



Australian Government

AusAID

1 June 2010

Request for Tender

Australia-Africa Partnerships Facility (AAPF)

REQUEST FOR TENDER

Australia-Africa Partnerships Facility

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

STRUCTURE OF THE RFT

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

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

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

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

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

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

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

AusAID Contracts Charter

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

SECTION 1 – PROJECT SPECIFIC TENDER AND CONTRACT CONDITIONS

PART 1 – PROJECT SPECIFIC TENDER CONDITIONS

1. TENDER PARTICULARS

Closing Time:

(Clauses 1.11 and 1.15, Part 5)

2.00 pm local time in Canberra
Australian Capital Territory, *26 July 2010*.

Mode of submission:

(Clause 1.1, Part 5)

Either:

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

or

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

Electronic Tender Lodgement

Address:

(Clause 1.11, Part 5)

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

Canberra Tender Box Address:

(Clause 1.15, Part 5)

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

Business Hours

for hard copy lodgment:

(Clause 1.15, Part 5)

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

File Format for Electronic Tenders:

(Clause 4.3, Annex C to Part 5)

PDF (Portable Document Format)

Number of Copies of Tender:

(Clause 1.6, Part 5)

For electronic tender lodgement

Technical Proposal: One (1) electronic copy.

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

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

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

For hard copy tender lodgement

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

Tenderer's Submission Checklist: One (1) printed
Original.

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

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

CD: with one (1) file for each proposal section (i.e. Technical, Financial etc).

Endorsement of hard copy Tenders:

(Clause 1.17, Part 5)

“Tender for the *Australia-Africa Partnerships Facility*.”

Tender Validity Period:

(Clause 1.8, Part 5)

180 days

Contact Person:

(Clause 2.1, Part 5)

Pip Armstrong

Email address: AfricaFacility@ausaid.gov.au

Page limits:

(Clauses 7.15 and 7.17, Part 5)

Technical proposal 10 pages plus annexes.

Curriculum Vitae 4 pages each

Information:

The following documents are attached:

MS Word versions of the Tables in Sections B and C of Part 1.

The Request for Tender and any associated documents are available from the AusTender website

<https://tenders.gov.au>

2. **ALTERNATIVE TENDERS**

- 2.1 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”.
- 2.2 Alternative Tenders will be considered only after completion of the technical assessment of conforming Tenders.
- 2.3 Only the alternative Tender of the preferred tenderer (following TAP assessment of conforming Tenders) will be assessed.
- 2.4 Alternative Tenders will be technically assessed against the selection criteria contained in this RFT.

3. **SCORE WEIGHTINGS**

- 3.1 The technical assessment of the proposal will account for **75%** of the overall score using the following formula:

$$\text{Technical Score} = \frac{\text{Tenderer's Weighted Technical Score (out of 100)}}{\text{Highest Weighted Technical Score (out of 100)}} \times 75\%$$

- 3.2 Following consideration of the technical merit of Tenders, a like-for-like price assessment will be undertaken by AusAID of the proposals that are assessed by the Technical Assessment Panel (TAP) as technically suitable.
- 3.3 The like-for-like price assessment will represent **25%** of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

$$\text{Price Score} = \frac{\text{Bid Price of Lowest Priced Technically Suitable Bid}}{\text{Tenderer's Bid Price}} \times 25\%$$

- 3.4 Following the final assessment and calculation of the final aggregate scores, confirmation of the Tenderer's financial capacity to meet the contractual obligations referred to in **Clause 7 of this Part** and consideration of other factors referred to in **Clause 7.8, Part 5**, a recommendation for further action will be made to the appropriate AusAID delegate. Tenderers should be aware that the delegate is not bound to accept the TAP recommendation and may direct that other action be taken in accordance with this RFT.

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

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

- (a) a technical proposal that substantively and individually addresses the selection criteria provided in **Clause 4.2 of this Part** taking into consideration “other factors” under **Clause 7.8, Part 5**; and
- (b) the required annexes included in **Clause 4.7 of this Part**.

4.2 **Selection Criteria**

A. Approach to Implementation (Weighting 50%)

4.3 Tenderers are required to articulate their approach to implementing the Facility including:

- (a) managing engagement with a wide range of stakeholders in Australia and Africa, to broker new relationships and build on existing relationships while increasing the Australian profile;
- (b) being flexible and responsive to requests for assistance and changing strategic priorities over the life of the Facility;
- (c) incorporating lessons learnt to strengthen the implementation of the AAPF on an ongoing basis;
- (d) communication, risk management, and monitoring and evaluation; and
- (e) performance management of the Facility.

4.4 Where tenderers are part of a consortium or association with another party, they must demonstrate robustness in the linkages established as well as a clear management framework detailing the roles and responsibilities of each party.

B. Corporate systems and processes to support the Facility (Weighting 25%)

4.5 Tenderers must explain their proposed:

- (a) systems and processes to be used to support the diverse range of concurrent activities (including managing grant funding, logistics for workshops/ training/ seminars, recruiting, deploying and managing technical advisers) in many African countries with a wide range of partners;
- (b) approach to the tracking and information management systems that will support the Facility in effective engagement with Australian and African stakeholders.
- (c) approach to align the Facility with overall Australian Government priorities, utilise the full range of forms of assistance available to the Australian Government and complement other donors’ work to enhance sustainable, well targeted development assistance; and

- (d) approach to develop and implement equitable, inclusive and accountable systems in support of partnership principles, particularly in mobilising and supporting technical assistance, procurement and sub-contracting.

C. Personnel

(Weighting 25%)

4.6 Tenderers must describe :

- (a) the skills and experience of the personnel nominated for the following positions:
 - (i) Facility Director (Africa-based); and
 - (ii) Recruitment and Logistics Manager (Australia-based).
- (b) the proposed team composition;
- (c) their processes for addressing the different levels of risk associated with managing staff and deployees across Africa.

4.7 **Annexes**

Annex 1 – Past Experience Form

Details of relevant activities or projects in which the nominated Personnel have been involved which demonstrate their ability to fulfil the objectives of the Project must be presented in the format outlined below. This annex must not contain more than *three (3)* examples and details of each activity must not exceed one (1) A4 page.

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

PAST EXPERIENCE FORM

Nominated Person:			
Activity Name:			
Activity Value:			
Activity Location(s):			
Activity Duration			
Client/Donor:			
Year Completed:			
Brief description of the activity and the Person'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 – Work Plan

A detailed work showing dependencies, eg. A Gantt Chart or Critical Path Method identifying resources, dependencies and milestones. Dates referring to commencement or mobilisation are indicative only and may be varied by AusAID. This annex may be presented on A3 paper.

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 may be presented on A3 paper.

Annex 4 – Risk Management Plan

A detailed Risk Management Plan *in table format up to a maximum of four (4) pages* that must identify:

- (a) all risks not previously identified in the Program Design Document (PDD) or considered necessary in the plan to provide further information;

- (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 – Mobilisation Plan

A detailed Mobilisation Plan for the first 3 months of the Project. 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 6 – 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 7 – 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.

5. TENDER SCHEDULE B – SPECIFIED PERSONNEL

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

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

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

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

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

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

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

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

SPECIFIED PERSONNEL

Position	Name	Total Inputs in person months		Referee Contact Details		Commitments
		Home Base	O/s	#1	#2	
<i>In Africa</i> Facility Director						
<i>In Australia</i> Recruitment/Logistics Manager						
<i>In Africa</i> Co-ordination						
<i>In Africa</i> Asset and Financial Management						
<i>In Australia</i> Co-ordination and Administration						
<i>In Africa or Australia</i> Monitoring and Evaluation						
<i>In Africa or Australia</i> Strategic Planning						
<i>In Africa</i> Program Support Group (PSG) Coordinator						
<i>Insert additional rows if needed</i>						

6. TENDER SCHEDULE C - FINANCIAL PROPOSAL

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

6.2 It must:

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

- (i) escalation and any allowance for foreign exchange rate variations;
 - (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.
- 6.3 Any escalators, foreign exchange rate variations, or other price risks, must be built into the fixed price proposal but separately disclosed as a single escalator factor. AusAID will not consider any “across the board” escalators subsequently applied to any rates or Project costs.
- 6.4 Information provided in the tables will be used for any financial assessment and for the like-for-like price assessment.

Facility Management Fee

- 6.5 The FMF shall comprise (but not be limited to) the following:
- (a) All aspects of profit, including commercial margins for all personnel;
 - (b) Rent;
 - (c) All management, operating and administration costs including:
 - (i) non-specified Personnel costs;
 - (ii) consumables, equipment/supplies maintenance costs, and all other overheads for the office under Schedule 1;
 - (d) All Costs of providing the Ancillary Services required under Clause 6.2 of Schedule 1.
 - (e) All Costs of providing the Facility Management Services required under Clause 5 of Schedule 1 (except for reimbursable travel costs as described in Clause 10 below);
 - (f) Costs of complying with the Contractor’s reporting and liaison obligations under Schedule 1;
 - (g) Any costs associated with contracting, sub-contracting and procurement of goods and services;
 - (h) Non-personnel related taxes and levies, incurred in Africa, Australia or elsewhere, as applicable, with the exception of GST for Services performed in Australia (refer to Clause 21 (Goods and Services Tax) of Part A of the Deed (Standard Contract Conditions)); and
 - (i) All allowances for profit, risk, financing, contingencies and escalators, *including* for all Specified Personnel under Schedule 2.

- (j) All insurance costs including (but not limited) to professional indemnity, health, medivac, workers compensation, public liability, indemnity and any other insurances required under the Contract in accordance with Clauses 33 (Indemnity) and 34 (Insurance) of Part A of the Deed (Standard Contract Conditions), and as deemed necessary by the Contractor;

6.6 Tenderers are required to complete Tables 1 & 2 below. Refer to Clause 3 of Part 4 of this RFT. Please include the costs of individual insurances as separate line items.

Table 1: The Facility Management Fee (FMF)

Description	Year 1 Upper Limit (AUD)	Year 2 Upper Limit (AUD)	Year 3 Upper Limit (AUD)	Total (AUD)
All aspects of profit, including commercial margins for all personnel				
Rent				
All management, operating and administration Costs				
All Ancillary Services Costs				
Facility Management Services Costs				
Reporting and liaison obligation Costs				
Contracting, sub-contracting and procurement Costs				
Taxation				
Allowances for profit, risk, financing, contingencies and escalators.				
Insurance Costs – (insert type)				
<i>Add lines as needed for individual insurance costs.</i>				
Total Management Fee	<i>Insert total cost including all insurances</i>			

Table 2: FMF Escalators

Year	Escalator
4	A%
5	B%

Personnel Costs

6.7 Tenderers are required to complete Tables 3 - 6 below. Refer to Clauses 5 and 6 of Part 4 of this RFT.

Table 3: Long Term Personnel Fee Rates

Position	Name (or number of personnel)	Inputs	Monthly Fees Yr 1 (AUD)	Superannuation	Accommodation, Utilities and Transport	No. of Leave Fares	Leave Airfare (per unit)	Monthly Leave Fare Allowance	Total Monthly Fee Yr 1	Total Monthly Fee Yr 2	Total Monthly Fee Yr 3	Total Average Monthly Cost
		(Mths)							(AUD)	(AUD)	(AUD)	
<i>In Africa</i> Facility Director	<i>Specify</i>	36	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Insert</i>
<i>In Australia</i> Recruitment/ Logistics Manager	<i>Specify</i>	36	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Insert</i>
<i>In Africa</i> Co-ordination	<i>Specify</i>	36	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Insert</i>
<i>In Africa</i> Asset and Financial Management	<i>Specify</i>	36	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Insert</i>
<i>In Australia</i> Co-ordination and Administration	<i>Specify</i>	36	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Insert</i>
<i>In Africa or Australia</i> Monitoring and Evaluation	<i>Specify</i>	36	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Insert</i>

<i>In Africa or Australia Strategic Planning</i>	<i>Specify</i>	<i>36</i>	<i>Specify</i>	<i>Insert</i>									
<i>In Africa Program Support Group (PSG) Coordinator</i>	<i>Specify</i>	<i>36</i>	<i>Specify</i>	<i>Insert</i>									
<i>Insert additional rows if needed</i>													
MONTHLY TOTALS	<i>N/A</i>	<i>N/A</i>	<i>Insert</i>	<i>Insert</i>									
YEARLY TOTALS			<i>Insert</i>	<i>Insert</i>									

6.8 Tenderers must detail in the financial proposal under Table 3 above the leave entitlements of nominated Specified Personnel. Where annual recreation leave entitlements exceed 2 trips or a total of 4 weeks per 12 month period, a justification must also be provided along with a narrative description of how the Tenderer will ensure, during Specified Personnel absences, the continued quality of Services. Tenderers should note that leave entitlements and the management strategy may be assessed by the TAP or AusAID as part of the technical assessment process. AusAID reserves the right to negotiate leave entitlements should AusAID consider them excessive.

Table 4: Long Term Personnel Fee Escalators in Australia and International

Year	Australia Escalator	International Escalator
4	A%	B%
5	C%	D%

Table 5: Short Term Personnel Fee Rates

Position	Name	Daily Fee Yr 1 (exclusive of accommodation and per diems) (AUD)	Daily Fee Yr 2 (exclusive of accommodation and per diems) (AUD)	Daily Fee Yr 3 (exclusive of accommodation and per diems) (AUD)	Inputs (Days)	Total (AUD)
<i>Tender to specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>

Table 6: Short Term Personnel Fee Escalators in Australia and International

Year	Australia Escalator	International Escalator
4	A%	B%
5	C%	D%

PROGRAM SUPPORT GROUP (PSG) COSTS

6.9 For the establishment, maintenance and updating of the PSG AusAID shall reimburse the Contractor at cost and monthly in arrears for the following:

- (a) Advertising costs for the recruitment process;
- (b) Travel costs;
- (c) IT and communication costs; and
- (d) Any further cost approved by AusAID.

PSG MEMBER COSTS

6.10 For each PSG member, AusAID shall pay the Contractor at cost and monthly in arrears for actual inputs provided, in accordance with the relevant rates for PSG members as specified in Annex 3 of Part 4 of the RFT and to the limit specified by AusAID in the Ancillary Work Request.

OTHER AUSAID-FUNDED AFRICAN PROGRAM STAFF COSTS

6.11 For each other AusAID-funded African program staff member, AusAID shall reimburse the Contractor at cost and monthly in arrears for actual inputs provided, in accordance with the relevant all-inclusive monthly rates specified in Annex 5 of Part 4 of the RFT.

TRAVEL COSTS

6.12 AusAID shall reimburse the Contractor for the following Travel Costs:

- (a) **Airfares:** reimbursed at economy class for domestic flights and flights between African countries unless otherwise agreed to by AusAID. 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;
- (b) **Compulsory Arrival and Departure Taxes, and Travel to and from Airport:** reimbursed at cost;
- (c) **Hotel Accommodation** as per agreed rates with AusAID;
- (d) **Travelling Allowance** as per agreed rates with AusAID;
- (e) **Hire of transport:** for Facility Activity purposes only; and
- (f) **Communication costs:** which are directly Facility Activity related.

COMMUNICATION COSTS

6.13 Communication costs include all communication costs related to operating the Facility but do not include:

- (a) communication costs under Clause 7.2 of PSG Costs in Part 4;
- (b) communication costs under Clause 11.1(f) of Travel Costs in Part 4; and
- (c) communication costs related to implementing Facility Activities under Clause 10 of Schedule 1.

AD HOC FACILITY ACTIVITY COSTS

6.14 Ad Hoc Facility Activity Costs which will not be included in any Pre-payments include the following:

- (a) Costs related to Facility Activities not included in the fully costed Activity Implementation Plan and pre-payment; and

- (b) Activities approved but not included in the Quarterly Request Report due to a lack of detail in the proposed budget or due to the fluid/flexible nature of the services required.

CONSULTANTS' COSTS FOR ANCILLARY SERVICES

6.15 Consultants' Costs may be reimbursed when consultants have been used to provide Ancillary Services if the costs have been pre-approved by AusAID in writing.

Reimbursable costs

6.16 The Contractor shall be reimbursed at cost on a monthly basis in arrears, within 30 days of AusAID's receipt of a correctly rendered invoice, for the items in Table 7 subject to:

- (a) the items being agreed in Ancillary Work Requests, with the exceptions of Senior Reference Group meetings and Management Committee meetings Travel Costs (which require no further approval); and
- (b) the line item limits specified in Table 7 of this Clause 6.16 are not exceeded, except as permitted in Clause 6.17 below.

6.17 When expenditure reaches 80% of the limit for each line item in Table 7, the Contractor shall advise AusAID of the remaining commitments and whether the upper limits are likely to be exceeded, and, if so, provide justification and seek approval to do so.

Table 7 –Reimbursable Costs

Reimbursable Category	Year 1 Upper Limit AUD	Year 2 Upper Limit AUD	Year 3 Upper Limit AUD	TOTAL (AUD)
Long Term Personnel (Clause 5 of Schedule 2)				
Short Term Personnel (Clause 6 of Schedule 2)				
PSG Costs (establishment, maintaining and updating costs) (Clause 7 of Schedule 2)				
PSG Member Costs (Clause 8 of Schedule 2)				
Other AusAID-Funded African Program Costs (Clause 9 of Schedule 2)				
Travel Costs (for Senior Reference Group and Management Committee members, Long Term Personnel, PSG members, and Other AusAID-funded Africa program staff members) (Clause 11 of Schedule 2)				
Communication Costs (Clause 12 of Schedule 2)				

Reimbursable Category	Year 1 Upper Limit AUD	Year 2 Upper Limit AUD	Year 3 Upper Limit AUD	TOTAL (AUD)
Ad Hoc Facility Activity Costs (Clause 13 of Schedule 2)				
Consultant costs for Ancillary Services (Clause 14 of Schedule 2)				
Website and Database development and maintenance Costs (Clause 15 of Schedule 2)	50,000	50,000	50,000	150,000
TOTAL Reimbursables				

6.18 Tenderers are required to complete **Table 8. Table 8 (Summary of Facility Costs)** will be used by AusAID in the financial assessment of the tender (refer Clause 3.2 and 3.3 above).

Table 8: Summary of Facility Costs

Item Number	Item Description	Reference/Comment	Cost excluding GST (AUD)
1.	The Total Management Fee	Table 1 above, Clauses 6.3 and 6.4 above, and Clause 3 of Part 4 of the RFT	<i>Insert Total of Table 1</i>
2	Reimbursable Costs	Table 7 above, Clauses 6.5 – 6.16 above, and Clauses 4 – 14 of Part 4 of the RFT.	<i>Insert Total of Table 7</i>
3	Pre-Payments	Clause 15 of Part 4 of the RFT	30,000,000
TOTAL			<i>insert</i>

7. TENDER SCHEDULE D – FINANCIAL ASSESSMENT

For the purposes of this Tender, the provisions of **Standard Tender Conditions Clause 1.3(c) Part 5** do not apply.

8. FAIR WORK PRINCIPLES

8.1 Tenderers should note that in accordance with the Fair Work Principles AusAID will not enter into a contract with a Tenderer who is a supplier of cleaning services that employs cleaning staff in Australia, who does not undertake to:

- (a) provide their employees with the appropriate training, supervision, equipment and materials to enable them to perform their job safely and efficiently;
- (b) provide their employees with a written duty schedule at each site listing specific tasks to be completed;

- (c) set fair and reasonable workloads for all employees and provide adequate staff to achieve the required performance levels; and
- (d) acknowledge and support freedom of association and representation of employees.

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**.

CONTRACT

BETWEEN

COMMONWEALTH OF AUSTRALIA

represented by the Australian Agency for International Development
(AusAID)

ABN 62 921 558 838

and

CONTRACTOR'S NAME

ABN XX XXX XXX XXX

FOR

AUSTRALIA-AFRICA PARTNERSHIPS FACILITY

AusAID AGREEMENT NUMBER 00000

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA
represented by the Australian Agency
for International Development by:

in the presence of:

Signature of FMA Act s44 Delegate

Signature of witness

Delegate Name

Name

Name of witness
(*Print*)

Position, Section

Position, Section

SIGNED for and on behalf of
CONTRACTOR'S NAME by:

Signature of director

Signature of director/company secretary

Name of director
(*Print*)

Name of director/company secretary
(*Print*)

STRUCTURE OF THE CONTRACT

This contract has two parts and six (*revise as required*) schedules as follows:

Part A	Project Specific Contract Conditions
Part B	Standard Contract Conditions
Schedule 1	Scope of Services
Schedule 2	Basis of Payment
Schedule 3	Deed of Confidentiality
Schedule 4	Deed of Novation and Substitution
Schedule 5	Performance Guarantee (<i>delete as required</i>)

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PART A – PROJECT SPECIFIC CONTRACT CONDITIONS

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

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

2. TERM OF CONTRACT

2.1 The term of this Contract commences upon execution by both parties, being the date indicated at the front of this Contract, and continues until all obligations under this Contract have been fulfilled or earlier notice of termination under this Contract.

2.2 The Contractor must commence the Services in the Partner Country no later than **15 October 2010** and must complete the Services by **30 June 2013** unless the option in **Clause 2.3** below of this **Part A** of this Contract is exercised by the Commonwealth.

- 2.3 The Contractor grants to the Commonwealth an option to extend the period of the Services for a period of up to **two (2) years**. The option must be exercised by notice in writing to the Contractor prior to the date of completion of the Services as specified in **Clause 2.2** above of this **Part A** of this Contract. If this option to extend is exercised, the Contractor shall continue to provide the Services for the extended period on the terms and conditions contained in this Contract, except that this **Clause 2.3** shall no longer apply.

3. ACCOUNTS AND RECORDS

- 3.1 The statement of Project expenditure referred to in Standard Conditions **Clause 15.1(e)** (Accounts and Records) must be provided on a 3 monthly basis and must indicate:
- (a) total expenditure of the Project to date;
 - (b) disaggregated expenditure for the Project to date identifying all categories of expenditure including the Fees component and Reimbursable items;
 - (c) total expenditure for the period of 3 months; and
 - (d) forward expenditure and expenses 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 Pretoria
Attention: Agreement Manager NameAAPF

Postal Address: Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601 AUSTRALIASOUTH AFRICA

Street Address: 255 London Circuit
CANBERRA ACT 2601 AUSTRALIA SOUTH AFRICA

Contractor

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

Postal Address: Postal Address

Street Address: Street Address

Facsimile: Fax

5. MANAGEMENT SERVICES

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

6. MOBILISATION OF SERVICES

- 6.1 The Contractor must supply a detailed Mobilisation Plan for the first three (3) months of the Project within 28 days of the Project Start Date, in a form agreed with AusAID and for written approval by AusAID.
- 6.2 The Mobilisation Plan is subject to AusAID approval. It must include provision for:
- (a) the establishment of communication channels with AusAID, the Australian Diplomatic Missions and other Stakeholders;
 - (b) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including without limitation:
 - (i) the supply and deployment of Long and Short Term Advisers and overall approach to their assignments;
 - (ii) the establishment of procedures relevant to the Procurement Services;
 - (iii) a planned approach to coordination of all aspects of implementation of the Services including identification of Supplies, mobilisation of personnel and obtaining necessary approvals; and
 - (iv) a planned approach to coordination of all aspects of implementation and management of and 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 REVIEW GROUP**

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

8. **ANNUAL WORK PLAN**

- 8.1 The Contractor must provide to AusAID, within three (3) months of the Project Start Date, and updated quarterly to co-incide with Management Committee Meetings

thereafter, an Annual Work Plan which, before it is implemented, must be approved by AusAID.

8.2 The Annual Work Plan should be prepared in accordance with directions provided in writing by AusAID, must be consistent with this Contract and must include the following matters:

- (a) the Contractor's plan for performance of the Services required for the period of the Annual Work Plan;
- (b) the Contractor's proposed strategy for coordinating any Third Party Issues and for providing the Services in a flexible manner as is appropriate;
- (c) a detailed budget for the period of the Annual Work Plan;

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

8.4 Within 30 days of receipt of the Annual Work Plan in accordance with **Clause 8.1 above** AusAID shall notify the Contractor in writing when a decision is likely to be made to reject or accept the Annual Work Plan. If such Annual Work Plan has not been approved or rejected within the stated period of 30 days AusAID shall give fair and reasonable consideration to granting an extension of time to the Contractor in respect of the performance of the Services.

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

9. SUB-CONTRACTING

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

- (a) if AusAID objects to the Contractor's recommended sub-contractor, or AusAID nominates a particular sub-contractor, the Contractor must enter into an agreement with such other sub-contractor as directed by AusAID on the basis of remuneration approved by AusAID and provide AusAID with a copy of the executed sub-contract.

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

9.3 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.

10. GRANT ADMINISTRATION

10.1 In administering any grants, the Contractor must:

- (a) implement procedures so that grant administration is undertaken in a manner that is consistent with the Commonwealth Grant Guidelines, in particular the seven Key Principles for Grants Administration; and

- (b) maintain complete and accurate records documenting the procedures followed in selecting grant recipients.

11. MEETINGS

11.1 The Project Director must attend monthly meetings **at Pretoria Post**, to review or discuss the Contract including the following matters:

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

11.2 AusAID may require an implementation briefing in Canberra prior to mobilisation. The Project Director and the Team Leader who are included in the Specified Personnel must attend this meeting. AusAID may also require the Team Leader and other Specified Personnel to attend a meeting at the Australian Diplomatic Mission in or having responsibility for each Partner Country before commencement of implementation.

11.3 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).

12. RIGHT OF AusAID TO RECOVER MONEY

12.1 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.

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

- (a) if the total of the amount paid to the Contractor is greater than AusAID determines by review to be payable under 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 12.2(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.
- 12.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 12.2**, or pay any amount due to AusAID, the amount of the refund or payment is recoverable by AusAID from the Contractor by deducting the amount from subsequent payments owed to the Contractor or in any court of competent jurisdiction as a debt due and payable to AusAID by the Contractor.
- 12.4 Where AusAID deducts the amount of a debt or payment in accordance with this clause, it must advise the Contractor in writing that it has done so.

13. **GOVERNMENT TAXES, DUTIES AND CHARGES**

- 13.1 Except to the extent referred to in this clause 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.
- 13.2 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.
- 13.3 The Contractor must bear and is responsible for all stamp duty and other fees, whether levied in Australia or in the Partner Country, on or in respect of:
- (a) 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.
- 13.4 Subject to **Clause 13.8 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.
- 13.5 An increase in the Fees under **Clause 13.4 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.
- 13.6 A decrease in Fees under **Clause 13.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.
- 13.7 The Contractor may claim a Changed Tax adjustment only once in respect of any change.
- 13.8 **Clause 13.4 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.

14. INSURANCES

- 14.1 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.
- 14.2 The Contractor undertakes that it shall use its best endeavours to ensure that it commits no act or omission which renders any of the insurances required by this Contract to be effected by it, null and void or of less value.
- 14.3 In respect of the public liability insurance, 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.

15. PRE-PAYMENTS

- 15.1 The Contractor agrees that the money provided as a pre-payment is to be used for the purpose of funding approved Facility Activities only.
- 15.2 The Contractor is responsible for the management of (including scheduling, acquittal and disbursement) and reporting on pre-payments.
- 15.3 Any Interest earned on pre-payments shall be used for Project purposes and acquitted to AusAID as such.
- 15.4 Within 14 days of the end of the quarter, the Contractor shall provide to AusAID a certified, by the Facility's Financial Manager or the Facility Director, acquittal of the moneys.
- 15.5 On every anniversary of the Commencement Date, an audit of pre-payments and all documentation relating to pre-payments for the previous twelve months must be conducted by an independent external auditor. The audit must be completed within 28 days of each anniversary of the Commencement Date and the audit report sent to the relevant AusAID officer specified for the purposes of Standard Conditions Clause 40 (Notices) within 7 days of the Contractor's receipt of the audit report.
- 15.6 A final independent audit of pre-payments and all documentation relating to pre-payments must be provided with the Project Completion Report for the period since the last independent audit provided in accordance with **Clause 15.5** above.
- 15.7 The cost of an audit conducted in accordance with **Clauses 15.5 and 15.6** is included in the fees payable to the Contractor, and the cost of any corrections or remedial work

required in regard to pre-payments pursuant to audit findings is to be borne by the Contractor.

- 15.8 The pre-payments and all documentation relating to the pre-payments, including documentation related to the use of pre-payment funds, may be subject to audit by or on behalf of AusAID at any time and from time to time.
- 15.9 If, upon the premature termination of the Contract or at the end of the Contract, pre-payment money remains unspent, the Contractor shall pay to AusAID an amount equal to the total amount of money (including any accrued interest) remaining.
- 15.10 In the event that AusAID becomes aware that any pre-payment money cannot be accounted for by the Contractor, including upon premature termination of the Contract, AusAID has the right to recover the amount in question (plus interest equal to the interest that would have been earned on the funds had they remained in the Contractor's Account) from monies due and owing to the Contractor under this Contract or as a debt due to the Commonwealth, whichever AusAID in its absolute discretion considers appropriate.
- 15.11 This clause shall survive expiration or termination of this Contract.

16. **PERFORMANCE GUARANTEE**

[Note to Tenderers: This Clause may be inserted into the Contract with the preferred bidder.]

- 16.1 The Contractor must, at its expense, provide to AusAID; within 10 Business Days of the Project Start Date, a performance guarantee executed by a guarantor delivered to AusAID, guaranteeing the performance by the Contractor of its obligations under the Contract, which must be substantially in the form appearing in **Schedule 5**.

SCHEDULE 1 – SCOPE OF SERVICES

AUSTRALIA - AFRICA PARTNERSHIPS FACILITY (AAPF)

1. DEFINITIONS

1.1 The following definitions apply:

“Ancillary Services” means those Services in Clause 6 of this Schedule 1 described and agreed to in an Ancillary Work Request issued by AusAID under the Contract.

“Ancillary Work Request” means the mechanism used by AusAID to trigger Ancillary Services to be performed by the Managing Contractor.

“Facility Activities” means activities agreed to in a Quarterly Request Report issued under the Contract.

“Facility Team Members” means personnel employed by the Contractor in the provision of the Services and includes Long Term Personnel and Short Term Personnel.

“Quarterly Request Report” means the approval given by the AusAID delegate to implement Facility Activities which may trigger Pre-payment to the Contractor.

“PSG Member” means a person engaged by the Contractor following joint selection with AusAID to be part of the Program Support Group.

“Staff members of other AusAID-funded Africa programs” means personnel engaged by the Contractor to perform Services described in Clause 8 of this Schedule 1.

“AusAID’s AAPF Management Team” means the AusAID staff acting as the Facility liaison point for AusAID that provide the services described in Clauses 5.3 – 5.6 of this Schedule 1.

2. INTRODUCTION

2.1 The Australia-Africa Partnerships Facility (the “Facility”) is part of the Australian Government’s commitment to expand the development cooperation program and increase broader engagement across Africa. The Facility will respond to requests for assistance from African governments as well as take advantage of opportunities to leverage links between Australia and Africa more generally.

2.2 AusAID may also use existing programs and activities to fulfil requests made to the Facility for capacity development assistance.

2.3 Expertise may be required in a range of areas but with a focus on the following:

- (a) Governance for mining and natural resources;
- (b) Public policy (especially trade policy and negotiation, economic governance and public sector reform);

- (c) Agriculture;
- (d) Peace building and conflict prevention;
- (e) Private sector development;
- (f) Maternal and child health; and
- (g) Water and sanitation.

2.4 Other areas may be considered on a case by case basis.

3. **GOAL AND OBJECTIVES**

3.1 The Goal of the Facility is to develop Partnerships between Australia and African countries that contribute to achieving African countries' development priorities.

3.2 The Facility has two Objectives:

- (a) Objective 1: Development Benefit: Build effective partnerships that contribute to sustainable achievement of targeted development priorities in African countries; and
- (b) Objective 2: Relationship Benefit: Build and promote effective working relationships with African countries.

4. **SERVICES REQUIRED**

4.1 The Contractor will provide the following Services:

- (a) Facility Management (see Clause 5);
- (b) Ancillary Services (see Clause 6);
- (c) Establishment and management of a Program Support Group (PSG) (see Clause 7);
- (d) Support other AusAID-funded African programs (See Clause 8);
- (e) Facility Activities (see Clause 10);
- (f) Identifying and Recommending Consultants/Organisations (see Clause 11); and

5. **FACILITY MANAGEMENT**

5.1 The Contractor must carry out the following Facility Management Activities that include, but are not limited to, the categories set out below.

- (a) I Management and Administration Services including, but not limited to, establishing and managing the PSG, and providing secretariat services for the AAPF governing bodies (Clauses 5.2-5.12);
- (b) II Monitoring and Evaluation Services (Clauses 5.13-5.21);
- (c) III Overall Quality Control and Assessment Services (Clause 5.22);

- (d) IV Procurement and Grant Management Services (see Clause 5.23);
- (e) V People Management Services (see Clause 5.24);
- (f) VI Logistics Services (see Clause 5.28);
- (g) VII Security Services (see Clause 5.29);
- (h) VIII Performance Management (see Clause 5.30);
- (i) IX Establishment, Ongoing Management and Maintenance (see Clause 5.31); and
- (j) X Management of Facility Team Members (Clauses 5.32 – 5.41).

I Management and Administration Services

5.2 The governing bodies and management mechanisms for the AAPF are outlined in Annex 1 to this Schedule 1.

AusAID's AAPF Management Team

- 5.3 The AusAID AAPF Management Team shall be the key liaison point between the Contractor and AusAID (including for all management, operational and contractual issues).
- 5.4 In addition to the weekly management meetings described in Clauses 5.7 – 5.8 below, the AusAID AAPF Management Team shall meet or liaise with the Contractor as required.
- 5.5 In complementing the role of the Management Committee, AusAID's AAPF Management Team shall be responsible for strategic oversight of the Contractor and Services, including higher level evaluation of the Contractor's performance against the objectives of the Facility and evaluating the Contractor's continuous flexible response to the evolving requirements of AusAID.
- 5.6 AusAID's AAPF Management Team shall maintain regular dialogue with the PSG members within the Facility to ensure the Contractor's outputs are in line with AusAID's requirements and expectations.

Weekly Management Meetings

- 5.7 The Contractor must ensure that the Contractor's Facility Director attends weekly management meetings with the AusAID AAPF Management Team.
- 5.8 Weekly management meetings will comprise monitoring and evaluation of the operational aspects of the Facility and its management and will:
 - (a) discuss requests for assistance received and action taken/to be taken;
 - (b) address any financial management and contractual issues;
 - (c) address any recruitment or other issues relating to personnel and members of the PSG;
 - (d) review quality assurance mechanisms, monitoring and evaluation progress and Risk Management Matrix as required;

- (e) review the annual work plan and discuss the activity pipeline;
- (f) discuss performance of the Facility Director, Experts and Consultants, in terms of availability, timeliness and quality of response based on reports and outcomes; and
- (g) discuss any other issues the AusAID AAPF Management team wishes to discuss in relation to the management and operation of the Facility.

Contractor

- 5.9 The Contractor shall provide Facility Team Members to undertake the roles, described in Clauses 5.32 – 5.34 below, with an appropriate level of technical expertise and shall recruit appropriately qualified administrative and information technology support staff as required.
- 5.10 Day to day operation, management and maintenance of the Facility will be the responsibility of the Facility Director, who must report to AusAID in accordance with Clause 5.7 above.
- 5.11 The Contractor shall be required to adapt staff levels, in response to changes in demand for and usage of the Facility, in accordance with AusAID's direction.
- 5.12 The Contractor shall provide secretariat services for the AAPF governing bodies including
 - (a) Providing minutes of the Committee meetings; and
 - (b) Reporting to each meeting of the Committees.
- 5.13 The Contractor shall be responsible for coordinating the delivery of all Services to be provided through the Facility.

II Monitoring and Evaluation Services

- 5.14 The Contractor shall be responsible for the ongoing monitoring and evaluation of the Facility's performance including of Contractor Personnel.
- 5.15 The Contractor shall be responsible for developing a Monitoring and Evaluation Plan for the Facility. A draft plan shall be submitted with the Facility Guidelines (described in Clause 5.3(a) by the end of month two (2) following signing of the Contract. The Contractor shall engage the Monitoring and Evaluation Adviser (specified in Annex 2 of this Schedule 1) to undertake this task. The draft Monitoring and Evaluation Plan shall be submitted to AusAID for discussion and approval.
- 5.16 A final Monitoring and Evaluation Plan shall be produced by the end of month three (3) following signing of the Contract.
- 5.17 The Monitoring and Evaluation Plan shall include a description of the proposed principles and approach to undertaking monitoring and evaluation and operational guidelines, and shall include the following:
 - (a) agreed Key Performance Indicators;
 - (b) means of verification;
 - (c) information requirements and how the information will be used;

- (d) primary roles and responsibilities for collecting and analysing information; and
 - (e) formal reporting requirements.
- 5.18 The Monitoring and Evaluation Plan shall include the following mechanisms for monitoring the program:
- (a) strategic oversight: Senior Reference Group, Management Committee and AusAID's AAPF Manager; and
 - (b) weekly management meetings.
- 5.19 The Monitoring and Evaluation Plan shall provide mechanisms to monitor and evaluate the Contractor's progress towards achievement of the Facility objectives.
- 5.20 The Monitoring and Evaluation Plan shall be used by the Contractor to ensure consistently high standards of Services and outputs.
- 5.21 The Contractor shall conduct routine monitoring and reporting of the Facility and its activities to continually develop and identify improvements that can be made to the Facility and activity delivery.
- 5.22 The Contractor shall provide any further monitoring and evaluation as requested by AusAID.

III Overall Quality Control and Assessment Services

- 5.23 Under the Facility, the Contractor will receive proposals from AusAID and/or African Applicants/Organisations. The Contractor will be required to provide assessment and quality control services on an ongoing basis. These Services may include, but will not be limited to, the following:
- (a) Receiving proposals for proposed activities under the Facility;
 - (b) Assessing proposals against the approved Facility Guidelines;
 - (c) Providing technical support to Applicants to improve proposals, if required;
 - (d) Submitting the results of the assessment process of all proposals received, including the recommended and fully-costed proposals for implementation, to the AusAID AAPF Management Team for consideration by the Management Committee;
 - (e) Proposing additional scoping or design work to AusAID and the Management Committee when required;
 - (f) Advising African partner agencies of successful and non-successful proposals;
 - (g) Managing budgeting and expenditure within the annual allocations agreed by AusAID; and
 - (h) Other Quality Control and Assessment Services as required by AusAID.

IV Procurement and Grant Management Services

5.24 Procurement and Grant Management Services will include:

- (a) managing procurements in accordance with the principles of Commonwealth Procurement Guidelines (CPGs);
- (b) managing grant funding in accordance with the principles of the Commonwealth Grant Guidelines;
- (c) when necessary and relevant, undertake Sub-clauses 5.23(a) and (b) above in partnership with African governments and institutions.
- (d) other Procurement and Grant Management Services as required by AusAID.

V People Management Services

5.25 People Management Services may include:

- (a) where advisers or deployees are required, being responsible for all arrangements and duty-of-care for the individual advisers/deployees. This will include:
 - (i) recruitment, including advertising, short listing, interviews, referee and police checks and documenting outcomes;
 - (ii) drafting and negotiating employment contracts for the individuals;
 - (iii) undertaking an induction program that has been tailored to the needs of the individual's placement which includes a thorough briefing on security arrangements;
 - (iv) assisting with the mobilisation and demobilisation of Short Term Personnel, Long Term Personnel and other AusAID-funded Africa program staff members;
 - (v) monitoring individuals' security and welfare;
 - (vi) debriefings at the completion of placements; and
- (b) other people management services as required and agreed with AusAID.

VI Logistics Services

5.26 Logistics Services may include:

- (a) managing all logistical arrangements for the delivery of activities including the sub-contracting of activity delivery to the private sector, public sector, NGOs or international financial institutions as required. This will include:
 - (i) **Security and Occupational Health and Safety (OH&S):** including security services, OH&S, and workplace standard refurbishments;

- (ii) **Mobilisation:** including, as required, organising customs clearance and providing in-country briefing and assistance;
- (iii) **Travel:** organising transportation and facilitating participants' compliance with immigration requirements, including arranging and submitting paperwork for passports and visas;
- (iv) **Accommodation:** arranging appropriate short and long-term accommodation (as required);
- (v) **Venue hire and catering:** finding and booking appropriate venues for meetings and workshops, including catering as required;
- (vi) **Meeting Services:** provide administrative services prior to, and during, meetings and workshops;
- (vii) **Transport:** purchase or hire vehicles, or other suitable local transport arrangements, for personnel involved in activities;
- (viii) **Office Space:** renovate, maintain and equip long term work spaces;
- (ix) **Communications:** including provision of radio, mobile/satellite phone, landline, translation and interpreting services, and mail services (as appropriate);
- (x) **IT Services:** including provision of internet connection and email services, website and database design and maintenance (as appropriate);
- (xi) **Office Equipment:** purchasing and maintaining office equipment, including computers, as required; and
- (xii) **Demobilisation:** including updating passports, organising flights and other arrangements required at the end of an activity.

5.27 On occasion, Consultants/Organisations may be required to work as part of a team comprising personnel obtained from other Service Providers.

5.28 The Contractor is responsible for making all travel and accommodation arrangements to meet AusAID's requirements for the activity.

5.29 The Contractor will provide other logistical services as approved or requested by AusAID in Ancillary Work Requests.

VII Security Services

5.30 Security Services may include:

- (a) taking responsibility for ensuring the personal security of personnel and the security of any equipment; and
- (b) other Security Services as required.

VIII Performance Management Services

5.31 Performance Management Services will include:

- (a) assisting and complying with Performance Management requests made by AusAID;
- (b) responding to reports and recommendations made by an independent auditor or AusAID on the extent to which the Contractor's systems and processes are delivering value for money for the Facility operations and Facility Activities;
- (c) addressing in a timely manner any areas identified by an independent auditor or AusAID as needing improvement; and
- (d) other Performance Management Services as required.

IX Establishment, ongoing management and maintenance Services

5.32 Establishment, ongoing management and maintenance Services will include:

- (a) Developing Facility Operations Manual
 - (i) During the establishment phase, the Contractor shall develop Facility Guidelines for the Facility comprising detailed information on work systems, processes, activity planning, monitoring and reporting procedures for Facility Activities, administrative procedures including responding to requests from AusAID to use the PSG and procedures for sourcing and sub-contracting in order to fulfil requests for Services. The Facility Guidelines shall be updated as required and shall include, but not be limited to, the following:
 - (A) Clear articulation of Facility management responsibilities and the process for Facility management;
 - (B) The processes for AusAID requesting PSG Services, the process for identifying and recommending technical experts (PSG members) and processes for quality assurance;
 - (C) Final AAPF Guidelines for African and Australian organisations including an application form template and activity completion report template to guide applicants on how to submit suitable proposals. Interim Guidelines are found in Annex 3 of this Schedule 1;
 - (D) Quarterly Request Report template to be used by AusAID to provide approval for AAPF Activities to be implemented.
 - (E) Reference to AusAID's policies as well as guidance to ensure opportunities to identify and address these policies are maximised and that an understanding of the importance of these policies is fostered by Specified Personnel;
 - (F) Dissemination and knowledge of management processes;
 - (G) Risk Management Matrix (updated as required);

- (H) Website and Database designs;
 - (I) Benchmarks agreed to by AusAID;
 - (J) AAPF Guidelines for African Organisations; and
- (ii) Draft Facility Guidelines shall be submitted for approval to AusAID by the end of month two (2) of this Contract. Final Facility Guidelines shall be submitted to AusAID by the end of month three (3) of this Contract.
- (b) Risk Management Matrix
- (i) The Contractor shall review the Risk Management Matrix for the AAPF (at Annex 6 of the Australia-Africa Partnerships Facility Design Document, dated 26 November 2009) at commencement of this Contract (submitted with the Facility Guidelines) and update at least annually to ensure ongoing validity and relevance.
- (c) Financial Management and reporting to AusAID
- (i) The Contractor shall establish a financial management system that supports quarterly financial reporting in a format acceptable to AusAID, document this system in the Facility Guidelines and ensure that Contractor Personnel follow the manual.
- (ii) The Contractor shall be responsible for management of payments for Personnel and for all contract and financial management tasks associated with sub-contracted activities.
- (iii) The Contractor shall ensure that payment to sub-contractors is completed a maximum of thirty (30) days after submission of a correctly rendered invoice and confirmation from the Applicant of satisfactory delivery of the sub-contracted Activities.
- (d) AusAID Reviews
- (i) The Contractor shall co-operate fully with any reviews that may be commissioned by AusAID, including providing information where reasonably requested.

X Management of Facility Team Members

5.33 The Contractor shall initially engage individuals to fulfil the following Africa-based roles:

- (a) Facility Director; and
- (b) Staff to look after the following:
 - (i) Co-ordination and administration;
 - (ii) Assets and financial management;
 - (iii) Communications and Public relations;

- (iv) Contract management and procurement; and
 - (v) Project Development Specialist (Design, Implementation, M&E specialist).
- 5.34 The Contractor shall initially engage individuals to fulfil the following Australia-based roles:
 - (a) Recruitment/Logistics Manager; and
 - (b) Staff to look after the following:
 - (i) Co-ordination and administration;
 - (ii) Liaison with AusAID and other government agencies;
 - (iii) Contract management and procurement.
- 5.35 Other roles required by the Contractor, in either Africa or Australia, include:
 - (a) Monitoring and evaluation; and
 - (b) Planning.
- 5.36 Terms of Reference for the Positions in Clauses 5.32 – 5.34 above are in Annex 1 to this Schedule 1.
- 5.37 The Contractor must ensure that there are Facility Team members with language skills at a level of proficiency to communicate in English, French, Arabic and Portuguese-speaking environments. Ability to speak any national African languages would also be useful.
- 5.38 The Contractor shall be responsible for ensuring that Facility Activity Personnel are quality assured as suitably qualified and have the relevant experience and expertise to undertake the Services requested, and that such Facility Activity Personnel represent value for money.
- 5.39 The Contractor may be required to organise security clearances for Facility Team Members as directed by AusAID.
- 5.40 The Contractor shall be required to adapt to changes in demand and usage of the AAPF and it is the responsibility of the Contractor to ensure that relevant, quality Facility Team Members are available to respond to AusAID requests. AusAID shall review any proposed changes to the Facility Director and Recruitment/Logistics Manager positions.
- 5.41 Managing Facility team members may include the following:
 - (a) Identifying and disclosing any conflicts of interest to AusAID;
 - (b) Quality control of team members including quality assuring their written outputs in accordance with Clause 5.41 of Schedule 1;
 - (c) Managing and mitigating risks;
 - (d) Managing the workflow of the Facility;

- (e) Financial management and reporting to AusAID in accordance with Clauses 5.31(c) and (d) of this Schedule 1;
- (f) Being responsible for all arrangements and duty of care for the individual team members and their family. This will include the following:
 - (i) Recruitment, including advertising, short listing, interviews, referee and police checks and documenting outcomes;
 - (ii) Drafting and negotiating employment contracts for the individuals;
 - (iii) Undertaking an induction program that has been tailored to the needs of the individual's placement which includes a thorough briefing on security arrangements;
 - (iv) Assisting with mobilisation and demobilisation, where appropriate;
 - (v) Monitoring individuals' security and welfare throughout a placement where appropriate; and
- (g) other Management Services as required.

5.42 The Contractor shall be responsible for quality assuring Scope of Services, Personnel outputs and ensuring Services provided are in accordance with the Ancillary Work Requests issued by AusAID.

6. **ANCILLARY SERVICES**

6.1 Ancillary Services shall be established under Ancillary Work Requests issued under this Contract and shall include all services as outlined in Clause 6.2 below.

6.2 The Contractor, is to undertake the following ancillary activities when requested, via a written Ancillary Work Request:

- (a) Assessing initial Proposals received against the Facility Guidelines;
- (b) Provide technical support to Applicants to improve proposals;
- (c) Develop fully-costed proposals that are able to be implemented, with additional scoping or design work as appropriate;
- (d) Establishment of the PSG and recruitment of the members of the PSG jointly with AusAID;
- (e) Costing of Activities for PSG members as requested by AusAID; and
- (f) Establish support to other AusAID-funded African programs.

6.3 If approved by AusAID in writing, consultants may be used by the Contractor to assist in the performance of Ancillary Services.

6.4 Consultants used by the Contractor to assist with Ancillary Services must be selected following the principles in the Commonwealth Procurement Guidelines.

7. PROGRAM SUPPORT GROUP (PSG)

PSG Members

- 7.1 The Contractor will manage a procurement process to establish a Program Support Group (PSG) made up of specialists who will provide services and advice on an as needed basis to support the delivery of capacity building activities under the Facility and support the implementation, monitoring and review of other components of the Africa program beyond the Partnerships Facility. AusAID will work in conjunction with the Contractor in the selection of the individual members of the PSG.
- 7.2 Activities for PSG members shall be established under Ancillary Work Requests issued under this Contract and may only include the Services outlined in Clause 7.9 below. The Ancillary Work Request will have a draft Terms of Reference (TORs) attached. Once a Ancillary Work Request is issued, the Contractor will draft a Services Order and seek AusAID approval. Once approved, the Contractor will issue the Services Order to the PSG member.
- 7.3 The PSG will consist of a team of individuals who together have skills, abilities and experience relevant to Africa in one or more of the following categories:
- (a) gender analysis and integration;
 - (b) maternal and child health;
 - (c) water and sanitation;
 - (d) agriculture and food security;
 - (e) natural resource management and the environment (particularly in mining);
 - (f) public sector reform (including trade policy);
 - (g) private sector development;
 - (h) community development;
 - (i) partnership models including design and monitoring of technical assistance activities;
 - (j) monitoring and evaluation including design of monitoring and evaluation frameworks; and
 - (k) program/project management.
- 7.4 The Contractor must ensure that the final composition of the PSG is made up of consultants who, as a group, have experience or expertise that covers all of the skill areas identified in Clause 7.3.
- 7.5 The PSG will not be engaged in implementation of Facility Activities including Ancillary Activities under the Facility unless otherwise agreed to in writing by AusAID.

- 7.6 The Contractor will sub-contract, manage and provide necessary support services to the PSG.
- 7.7 Mobilisation of PSG members will be at the discretion of AusAID.
- 7.8 PSG members are not guaranteed any minimum amount of work.
- 7.9 The PSG members, as a team, will be able to provide at least the following:
- (a) Language skills at an intermediate level of proficiency in English, French, Arabic and Portuguese-speaking environments;
 - (b) Expert advice on program/project design, management, and monitoring and evaluation approaches and methodologies;
 - (c) Provision of specialist monitoring and evaluation services in the priority sectors for Australia's Africa program including: the conduct of program, project and partner performance reviews and field monitoring visits; and assessment and reporting on progress and impact of AusAID funded program/project activities;
 - (d) Appraisal of project/activity design and/or proposals submitted by partner and/or potential Applicants;
 - (e) Assist partner agencies in formulating activity proposals and terms of reference;
 - (f) Attendance (on behalf of AusAID) at relevant program/project related events such as stakeholder workshops, joint evaluation missions, conferences etc.;
 - (g) Undertake reporting required under AusAID quality and performance management systems including Program Management Plans, Risk Management Plans, Quality at Entry and Quality at Implementation reports for activities and the Annual Program Performance Review for the Africa program.
 - (h) Provision of high quality analysis and advice on relevant sector/thematic issues and challenges;
 - (i) PSG activity reporting;
 - (j) Work, as required, as part of a team comprising other thematic or sector specialists;
 - (k) Preparation of annual project/activity workplan and budget proposals aligned to AusAID quality monitoring and reporting requirements; and
 - (l) Support other components of the Africa program beyond the Partnerships Facility.
- 7.10 The Contractor shall be required to adapt to changes in demand and usage of the PSG and it is the responsibility of the Contractor to ensure that relevant, quality PSG members are available to respond to AusAID requests. AusAID shall review any proposed changes to the pool of PSG members.

PSG Quality Assurance

- 7.11 The Contractor shall be responsible for ensuring that PSG members have been quality assured as suitably qualified and have the relevant experience and expertise to undertake the Services requested, and that such PSG members represent value for money.
- 7.12 The Contractor shall be responsible for quality assuring Scope of Services, PSG member outputs and ensuring Services provided are in accordance with the approved ToR and Ancillary Work Requests issued by AusAID.

8. SUPPORT TO OTHER AUSAID-FUNDED AFRICAN PROGRAMS

- 8.1 Support to other AusAID-funded African programs shall be established under Ancillary Work Requests issued under this Contract.
- 8.2 The duration of the other AusAID-funded African programs may range from a few months to a few years and may take place throughout Africa.
- 8.3 Support to other AusAID-funded African programs will include but not be limited to the following:
- (a) Where personnel for other AusAID-funded African programs are required, being responsible for all arrangements and duty-of-care for the individual personnel. This will include:
 - (i) recruitment of staff members of other AusAID-funded Africa program staff members (in consultation with AusAID, if requested by AusAID), including advertising, short listing, interviews, referee and police checks and documenting outcomes;
 - (ii) drafting and negotiating employment contracts for the individuals;
 - (iii) undertaking an induction program that has been tailored to the needs of the individual's placement which includes a through briefing on security arrangements;
 - (iv) assisting with the mobilisation and demobilisation of other AusAID-funded Africa program staff members;
 - (v) where required, providing suitable office accommodation and basic administrative support for the other AusAID-funded Africa program staff members;
 - (vi) monitoring individuals' security and welfare, and ensuring the availability of psychological services throughout placement; and
 - (b) Ad hoc support to other AusAID-funded program services as required.

9. AAPF WEBSITE AND DATABASE

- 9.1 The Contractor is to develop an AAPF website and database in accordance with the designs approved by AusAID (see Clause 5.31(a)(i)(I)).

9.2 The Contractor will provide development and maintenance services (including adding new content) for the website and database as required.

10. **FACILITY ACTIVITIES**

10.1 Facility Activities shall be established under Quarterly Request Reports issued by AusAID under this Contract and shall include all services outlined in Clauses 10.2 – 10.5 below.

10.2 The Facility Activities shall be undertaken by those individuals specified in the Quarterly Request Reports following a recommendation from the Contractor.

10.3 The duration of Facility Activities may range from a few days to several months and may take place throughout Australia and the Partner Countries of Africa. Personnel may need to be available at short notice to provide services in Australia and Partner Countries.

10.4 Facility Activities will respond to requests from African governments as well as take advantage of opportunities to leverage links between Australia and Africa and will be drawn from various modalities of aid including, but not limited to the following:

- (a) The placement of short-term specialists and volunteers to work alongside and mentor African officials;
- (b) Partnerships and exchanges between Australian and African organisations, both government and non-government;
- (c) Short-term professional development programs delivered by international financial institutions (IFIs), public sector and private sector bodies;
- (d) Workshops and training;
- (e) Grant funding for activities implemented by non government organisations; and
- (f) Joint research.

10.5 Multiple requests from Applicants may be bundled together and addressed by one Facility Activity.

11. **IDENTIFYING AND RECOMMENDING CONSULTANTS/ORGANISATIONS**

11.1 The proposal for an activity (including timeframes for deliverables and a detailed budget) must be approved by AusAID and the Applicant (where relevant) before a Consultant/Organisation is nominated.

11.2 The Contractor shall undertake a procurement process, in response to the approved proposal, in accordance with the Principles of the Commonwealth Procurement Guidelines.

11.3 The Contractor must provide AusAID with the following details for each activity requiring Consultant/Organisation input:

- (a) The recommendation of at least one (1) Consultant/Organisation for each position/task required that is:
 - (i) suitably qualified;

- (ii) available to undertake the requested Services; and
 - (iii) represents value for money.
 - (b) All relevant costs associated with the requested activity including daily professional fee rates for Consultants, permitted Reimbursable Costs and maximum costs of the Activity.
- 11.4 Where a Consultant/Organisation is recommended by the Contractor to provide Services, the Contractor shall, at the time of making the recommendation to AusAID, certify that the recommended Consultant/Organisation represents value for money in relation to the activity divided into quarterly payments over the length of the activity.
- 11.5 In situations where the Applicant and/or AusAID is not satisfied with the recommended Consultant/Organisation, AusAID will inform the Contractor that it does not accept the recommendation and may request the Contractor to provide at least one (1) further recommended Consultant/Organisation. AusAID will explain its reasons for not accepting a recommended consultant and will further clarify its requirements. The Contractor must only inform the Consultant/Organisation that they will be required to undertake Services after AusAID has agreed in writing to that Consultant/Organisation.
- 11.6 All costs associated with identifying and recommending Consultants/Organisations shall be covered by the Services and Fees in Ancillary Work Requests.

12. **QUARTERLY REQUEST REPORT**

- 12.1 Quarterly, after AusAID has accepted the recommended Consultant/Organisation to undertake the Services in the proposed Activities from the Managing Contractor, AusAID shall provide a signed Quarterly Request Report outlining the approved Activities and their budgets organised into planned quarterly payments.
- 12.2 Once a Quarterly Request Report has been provided by AusAID, the Contractor shall sub-contract the nominated Consultants/Organisations, and arrange all logistics (including deployment of Personnel, where required) to deliver the Services. The Contractor shall ensure that such Services are delivered within the agreed timeframe and in accordance with the Quarterly Request Report.

13. **REPORTING REQUIREMENTS**

- 13.1 All reports shall:
- (a) be provided in accordance with the specification under Standard Conditions Clause headed Reports in the Contract;
 - (b) be accurate and not misleading in any respect;
 - (c) be prepared in accordance with guidance or direction given by AusAID;
 - (d) be provided in the format and on the media approved or requested by AusAID;
 - (e) not incorporate either the AusAID, the Contractor's or other logo;

- (f) be provided at the time specified in this Schedule 1, the Ancillary Work Requests or the Quarterly Request Reports issued under the Contract (as the case requires); and
- (g) incorporate sufficient information which allows AusAID to monitor and assess the success of the Services in achieving the objectives of AusAID's Gender and Development and other cross cutting AusAID policies.

13.2 The Contractor shall provide the following reports by the date, in the format and the number of copies indicated:

- (a) An ongoing database of all requests for assistance received (pipeline) and the action taken, including total expenditure for Activities tasked through and disaggregated by service type and identifying all categories of expenditure for each Activity (to be established in consultation with AusAID by the end of month one (1) of this Contract) an updated copy of which will be provided to the AusAID AAPF Management Team each week;
- (b) Facility Guidelines referred to in Clause 5.31(a) (including Risk Management Matrix) to be submitted by the end of month two (2) of this Contract;
- (c) Monitoring & Evaluation Plan referred to in Clause 5.13 – 5.21 (to be submitted by the end of month three (3) of this Contract);
- (d) Annual Work Plan regarding planned activities (to be submitted by the end of month three (3) of this Schedule 1 and to be updated quarterly to coincide with meetings of the Management Committee);
- (e) Quarterly Reports to Management Committee (to be submitted two (2) weeks prior to Management Committee Meetings and including the updated Annual work plan);
- (f) Midterm Review Report to Management Committee (to be submitted after the second anniversary of the Contract Start Date), if required by AusAID;
- (g) AAPF Completion Report (draft to be submitted three (3) months prior to the completion of this Contract, and final report incorporating any comments by AusAID to be submitted 2 weeks prior to completion of this Contract);
- (h) Exception Reports on an as-required basis including for key emerging and/or urgent issues to be considered by AusAID.

13.3 The Contractor shall provide one (1) hard copy and one (1) electronic copy in Microsoft Word format to the AusAID AAPF Manager for each report listed in Clause 13.2 other than for the ongoing database which shall be submitted electronically on a weekly basis and the quarterly reports to Management Committee which shall be submitted in six (6) hard copies and one (1) electronic copy.

Quarterly Reporting to the Management Committee

13.4 The Contractor shall provide a written report to AusAID prior to each Management Committee meeting which shall include the following:

- (a) An updated table of all proposals received including date received, request details and the action taken;

- (b) A summary table of all the current Activities disaggregated by service type;
- (c) A financial report detailing total expenditure for Activities tasked through Quarterly Request Reports or Ancillary Work Requests for the past three (3) month period, also disaggregated by service type and identifying all categories of expenditure for each Activity;
- (d) Any significant performance management or personnel issues and steps taken (or proposed) to address them;
- (e) Identification of any significant issues, risks, or problems in progress encountered in implementing requested Activities and in achieving the Facilities objectives and any proposed options/recommendations to resolve these; and
- (f) An updated Risk Management Matrix and Monitoring and Evaluation plan if relevant.

13.5 The mid-term review should be submitted to AusAID with the relevant quarterly report.

13.6 The final quarterly report to the Management Committee shall be submitted to AusAID with the AAPF Completion Report.

AAPF Completion Report

13.7 The Contractor shall prepare an AAPF Completion Report in draft form three (3) months prior to the completion of this Contract. It shall be submitted in final form two (2) weeks prior to completion of this Contract after discussions with AusAID.

13.8 The AAPF Completion Report shall include detailed financial and activity records on the Services provided by the Contractor for the duration of this Contract and shall evaluate overall performance against the Facility's goal and objectives.

13.9 In preparing the completion report, the Contractor shall refer to guidance issued by AusAID detailing activity completion reporting requirements.

13.10 AusAID shall engage an independent evaluator (or team) to appraise the AAPF Completion Report.

13.11 Reports or other documentation required for Facility Activities shall be specified in the Quarterly Request Report pursuant to the Contract.

14. CONTRACTOR PERFORMANCE

14.1 Satisfactory performance (and particularly timeliness and quality) of services as set out in the Ancillary Work Requests and Quarterly Request Reports may be taken into account in awarding further work under this Contract and in selections for future AusAID work.

14.2 AusAID reserves the right to introduce or remove a performance system to the Contracts at its discretion.

15. SERVICE LEVELS

15.1 The Contractor must, within the Fees, and in accordance with the terms and conditions of the Contract, meet the following Service Levels for Services performed under the Contract and all Ancillary Work Requests and Quarterly Request Reports that come into effect under the Contract:

- (a) Ensure the availability of all individuals nominated as Long Term or Short Term Personnel in Annex 3 of the Contract to perform Services at the request and discretion of AusAID;
- (b) Monitor the performance of all individuals nominated as Long Term Personnel and ensure they meet performance standards prescribed in the Deed and performance standards specified in Ancillary Work Requests and Quarterly Request Reports to the highest standards;
- (c) Monitor the production of written reports by all individuals nominated as Long Term Personnel as required under Ancillary Work Requests and Quarterly Request Reports, ensuring all reports:
 - (i) meet the highest standards of quality, including report content, format, spelling and grammar;
 - (ii) include all information required by Ancillary Work Requests and Quarterly Request Reports;
 - (iii) are prepared as directed in writing by AusAID, as required;
 - (iv) are compatible with AusAID's information systems;
 - (v) are prepared in accordance with the requirements of the Contract; and
 - (vi) are delivered in a timely manner and in accordance with timetables specified in Ancillary Work Requests and Quarterly Request Reports;
- (d) Ensure the co-operation of all individuals nominated as Long Term Personnel with Personnel from other Contractors appointed by AusAID to undertake activities, including as a member of a team; and
- (e) Use best endeavours to ensure that individuals nominated as Long Term Personnel meet the requirements of the Contract.

15.2 The Contractor must ensure that any Services under any Ancillary Work Requests and Quarterly Request Reports issued under the Contract are performed in accordance with the requirements of the Contract.

16. SECURITY

16.1 Contractors should be aware that in some overseas locations security issues may need particular attention. It is the Contractor's responsibility to ensure the personal security of their personnel and the security of any equipment.

Annex 1

Governing Bodies of the AAPF

Senior Reference Group

- 1.1 The Senior Reference Group (SRG) will be the highest-level governance body for the Facility and will:
- (a) review overall program outcomes and achievements;
 - (b) make decisions on the strategic direction of the Facility;
 - (c) consider annual management plans and reports prepared by the Managing Contractor;
 - (d) agree on notional annual funding and allocations for each of the nine regions represented by a Head of Mission and determine an appropriate level of unallocated funds to enable the Facility to be responsive to emerging priorities;
 - (e) provide observations and advice to the Management Committee and the Managing Contractor; and
 - (f) engage with external review of the Facility, as required.
- 1.2 Membership of this Senior Reference Group will be the same as the Senior Reference Group for the Africa Scholarships Program - it will be chaired by the Assistant Director General, Africa Humanitarian Branch, AusAID Canberra (or equivalent). Other permanent members will be the AusAID Counsellor, and a senior representative from Austrade, DFAT (Department of Foreign Affairs and Trade).
- 1.3 SRG meetings will be held once a year in Canberra.

Management Committee

- 1.4 The Management Committee will make the final decision on all proposals across each of the nine regions represented by a Head of Mission.
- 1.5 The responsibility of the Management Committee is to:
- (g) indicate individual activities to be supported and recommend further scoping/design work to be undertaken in accordance with the Facility Guidelines and the priorities specified by the Senior Reference Group;
 - (h) identify any proposals that would benefit from being supported through other parts of the broader Africa program (e.g. scholarships);

- (i) ensure that mechanisms are in place to enable decisions to be made between meetings, including at short notice;
 - (j) provide advice to the Senior Reference Group on required changes or refinements in the strategic directions of the Facility; and
 - (k) ensure compliance with all relevant Australian Government legislation.
- 1.6 The Management Committee will have four (4) core members, as follows:
- (a) A senior AusAID representative who will be the Chair of the Management Committee;
 - (b) The AusAID Partnerships Facility Manager or another AusAID AAPF Management team member;
 - (c) A senior Canberra-based or Africa-based AusAID representative; and
 - (d) A DFAT representative.
- 1.7 Other representatives may be involved over time as agreed to in writing by AusAID.
- 1.8 Management Committee meetings will be held in Africa. Australian-based representatives would need to join meetings by phone or video conference.
- 1.9 The Management Committee will meet quarterly, with at least one meeting per year being face-to-face and other meetings conducted by teleconference or face-to-face as required.
- 1.10 Decisions may be made at times other than the quarterly meetings by the Chair calling an out-of-session Management Committee phone meeting at any time or by circulating recommendations by email.
- 1.11 The Contractor is to carry out the following Ancillary Services, which may include:
- (a) Serving as the Secretariat for the two primary governance bodies for the Facility:
 - (i) the Management Committee; and
 - (ii) the Facility-related meetings of the Senior Reference Group;
 - (b) Providing minutes of the Committee meetings referred to in Clause 5.12; and
 - (c) Reporting to each meeting of the Committees referred to in Clause 5.12;

ANNEX 2 – TERMS OF REFERENCE

Facility Director

Duration:	Life of the Facility
Location:	Pretoria, South Africa
Reporting to:	AAPF Manager, Australian High Commission, Pretoria
Advises:	Senior Reference Group
Direct reports:	<ul style="list-style-type: none"> • Recruitment/Logistics Manager (in Australia) • In-Africa team
Skills/Experience:	<ul style="list-style-type: none"> • Proven practical project management experience • Expertise in organisational analysis • Recent cross sectoral experience in Africa – in one or more of public sector, private sector and civil society - or recent cross sectoral experience in the public sector of a developing country combined with a demonstrated ability to apply this experience in an African context • Working effectively at all levels of government • Excellent cross cultural and interpersonal skills • Understanding of cross cutting issues, particularly gender • Familiarity with continuous improvement principles • Ability to handle multiple tasks at both strategic and micro levels • Counselling, mediation and problem solving
Responsibilities:	<ul style="list-style-type: none"> • Establish and provide quality control for all plans, reports, systems, outputs and contract management • Plan, manage and monitor the work of Facility and Facility Team, applying a continuous improvement orientation • Manage all activities and placements, including initial induction and orientation, ongoing support and training, trouble shooting, counselling for performance • Monitor Facility progress, make recommendations about appropriate actions, including managing risk • Provide motivation and leadership by fostering a collaborative approach to work challenges within the Managing Contractor team, between advisers and host agencies and between AusAID and its partners • Advise the Senior Reference Group and the Management Committee on strategic and critical performance issues, ensuring advice is given early and solutions are proposed

which are practical, cost effective and give primacy to AusAID and African interests

- Oversee the disbursement of Facility funds and certify payments in accordance with agreed procedures

Recruitment/Logistics Manager

Duration:	Life of the Facility
Location:	Australia
Reporting to:	Facility Director (in Africa)
Skills/Experience:	<ul style="list-style-type: none"> • Thorough knowledge of and experience in contemporary policies and practices for sourcing and engaging consultants/contracted employees/volunteers, sub-contracting training providers and engaging the Australian public sector in development activities • Ability to acquire knowledge of, and apply Commonwealth Government and AusAID contractual policies and guidelines applicable to the identification and placement of advisers/volunteers and training providers • Appreciation of, or ability to develop an appreciation of, capacity building issues in Africa and apply this knowledge to the effective sourcing of expertise • Commitment to gender equity in human resource practices • Ability to liaise and keep up-to-date remotely and in networking widely.
Responsibilities:	<ul style="list-style-type: none"> • Plan and manage selection and recruitment of in-Australia personnel and sub-contractors • Determine and implement the advertising strategy for each activity • Determine and implement assessment methods for applicants, to include, but not necessarily be limited to, interview and referees • Convene selection panels with an appropriate mix of expertise • Determine, on a case by case basis, the extent to which host agency head/delegate can practically be involved in recruitment and selection • Draft recruitment and selection reports • Mobilisation and pre-departure arrangements • Ensure advisers are recruited at value for money rates.

Skills Packages in Africa

(i) Co-ordination

Duration:	Life of the Facility. Number of positions, full/part time, organisational structure – to be proposed by tenderers.
Reporting to:	Facility Director
Skills/Experience	<p>Depth of skills and extent of experience will depend on numbers of staff proposed and organisational structure, but generally:</p> <ul style="list-style-type: none"> • Administration in either private or public sectors • Understanding of public accountability and transparency issues • Excellent interpersonal skills and a supportive, collaborative approach to work • Record keeping and attention to detail. <p>Among the positions a range of higher level or more specialist skills may be required:</p> <ul style="list-style-type: none"> • Project management • Organisational and problem analysis • Analytical skills in relation to defining terms of reference, charters, work plans • Ability to design and conduct briefings and workshops • Ability to design informational materials • Good understanding of development assistance principles and practices or ability to develop understanding.
Responsibilities:	<p>Responsibilities will vary according to the structure proposed by tenderers, but generally will include the following:</p> <ul style="list-style-type: none"> • Assist African agencies to develop comprehensive Facility proposals • Evaluate Facility proposals and prepare documentation for submission to Management Committee • Assist host agencies to cost proposals. • Assist Facility Director in the induction and orientation of advisers and sub-contractors • Assist the Facility Director to manage, monitor and evaluate the work of the advisers and sub-contractors • Assist the Facility Director to prepare plans and reports • Maintain Facility records and systems • Control Facility assets

(ii) Asset and Financial Management

Duration:	Life of the Facility. Number of positions, full/part time – to be proposed by tenderers. Alternatively this could be subcontracted to a local accountancy company.
Reporting to:	Facility Director
Skills/Experience	It is likely that at least one professional accountant will be required, someone qualified to practice in South Africa and possibly eligible to practice in Australia.
Responsibilities:	<ul style="list-style-type: none"> • Design, establish and implement all financial systems and procedures to ensure the accountable disbursement of funds • Produce timely accurate financial reports • Pay, or certify for payment in Australia, all agreed fees and allowances to advisers and sub-contractors • Assist advisers to manage, disburse and acquit placement expenditures • Provide for Senior Reference Group an evaluation of the financial aspects of all proposals • Assist host agencies to cost placement proposals • Participate in induction sessions for advisers • Work collaboratively with host agency staff and advisers on issues to do with management and control of Facility expenditure and assets • Internal audit – conduct periodic inspections of accounts and assets held by advisers.

Skills Packages in Australia

Co-ordination and Administration

Duration:	Life of the Facility. Numbers of positions, full/part time – to be determined by tenderers.
Reporting to:	Recruitment/Logistics Manager
Responsibilities	Co-ordination and administration – staff to assist in undertaking the critical tasks of advertising placements, selecting advisers through interview and other methods, contracting advisers and conducting pre-departure briefings; staff for general administrative, accounting and liaison tasks.

In Africa or Australia Skills Packages

(i) Monitoring and Evaluation

Duration:	Intermittent inputs over life of the Facility. Facility Director may be able to provide necessary inputs subject to quality of experience.
Reporting to:	Facility Director
Responsibilities:	<ul style="list-style-type: none"> • Prepare Monitoring and Evaluation Framework in first 3 months • Develop monitoring and evaluation framework and systems for data collection and reporting • Conduct two cluster impact studies • Contribute to completion report • Other inputs for monitoring and evaluation as determined by Senior Reference Group.

(ii) Strategic Planning

Duration:	Intermittent inputs.
Reporting to:	Facility Director
Responsibilities:	<ul style="list-style-type: none"> • Develop initial Facility Plan and annual work plan to ensure Facility is focussed and meeting its goal and purpose. • Other inputs for planning as determined by the Senior

Reference Group.

In Africa - Program Support Group (PSG) Coordinator

Duration:	Life of the Facility. Number of positions, full/part time, organisational structure – to be proposed by tenderers.
Reporting to:	Facility Director
Skills/Experience	<p>Depth of skills and extent of experience will depend on numbers of staff proposed and organisational structure, but generally:</p> <ul style="list-style-type: none"> • Administration in either private or public sectors • Understanding of public accountability and transparency issues • Excellent interpersonal skills and a supportive, collaborative approach to work • Record keeping and attention to detail. <p>Among the positions a range of higher level or more specialist skills may be required:</p> <ul style="list-style-type: none"> • Project management • Organisational and problem analysis • Analytical skills in relation to defining terms of reference, charters, work plans • Ability to design and conduct briefings and workshops • Ability to design informational materials • Good understanding of development assistance principles and practices or ability to develop understanding.
Responsibilities:	<ul style="list-style-type: none"> ▪ Support AusAID to recruit team members for the PSG & for other AusAID programs (logistics of any required tendering or recruitment process to select PSG members) ▪ Contract PSG members and staff of other AusAID programs selected by AusAID through the process above ▪ Provide support to PSG members and staff of other AusAID programs (admin support, travel and logistics support including organising and paying for airfares, hotels and TA etc) ▪ Keep a track of Ancillary Work Requests and Quarterly Request Reports and provide a consolidated monthly invoice to AusAID for work carried out by PSG members ▪ Ensure timely payment of PSG members for work undertaken (and reimbursement of expenses incurred) ▪ Consolidated report to AusAID on PSG member activities and progress against Ancillary Work Requests and Quarterly Request Reports and Proposal Requests.

- Report to AusAID on spending against PSG budget
- Organise and support meetings of the PSG with AusAID
- As required, recruit and support (admin support, travel and logistics support, office space and facilities etc) long-term program support staff to assist AusAID with implementation and management of programs (i.e. equivalent of O-Based staff)

Annex 3

INTERIM APPF GUIDELINES FOR AFRICAN AND AUSTRALIAN ORGANISATIONS

AUSTRALIA-AFRICA PARTNERSHIPS FACILITY GUIDELINES FOR AFRICAN ORGANISATIONS

Up to 31 December 2010

IMPORTANT

**Activity proposals must be submitted in accordance with
the Application Form (Attachment 1) and
other instructions outlined in these Guidelines**

**Activity proposals should be submitted to the
AusAID office as specified in Section 7**

1. Background

- 1.1 Australia has established an Australia-Africa Partnerships Facility to support capacity building efforts of partner governments and institutions in Africa. These are Guidelines and an Application Form to cover the period until 30 December 2010. A permanent Application Form and Guidelines will be released when the Facility becomes fully operational.

2. Goal

- 2.1 The goal of the Australia-Africa Partnerships Facility is to develop partnerships between Australia and African countries that contribute to achieving African countries' development priorities.

- 2.2 To achieve this the Facility will:

- (i) increase African partner governments and institutions access to Australian capacity building assistance; and
- (ii) seek to build effective partnerships that contribute to sustainable achievement of targeted development priorities in African countries.

3. Focus

- 3.1 Activity proposals for support under the Facility can be made by:

- African governments, through the relevant government agency responsible for coordinating development assistance;
- African organisations or institutions involved in development work of priority to partner countries; and
- Australian agencies or organisations involved in development work of priority to partner countries (in which case the request should be endorsed by the potential beneficiary agency or organisation in Africa).

- 3.2 Activity proposals from individuals will not be considered.

- 3.3 Activities supported will be consistent with partner countries' development priorities and the objectives of the Australian Government's strategy for development co-operation with Africa. Priority areas for assistance under the Facility will be:

- Public policy (especially economic governance, trade policy and negotiations, and public sector reform);

- Mining, minerals and natural resource management;
- Food security and agriculture.

3.4 Other activities outside the above priority areas may be considered on a case by case basis.

4. Development Approach

4.1 Eligible activities will, where relevant:

- involve some level of contribution by the partner organisation towards the costs (including contributions in kind) and the management of activities;
- strengthen counterpart organisations' institutional capacity in order to promote sustainability of the funded activity;
- include a joint AusAID and partner agency or partner government monitoring and evaluation framework
- ensure that the needs of both women and men are taken into account and that women are given the opportunity to participate;
- demonstrate good value for money;
- benefit groups selected on the basis of need – not on a religious, sectarian or political basis.

4.2 Support under the Facility is not available for activities which:

- are focused primarily on the provision of equipment, freight, infrastructure or buildings;
- involve retrospective funding;
- subsidise evangelism or missionary outreach;
- are for emergency relief purposes.

5. Forms of Assistance Available

5.1 Examples of the types of assistance the Facility will support include:

- Partnerships and exchanges between Australian and African organisations;
- Short term placements of technical / advisory assistance with a focus on counterpart capacity building;
- Short term professional development programs, workshops and seminars;
- Joint research; and
- Grant funding.

5.2 Activity proposals considered will typically be up to two years duration and up to AUD1 million. Although requests outside the examples above may be considered, applying organisations are encouraged to consult with AusAID prior to finalisation and submission of the proposal.

6. Application and Selection Procedures

6.1 The Australia-Africa Partnerships Facility is managed by the Australian Government's overseas development agency, AusAID.

6.2 Because funding under the Facility is limited, not all proposals for assistance will be able to be supported.

6.3 The format for the Application Form for proposed activities is included in these guidelines at [Attachment 1](#). Proposals should not exceed five A4 pages (excluding attachments).

6.4 Activity proposals will be considered through regular meetings of a Facility Management Committee.

6.5 Proposals will be evaluated according to the following criteria:

- The developmental merit of the request, including:
 - relevance of the proposed activity to the stated development priorities of the partner government, agency or organisation and to the areas of focus under the Australian Government's development cooperation strategy;
 - value for money - the costs/benefits of the proposal in terms of the amount of funding required versus the expected development outcomes and impact that the assistance requested can be expected to have;
 - the expected level of sustainability (including factors such as how the assistance will link with broader government/donor programs and initiatives; and prospects of incorporating results obtained into larger scale activities);
 - the overall quality of the proposal, including the potential to develop counterpart capacity through scoping, implementation and monitoring and evaluation; and
- Whether the proposed activity will help to build new, or deeper, partnerships between Australia and partner African countries.

6.6 AusAID may use independent advisers and contractors to perform a range of tasks, including: undertaking context analysis to guide assessment of the proposals, assessing the developmental impact of proposals and assisting governments to scope their needs (for example, by working on terms of reference for advisory assistance).

6.7 Applying agencies should specify in the application whether support is requested to help further develop the Terms of Reference or scope the proposal.

7. Activity Management and Reporting Requirements

7.1 Prior to receiving funding under the Facility, an organisation undertaking activities funded through the Facility will need to enter into a funding agreement with AusAID. Implementation, accountability, funding and reporting arrangements will be determined and recorded in the agreement.

7.2 The partner organisation will be requested to collect and compile monitoring data on performance indicators submitted in the proposal. This will assist AusAID to measure the success and impact of the activity, to identify lessons learned to improve the Facility's delivery into the future and to properly account for money and assistance provided. Where relevant, this reporting may need to take the form of a Completion Report, a sample of which is provided at [Attachment 2](#). This template will be adapted to suit the proposed activity .

7.3 In order to assess the success of the Facility and future funding priorities, AusAID (or its agents) may from time to time monitor, review and/or evaluate activities funded under the Facility. This would be undertaken in consultation with partner organisations.

8. Contact Details

8.1 Formal (written) requests for funding; queries about the facility; or enquiries following up on submitted requests from Australian government agencies or organisations based in Australia should be directed to AusAID Canberra, attention to:

Australia-Africa Partnerships Facility Manager
Australian Agency for International Development (AusAID)

GPO Box 887
Canberra ACT 2601
Australia.

- 8.2 Formal (written) requests for funding; queries about the initiative; or enquiries following up on submitted requests from African government agencies or organisations based in Africa should be directed to:

Anita Menete, Program Manager

Australia-Africa Partnerships Facility

Australian High Commission

292 Orient Street (Cnr Schoeman Street)

Arcadia 0083 Pretoria

Republic of South Africa

Private Bag X150

Pretoria 0001

Republic of South Africa

E-Mail: anita.menete@dfat.gov.au

AUSTRALIA-AFRICA PARTNERSHIPS FACILITY

Application Form

(5 pages maximum)

1. Nominating Authority and Contact Officer Details:

2. Activity Title:

3. Counterpart African Organisation and Contact Officer (identify the lead organisation if more than one):

4. AusAID Contact Officer Details (for enquiries on this Application Form)

Anita Menete, Program Manager

Australia- Africa Partnerships Facility

Australian High Commission

292 Orient Street (Cnr Schoeman Street)

Arcadia 0083 Pretoria

Republic of South Africa

Private Bag X150

Pretoria 0001

Republic of South Africa

E-Mail: anita.menete@dfat.gov.au

5. Identify the development need which the proposed Activity is intended to address:

6. Detail the objective and output(s) which the proposed Activity will deliver:

7. Detail the relevant experience and expertise your agency has relating to the proposed Activity (include details of any previous or existing related projects, relationship with partner organisation or experience working in Africa).

AUSTRALIA-AFRICA PARTNERSHIPS FACILITY

Completion Report

(To be completed by the counterpart organisation after activity completion)

Country: _____

Counterpart Organisation: _____

Activity Title: _____

A. CONSISTENCY WITH ACTIVITY DEVELOPMENT OUTCOMES

1. Has the activity achieved the purpose stated in the proposal submitted to AusAID? List your achievements (changes in policy, management practices and processes) against the original Activity Identification Form measures of success.

2. If any anticipated outputs were not achieved, what were they and why were they not achieved.

3. What aspects of the activity were particularly successful?

4. What changes to the activity would have enhanced the outcome?

B. FINANCIAL ACQUITTAL (Where relevant)

	AusAID Contribution (A\$ or Local Currency)	Implementing Organisation Contribution (A\$ or Local Currency)	Other Donor Contributions (A\$ or Local Currency)
Activity Personnel Costs			
Non-Personnel Cost			
Activity Support Costs			
TOTAL COSTS			

Declaration and Acquittal

The following declaration must be made by an appropriately authorised officer of the Organisation.

"I (*authorised officer*) declare that

- this report is complete and accurate
- the acquittal is a correct record of income and expenditure for this project
- the expenditure detailed in the acquittal has been extracted from the Organisation's financial accounting records
- a detailed record of income and expenditure at an individual item level is available
- the funds allocated to the Project were used in accordance with the Exchange of Letters and the Project Proposal, including any variations to the Proposal approved by AusAID in writing."

Full Name: _____

Signature: _____

Position in Organisation: _____

Phone No: _____

Fax No: _____

E-mail Address: _____

Date (dd/mm/yyyy): / /

PART 4 - BASIS OF PAYMENT

AUSTRALIA-AFRICA PARTNERSHIPS FACILITY

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

1. TOTAL AMOUNT

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

2. PAYMENT STREAMS

- 2.1 All Services shall be payable as follows:
 - (a) Facility Management Fee - payable in accordance with Clause 3 of this Schedule 2.
 - (b) Reimbursable Costs - payable in accordance with Clause 4 of this Schedule 2.
 - (c) Pre-payments - payable in accordance with Clause 15 of this Schedule 2.

3. FACILITY MANAGEMENT FEE

- 3.1 The total Facility Management Fee (FMF), payable under this Schedule 2 must not exceed the sum of **AUDXX** plus GST, if any, to a maximum of **AUDXX**.
- 3.2 The FMF shall be fixed for the term of this Contract and be payable to the Contractor upon:
 - (a) AusAID's acceptance in writing of the milestones in Table 1 below; and
 - (b) within thirty (30) days of AusAID's receipt of a correctly rendered invoice, including certification that the inputs and outputs have been provided as required by this Contract.

Table 1: Milestone Payments

Milestone	Due Date	Verifiable Indicators	Amount (AUD)
Year 1 – October 2010 to June 2011			
Facility Guidelines (Clause 5.31(a) & 13.2(b), Schedule 1 of the Contract)	Two months after signing of the Contract	AusAID approval in writing	6%
Quarterly Report 1 (Clause 13.2(e) & 13.4, Schedule 1 of the Contract)	2 weeks prior to Management Committee Meeting (estimated Dec 2010)	Management Committee acceptance in writing	8%
Quarterly Report 2 (Clause 13.2(e) & 13.4, Schedule 1 of the Contract)	2 weeks prior to Management Committee Meeting (estimated March 2011)	Management Committee acceptance in writing	8%
Quarterly Report 3 (Clause 13.2(e) & 13.4, Schedule 1 of the Contract)	2 weeks prior to Management Committee Meeting (estimated June 2011)	Management Committee acceptance in writing	8%
Year 1 Total			
Year 2 – July 2011 to June 2012			
Quarterly Report 4 (Clause 13.2(e) & 13.4, Schedule 1 of the Contract)	2 weeks prior to Management Committee Meeting (estimated Sept 2011)	Management Committee acceptance in writing	8%
Quarterly Report 5 (Clause 13.2(e) & 13.4, Schedule 1 of the Contract)	2 weeks prior to Management Committee Meeting (estimated Dec 2011)	Management Committee acceptance in writing	8%
Quarterly Report 6 (Clause 13.2(e) & 13.4, Schedule 1 of the Contract)	2 weeks prior to Management Committee Meeting (estimated March 2012)	Management Committee acceptance in writing	8%
Quarterly Report 7 (Clause 13.2(e) & 13.4, Schedule 1 of the Contract)	2 weeks prior to Management Committee Meeting (estimated June 2012)	Management Committee acceptance in writing	8%
Year 2 Total			
Year 3 – July 2012 to June 2013			
Quarterly Report 8 (Clause 13.2(e) & 13.4, Schedule 1 of the Contract)	2 weeks prior to Management Committee Meeting (estimated Sept 2012)	Management Committee acceptance in writing	8%
Quarterly Report 9 (Clause 13.2(e) & 13.4, Schedule 1 of the Contract)	2 weeks prior to Management Committee Meeting	Management Committee acceptance in	8%

Milestone	Due Date	Verifiable Indicators	Amount (AUD)
	(estimated Dec 2012)	writing	
Quarterly Report 10 (Clause 13.2(e) & 13.4, Schedule 1 of the Contract)	2 weeks prior to Management Committee Meeting (estimated March 2013)	Management Committee acceptance in writing	8%
Quarterly Report 11 (Clause 13.2(e) & 13.4, Schedule 1 of the Contract)	2 weeks prior to Management Committee Meeting (estimated June 2013)	Management Committee acceptance in writing	8%
AAPF Completion Report (Clause 13.2(e) & 13.4, Schedule 1 of the Contract)	2 weeks prior to completion of this Contract	AusAID approval in writing	6%
Year 3 Total			
Facility Management Fee Financial Limit			

3.3 The FMF shall comprise (but not be limited to) the following and as set out in the table in Annex 9 of this Schedule 2:

- (a) All aspects of profit, including commercial margins for all personnel;
- (b) Rent;
- (c) All management, operating and administration costs including:
 - (i) non-specified Personnel costs;
 - (ii) consumables, equipment/supplies maintenance costs, and all other overheads for the office under Schedule 1;
- (d) All Costs of providing the Ancillary Services required under Clause 6.2 of Schedule 1.
- (e) All Costs of providing the Facility Management Services required under Clause 5 of Schedule 1 (except for reimbursable travel costs as described in Clause 10 below);
- (f) Costs of complying with the Contractor's reporting and liaison obligations under Schedule 1;
- (g) Any costs associated with contracting, sub-contracting and procurement of goods and services;
- (h) Non-personnel related taxes and levies, incurred in Africa, Australia or elsewhere, as applicable, with the exception of GST for Services performed in Australia (refer to Clause 21 (Goods and Services Tax) of Part A of the Deed (Standard Contract Conditions); and

- (i) All allowances for profit, risk, financing, contingencies and escalators, *including* for all Specified Personnel under Schedule 2.
- (j) All insurance costs including (but not limited) to professional indemnity, health, medivac, workers compensation, public liability, indemnity and any other insurances required under the Contract in accordance with Clauses 33 (Indemnity) and 34 (Insurance) of Part A of the Deed (Standard Contract Conditions), and as deemed necessary by the Contractor;

3.4 If AusAID decides at its sole and absolute discretion to exercise its option and extend this Contract, the FMF payable for the extension period shall be calculated using the relevant escalation factor for the term of the option period indicated in the table below.

Table 2: FMF Escalators

Year	In –Australia Escalator (%)	Overseas Escalator (%)
4		
5		

4. REIMBURSABLE COSTS

4.1 AusAID shall reimburse the Contractor up to a maximum of **AUDXX** plus GST, if any, to a maximum amount of **AUDXX** for the Reimbursable Costs specified in Table 3 of Clause 4.2 of this Schedule 2. This Schedule 2 does not provide for the inclusion of any reimbursable costs categories or items other than those explicitly specified in Table 3.

4.2 The Contractor shall be reimbursed at cost on a monthly basis in arrears, within 30 days of AusAID’s receipt of a correctly rendered invoice, for the items in Table 3 subject to:

- (a) the items being agreed in Ancillary Work Requests, with the exceptions of Senior Reference Group meetings and Management Committee meeting Travel Costs (which require no further approval); and
- (b) the category limits specified in Table 4 of this Clause 4.2 are not exceeded, except as permitted in Clause 4.3 below.

Table 3 –Reimbursable Costs

Reimbursable Category	Year 1 Upper Limit AUD	Year 2 Upper Limit AUD	Year 3 Upper Limit AUD	TOTAL (AUD)
Long Term Personnel (Clause 5 of Schedule 2)				
Short Term Personnel (Clause 6 of Schedule 2)				
PSG Costs (establishment, maintaining and updating costs) (Clause 7 of Schedule 2)				

Reimbursable Category	Year 1 Upper Limit AUD	Year 2 Upper Limit AUD	Year 3 Upper Limit AUD	TOTAL (AUD)
PSG Member Costs (Clause 8 of Schedule 2)	650,000	750,000	850,000	2,250,000
Other AusAID-Funded African Program Costs (Clause 9 of Schedule 2)	200,000	250,000	300,000	750,000
Travel Costs (for Senior Reference Group and Management Committee members, Long Term Personnel, PSG members, and Other AusAID-funded Africa program staff members) (Clause 11 of Schedule 2)				
Communication Costs including website development and maintenance; promotion; translations and interpreting (Clause 12 of Schedule 2)				
Ad Hoc Facility Activity Costs (Clause 13 of Schedule 2)	300,000	500,000	300,000	900,000
Consultant costs for Ancillary Services (Clause 14 of Schedule 2)	300,000	300,000	300,000	900,000
TOTAL Reimbursables				

- 4.3 When expenditure reaches 80% of the category limits specified in Table 3, the Contractor shall advise AusAID of the remaining commitments and whether the upper limits are likely to be exceeded, and, if so, provide justification.
- 4.4 The Contractor shall maintain a Register of Assets in accordance with Clause 10.4 (Procurement Services) of Part B (Contract), in the format specified in Annex 1 of this Schedule 2.
- 4.5 The Contractor must keep records of evidence of Reimbursable Costs incurred. The Contractor may be required to provide evidence (by way of receipt, tax invoice or otherwise) of actual costs incurred. Such evidence may be requested with any tax invoice submitted to AusAID.
- 4.6 Where appropriate, the exchange rate used when calculating Reimbursable Costs payable shall be the exchange rate actually applied on the day the Cost is incurred.
- 4.7 The Contractor will be reimbursed on the basis of the actual cost incurred for items identified as reimbursable, up to the specified limit, within thirty (30) days of AusAID's receipt of a correctly rendered invoice.
- 5. LONG TERM PERSONNEL COSTS**
- 5.1 AusAID shall reimburse the Contractor up to a maximum amount of **AUDXX** plus GST, if any, to a maximum amount of **AUDXX** for Long Term Personnel costs.
- 5.2 For each Long Term Personnel, AusAID shall reimburse the Contractor at cost and monthly in arrears for actual inputs provided, in accordance with the relevant all-inclusive monthly rates specified in Annex 2 of Schedule 2. The all-inclusive monthly rates shall be:

- (a) based on thirty (30) days per month (when a fee is required to be calculated on a daily pro-rata basis such as at the start or end of this Contract);
 - (b) **inclusive** of:
 - (i) remuneration of all Long Term Personnel;
 - (ii) all personnel-related taxes and levies incurred in Africa, Australia or elsewhere, as applicable, with the exception of GST for Services performed in Australia (refer to Clause 20 (Goods and Services Tax) of Part A of the Standard Contract Conditions);
 - (iii) superannuation levy, if any, as appropriate;
 - (iv) annual leave allowances of up to four (4) weeks per annum, to accrue on a pro rata basis per twelve (12) months continuous engagement on the Facility (noting that leave allowances shall not be carried over from one twelve month period to another and shall be taken in the twelve (12) month period in which they fall due), including any applicable leave costs (such as airfares);
 - (v) Australian public holidays per annum; and
 - (vi) any housing accommodation, utilities and private transport allowance;
- BUT
- (c) **exclusive** of any profit, overheads, administration or management fee or any other mark-up margins on the part of the Contractor.

5.3 In addition to the items listed under Clause 5.2(b) of this Schedule 2, AusAID shall reimburse the Contractor for any mobilisation and demobilisation costs applicable to Long Term Personnel (including airfares) at Cost (subject to reasonableness) and in arrears, up to the maximum amounts specified in Annex 2 of this Schedule 2, on a one-off basis for each Long Term Personnel, if applicable.

5.4 Where Contractor leave entitlements for Long Term Personnel exceed a total of four (4) weeks per twelve (12) month period, a satisfactory justification shall be provided to AusAID of how the Contractor shall ensure, during Specified Personnel absences, the continued quality of the Services. AusAID shall not pay for leave costs in excess of those specified in Clause 5.2(b)(iv) of this Schedule 2.

5.5 If a Long Term Personnel member is absent for any period, aside from the periods of leave permitted in Clause 5.2(b)(iv) of this Schedule 2, the monthly rate payable shall be adjusted in accordance with the following formula:

$$\text{Adjustable Monthly Rate} = \frac{\text{Number of Days Worked} \times \text{Monthly Rate}}{30}$$

30

5.6 If any Long Term Personnel inputs are not supplied in accordance with Annex 2 of this Schedule 2, the Contractor shall, in its monthly claim for reimbursable payments, reduce the amount claimed by the number of days that any Long Term Personnel have not

provided the required inputs. The Contractor shall include with the claim details of the inputs not provided, together with the amount of the reduction in total cost for the relevant Long Term Personnel.

- 5.7 Leave accrued for Long Term Personnel shall be deemed to be taken in the year it falls due and shall not be accumulated or paid out.
- 5.8 Any additional Long Term Personnel agreed to by AusAID shall be negotiated giving consideration to the Long Term Personnel rates specified in Annex 2 of Schedule 2.
- 5.9 If AusAID decides, at its sole and absolute discretion, to exercise its option and extend this Contract, the Long Term Personnel monthly rates for any extension period shall be calculated using the monthly rate specified in Annex 2 of Schedule 2 plus an escalator for the period of the extension provided in the table below.

Table 4: Long Term Personnel Escalators

Year	Overseas Escalator (%)	In Australia Escalator (%)
4		
5		

6. SHORT TERM PERSONNEL COSTS

- 6.1 AusAID shall reimburse the Contractor up to a maximum of **AUDXX**, plus GST, if any, to a maximum amount of **AUDXX** for Short Term Personnel costs.
- 6.2 For each Short Term Personnel (see Annex 3 of this Schedule 2), AusAID shall reimburse the Contractor at cost and monthly in arrears for actual inputs provided, in accordance with the relevant all inclusive daily rate(s) specified in Annex 3 of Schedule 2. The daily rates for Short Term Personnel shall be:
 - (a) based on a five (5) day working week for, in-Australia or at Home-Base inputs and a seven (7) day working week for in-Country inputs;
 - (b) *inclusive* of:
 - (i) remuneration of Short Term Personnel;
 - (ii) all personnel-related taxes and levies incurred in Africa, Australia or elsewhere, as applicable, with the exception of GST for Services performed in Australia (refer to Clause 20 (Goods and Services Tax) of Part A of the Deed (Standard Contract Conditions)); and
 - (iii) superannuation levy, if any, as appropriate;

BUT

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

- 6.3 If AusAID decides, at its sole and absolute discretion, to exercise its option and extend this Contract, the Short Term Personnel rate(s) for any extension period shall be calculated using the daily rate(s) specified in Annex 3 of Schedule 2 plus an escalator for the period of the extension provided in the table below.

Table 5: Short Term Personnel Escalators

Year	Overseas Escalator (%)	In Australia Escalator (%)
4		
5		

7. PSG COSTS

- 7.1 AusAID shall reimburse the Contractor up to a maximum amount of **AUDXX** plus GST, if any, to a maximum amount of **AUDXX** for PSG Costs detailed in Clause 7.2 below.
- 7.2 For the establishment, maintenance and updating of the PSG AusAID shall reimburse the Contractor at cost and monthly in arrears for the following:
- (a) Advertising costs for the recruitment process;
 - (b) Travel costs;
 - (c) IT and communication costs; and
 - (d) Any further cost approved by AusAID.

8. PSG MEMBER COSTS

- 8.1 PSG members shall be jointly selected between AusAID and the Contractor in accordance with this Clause 8 and Clauses 6.1 to 6.10 of Schedule 1.
- 8.2 For each PSG member, AusAID shall pay the Contractor at cost and monthly in arrears for actual inputs provided, in accordance with the relevant rates for PSG members as specified in Annex 4 of this Schedule 2 (see Annex 8 of Schedule 2). ***NB rates are to be inserted via an amendment after the PSG has been formed.***
- 8.3 Regardless of the duration of work undertaken by the PSG members, whether in-Country or at Home-Base, the Contractor shall not be paid in excess of the monthly rate specified in Annex 3 of this Schedule 2 for each PSG member.

9. OTHER AUSAID-FUNDED AFRICAN PROGRAM STAFF COSTS

- 9.1 AusAID shall reimburse the Contractor up to a maximum amount of **AUDXX** plus GST, if any, to a maximum amount of **AUDXX** for Other AusAID-funded African program staff costs. ***NB Total/Additional Amounts to be inserted via amendment and updated as required.***

- 9.2 For each Other AusAID-funded African program staff member, AusAID shall reimburse the Contractor at cost and monthly in arrears for actual inputs provided, in accordance with the relevant all-inclusive monthly rates as agreed with AusAID on a case by case basis. The all-inclusive monthly rates, shall be:
- (a) based on thirty (30) days per month (when a fee is required to be pro rated to a daily basis such as at the start or end of this Contract);
 - (b) ***inclusive*** of:
 - (i) remuneration of all other AusAID-funded African program staff members;
 - (ii) all personnel-related taxes and levies incurred in Africa, Australia or elsewhere, as applicable, with the exception of GST for Services performed in Australia (refer to Clause 20 (Goods and Services Tax) of Part A of the Contract (Standard Contract Conditions));
 - (iii) superannuation levy, if any, as appropriate;
 - (iv) annual leave allowances of up to four (4) weeks per annum, to accrue on a pro rata basis per twelve (12) months continuous engagement on the Facility (noting that leave allowances shall not be carried over from one twelve month period to another and shall be taken in the twelve (12) month period in which they fall due), including any applicable leave costs (such as airfares);
 - (v) Australian public holidays per annum; and
 - (vi) any housing accommodation, utilities and private transport allowance;
- BUT
- (c) ***exclusive*** of any profit, overheads, administration or management fee or any other mark-up margins on the part of the Contractor.

9.3 In addition to the items listed under Clause 9.2(b) of this Schedule 2, AusAID shall reimburse the Contractor for any mobilisation and demobilisation costs applicable to other AusAID-funded African program staff member's remuneration (including airfares) at Cost (subject to reasonableness) and in arrears, up to the maximum amounts agreed with AusAID on a case by case basis.

9.4 Where Contractor leave entitlements for other AusAID-funded African program staff member exceed a total of four (4) weeks per twelve (12) month period, a satisfactory justification shall be provided to AusAID of how the Contractor shall ensure, during Personnel absences, the continued quality of the Services. AusAID shall not pay for leave costs in excess of those specified in Clause 9.2(b)(iv) of this Schedule 2.

9.5 If any other AusAID-funded African program staff member is absent for any period, aside from the periods of leave permitted in Clause 9.2(b)(iv) of this Schedule 2, the monthly rate payable shall be adjusted in accordance with the following formula:

$$\text{Adjustable Monthly Rate} = \frac{\text{Number of Days Worked} \times \text{Monthly Rate}}{30}$$

9.6 Leave accrued for other AusAID-funded African program staff member shall be deemed to be taken in the year it falls due and shall not be accumulated or paid out.

10. LEAVE

10.1 Leave accrued during the assignment for long term advisors shall be deemed to be taken in the year it falls due and cannot be accumulated or paid out.

11. TRAVEL COSTS

11.1 AusAID shall reimburse the Contractor up to a maximum amount of **AUDXX** plus GST, if any, to a maximum amount of **AUDXX** for the following Travel Costs related to Facility management only:

- (a) **Airfares:** reimbursed at economy class for all domestic and inter-African flights unless otherwise agreed to by AusAID. 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;
- (b) **Compulsory Arrival and Departure Taxes, and Travel to and from Airport:** reimbursed at cost;
- (c) **Hotel Accommodation** as per agreed rates with AusAID;
- (d) **Travelling Allowance** as per agreed rates with AusAID;
- (e) **Hire of transport:** for Facility Activity purposes only; and
- (f) **Communication costs:** which are directly Facility Activity related.

12. COMMUNICATION COSTS

12.1 AusAID shall reimburse the Contractor up to a maximum amount of **AUDXX** plus GST, if any, to a maximum amount of **AUDXX** for communication costs.

12.2 Communication costs include all communication costs related to operating the Facility but do not include:

- (a) communication costs under Clause 7.2 of PSG Costs;
- (b) communication costs under Clause 11.1 of Travel Costs; and
- (c) communication costs related to implementing Facility Activities under Clause 9 of Schedule 1 including website development and maintenance; promotion and interpreting and translating costs.

13. AD HOC FACILITY ACTIVITY COSTS

13.1 AusAID shall reimburse the Contractor for Ad Hoc Facility Activity Costs as described in Clause 13.2 below.

- 13.2 Ad Hoc Facility Activity Costs include the following:
- (a) Costs related to Facility Activities not included in an initial budget; and
 - (b) Activities approved but not included in the Quarterly Request Report due to a lack of detail in the proposed budget or due to the fluid/flexible nature of the services required.
14. **CONSULTANT COSTS FOR ANCILLARY SERVICES**
- 14.1 AusAID shall reimburse the Contractor for Consultant Costs for Ancillary Services if the costs have been pre-approved by AusAID in writing.
- 14.2 The Contractor must be selected following the principles of the CPGs and must reflect value for money.
15. **PRE-PAYMENTS**
- 15.1 AusAID has allocated a maximum amount of **AUD45,000,000** for Facility Activities under this Contract.
- 15.2 Based on an approved Quarterly Request Report received from AusAID, the Contractor may submit a Request for Pre-payment for the Pre-payment of Activity Costs (see Clause 10.1 of Schedule 1 and Annex 8 of this Schedule 2) described in the Report when the following conditions are met:
- (a) The specific Costs are known;
 - (b) Payment for the Costs will be made by the Contractor within the quarter to which the Quarterly Request Report refers; and
 - (c) The Contractor has identified a benefit to the Commonwealth.
- 15.3 Annex 8 of this Schedule 2 shows the process in Schematic form.
- 15.4 The Request for Pre-payment from the Contractor will contain at least the following information:
- (a) Contract Number, Invoice Number and Date relating to the Quarterly Request Report;
 - (b) Details of the Services/Goods to be provided within the quarter, including costs and timeframes for delivery and payment; and
 - (c) GST.
- 15.5 All Requests for Pre-payment shall be made to the AusAID Facility Manager.
- 15.6 Within 14 days of the end of the quarter, the Contractor shall provide to AusAID a certified, by the Facility's Financial Manager or the Facility Director, acquittal of the moneys.

16. **CLAIMS FOR PAYMENT**

16.1 The Contractor's tax invoice for the FMF and costs not included in the Quarterly Request Report must be submitted when due pursuant to this **Schedule** in a form identifiable with the Services.

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

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

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

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

16.4 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

16.5 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 – Registry of Assets

Identification Number	Description of Asset	Purchase Reference	Purchase date	Purchase Price	Date & Location Received	Remarks – including disposal action & price received

ANNEX 2 – LONG TERM PERSONNEL RATES

Table 3: Long Term Personnel Fee Rates

Position	Name (or number of personnel)	Inputs (Mths)	Monthly Fees Yr 1 (AUD)	Superannuation	Accommodation, Utilities and Transport	No. of Leave Fares	Leave Airfare (per unit)	Monthly Leave Fare Allowance	Total Monthly Fee Yr 1 (AUD)	Total Monthly Fee Yr 2 (AUD)	Total Monthly Fee Yr 3 (AUD)	Total Average Monthly Cost
<i>In Africa</i> Facility Director	<i>Specify</i>	36	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Insert</i>
<i>In Australia</i> Recruitment/ Logistics Manager	<i>Specify</i>	36	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Insert</i>
<i>In Africa</i> Co-ordination	<i>Specify</i>	36	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Insert</i>
<i>In Africa</i> Asset and Financial Management	<i>Specify</i>	36	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Insert</i>
<i>In Australia</i> Co-ordination and Administration	<i>Specify</i>	36	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Insert</i>
<i>In Africa or Australia</i> Monitoring and Evaluation	<i>Specify</i>	36	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Insert</i>

<i>In Africa or Australia Strategic Planning</i>	<i>Specify</i>	<i>36</i>	<i>Specify</i>	<i>Insert</i>									
<i>In Africa Program Support Group (PSG) Coordinator</i>	<i>Specify</i>	<i>36</i>	<i>Specify</i>	<i>Insert</i>									
<i>Insert additional rows if needed</i>													
MONTHLY TOTALS	<i>N/A</i>	<i>N/A</i>	<i>Insert</i>	<i>Insert</i>									
YEARLY TOTALS			<i>Insert</i>	<i>Insert</i>									

ANNEX 3 – SHORT TERM PERSONNEL RATES

Table 5: Short Term Personnel Fee Rates

Position	Name	Daily Fee Yr 1 (exclusive of accommoda tion and per diems) (AUD)	Daily Fee Yr 2 (exclusive of accommoda tion and per diems) (AUD)	Daily Fee Yr 3 (exclusive of accommoda tion and per diems) (AUD)	Inputs (Days)	Total (AUD)
<i>Tender to specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>

ANNEX 4 – Maximum Mobilisation and Demobilisation Costs for Long Term Personnel

Position	Name	Max Mobilisation Cost (AUD)	Max Demobilisation Cost (AUD)	TOTAL

ANNEX 5 – PSG Member Daily Rates¹

Name	Skills	Rate (AUD) Per Day

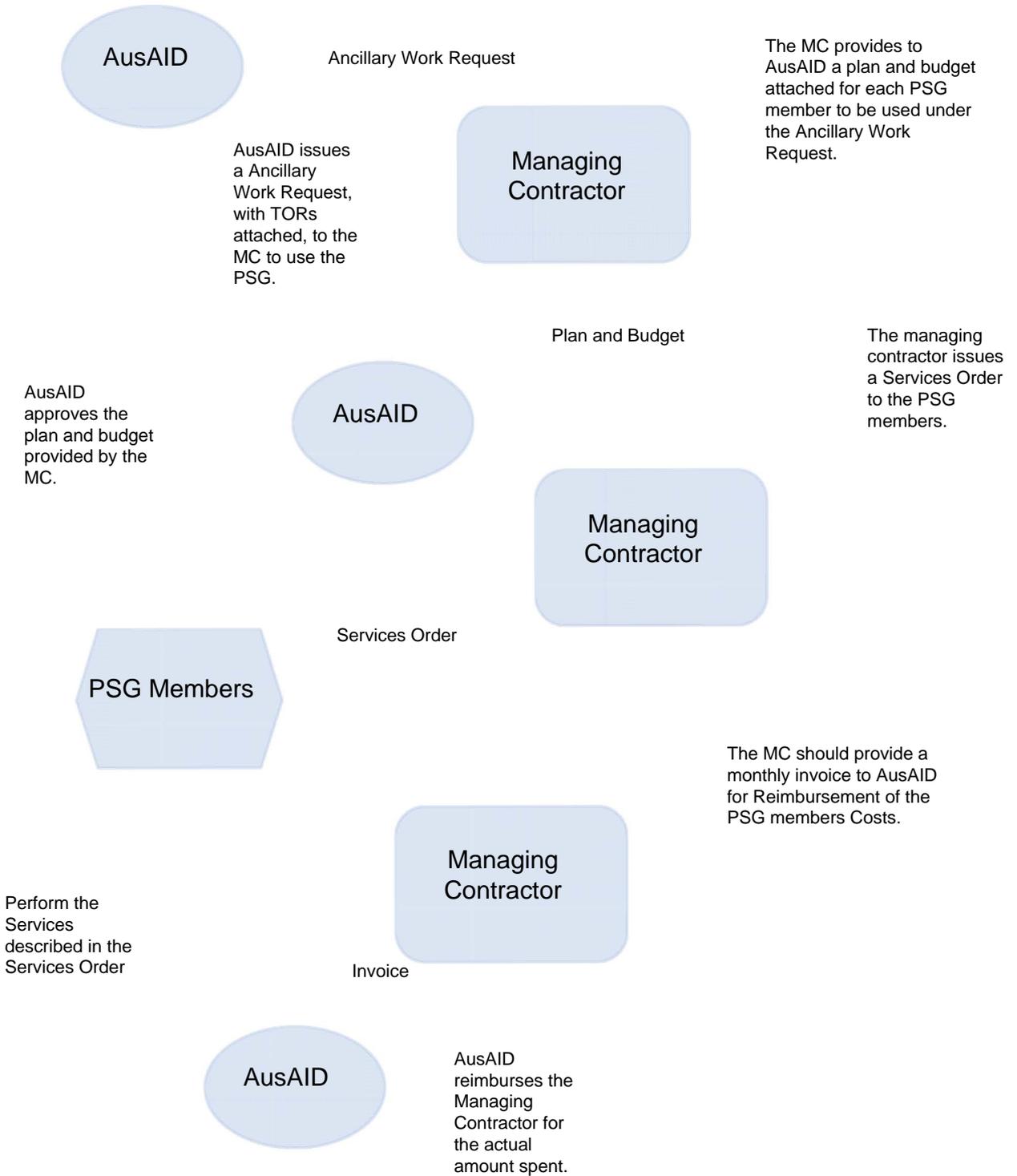
¹ Note: This table will be amended when the PSG is formed.

ANNEX 6 – Other AusAID-Funded African Program Staff Costs²

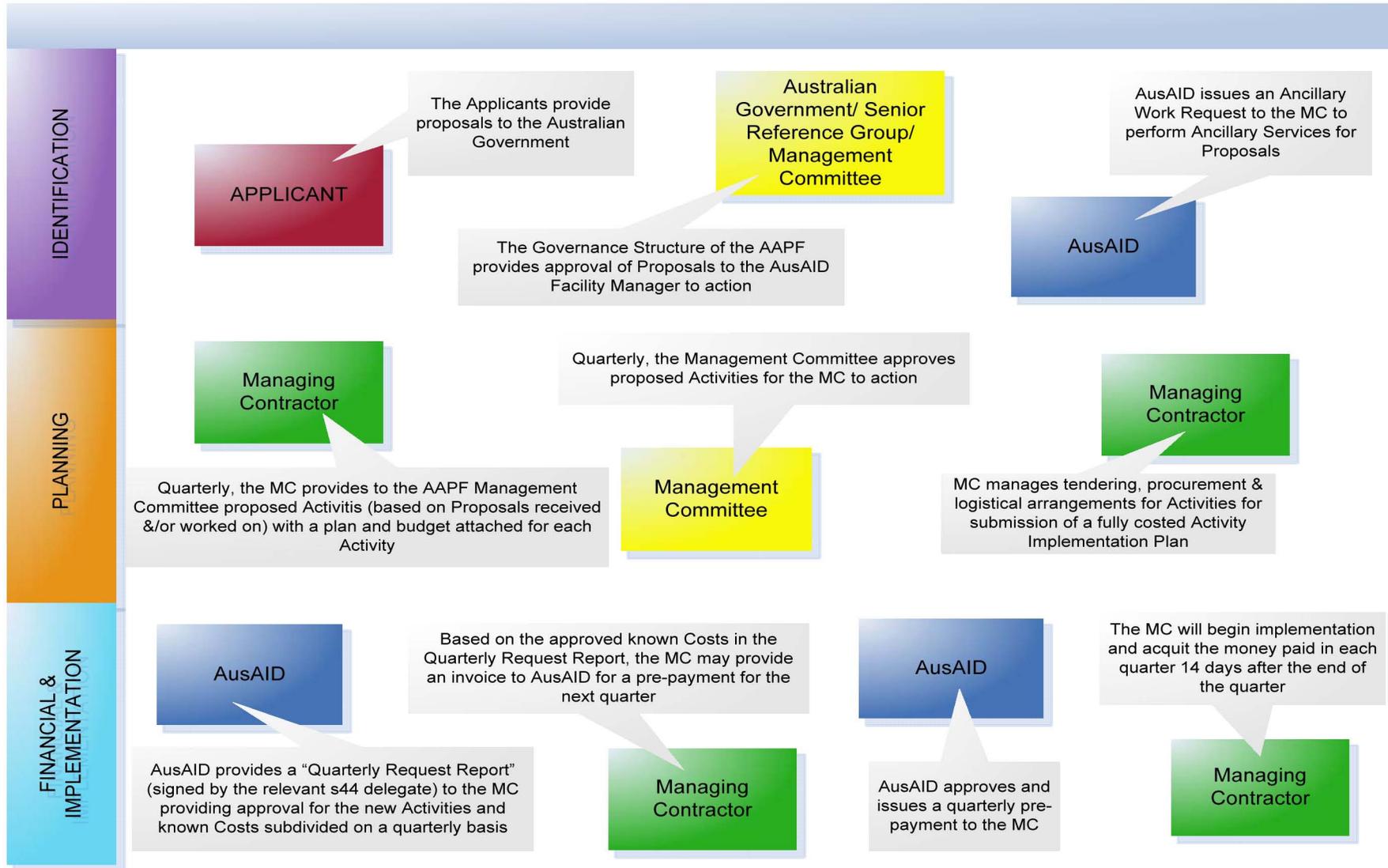
Program Name	Position	Name	Long/Short Term	Rate (AUD) per month	Start Date	End Date

² Note: This table will be amended as the Other AusAID-funded African Programs begin or end.

ANNEX 7 – PSG Workflow and Payment Diagram



ANNEX 8 – AAPF Workflow and Pre-payment Diagram



ANNEX 9 – The Facility Management Fee (FMF)

Table: The Facility Management Fee (FMF)

Description	Year 1 Upper Limit (AUD)	Year 2 Upper Limit (AUD)	Year 3 Upper Limit (AUD)	Total (AUD)
All aspects of profit, including commercial margins for all personnel				
Rent				
All management, operating and administration Costs				
All Ancillary Services Costs				
Facility Management Services Costs				
Reporting and liaison obligation Costs				
Contracting, sub-contracting and procurement Costs				
Taxation				
Allowances for profit, risk, financing, contingencies and escalators.				
Insurance Costs – (insert type)				
<i>Add lines as needed for individual insurance costs.</i>				
Total Management Fee	<i>Insert total cost including all insurances</i>			

SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

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PART 5 – STANDARD TENDER CONDITIONS

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

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

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

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

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

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

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

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

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

Conditions Applying to Electronic Tender Lodgement

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

Conditions Applying to Hard Copy Tender Lodgement

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

2. TENDERER ENQUIRIES

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

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

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

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

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

3. **LATE TENDERS**

Conditions Applying to Tenders Lodged Electronically

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

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

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

Conditions Applying to Tenders Lodged in Hard Copy

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

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

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

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

4. **NON-CONFORMING TENDERS**

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

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

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

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

5. **CLARIFICATION OF TENDERS**

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

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

5.2 Clarifications are provided on the terms of the RFT.

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

6. **AMENDMENT OF THE RFT**

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

7. **ASSESSMENT OF TENDERS**

7.1 Tenders will be assessed on the following basis:

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

to achieve the best value for money outcome.

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

Technical Assessment

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

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

These other factors have not been allocated any specific weightings.

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

Goods and Services Tax

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

Insurances

- 7.11 The financial proposal must be inclusive of all necessary insurances required by the Contract Conditions and for the performance of the Services. Notwithstanding the

requirements of the Contract AusAID strongly recommends that all Tenderers seek advice on and consider arranging professional indemnity insurance as a matter of prudent commercial practice. Where such insurance is arranged, AusAID recommends that it be maintained for the duration, plus a further 3 years, of the full Term of the Contract or earlier termination.

Project Vehicles

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

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

Technical proposal format

- 7.15 The technical proposal must:
- (a) indicate the Tenderer’s nominated contact person and contact details on the cover page;
 - (b) be in a type font of no less than 12 point on A4 paper;

- (c) have left and right page margins of no less than 2.5 cm, and top and bottom page margins of no less than 3 cm, excluding headers, footers and page numbers;
- (d) not have the AusAID logo or any other representation or mark which may indicate that the Tenderer is in any way related to or connected with AusAID; and
- (e) be no longer than the page limit detailed in the Tender Particulars (inclusive of tables, diagrams or graphs), but exclusive of required annexes.

Curricula vitae

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

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

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

“I, *[insert name]*, declare that:

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

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

Referees

7.18 Tenderers must nominate at least two (2) referees who can provide an objective assessment of the quality of relevant and recent work performed by the organisation (if the Annex titled Past Experience Forms is used) or the proposed team member (regarding Tender Schedule B). Referees who can supply character references only are not sufficient.

7.19 Tenderers must ensure that nominated referees do not have an actual or potential conflict of interest when acting as a referee. In particular, Tenderers must ensure that referees:

- (a) are not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with, the Tenderer or a subsidiary organisation of the Tenderer;
- (b) are not included in the Tender as proposed team members; and
- (c) are not AusAID employees.

7.20 Tenderers must further ensure that nominated referees:

- (a) are available to be contacted in the 3 week period after the **Closing Time**; and
- (b) are able to provide comments in English.

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

8. **JOINT VENTURES AND CONSORTIUMS**

8.1 AusAID intends to contract with a single legal entity.

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

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

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

9. **ASSOCIATES AND OTHER SUB-CONTRACTORS**

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

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

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

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

9.3 In addition to Associates, Tenderers are required to include detailed information on other work to be sub-contracted (excluding Specified Personnel) and proposed sub-contractors,

where these are reasonably known at the time of the Tender and have expressed their willingness to be involved in the Project. These details must also be included in a separate annex to **Tender Schedule A** in the form described in **Clause 9.4 below**.

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

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

10. **OWNERSHIP OF TENDERS AND RFT**

10.1 All Tenders become the property of AusAID on lodgement.

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

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

10.4 Copyright in the RFT is reserved to AusAID.

11. **CONFLICT OF INTEREST**

11.1 Tenderers must:

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

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

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

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

12. **TENDERING CONDUCT**

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

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

13. INELIGIBILITY TO TENDER

13.1 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:
- (b) by the Minister for Foreign Affairs under the *Charter of the United Nations Act 1945* and/or listed in regulations made under Division 102 of the *Criminal Code Act*

1995 (Cth). Further information about listed persons and entities is available from the Department of Foreign Affairs and Trade website at www.dfat.gov.au/icat/UNSC_financial_sanctions.html and from <http://www.nationalsecurity.gov.au/>

- (c) by the World Bank on its “Listing of Ineligible Firms” or “Listings of Firms, Letters of Reprimand” posted at www.worldbank.org (the “World Bank List”) and/or any similar list maintained by any other donor of development funding.

17.7 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.
- 3.21 Neither the Tenderer nor any of its employees, agents or contractors had knowledge of the technical proposal or the Tender Price for the Services of any other tenderer prior to the Tenderer submitting its Tender for the Services.
- 3.22 Neither the Tenderer nor any of its employees, agents or contractors disclosed the technical proposal or the Tender Price for the Services submitted by the Tenderer to any other tenderer who submitted a tender for the Services or to any other person or organisation prior to the **Closing Time**.
- 3.23 Neither the Tenderer nor any of its employees, agents or contractors provided information to any other tenderer, person or organisation, to assist another tenderer for the Services to prepare a tender known in the building and construction industry as a "cover bid", whereby the Tenderer was of the opinion or belief that another tenderer did not intend to genuinely compete for the Contract.
- 3.24 The Tenderer is genuinely competing for the Contract and its Tender is not a "cover bid".
- 3.25 Prior to the Tenderer submitting its Tender for the Services neither the Tenderer nor any of its employees, agents or contractors entered into any Contract, agreement, arrangement or

understanding that the successful Tenderer for the Services would pay any money, or would provide any other benefit or other financial advantage, to or for the benefit of any other tenderer who unsuccessfully tendered for the Tender.

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

4. **ADDENDA TO TENDER DOCUMENTS**

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

Number _____ Dated _____ Number _____ Dated _____

Number _____ Dated _____ Number _____ Dated _____

5. **ADDRESS OF TENDERER**

Address or Registered Office of Tenderer

Address for service of notices (NOT PO. BOX)

Telephone Number: Fax Number:

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

insert name and title

Signature

ANNEX C – TENDERER’S SUBMISSION CHECKLIST

This checklist is to be included with all proposals. Tenderers are to confirm that their 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 and four (4) copies been submitted?	
For hard copy lodgement, had one (1) CD with the tenderers submission been submitted?	
Tender Schedule A: Technical Proposal and Annexes	
Is the Technical Proposal within the specified page limit?	
Does the Technical Proposal address each of the selection criteria individually?	
Does the Technical Proposal indicate the Tenderer’s nominated contact person and contact details on the cover page?	
Are the required annexes included and within the specified page limit(s)?	

	Checked
<p>If the Past Experience Annex is used have at least two (2) referees been nominated and has it been confirmed that they are:</p> <ul style="list-style-type: none"> a) not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with the Tenderer or a subsidiary of the Tenderer? b) not included in the Tender as proposed team members? c) not AusAID employees? 	
<p>Are both the Technical Proposal and annexes:</p> <ul style="list-style-type: none"> a) in a type font of no less than 12 point on A4 paper? b) formatted with left and right page margins no less than 2.5cm and top and bottom page margins no less than 3cm, excluding headers, footers and page numbers? c) absent of AusAID's logo or any representation or mark which indicates that the Tenderer is in any way related to or connected with AusAID? 	
For electronic lodgement, has one (1) electronic copy containing all parts and annexes been provided?	
For hard copy lodgement, has one (1) printed original containing all parts and annexes been provided?	
For hard copy lodgement, had one (1) CD with the tenderers submission been submitted?	
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?	

	Checked
Do the CV's include details of recent relevant professional and development work experience, including the duration and extent of inputs?	
Have at least two (2) referees been nominated on each of the CV's and has it been confirmed that they are: <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?	
For hard copy lodgement, had one (1) CD with the tenderers submission been submitted?	
Tender Schedule C: Financial Proposal	
Is the financial proposal in the required format?	
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: <ul style="list-style-type: none"> (a) escalation? (b) necessary insurances required by the Contract Conditions and for the performance of the Services? (c) detailed information on assumptions used in preparing the pricing? 	
For electronic lodgement has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement has one (1) printed original been provided in a separate, sealed envelope?	

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

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

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

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

2. REGISTERED TENDERERS AND NOTICES

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

3. AUSTENDER HELP DESK

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

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

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

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

Virus Checking

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

Tender File Formats, Naming Conventions and Sizes

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

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

Scanned or Imaged Material, including Statutory Declarations

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

5. ELECTRONIC LODGEMENT PROCESS

- 5.1 Before submitting an electronic tender, tenderers must:
- (a) ensure their technology platform meets the minimum requirements identified on AusTender;
 - (b) refer to AusTender’s Help guidance, if required, on uploading tenders;
 - (c) take all steps to ensure that the tender is free from anything that might reasonably affect useability or the security or operations of AusTender and/or AusAID computing environment;
 - (d) ensure that the tender does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by AusAID; and
 - (e) ensure that the tender complies with all file type, format, naming conventions, size limitations or other requirements specified in **Clause 4** above or otherwise advised by AusAID or required by AusTender.
- 5.2 Tenderers must allow sufficient time for tender lodgement, including time that may be required for any problem analysis and resolution prior to the **Closing Time**.
- 5.3 Tenderers should be aware that holding the “Lodge a Response” page in the web browser will not hold the electronic tender box open beyond the **Closing Time**. An error message will be issued if the lodgement process is attempted after the **Closing Time**.
- 5.4 Tenders lodged through AusTender will be deemed to be authorised by the tenderer.
- 5.5 If tenderers have any problem in accessing the AusTender website or uploading a tender they must contact AusAID via the nominated **Contact Person (Clause 1 of Part 1)** or the AusTender Help Desk (**Clause 3.1** above) **prior to the Closing Time**. Failure to do so will exclude a tender from consideration.

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

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

7. **PROOF OF LODGEMENT**

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

8. **AUSTENDER SECURITY**

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

PART 6 - STANDARD CONTRACT CONDITIONS

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

PART B – STANDARD CONTRACT CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"World Bank List" means a list of organisations maintained by the World Bank in its "Listing of Ineligible Firms" or "Listings of Firms, Letters of Reprimand" posted at: <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.ausaid.gov.au/business/contracting.cfm>.

This list is not exhaustive and is provided for information only. The provision of this list does not relieve the Contractor from complying with the obligations contained in **Clause 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.ausaid.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_Disability%20for%20All.pdf;

- (c) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child protection policy*;
- (d) *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.ausaid.gov.au/keyaid/health.cfm>);
- (e) Environment. AusAID is bound by the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:
 - 1. ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;
 - 2. comply with AusAID's Environmental Management System outlined in the *Environmental Management Guide for Australia's Aid Program*, including:
 - a. assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;
 - b. report regularly on any such impacts as required by the Scope of Services; and
 - 3. comply with all relevant environmental laws and regulations of the Partner Country.

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

38. INVESTIGATION BY THE OMBUDSMAN

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

- (b) making Contractor Personnel available to assist the investigator and
- (c) allowing the investigator, at any reasonable time of the day, to enter a place occupied by the Contractor and carry on the investigation at that place.

38.4 If the Ombudsman brings evidence to the notice of AusAID concerning the conduct of the Contractor, or of an employee or subcontractor of the Contractor, the Contractor must, at the cost of the Contractor, take whatever remedial action is required by AusAID or by the Ombudsman to rectify the situation.

38.5 The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including this requirement in relation to subcontracts.

38.6 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID, due to conduct of the Contractor or of an employee or subcontractor, which arise directly or indirectly, as a result of an investigation carried out by the Ombudsman.

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

39. **RESOLUTION OF DISPUTES**

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

39.2 A Party may give the other Party a notice of dispute ("**dispute notice**") in connection with this Contract. Following the giving of a dispute notice, the dispute must be referred to a senior officer of AusAID and a senior officer of the Contractor, who must use reasonable endeavours to resolve the dispute within 20 Business Days or such other period as is agreed by the Parties.

39.3 If the Parties have not been able to resolve the dispute in accordance with **Clause 39.2 above**, then the Parties may agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation.

39.4 In the event that the dispute, controversy or claim has not been resolved within 50 Business Days (or such other period as agreed between the Parties in writing) after the dispute notice has been received in accordance with clause headed 'Notices' in Part B (Standard Contract Conditions) of this Contract, then either Party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.

39.5 Nothing in this clause prevents either Party from seeking urgent injunctive relief.

40. **NOTICES**

40.1 A notice required or permitted to be given by one Party to another under this Contract must be in writing and is treated as having been duly given and received:

- (a) when delivered (if left at that Party's address);

- (b) on the third Business Day after posting (if sent by pre-paid mail); or
- (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

41. MISCELLANEOUS

41.1 Waiver

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

41.2 Liability of Party

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

41.3 Entire agreement

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

41.4 Severance

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

41.5 Assignment

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

41.6 Governing Law and Jurisdiction

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

41.7 Contra Proferentem

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

41.8 **False and Misleading Information**

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

Note to Tenderers: Schedules 1 and 2 are Parts 3 and 4 of the RFT.

SCHEDULE 3 - DEED OF CONFIDENTIALITY

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

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

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

RECITALS

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

THE RECIPIENT DECLARES AS FOLLOWS:

1. INTERPRETATION

In this Deed:

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

- (a) is designated by AusAID as confidential; or
- (b) the Recipient knows or ought to know is confidential,
and includes to the extent that it is confidential:
- (c) information comprised in or relating to any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID;
- (d) information relating to the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;
- (e) the Data; and
- (f) personal information under the *Privacy Act 1988*;

but does not include information which:

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

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

2. NON DISCLOSURE

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

3. RESTRICTION ON USE

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

4. DELIVERY UP OF DOCUMENTS

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

5. SURVIVAL OF OBLIGATIONS

- 5.1 The obligations in this Deed are perpetual.

EXECUTED as a deed poll.

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

.....
Signature of witness

.....
Name of witness
(Print)

SCHEDULE 4 – DEED OF NOVATION AND SUBSTITUTION

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

BETWEEN:

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

AND:

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

AND:

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

WHEREAS:

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

NOW THIS DEED WITNESSES AS FOLLOWS:

1. **DEFINITIONS**

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

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

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

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

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

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

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

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

2. **APPLICATION OF DEED**

2.1 The Contractor and the Subcontractor agree that:

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

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

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

3. **NOVATION**

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

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

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

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

4. **RELEASE**

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

5. **FURTHER ASSURANCES**

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

6. **DISCHARGE**

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

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

7. NOTICES

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

Address of Party

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

AusAID

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

Facsimile: **Desk Fax**

Contractor

To: **Contractor's Name**
Attention:
Address: **Contractor's Address**
Facsimile: **Contractor's Fax**

Subcontractor

To:
Attention:
Address:
Facsimile:

8. **LAWS**

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

9. **WARRANTY**

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

10. **GENERAL**

Counterparts

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

Attorneys

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

Further Assurance

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

Assignment

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

EXECUTED as a Deed.

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

.....
Signature

.....
Signature of witness

.....
Name of witness
(*Print*)

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

.....

Director
Name of Director
(*Print*)

.....

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

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

.....

Director
Name of Director
(*Print*)

.....

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

SCHEDULE 5 – PERFORMANCE GUARANTEE

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

BETWEEN COMMONWEALTH OF AUSTRALIA represented by the Australian Agency for International Development (‘**AusAID**’)

AND [_____] ABN [_____]

(‘**Guarantor**’)

RECITALS

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

AGREEMENT

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

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

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

In the presence of:

..... Name and Position
Signature of witness (*Print*)

.....
Name of witness (print)

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

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

Please attach the appropriate EFT Direct Credit Payment Form here

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