6) weeks of the Mobilisation Date outlining:
 - (i) the status of Program Office establishment and recruitment of Program personnel; and
 - (ii) any relevant issues, including constraints encountered by the Contractor.
- (b) Quarterly Contractor Progress Reports within ten (10) working days of the end of the relevant quarter on the provision of contracted Program inputs and Services under the Contract in a format to be agreed in advance between the TL/PC and the Contractor;
- (c) Exception Reports immediately upon identification of any major unforeseen problems arising in the Program, particularly if they may have a detrimental effect on the achievement of the objectives of the Program;
- (d) Draft Six-monthly Progress Reports in a format specified by AusAID within twenty (20) working days of the end of the relevant period, and final reports within ten (10) working days of receipt of comments from the TL/PC on the draft reports;

- (d) Draft Annual Program Accomplishment Reports within twenty (20) working days of the end of the relevant period; and final reports within ten (10) working days of receipt of comments from the TL/PC on the draft reports;
- (e) Activity Completion Report within three (3) months of the scheduled completion date of the Program, and in accordance with AusAID guidance and any other written instructions that may be issued by AusAID. The Activity Completion Report must:
 - (i) assess whether the Services have been implemented according to the Contract;
 - (ii) provide a full acquittal of Program funds; document lessons learned and identify any obstacles to implementation; and
 - (iii) provide recommendations for managing the administration of follow-up assistance;
- (f) Draft Handover Plan for submission to AusAID six (6) 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 and to AusAID as required on completion of the Contract; and
- (g) Final Handover Plan for draft and updated draft Handover plans must be submitted to AusAID within two (2) weeks of receipt of AusAID comments on the Draft Handover Plans.

14.2 All reports must:

- (a) be provided in accordance with the specification in **Part B** Standard Contract Condition **Clause 16**;
- (b) be accurate and not misleading in any respect;
- (c) be prepared in accordance with AusAID requirements;
- (d) allow AusAID to properly assess progress under the Contract;
- (e) be provided in a format and on media approved or requested by AusAID;
- (f) be provided at the time specified in this Clause; and
- (g) 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 where relevant and AusAID's policy framework.

14.3 The Contractor must amend the reports as reasonably requested by the TL/PC.

14.4 AusAID may from time to time amend the timing and/or detail required in the any report to be submitted by the Contractor in response to the needs of the Program.

14.5 The Contractor must provide other ad hoc reporting as directed by the TL/PC and PSC with reasonable notice.

15. SUMMARY OF OUTPUTS AND REPORTS

15.1 The Contractor must provide the following outputs and reports by the date indicated:

Table 1 – Outputs and Reports

Reference	Document	Submitted to TL/PC
1	Mobilisation Report	Within 6 weeks of the Mobilisation date
2	Program Operations Manual	Within 3 months of the Mobilisation Date
3	Human Resource Management Plan	Within 3 months of the Mobilisation Date
4	Information and Communication Plan	Within 6 months of the Mobilisation Date
5	Monitoring and Evaluation Framework	Within 6 months of the Mobilisation Date.
6	Quarterly Contractor Progress Report	Within 10 working days of end of period
7	Draft Six-monthly Progress Report	Within 20 working days of end of period
8	Final Six-monthly Progress Report	Within 10 working days of receipt of comments from the TL/PC on the Draft Six-monthly Progress Report.
9	Draft Annual Program Accomplishment Report	Within 20 working days of end of period
10	Final Annual Program Accomplishment Report	Within 10 working days of receipt of comments from the TL/PC on the Draft Annual Program Accomplishment Report.
11	Annual Procurement Plan	Within 20 working days of finalisation of Annual Action Plan
12	Exception Reports	As required
13	Activity Completion Report	3 months prior to demobilisation
14	Draft Handover Plan	6 months prior to Contract completion and updated 3 months

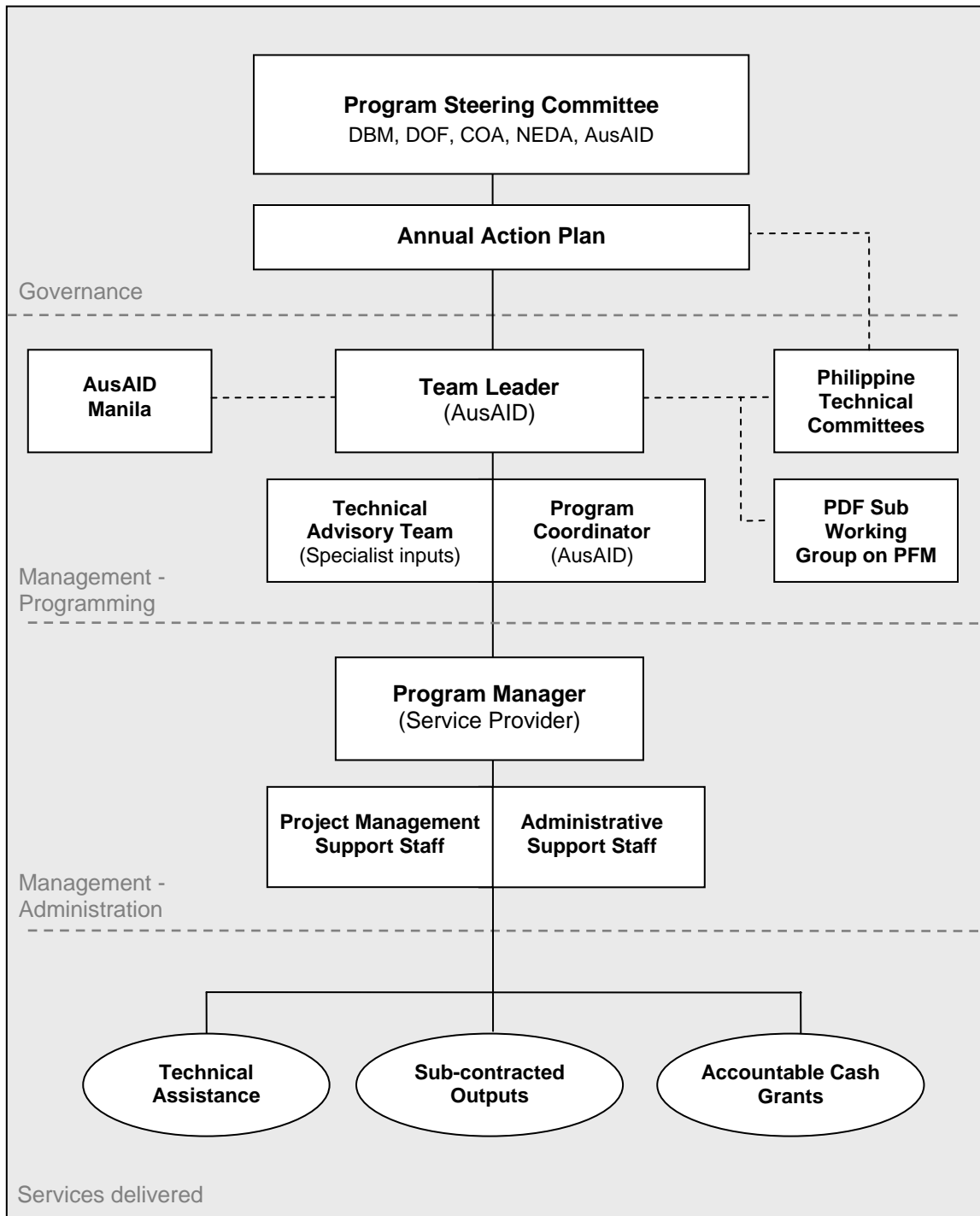
		prior to Contract completion.
14	Final Handover Plan	Within two weeks of receipt of comments from AusAID on the Draft Handover Plan and updated Handover Plan.

16. CONTACTOR PERFORMANCE REVIEWS

16.1 In conducting its annual Contractor Performance Assessment Reviews in accordance with **Clause 17 (g)** of the Standard Contract Conditions, AusAID will have regard to the following matters inclusive of but not limited by:

- (a) the level of corporate support provided by the Contractor, including the extent to which the Program Manager and M & E Specialist consult with the Contractor representative in Australia and obtain assistance with establishment and maintenance of financial management systems at the Program Office;
- (b) the accountability and management responsibility taken by the Contractor;
- (c) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services under the Contract and ensuring value for money for the Commonwealth;
- (d) the extent to which the Contractor liaises with AusAID Manila and the Team Leader and Program Coordinator on Contract matters, including the extent to which the Contractor provides management support to the in-country Specified Personnel, and the TAT and its Technical Advisory personnel;
- (e) the accuracy of the Contractor's invoices and financial reports in relation to the provision of the Services under the Contract; and
- (f) the quality and timeliness of the Contractor's outputs and reports as specified in this Scope of Services including the extent to which the Contractor monitors expenditure, invoicing and funds transfer.

ANNEX A - PFMP GOVERNANCE AND MANAGEMENT STRUCTURE



ANNEX B - TERMS OF REFERENCE FOR AUSAID PERSONNEL

Team Leader (TL)

The TL will have overall responsibility for programming and program implementation and will provide a mix of strategic, technical and managerial input to the program. The TL will engage in high-level liaison between Australia, the GOP, development partners and civil society to shape a program in support of the GOP's PFM reform agenda.

An AusAID officer will be appointed to TL position. He/she will report to the AusAID Minister Counsellor and to the Counsellor Economic Growth on a day-to-day basis. The TL will be co-located in AusAID's Manila Office and the Program Office to facilitate a close working relationship with AusAID, the PC, Program Manager and Technical Advisory Team.

Reporting relationship: AusAID Counsellor Economic Growth

Location: Manila, Philippines

Duration: three years

Key responsibilities:

- (a) provide strategic guidance and advice on PFM reform issues to AusAID and the GOP, particularly as they relate to the implementation of the PFMP;
- (b) work closely with Program stakeholders to prepare the Annual Action Plan and enable coherence of Program priorities and activities with the GOP;
- (c) enable coordination and coherence of PFM reform priorities and activities with other relevant AusAID programs and development partners;
- (d) report on Program performance in collaboration with the Program Coordinator, M&E Specialist and Program Manager;
- (e) provide technical inputs, particularly related to evaluation of proposals and quality assurance of Program outputs;
- (f) manage key Program personnel including the Program Coordinator, Program Manager and Technical Advisory Team;
- (g) establish professional networks and relationships across domestic and international organisations involved in PFM strengthening and economic development;
- (h) operate in accordance with the principles of aid effectiveness, including using and supporting GOP systems; and
- (i) work in a way that promotes gender equality and principles of good governance.

Skills, knowledge and experience:

- (a) understanding of the role and functions of PFM in a modern democracy;
- (b) ability to provide high quality advice and strategic guidance on PFM reform issues in a developing country context;
- (c) experience with developing country PFM systems and organisations to manage and implement public resources to deliver services;
- (d) program management experience and ability to manage diverse forms of support and personnel from varied professional and cultural backgrounds;
- (e) training in and exposure to a broad range of PFM and/or economic development issues;
- (f) knowledge and experience of development assistance programs and ability to apply the principles of aid effectiveness;
- (g) strong interpersonal and communication skills, including the ability to convey concepts clearly and to understand and meet the needs of a range of stakeholders; and
- (h) understanding and commitment to principles of gender equality and good governance.

ANNEX B - TERMS OF REFERENCE FOR AUSAID PERSONNEL

Program Coordinator (PC)

The PC will support the TL in programming and program implementation in collaboration with the GOP, development partners and civil society. An AusAID officer will be appointed to PC position and is likely to be a locally engaged officer with a background in whole-of-government PFM issues. This role will provide back-up for the TL when he/she is absent. The PC will also be co-located in AusAID's Manila Office and the Program Office. He/she will report to the TL.

Reporting relationship: Team Leader

Location: Manila, Philippines

Duration: three years

Key responsibilities:

- (a) support programming and Program implementation, including liaison with the GOP, development partners and civil society;
- (b) work closely with other relevant AusAID programs and development partners to enable coordination and coherence of PFM reform priorities and activities;
- (c) work closely with the Team Leader, M&E Specialist and Program Manager to support Program reporting and monitoring;
- (d) provide technical inputs, particularly related to screening of proposals and quality assurance of Program outputs;
- (e) manage performance of the Service Provider in accordance with contractual arrangements;
- (f) manage AusAID's internal activity management process;
- (g) enable professional networks and relationships with organisations involved in PFM strengthening and economic development in the Philippines; and
- (h) promote gender equality and principles of good governance.

Skills, knowledge and experience:

- (a) experience with PFM systems and organisations in the Philippines to manage and implement public resources to deliver services;
- (b) program management (including contract management) experience and ability to manage diverse forms of support and personnel from varied professional and cultural backgrounds;

- (c) knowledge and experience of development assistance programs and ability to apply the principles of aid effectiveness;
- (d) understanding of the range of capacity development approaches and their applicability to different contexts and needs;
- (e) strong interpersonal and communication skills, including the ability to understand and meet the needs of a range of stakeholders; and
- (f) understanding and commitment to principles of gender equality and good governance.

ANNEX C - DUTY STATEMENTS OF PROGRAM OFFICE PERSONNEL

Program Manager

The Program Manager is responsible for the administration of the program and for managing the Program Office in support of the programming decisions taken by AusAID and the GOP. The Program Manager will be under contract with, and be accountable to, the Contractor, while also supporting the TL/PC on a day-to-day basis. The Program Manager is a full-time position based in the Program Office.

Reporting relationship: the Contractor (Team Leader on a day-to-day basis)

Location: Manila, Philippines

Duration: three years

Key responsibilities:

- (a) work closely with the TL/PC and the GOP to provide timely, high quality and value-for-money assistance through the Program;
- (b) provide advice and guidance on operational issues in the implementation of the Program, including managing risk;
- (c) manage human resources for the PFMP, including Program Office Personnel, the Technical Advisory Team and TA Personnel;
- (d) manage and report on Program funding, and oversee the disbursement of Program funds in accordance with agreed procedures;
- (e) ensure the quality and timeliness of implementation reporting by contracted Program inputs;
- (f) maintain constructive working relationships with the TL/PC and the GOP;
- (g) establish and provide quality control for all operational and administrative plans, reports, systems, outputs and contract management;
- (h) manage all advisory placements, including initial induction and orientation, ongoing support and training, trouble shooting, and counselling for performance; and
- (i) manage an Information and Communication Plan to collate and disseminate appropriate information between and across key partners and stakeholders.

Skills, knowledge and experience:

- (a) program management experience, including the leadership of a significant program comprising diverse forms of support and personnel from varied professional and cultural backgrounds;

- (b) understanding of the key aspects of project management, including human resource management, financial management, procurement and contracting, and information management;
- (c) knowledge and experience of development assistance programs and a demonstrated ability to apply the principles of aid effectiveness;
- (d) a demonstrated understanding of the range of capacity development approaches and their applicability to different contexts and needs;
- (e) counselling, mediation and problem solving experience in complex environments;
- (f) high level interpersonal, communication and cross-cultural skills, including the ability to understand and meet the needs of a range of stakeholders; and
- (g) a demonstrated understanding of and commitment to gender equity in human resource practices.

ANNEX C - DUTY STATEMENTS OF PROGRAM OFFICE PERSONNEL

Project Officers (2)

Two Project Officers shall support the Program Manager in all aspects of project management of the contracted Program inputs. They shall support the procurement and contracting processes in accordance with this Scope of Services. The Project Officers will also be responsible for supporting implementation of the knowledge and information management system.

Reporting relationship: Program Manager

Location: Manila, Philippines

Duration: three years

Key responsibilities:

- (a) plan and manage all procurement and contracting undertakings, including the development of the Annual Procurement Plans;
- (b) manage systems and procedures for procuring short-term, long-term and periodic TA personnel under the Program;
- (c) supervise procurement of materials and equipment for the Program Office;
- (d) coordinate timely submission of sub-contract and agreement milestones in accordance with Program guidelines on contract management;
- (e) provide timely advice to the Program Manager on outstanding contractual matters;
- (f) maintain a sub-contracts and agreements database;
- (g) provide assessment, briefings and ongoing support to implementing partners, as necessary; and
- (h) support implementation of the Information and Communication Plan and knowledge and information system.

Skills, knowledge and experience

- (a) strong background in the procurement of goods and services including sub-contracting arrangements;
- (b) experience in managing performance of contracts, preferably in AusAID or other donor-funded projects;
- (c) demonstrated ability to develop and implement procurement plans;
- (d) knowledge and experience in record keeping and information management;

- (e) understanding of the GOA and GOP procurement laws, regulations and processes; and
- (f) good communication skills and an ability to work as a member of a team.

ANNEX C - DUTY STATEMENTS OF PROGRAM OFFICE PERSONNEL

Finance Officer

The Finance Officer shall support the Program Manager in the financial management of all Program funds. He/she is responsible for maintaining the financial management information system and procedures for the effective disbursement, acquittal and reporting of Program funds by the Program Office.

Reporting relationship: Program Manager

Location: Manila, Philippines

Duration: three years

Key responsibilities:

- (a) manage the financial management systems and procedures of the Program Office;
- (b) maintain accurate financial records for the Program bank accounts;
- (c) provide timely and accurate reporting to the Program Manager, TL/PC and PSC;
- (d) facilitate the timely and efficient provision of funds to implementing partners;
- (e) implement fraud control procedures;
- (f) conduct briefings and basic financial training to implementing partner finance staff and managers, as necessary; and

Skills, knowledge and experience

- (a) recognised qualifications in accounting and/or bookkeeping;
- (b) experience in the management of finance and reporting systems and procedures, preferably in AusAID or other donor-funded projects;
- (c) experience in providing advice and basic training in financial management and/or bookkeeping; and
- (d) good communication skills and an ability to work as a member of a team.

ANNEX C - DUTY STATEMENTS OF PROGRAM OFFICE PERSONNEL

Administrative Officer

The Administrative Officer shall support the Program Manager in the administrative and logistical functions of the Program Office. He/she will provide organisational support to the governance and coordination arrangements and assist in the implementation of knowledge and information management systems.

Reporting relationship: Program Manager

Location: Manila, Philippines

Duration: three years

Key responsibilities

- (a) organise and provide support to regular Program meetings including the PSC, and Philippine Technical Committees if required;
- (b) maintain a system for events coordination to include organising and managing conferences and training programs, promotional events, and meetings;
- (c) maintain a system for managing travel, accommodation, visa and itinerary requirements, and provide other travel-related logistical support;
- (d) assist in the procurement and maintenance of Program Office furniture, vehicles, materials and equipment;
- (e) assist the mobilisation, support and demobilisation of Program Office and TA personnel; and
- (f) assist in the maintenance of relevant Program documents and the overall information management systems.

Skills, knowledge and experience

- (a) recognised qualifications in office administration and/or secretarial functions;
- (b) experience in office administration, preferably in an international organisation;
- (c) good knowledge of project administration activities, preferably in AusAID or other donor-funded projects;
- (d) excellent computer skills; and
- (e) good communication skills and an ability to work as a member of a team.

ANNEX D - DUTY STATEMENTS OF TECHNICAL ADVISORY TEAM PERSONNEL

Monitoring and Evaluation Specialist

The Monitoring and Evaluation (M & E) Specialist will support the Philippines and Australian Governments' increasing commitment to managing for development results and greater performance orientation, while also investing in opportunities for learning and incorporating qualitative techniques to capture the depth and breadth of change programs. The M&E Specialist will enable M&E methodologies and strategies to be consistent across the Program. This is a full-time position based in the Program Office and forms part of the Technical Advisory Team.

Reporting relationship: Team Leader

Location: Manila, Philippines

Duration: three years

Key responsibilities:

- (a) ensure the M&E Framework is appropriately managed, updated and implemented as per the Program Design Document;
- (b) develop and update the methodology for measuring Program performance and progress towards achieving objectives and outcomes;
- (c) coordinate the collection of all evidence on the impact of the Program with information about other GOP, AusAID and donor programs also operating in Public Financial Management (PFM) reform;
- (d) prepare the Six-monthly Progress Reports and Annual Program Accomplishment Reports for submission to the TL/PC and PSC, and generally support the TL/PC with all monitoring, evaluation and reporting activities;
- (e) provide targeted and agreed technical support to the GOP, such as management and implementation of issues-based evaluation studies, and monitoring of the government's PFM reform program if requested;
- (f) enable the Program to meet all AusAID and GOP reporting requirements; and
- (g) ensure that M&E strategies and opportunities enhance gender equity outcomes within the overall context of the Program.

Skills, knowledge and experience:

- (a) experience and understanding of contemporary M&E strategies and systems;

- (b) strong understanding and/or experience of the M&E needs of partner government agencies in a development context;
- (c) high level interpersonal, communication and cross-cultural skills, including the ability to convey concepts clearly and to understand and meet the needs of a range of stakeholders; and
- (d) a demonstrated commitment to gender equity within an M&E context.

SCHEDULE 2 - BASIS OF PAYMENT

Philippines – Australia Public Financial Management Program

1. MAXIMUM AMOUNT PAYABLE

- 1.1 The maximum amount payable by AusAID to the Contractor shall not exceed the sum of **AUD[insert Financial Limitation]** plus GST, if any, to a maximum of **AUD [no more than 10% of the Financial Limitation]**.
- 1.2 AusAID shall not be liable for any costs or expenditure incurred by the Contractor in excess of the amount specified in **Clause 1.1**, and as set out in the Table below.

(a)	AUDXXX – Fixed Management Fees
(b)	AUDXXX – Reimbursable Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel Costs
(c)	AUDXXX – Reimbursable Unspecified Program Office (Long Term Adviser) Personnel Costs
(d)	AUD12,000,000.00 – Reimbursable Unspecified Technical Advisory Team and Technical Assistance (Long Term, Short Term and Periodic Adviser) Personnel Costs
(e)	AUDXXX – Adviser Support Costs
(f)	AUDXXX – Program Office Operational Costs
(g)	AUD600,000.00 – Reimbursable Payments (Accountable Cash Grants and Non-Adviser Implementation Activities)

2. PAYMENT STREAMS

- 2.1 For the performance of the Services described in the Contract, AusAID shall pay the Contractor as follows, to the maximum amount specified in Clause 1.1 above:
- (a) Fixed Management Fees in accordance with **Clause 3** of this Schedule;
 - (b) Reimbursable Costs as follows:
 - (i) Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel Costs in accordance with **Clause 4** of this Schedule;
 - (ii) Unspecified Program Office (Long Term Adviser) Personnel Costs in accordance with **Clause 5** of this Schedule.

- (iii) Unspecified Technical Advisory Team and Technical Assistance (Long Term, Short Term and Periodic Adviser) Personnel Costs in accordance with **Clause 6** of this Schedule;
 - (iv) Adviser Support Costs in accordance with **Clause 7** of this Schedule; and
 - (v) Program Office Operational Costs in accordance with **Clause 8** of this Schedule;
 - (c) Reimbursable Payments (Accountable Cash Grants and Non-Adviser Implementation Activities) in accordance with **Clause 8** of this Schedule.
- 2.2 When total reimbursable expenditure reaches 80% of the maximum limit specified in this Schedule 2, the Contractor must advise AusAID of the remaining commitments and must ensure that the maximum limit is not exceeded.
3. **FIXED MANAGEMENT FEES**
- 3.1 The maximum amount payable to the Contractor for Fixed Management Fees shall not exceed the sum of **AUDXXX** (excluding GST).
- 3.2 The Fixed Management Fees comprise the following:
- (a) profits, including commercial margins and mark-up for personnel and program management;
 - (b) financial management costs, including the cost of an independent annual audit of the Program and financing costs, if any;
 - (c) costs of Contractor administrative and head office staff, including the cost of a Contractor Representative, if any;
 - (d) insurance costs as required by this Contract, but exclusive of the costs of medical insurance for Advisers;
 - (e) taxation, as applicable;
 - (f) costs of complying with the Contractor's reporting and liaison obligations under this Contract;
 - (g) costs associated with all personnel briefings in Australia or in-country;
 - (h) costs associated with any subcontracting and procurement of goods and services;
 - (i) costs, including domestic and international travel, accommodation, per diems, and local transport costs where required for Contractor Program Office personnel (other than those listed as Specified Personnel at **Tables 1A-1D** in **Annex 2** of this Schedule);
 - (j) costs of any leave taken by Long Term Advisers in excess of twenty (20) days per twelve (12) month period;

- (k) any other overheads required to perform the Services in accordance with this Contract;
 - (l) all escalators for the term of this Contract; and
 - (m) any allowance for risks and contingencies.
- 3.3 The Fixed Management Fees will be paid as:
- (a) **Regular Payments** in accordance with Clause 3.4 of this Schedule up to a maximum total amount of **AUDXXX**. This amount reflects ninety per cent (90%) of the Management Fees.
 - (b) **A Performance Payment** in accordance with **Clause 3.5** of this Schedule up to a maximum of **AUDXXX**. This amount reflects ten (10%) of the Management Fees.
- 3.4 Subject to **Clause 3.8**, Regular Payments payable to the Contractor will be paid progressively in equal instalments on a three monthly basis in arrears within thirty (30) days of AusAID's receipt of a correctly rendered invoice as required by the Contract.
- 3.5 Subject to **Clauses 3.6** and **3.7**, AusAID shall pay the Contractor an annual Performance Payment comprised of 10% of the Fixed Management Fees within thirty (30) days of AusAID's receipt of a correctly rendered invoice.
- 3.6 Payment by AusAID of the annual Performance Payment is subject to the Contractor obtaining a rating of 'Satisfactory' in the Contractor Performance Assessment Review in accordance with **Clause 17 (g)** of the Standard Contract Conditions and **Clause 16.1** of **Schedule 1 – Scope of Services**.
- 3.7 If the Contractor is rated as 'Unsatisfactory' in the Contractor Performance Assessment Review, AusAID will withhold the annual Performance Payment and the Performance Payment will lapse for the relevant year of the Program.
- 3.8 AusAID may withhold a Regular Payment of the Fixed Management Fees if the Contractor has not submitted a report, plan or other deliverable which was due during the three month period to which the payment relates. AusAID may withhold a payment under this Clause until the report, plan or other deliverable is submitted to AusAID in accordance with this Contract.
4. **REIMBURSABLE SPECIFIED PROGRAM OFFICE AND TECHNICAL ADVISORY TEAM (LONG TERM ADVISER) PERSONNEL COSTS**
- 4.1 AusAID shall reimburse the Contractor at actual cost up to a maximum of **AUDXXX** (excluding GST) for Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel Costs.
- 4.2 For each Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel, AusAID shall pay the Contractor, quarterly on a reimbursable basis in arrears, an all-inclusive Monthly Professional Fee as detailed in **Tables 1A – 1D** in **Annex 1** of this Schedule. The all-inclusive Monthly Professional Fee includes the following items:

- (a) the Monthly Rate:
 - (i) inclusive of base salary;
 - (ii) inclusive of superannuation levy, if any;
 - (iii) inclusive of paid annual leave allowances of up to twenty (20) days per annum, to accrue on a pro rata basis per twelve (12) months' continuous engagement on the Program;
 - (iv) inclusive of any locally recognised public holidays;
 - (v) inclusive of private transport costs; and
 - (vi) inclusive of all escalators for the term of this Contract; BUT
 - (vii) exclusive of any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor;
- (b) taxes;
- (c) mobilisation and demobilisation allowance, if any; and
- (d) any other allowances.

4.3 Leave accrued during the assignment for Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel shall be deemed to be taken in the 12 month period it falls due and cannot be accumulated or paid out. AusAID will not reimburse leave costs in excess of those specified in **Clause 4.2** (a) (iii) above.

5. **REIMBURSABLE UNSPECIFIED PROGRAM OFFICE (LONG TERM ADVISER) PERSONNEL COSTS**

- 5.1 AusAID shall reimburse the Contractor at actual cost up to a maximum of **AUDXXX** (excluding GST) for Unspecified Program Office (Long Term Adviser) Personnel Costs.
- 5.2 For each Unspecified Program Office (Long Term Adviser) Personnel, AusAID shall pay the Contractor, quarterly on a reimbursable basis in arrears, an all-inclusive Monthly Professional Fee as detailed in **Tables 2A – 2D** in **Annex 1** of this Schedule. The all-inclusive Monthly Professional Fee includes the following items:

- (a) the Monthly Rate:
 - (i) inclusive of base salary;
 - (ii) inclusive of superannuation levy, if any;
 - (iii) inclusive of paid annual leave allowances of up to twenty (20) days per annum, to accrue on a pro rata basis per twelve (12) months' continuous engagement on the Program;
 - (iv) inclusive of any locally recognised public holidays;

- (v) inclusive of private transport costs; and
 - (vi) inclusive of all escalators for the term of this Contract; BUT
 - (vii) exclusive of any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor;
 - (b) other allowances, if any.
- 5.3 Leave accrued during the assignment for Unspecified Program Office (Long Term Adviser) Personnel shall be deemed to be taken in the 12 month period it falls due and cannot be accumulated or paid out.
6. **REIMBURSABLE UNSPECIFIED TECHNICAL ADVISORY TEAM AND TECHNICAL ASSISTANCE (LONG TERM, SHORT TERM AND PERIODIC ADVISER) PERSONNEL COSTS**
- 6.1 AusAID shall reimburse the Contractor at actual cost up to a maximum of **AUD12,000,000.00** (excluding GST) for Unspecified Technical Advisory Team and Technical Assistance (Long Term, Short Term and Periodic Adviser) Personnel Costs.
- 6.2 For each Unspecified Technical Advisory Team or Technical Assistance (Long Term, Short Term and Periodic Adviser) Personnel, AusAID shall pay the Contractor, quarterly on a reimbursable basis in arrears, an all-inclusive Monthly Professional Fee as directed by the Team Leader in accordance with **Clause 4.10 in Schedule 1 – Scope of Services**. The all-inclusive Monthly Professional Fee includes the following items:
- (a) base salary;
 - (b) superannuation levy, if any;
 - (c) paid annual leave allowances of up to twenty (20) days per annum, to accrue on a pro rata basis per twelve (12) months' continuous engagement on the Program;
 - (d) locally recognised public holidays;
 - (e) private transport costs;
 - (f) all escalators for the term of this Contract;
 - (g) taxes;
 - (h) mobilisation and demobilisation allowance, if any;
 - (i) other allowances, if any; BUT.
 - (j) excludes any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor;

7. ADVISER SUPPORT COSTS

- 7.1 AusAID shall reimburse the Contractor at actual cost up to a maximum of **AUDXXX** (excluding GST) for Adviser Support Costs for Program Office, Technical Advisory Team and Technical Assistance (Long Term, Short Term and Periodic Advisers) Personnel.
- 7.2 AusAID shall pay the Contractor, quarterly on a reimbursable basis in arrears, for Adviser Support Costs for Program Office, Technical Advisory Team and Technical Assistance (Long Term, Short Term and Periodic Adviser) Personnel that includes the following items:
- (a) any reasonable costs related to security;
 - (b) work related travel and accommodation costs at the rates determined by AusAID from time to time;
 - (c) provision of communications support;
 - (d) recruitment and induction costs;
 - (e) reasonable costs for medical insurance;
 - (f) costs of any learning and development directly associated with the position;
 - (g) expenses associated with Housing Costs for Long Term Advisers. Long Term Advisers with spouses or partners who are already in receipt of an expatriate accommodation allowance will not be eligible to reimbursement for Housing Costs; and
 - (h) fixed, non-acquittable per diems in accordance with the rates prescribed by AusAID for the relevant location for Short Term Advisers.
- 7.3 The cost of any airfares will be reimbursed at the cost of economy class for each flight sector of four (4) hours or less and business class for each flight sector greater than four (4) hours duration. Any travel undertaken at cheaper rates (eg discount fares) does not entitle the Contractor to reimbursement of the cost of any higher class of travel. Travel must be via the most direct and cost effective route. A ‘flight sector’ means from any one flight departure point to any one flight landing point.
- 7.4 Adviser Support Costs for Program Office, Technical Advisory Team and Technical Assistance (Long Term, Short Term and Periodic Adviser) Personnel will be reimbursed at cost on a quarterly basis in arrears within thirty (30) days of AusAID’s receipt of a correctly rendered invoice.

8. PROGRAM OFFICE OPERATIONAL COSTS

- 8.1 AusAID shall reimburse the Contractor up to a maximum of **AUDXXX**, for the following Program Office Operational Costs:
- (a) Program Office furniture, equipment, vehicles, vehicle running and maintenance costs, office materials and supplies and administrative costs;

- (b) systems for events coordination and management of travel, accommodation, visa and itinerary requirements, including software; and
 - (c) the cost of provision of Secretariat services for meetings.
- 8.2 Program Office Operational Costs will be reimbursed at cost on a quarterly basis in arrears within thirty (30) days of AusAID's receipt of a correctly rendered invoice.
- 9. **REIMBURSABLE PAYMENTS (ACCOUNTABLE CASH GRANTS AND NON-ADVISER IMPLEMENTATION ACTIVITIES)**
 - 9.1 AusAID shall reimburse the Contractor on a monthly basis in arrears the amount disbursed by the Contractor to implement Accountable Cash Grants and Non-Adviser Implementation Activities include the following:
 - (a) accountable cash grants to implementing partners;
 - (b) workshops and training activities; and
 - (c) overseas study tours.
 - 9.2 The amounts to be disbursed by the Contractor for Accountable Cash Grants and Non-Adviser Implementation Activities will be specified in Tasking Notes issued by AusAID for each activity as outlined in **Clause 4.10 in Schedule 1 – Scope of Services**.
 - 9.3 The maximum amount payable to the Contractor shall not exceed the sum of **AUD600,000.00** (excluding GST, if any). These Reimbursable Payments will be made by AusAID within thirty (30) days of receipt of a correctly rendered invoice.
- 10. **CONTRACTOR PERFORMANCE ASSESSMENT REVIEWS**
 - 10.1 AusAID may pay the Contractor an annual Performance Payment in accordance with **Clause 3** of this Schedule.
 - 10.2 The amount payable for the annual Performance Payment will be determined by the Contractor Performance Assessment Review, which will be conducted by AusAID in accordance with **Annex 2** of this Schedule.
- 11. **CLAIMS FOR PAYMENT**
 - 11.1 The Contractor's tax invoice must be submitted when due pursuant to this **Schedule 2** in a form identifiable with the Services.
 - 11.2 All tax invoices must include a certification by a Company director of the Contractor, or their delegate:
 - (a) that the invoice has been correctly calculated; and
 - (b) that the Services included in it have been performed in accordance with this Contract.

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

Chief Finance Officer

Australian Agency for International Development

GPO Box 887

CANBERRA ACT 2601

11.4 Tax invoices should be sent to the above address. Alternatively, AusAID will accept electronic tax invoices. These can be sent to accountsprocessing@ausaid.gov.au with a copy sent to the AusAID Activity Manager as per **Clause 4.1 in Part A**.

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

ANNEX 1 to Schedule 2 – Basis of Payment

Table 1A: Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel for 1 July 2011 – 30 June 2012

Name	Position Description and Status (National or International)	Number of Months Inputs	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate	Total
	Program Manager						
	Monitoring and Evaluation Specialist (TAT)						
TOTAL (1 July 2011 – 30 June 2012)							

Tenderer's Notes and Assumptions:

Table 1B: Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel for 1 July 2012 – 30 June 2013

Name	Position Description and Status (National or International)	Number of Months Inputs	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate	Total
	Program Manager						
	Monitoring and Evaluation Specialist (TAT)						
TOTAL (1 July 2012 – 30 June 2013)							

Tenderer's Notes and Assumptions:

Table 1C: Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel for 1 July 2013 – 30 June 2014

Name	Position Description and Status (National or International)	Number of Months Inputs	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate	Total
	Program Manager						
	Monitoring and Evaluation Specialist (TAT)						
TOTAL (1 July 2013 – 30 June 2014)							

Tenderer's Notes and Assumptions:

**Table 1D (a): Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel for 1 July 2014 – 30 June 2015
(Option Period – unfunded)**

Name	Position Description and Status (National or International)	Number of Months Inputs	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate	Total
	Program Manager						
	Monitoring and Evaluation Specialist (TAT)						
TOTAL (1 July 2014 – 30 June 2015)							

Tenderer's Notes and Assumptions:

Table 1D (b): Specified Program Office and Technical Advisory Team (Long Term Adviser) Personnel for 1 July 2015 – 30 June 2016 (Option Period – unfunded)

Name	Position Description and Status (National or International)	Number of Months Inputs	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate	Total
	Program Manager						
	Monitoring and Evaluation Specialist (TAT)						
TOTAL (1 July 2015 – 30 June 2016)							

Tenderer's Notes and Assumptions:

Table 2A: Unspecified Program Office (Long Term Adviser) Personnel 1 July 2011 – 30 June 2012

Name	Position Description and Status (National or International)	Number of Months Inputs	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate	Total
	Program Officer						
	Program Officer						
	Finance Officer						
	Administrative Officer						
	Other (<i>Specify</i>)_						
TOTAL (1 July 2011 – 30 June 2012)							

Tenderer's Notes and Assumptions:

Table 2B: Unspecified Program Office (Long Term Adviser) Personnel 1 July 2012 – 30 June 2013

Name	Position Description and Status (National or International)	Number of Months Inputs	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate	Total
	Program Officer						
	Program Officer						
	Finance Officer						
	Administrative Officer						
	Other (<i>Specify</i>)_						
TOTAL (1 July 2012 – 30 June 2013)							

Tenderer's Notes and Assumptions:

Table 2C: Unspecified Program Office (Long Term Adviser) Personnel 1 July 2013 – 30 June 2014

Name	Position Description and Status (National or International)	Number of Months Inputs	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate	Total
	Program Officer						
	Program Officer						
	Finance Officer						
	Administrative Officer						
	Other (<i>Specify</i>)_						
TOTAL (1 July 2013 – 30 June 2014)							

Tenderer's Notes and Assumptions:

Table 2D (a): Unspecified Program Office (Long Term Adviser) Personnel 1 July 2014 – 30 June 2015 (Option Period – unfunded)

Name	Position Description and Status (National or International)	Number of Months Inputs	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate	Total
	Program Officer						
	Program Officer						
	Finance Officer						
	Administrative Officer						
	Other (<i>Specify</i>)_						
TOTAL (1 July 2014 – 30 June 2015)							

Tenderer's Notes and Assumptions:

Table 2D (b): Unspecified Program Office (Long Term Adviser) Personnel 1 July 2015 – 30 June 2016 (Option Period – unfunded)

Name	Position Description and Status (National or International)	Number of Months Inputs	Monthly Fee Rate (AUD)	Mobilisation and Demobilisation	Monthly Allowance (if any) (AUD)	Total Monthly Fee Rate	Total
	Program Officer						
	Program Officer						
	Finance Officer						
	Administrative Officer						
	Other (<i>Specify</i>)_						
TOTAL (1 July 2015 – 30 June 2016)							

Tenderer's Notes and Assumptions:

ANNEX 2 to Schedule 2 – Basis of Payment

Contractor Performance Assessment Review

1. AusAID will be directly responsible for conducting the Contactor Performance Assessment Review which will be used as the basis for the annual Performance Payment.
2. In each year of the Program AusAID will undertake an assessment of Contractor performance against the criteria shown in **Table 1** below. A half-yearly (non-payment) Contractor Performance Assessment Review will be undertaken in the sixth month of the year. A full-year (payment) Contractor Performance Assessment Review will be undertaken in the last month of the year.
3. AusAID may draw upon the Independent Program Evaluations, regular Program reporting, their own participation in the Program, written documentation and financial statements, Minutes of the PSC, and feedback from participating stakeholders, in carrying out their assessments.
4. The Contractor Performance Assessment Review uses an “exception approach” as a means to highlight performance issues and give the Contractor an opportunity to respond and take action. The annual Performance Payment will be payable upon a rating of ‘Satisfactory’ or better for each and every criterion. For any criteria where an ‘Unsatisfactory’ rating is made, AusAID will reduce the annual Performance Payment in direct proportion to the total number of satisfactory ratings provided (e.g. if 1 out of 5 criteria are rated ‘Unsatisfactory’, the payment will be reduced by 20% for that period).
5. If the lowest rating is ‘Needs Attention’, the full annual Performance Payment will still be paid and the Contractor will have the opportunity to rectify performance or provide a response to the rating.
6. Where the Contractor receives a ‘Needs Attention’ rating for the same criteria for three consecutive assessments, this will be regarded as ‘Unsatisfactory’ and AusAID will reduce the annual Performance Payment as indicated in **Paragraph 4**.

Table 1 – Annual Contractor Performance Assessment Criteria

Report for the period ending: (date)

Criteria	Rating	Comment
Relationship Management <ul style="list-style-type: none"> • Effective relationships with key stakeholders and partners supported; • Regular, clear and meaningful communication of appropriate information to key stakeholders and partners in accordance with approved Information and Communication Plan; • Business processes consistent with partnership principles and AusAID's policies; • Effective Secretariat services to the PSC and regular Program meetings. 	Outstanding Satisfactory Needs Attention Unsatisfactory	<i>Substantive comments and examples should be provided</i>
Human Resource Management <ul style="list-style-type: none"> • Recruitment, mobilisation and performance management of Program personnel operate in accordance with approved Human Resource Management Plan; • Program personnel appropriately qualified and experienced for their positions and supported in their work; • Program personnel work effectively as a team; • Effective engagement strategy to attract and maintain a pool of international and local experts implemented. 	Outstanding Satisfactory Needs Attention Unsatisfactory	
Financial and Procurement Management <ul style="list-style-type: none"> • Financial and procurement management and procedures conducted in accordance with approved Program Operations Manual; • Accurate financial reporting provided to AusAID on time and in the agreed format; • Grants distributed to implementing partners in a timely and efficient manner; • Fraud control and audit systems operating effectively. 	Outstanding Satisfactory Needs Attention Unsatisfactory	
Program Input Quality <ul style="list-style-type: none"> • High quality and timely technical assistance is provided in accordance with Program priorities; • Technical assistance personnel provided with 	Outstanding Satisfactory Needs Attention	

<p>effective support;</p> <ul style="list-style-type: none"> • Non-adviser implementation activities are supported efficiently and effectively. 	Unsatisfactory	
<p>Monitoring and Evaluation</p> <ul style="list-style-type: none"> • Quality Program reporting submitted on time; • Data collection and reporting systems operate effectively to meet analytical needs in accordance with the M&E Framework; • Program implementation risks identified and managed effectively; 	<p>Outstanding</p> <p>Satisfactory</p> <p>Needs Attention</p> <p>Unsatisfactory</p>	

SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

CONTENTS

PART 5 – STANDARD TENDER CONDITIONS	95
1. DOCUMENTS THAT MUST BE LODGED	95
2. TENDERER ENQUIRIES	96
3. LATE TENDERS	97
4. NON-CONFORMING TENDERS	98
5. CLARIFICATION OF TENDERS	98
6. AMENDMENT OF THE RFT	98
7. ASSESSMENT OF TENDERS	98
8. JOINT VENTURES AND CONSORTIUMS	102
9. ASSOCIATES AND OTHER SUB-CONTRACTORS	102
10. OWNERSHIP OF TENDERS AND RFT	103
11. CONFLICT OF INTEREST	103
12. TENDERING CONDUCT	104
13. INELIGIBILITY TO TENDER	104
14. AusAID’s RIGHTS	105
15. TENDERER’S ACKNOWLEDGEMENT	106
16. DEBRIEFING OF TENDERERS	106
17. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES	106
18. FURTHER REQUIREMENTS	109
19. CONTRACT NEGOTIATIONS	110
20. CONTRACT PLANS	111
21. APPLICABLE LAW	111
ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION	112
ANNEX B – TENDERER DECLARATION	114
1. DEFINITIONS	114
2. BASIS OF DECLARATION	114
3. THE OFFER	114
4. ADDENDA TO TENDER DOCUMENTS	118
5. ADDRESS OF TENDERER	118
ANNEX C – TENDERER’S SUBMISSION CHECKLIST	120
ANNEX D – CONDITIONS FOR USE OF AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM	124

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

Conditions Applying to Tenders Lodged in Hard Copy

- 3.4 A hard copy Tender lodged after the **Closing Time** is a late Tender.
- 3.5 AusAID will admit to evaluation 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 or Manila 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 **AUD250.00** for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor’s invoices.
- 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 For the purpose of this **Clause 13**:

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

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

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

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

- (a) is listed on a World Bank List or on a Relevant List;
- (b) is subject to any proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List;
- (c) is temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process;
- (d) is temporarily suspended from tendering by a donor of development funding other than the World Bank; or

- (e) is the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.
- 13.5 If a Tenderer becomes aware of a circumstance referred to in **Clause 13.4** after it has submitted its Tender to AusAID, the Tenderer must immediately notify AusAID in writing.
- 13.6 AusAID will exclude any Tender from evaluation if the Tenderer is in breach of the warranty in **Clause 13.3**, or does not disclose any circumstance required under **Clause 13.4** or **13.5**.
- 13.7 AusAID reserves the right to exclude any Tender from evaluation if the Tenderer or a Related Entity:
 - (a) becomes listed on a World Bank List or Relevant List, or is subject to proceedings or an informal process which could lead to such a listing;
 - (b) is or becomes temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process; or
 - (c) is or becomes temporarily suspended from tendering by a donor of development funding other than the World Bank.
- 13.8 Tenderers should note that if they tender in breach of this **Clause 13**, or are subsequently listed on a World Bank List or Relevant List, AusAID may terminate any contract subsequently entered into with that Tenderer.

14. **AusAID's RIGHTS**

- 14.1 As a Commonwealth Government agency, all AusAID procurement is subject to the Commonwealth Procurement Guidelines. The core principle of Commonwealth procurement is to achieve value for money. AusAID is also bound to conduct its procurement in an ethical, accountable, transparent, efficient and effective manner.
- 14.2 AusAID reserves the right to:
 - (a) seek Tenders from any organisation;
 - (b) accept or reject any Tender;
 - (c) terminate, extend or vary its procurement process for the Services;
 - (d) request clarification in relation to a Tender;
 - (e) seek information or negotiate with any organisation that has not been invited to submit a Tender;
 - (f) terminate negotiations with the preferred Tenderer and commence negotiations with any other Tenderer;
 - (g) evaluate Tenders as AusAID sees appropriate; and
 - (h) negotiate with any one or more Tenderers.

15. TENDERER'S ACKNOWLEDGEMENT

15.1 A Tender is submitted on the following basis:

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

16. DEBRIEFING OF TENDERERS

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

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

17. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

17.1 Freedom of Information

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

17.2 Privacy

- (a) The *Privacy Act 1988* establishes a national scheme providing, through codes of practice adopted by private sector organisations and the National Privacy Principles, for the appropriate collection, holding, use, correction, disclosure and transfer of personal information by private sector organisations.
- (b) The Draft Contract provides that the Contractor will comply with the *Privacy Act 1988*, including the Information Privacy Principles and the National Privacy

Principles whether or not the Contractor is an organisation subject to the *Privacy Act 1988*.

- (c) The Tenderers acknowledge that the *Privacy Act 1988* reflects the principles of the International Covenant on Civil and Political Rights and OECD Guidelines, in particular, the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.
- (d) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Privacy Act 1988* on their participation in this RFT process and any subsequent contract.

17.3 Access by Australian National Audit Office

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

17.4 Access by Ombudsman

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

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

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

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

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

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

17.7 Fair Work Principles

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

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

17.8 Other Australian Government and AusAID Policies

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

18. FURTHER REQUIREMENTS

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

- 18.2 Tenderers should note that the Commonwealth Procurement Guidelines require that Commonwealth agencies must not enter into agreements with suppliers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not paid the claim. AusAID will reject submissions from tenderers in this position.
- 18.3 Tenderers must keep any discussions or contact with AusAID in connection with the Tender, the RFT and any contract negotiations confidential. Any unauthorised approach by a Tenderer to an AusAID officer or discussion of matters pertaining to the procurement process will be considered a breach of confidentiality.
19. **CONTRACT NEGOTIATIONS**
- 19.1 AusAID may select, as preferred Tenderer, the Tenderer(s) who best meet the requirements of the RFT on the basis of the tender assessment process.
- 19.2 The preferred Tenderer(s) must within 14 days of written notification from AusAID that it has been selected as preferred Tenderer, provide AusAID with originals of Police Clearance Certificates for all Personnel nominated in their Tender in positions specified in the Specified Personnel Table (**Clause 7, Part 1**) as working with children.
- (a) Police Clearance Certificates must be provided for each country in which the individual has lived for 12 months or longer over the last five years, and for the individual's country of citizenship;
 - (b) Police Clearance Certificates must be dated no earlier than 12 months before the Tender Closing Time;
 - (c) If any required Police Clearance Certificates are not provided to AusAID in accordance with **Clause 18.2** above, AusAID may exercise its right, specified at **Clause 14.2** above, to terminate negotiations with the preferred Tenderer and commence negotiation with any other Tenderer. AusAID recognises that in limited instances it may prove impossible to obtain a reliable Criminal Record Check, and will take non-provision of a Criminal Record Check into account upon request;
 - (d) AusAID reserves the right to require the preferred Tenderer(s) to replace any Personnel whose Police Clearance Certificate shows conviction of criminal offences of, or relating to, child abuse where AusAID, in its absolute discretion, considers that the Personnel poses an unacceptable risk to children's safety or well-being. Nominated replacement Personnel must have qualifications and experience equal to or better than those of the personnel being replaced, and must be acceptable to AusAID.
- 19.3 It is AusAID's intention to contract on the basis of the Contract Conditions contained in this RFT. Following the selection of a preferred Tenderer AusAID may enter into negotiations with the preferred Tenderer in respect of the Scope of Services and the Basis of Payments of the contract. Such negotiations will be strictly limited to matters of detail rather than substance.
- 19.4 If the Scope of Services is reduced as a result of constraints imposed on AusAID before or after the **Closing Time**, AusAID and the preferred Tenderer must negotiate, in good faith, a proportionate reduction, if necessary, to the fixed price quote.

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

20. **CONTRACT PLANS**

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

21. **APPLICABLE LAW**

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

ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION

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

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

ANNEX B – TENDERER DECLARATION

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

1. DEFINITIONS

1.1 In this declaration:

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

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

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

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

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

2. BASIS OF DECLARATION

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

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

3. THE OFFER

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

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

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

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

- 3.5 I acknowledge that if the Tenderer is found to have made false or misleading material claims or statements in the Tender or in this declaration, or to have used confidential information, or received improper assistance, AusAID will reject at any time any Tender lodged by or on behalf of the Tenderer.
- 3.6 I acknowledge and agree to the matters specified in **Clauses 14** (AusAID's Rights) and **15** (Tenderer's Acknowledgement) of **Part 5**.
- 3.7 I agree:
- (a) that the Tenderer will be bound by this Tender for the Tender Validity Period of 180 days after the **Closing Time**; and
 - (b) that this Tender may be accepted by AusAID at any time before the expiration of that period or any additional period to which we may agree.
- 3.8 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.
- 3.9 I understand that AusAID is not bound to accept the lowest priced or any Tender.
- 3.10 I warrant that in preparing the Tender for the Services the Tenderer did not act in any way which did or could have had the effect of reducing the competitiveness of the tender process for the Services. In particular I warrant that the Tenderer did not engage in:
- (a) any discussion or correspondence with other tenderers concerning the amount of the Tender;
 - (b) any collusive tendering or other anti-competitive practices with any of the other Tenderers or any other person; or
 - (c) any conduct or have any arrangement or arrive at any understanding with any of the other Tenderers.
- 3.11 **[This clause applies to government owned Tenderers only.]** I warrant that in preparing the Tender, the Tenderer has complied with the principles of competitive neutrality.
- 3.12 I warrant that the Tenderer and its Related Entities are not:
- (a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of the RFT; or
 - (b) listed on a Relevant List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of the RFT.
- 3.13 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not subject to any proceedings or informal processes which could lead to listing on a World Bank List or listing on a Relevant List. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity is subject to proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List. I warrant that the Tenderer has included information regarding the proceedings in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).

- 3.14 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process, or temporarily suspended from tendering by a donor of development funding other than the World Bank. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity has been temporarily suspended from tendering by either the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the temporary suspension in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).
- 3.15 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity is the subject of a formal or informal investigation by the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the investigation in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).
- 3.16 I undertake that, if the Tenderer becomes aware of a circumstance referred to in **Clause 13.4** (Ineligibility to Tender) of **Part 5** of the RFT after it has submitted its Tender, I will immediately notify AusAID in writing.
- 3.17 Neither the Tenderer nor any of its employees, agents or contractors have been convicted of an offence of, or relating to bribery of a public official, nor are they subject to any proceedings which could lead to such a conviction.
- 3.18 I undertake that the Tenderer will not permit any of its employees, agents or contractors, to work with children if they pose an unacceptable risk to children's safety or well being.
- 3.19 No employees of the Tenderer, or its agents or contractors, who have been nominated in Project positions that involve working with children, have been convicted of a criminal offence relating to child abuse, nor are they subject to any proceedings which could lead to such a conviction.
- 3.20 Neither the Tenderer nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.

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

- 3.21 The Tenderer has read and understood the Fair Work Principles User Guide and understands that the Fair Work Principles will apply to the procurement for the Project.
- 3.22 Compliance with Fair Work Principles
- (a) The Tenderer declares the following:
- (i) The Tenderer has had _____ *[Nil or specify number]* adverse Court or Tribunal decision for a breach of workplace relations law, occupational health and safety law, or workers' compensation law in the past two years preceding the date of this Request for Tender.
[If response is nil adverse decisions go to 3.22(a)(iii) below]
- (ii) *[Note to Tenderers: Strike through whichever option does not apply]*

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

OR

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

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

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

- (b) If at any time prior to entry into a contract with the preferred Tenderer, any information provided in this declaration changes, the Tenderer agrees to advise AusAID of that change within 7 calendar days.
- (c) The Tenderer agrees AusAID may provide any information collected, or provided to it by the Tenderer during the course of this RFT process (including breaches of the Fair Work Principles) to other Commonwealth agencies or regulatory bodies including the Department of Education, Employment and Workplace Relations, Australian National Audit Office, Fair Work Ombudsman and Fair Work Australia.
- (d) The Tenderer agrees that failure to comply with **Clause 3.22** of this Tenderer Declaration will result in its Tender being excluded from further consideration.

- 3.23 Neither the Tenderer nor any of its employees, agents or contractors had knowledge of the technical proposal or the Tender Price for the Services of any other tenderer prior to the Tenderer submitting its Tender for the Services.
- 3.24 Neither the Tenderer nor any of its employees, agents or contractors disclosed the technical proposal or the Tender Price for the Services submitted by the Tenderer to any other tenderer who submitted a tender for the Services or to any other person or organisation prior to the **Closing Time**.
- 3.25 Neither the Tenderer nor any of its employees, agents or contractors provided information to any other tenderer, person or organisation, to assist another tenderer for the Services to prepare a tender known in the building and construction industry as a “cover bid”, whereby the Tenderer was of the opinion or belief that another tenderer did not intend to genuinely compete for the Contract.
- 3.26 The Tenderer is genuinely competing for the Contract and its Tender is not a “cover bid”.
- 3.27 Prior to the Tenderer submitting its Tender for the Services neither the Tenderer nor any of its employees, agents or contractors entered into any Contract, agreement, arrangement or understanding that the successful Tenderer for the Services would pay any money, or would provide any other benefit or other financial advantage, to or for the benefit of any other tenderer who unsuccessfully tendered for the Tender.
- 3.28 I 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)?	
<p>If the Past Experience Annex is used have at least two (2) referees been nominated and has it been confirmed that they are:</p> <ul style="list-style-type: none"> a) not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with the Tenderer or a subsidiary of the Tenderer? b) not included in the Tender as proposed team members? c) not AusAID employees? 	

	Checked
Are both the Technical Proposal and annexes: <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, if relevant, permanent residency status of the nominated personnel?	
Do the CV's include details of the professional qualifications of nominated personnel (if relevant), including institution and date of award?	
Do the CV's include details of recent relevant professional and development work experience, including the duration and extent of inputs?	

	Checked
<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?	
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	

	Checked
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?	
<p>Have the previous three (3) years annual financial statements for the tendering entity been provided including:</p> <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?	
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 Tender System**

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

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

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

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

2. **Preparing to Lodge a Tender Electronically**

Virus Checking

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

Tender File Formats, Naming Conventions and Sizes

2.2 Tenderers must lodge their tender in accordance with the requirements set out in this **Clause 2** for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the tender not uploading successfully and/or may eliminate the bid from consideration.

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

2.4 The tender file name/s:

- (a) should incorporate the tenderer's company name;
- (b) should reflect the various parts of the bid they represent, where the tender comprises multiple files;

- (c) must not contain \ / : * ? " < > | characters. Check your files and re-name them if necessary; and
- (d) must not exceed 100 characters including the file extension.

2.5 Tender files:

- (a) must not exceed a combined file size of 5 megabytes per upload;
- (b) should be uploaded from a high level directory on a tenderer's desktop, so as not to impede the upload process; and
- (c) should be zipped (compressed) together for transmission to AusTender.

2.6 AusTender will accept up to a maximum of five files in any one upload of a tender. Each upload should not exceed the combined file size limit of 5 megabytes. If an upload would otherwise exceed 5 megabytes, the tenderer should either:

- (a) transmit the tender files as a compressed (zip) file not exceeding 5 megabytes; and/or
- (b) lodge the tender in multiple uploads ensuring that each upload does not exceed 5 megabytes and clearly identify each upload as part of the tender.

2.7 If a tender consists of multiple uploads, due to the number of files or file size, tenderers should ensure that transmission of all files is completed before the **Closing Time**.

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

3. **Scanned or Imaged Material, including Statutory Declarations**

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

4. **Electronic Lodgement Process**

4.1 Before submitting an electronic tender, tenderers must:

- (a) ensure their technology platform meets the minimum requirements identified on AusTender;
- (b) refer to AusTender's Help guidance, if required, on uploading tenders;
- (c) take all steps to ensure that the tender is free from anything that might reasonably affect useability or the security or operations of AusTender and/or AusAID's computing environment;

- (d) ensure that the tender does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by AusAID; and
 - (e) ensure that the tender complies with all file type, format, naming conventions, size limitations or other requirements specified in **Clause 2** or otherwise advised by AusAID or required by AusTender.
- 4.2 Tenderers must allow sufficient time for tender lodgement, including time that may be required for any problem analysis and resolution prior to the **Closing Time**.
- 4.3 Tenderers should be aware that holding the “Lodge a Response” page in the web browser will not hold the electronic tender box open beyond the **Closing Time**. An error message will be issued if the lodgement process is attempted after the **Closing Time**.
- 4.4 Tenders lodged through AusTender will be deemed to be authorised by the tenderer.
- 4.5 If tenderers have any problem in accessing the AusTender website or uploading a tender they must contact AusAID via the nominated **Contact Person (Clause 1 of Part 1)** or the AusTender Help Desk (**Clause 1.2** above) **prior to Closing Time**. Failure to do so will exclude a tender from consideration.
5. **Late Tenders, Incomplete Tenders and Corrupted Files**
- 5.1 Any attempt to lodge a tender after the **Closing Time** will not be permitted by AusTender. Such a tender will be deemed to be a Late Tender.
- 5.2 Where electronic submission of a tender has commenced prior to the **Closing Time** but concluded after the **Closing Time**, and upload of the tender file/s has completed successfully, as confirmed by AusTender system logs, the tender will not be deemed to be a Late Tender. Such tenders will be identified by AusTender to AusAID as having commenced transmission prior to, but completed lodgement after, **Closing Time**.
- 5.3 Where a tender lodgement consists of multiple uploads, due to the number and/or size of the files, tenderers must ensure that transmission of all files is completed and receipted before the **Closing Time** and **Clause 5.2** will only apply to the final upload.
- 5.4 Late Tenders, incomplete tenders, including those with electronic files that cannot be read or decrypted, tenders which AusAID believes to potentially contain any virus, malicious code or anything else that might compromise the integrity or security of AusTender and/or AusAID’s computing environment, will be excluded from evaluation.
6. **Proof of Lodgement**
- 6.1 When a tender lodgement has successfully completed, an official receipt is provided on screen. The on-screen receipt will record the time and date the tender was received by AusTender and will be conclusive evidence of successful lodgement of a tender. It is essential that tenderers save and print this receipt as proof of lodgement. A separate email

confirming receipt of the tender will also be automatically dispatched to the email address of the registered user whose details were recorded at login.

- 6.2 Failure to receive a receipt means that lodgement has not completed successfully. Where no receipt has been issued by AusTender, the attempted lodgement will be deemed to have been unsuccessful. Tenderers should refer to **Clauses 4.2 and 4.5**.

7. **AusTender Security**

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

- 7.2 Tenderers acknowledge that:

- (a) lodgement of their tender on time and in accordance with these conditions of tender is entirely their responsibility; and
- (b) AusAID will not be liable for any loss, damage, costs or expenses incurred by tenderers or any other person if, for any reason, a tender or any other material or communication relevant to this RFT, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

PART 6 - STANDARD CONTRACT CONDITIONS

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

PART B – STANDARD CONTRACT CONDITIONS**CONTENTS**

PART B – STANDARD CONTRACT CONDITIONS	128
1. INTERPRETATION	128
2. SCOPE OF CONTRACT	133
3. AUSAID’S OBLIGATIONS	133
4. NON-EXCLUSIVITY	133
5. PROVISION OF SERVICES	133
6. EARLY NOTIFICATION	135
7. CONTRACTOR PERSONNEL	135
8. SPECIFIED PERSONNEL	136
9. PROJECT VEHICLE CONTRIBUTION	137
10. PROCUREMENT SERVICES	138
11. SUB-CONTRACTING	139
12. CONTRACT AMENDMENT	140
13. EXTENSION OF TIME	141
14. HANDOVER	142
15. ACCOUNTS AND RECORDS	143
16. REPORTS	144
17. REVIEWS	144
18. AUDITS	145
19. ACCESS TO THE CONTRACTOR’S PREMISES, DATA AND RECORDS	145
20. PAYMENT	146
21. GOODS AND SERVICES TAX	147
22. INTELLECTUAL PROPERTY RIGHTS	148
23. INTELLECTUAL PROPERTY RIGHTS INDEMNITY	148
24. MORAL RIGHTS	148
25. CONFIDENTIALITY	149
26. PRIVACY	149
27. AusAID USE OF CONTRACT INFORMATION	151
28. PUBLICITY	151
29. WARRANTIES	151
30. PERSONNEL SECURITY	152
31. TERMINATION FOR CONTRACTOR DEFAULT	153
32. TERMINATION FOR CONVENIENCE	154
33. INDEMNITY	155
34. INSURANCE	156
35. CONFLICT OF INTEREST	157
36. FRAUD	157
37. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES	160
38. INVESTIGATION BY THE OMBUDSMAN	162
39. RESOLUTION OF DISPUTES	163
40. NOTICES	163
41. MISCELLANEOUS	164

PART B – STANDARD CONTRACT CONDITIONS

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

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

"AusAID Confidential Information" means information that:

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

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

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

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

"**Commonwealth Procurement Guidelines**" means the guidelines issued by the Minister for Finance and 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 all copyright and all rights in relation to inventions (including patent rights), trade marks, designs and confidential information, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

"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: <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>

General

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

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

1.2 Counterparts of the Contract

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

1.3 Contract prevails

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

1.4 **Inconsistency**

If there is any inconsistency (whether expressly or to be implied from the Contract or otherwise) between the Project Specific 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 any of the warranties, regarding pre-listing proceedings, temporary suspension from tendering or listing on a World Bank List or Relevant List, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
 - (l) is, during the term of this Contract, listed on a World Bank List or Relevant List;

- (m) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, bribery of a public official, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (n) is in breach of the warranty, regarding unsettled judicial decisions relating to employee entitlements, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (o) is, during the term of this Contract, convicted of an offence of, or relating to, bribery of a public official. In this Clause 31.1(o) the Contractor includes Contractor Personnel;
- (p) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, child abuse, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract; or
- (q) is in breach of the warranty, regarding the good fame and character of Contractor Personnel, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract.

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 as far as practicable must ensure that all Contractor Personnel comply with, the laws in Australia, the Partner Country and applicable laws of other countries.
- 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 Notwithstanding paragraph 4.3 on page 4 of the Fair Work Principles User Guide, the Contractor must comply with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at www.deewr.gov.au/fairworkprinciples), including by:
- (a) complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;
 - (b) informing AusAID of any adverse court of tribunal decision for a breach of workplace relations law, occupational health and safety laws, or workers' compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
 - (c) providing AusAID any information AusAID reasonably requires to confirm that the Contractor (and any subcontractor) is complying with the Fair Work Principles;
 - (d) participate in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.
- 37.5 Compliance with the Fair Work Principles shall not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.
- 37.6 If the Contractor does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Commonwealth, the Commonwealth shall be entitled to publish details of the Contractor's failure to comply (including the Contractor's name) and to otherwise provide those details to other Commonwealth agencies.
- 37.7 As far as practicable, the Contractor must:

- (a) not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and
 - (b) ensure that all subcontractors impose obligations on subcontractors equivalent to the obligations under **Clauses 37.4 to 37.7** in this **Part B** of this Contract.
- 37.8 In addition to any other rights or remedies it has at law or in equity, or under this Contract, AusAID may, by notice in writing to the Contractor, terminate this Contract, with effect from the date in the notice, if the Contractor is in breach of Clause **37.4** above in this **Part B** of this Contract.
- 37.9 The Contractor must notify AusAID of any material breach by the Contractor or Contractor Personnel of a law or guideline referred to in this **Clause 37**.
- 37.10 On becoming aware of a material breach by the Contractor or Contractor Personnel of a law or guideline, whether or not such a breach is notified to AusAID by the Contractor, AusAID may, in addition to any other rights available to AusAID, terminate this Contract under **Clause 31**.
- 37.11 The Contractor must in carrying out its obligations under this Contract comply with those laws in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the *Criminal Code Act 1995 (Cth)* and listed in regulations made under that Act and regulations made under the *Charter of the UN Act 1945 (Cth)*. The Contractor must ensure that funds provided under this Contract do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform AusAID immediately.
- 37.12 The Contractor and all Contractor Personnel must when providing any Services and procuring the Supplies have regard to and operate in accordance with Australian policies on developmental aid to foreign countries including:
- (a) the policy Gender Equality in Australia's Aid Program – Why and How (March 2007);
 - (b) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014', and in particular the strategy's six guiding principles, located at <http://www.ausaid.gov.au/publications/pdf/FINAL%20AusAID%20Disability%20for%20All.pdf>;
 - (c) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child protection policy*;
 - (d) *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.ausaid.gov.au/keyaid/health.cfm>);
 - (e) Environment. AusAID is bound by the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:

1. ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;
2. comply with AusAID's Environmental Management System outlined in the *Environmental Management Guide for Australia's Aid Program*, including:
 - a. assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;
 - b. report regularly on any such impacts as required by the Scope of Services; and
3. comply with all relevant environmental laws and regulations of the Partner Country.

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

38. INVESTIGATION BY THE OMBUDSMAN

- 38.1 In carrying out the Services, the Contractor, and an employee or subcontractor of the Contractor, may be a "Commonwealth service provider" under section 3BA of the Ombudsman Act 1976.
- 38.2 The Contractor must use its best endeavours, and must ensure that employees and subcontractors of the Contractor use their best endeavours, in undertaking the Services, not to engage in conduct that:
 - (a) would, if the Contractor or an employee or subcontractor were an officer of AusAID, amount to a breach of duty or to misconduct; or
 - (b) should be brought to the attention of the principal officer of AusAID.
- 38.3 If the Commonwealth Ombudsman commences an investigation of conduct of the Contractor, as a Commonwealth service provider, the Contractor, at the cost of the Contractor, must cooperate with the investigator including:
 - (a) providing all documentation required by the investigator,
 - (b) making Contractor Personnel available to assist the investigator and
 - (c) allowing the investigator, at any reasonable time of the day, to enter a place occupied by the Contractor and carry on the investigation at that place.

- 38.4 If the Ombudsman brings evidence to the notice of AusAID concerning the conduct of the Contractor, or of an employee or subcontractor of the Contractor, the Contractor must, at the cost of the Contractor, take whatever remedial action is required by AusAID or by the Ombudsman to rectify the situation.
- 38.5 The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including this requirement in relation to subcontracts.
- 38.6 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID, due to conduct of the Contractor or of an employee or subcontractor, which arise directly or indirectly, as a result of an investigation carried out by the Ombudsman.
- 38.7 This clause shall survive expiration or termination of this Contract.

39. **RESOLUTION OF DISPUTES**

- 39.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Contract. Subject to **Clause 20.11** (Payment) and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Contract.
- 39.2 A Party may give the other Party a notice of dispute ("**dispute notice**") in connection with this Contract. Following the giving of a dispute notice, the dispute must be referred to a senior officer of AusAID and a senior officer of the Contractor, who must use reasonable endeavours to resolve the dispute within 20 Business Days or such other period as is agreed by the Parties.
- 39.3 If the Parties have not been able to resolve the dispute in accordance with **Clause 39.2 above**, then the Parties may agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation.
- 39.4 In the event that the dispute, controversy or claim has not been resolved within 50 Business Days (or such other period as agreed between the Parties in writing) after the dispute notice has been received in accordance with clause headed 'Notices' in Part B (Standard Contract Conditions) of this Contract, then either Party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.
- 39.5 Nothing in this clause prevents either Party from seeking urgent injunctive relief.

40. **NOTICES**

- 40.1 A notice required or permitted to be given by one Party to another under this Contract must be in writing and is treated as having been duly given and received:
- (a) when delivered (if left at that Party's address);
 - (b) on the third Business Day after posting (if sent by pre-paid mail); or
 - (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice

had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

41. MISCELLANEOUS

41.1 Waiver

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

41.2 Liability of Party

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

41.3 Entire agreement

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

41.4 Severance

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

41.5 Assignment

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

41.6 Governing Law and Jurisdiction

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

41.7 Contra Proferentem

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

41.8 False and Misleading Information

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