



Australian Government

AusAID

9 February 2008

Request for Tender

Reducing the Cost of Remittances to the Pacific

REQUEST FOR TENDER

Reducing the Cost of Remittances to the Pacific

AusAID is seeking proposals from organisations interested in providing services for the ‘Reducing the Cost of Remittances to the Pacific’ project (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 supersede 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 1.14, Part 5) 2.00 pm (Canberra time) Wednesday 26 March 2008

Mode of submission:

(Clause 1.1, Part 5)

Either:

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

or

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

Electronic Tender Lodgement

Address:

(Clause 1.11, Part 5)

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

Canberra Tender Box Address:

(Clause 1.14, Part 5)

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

File Format for Electronic Tenders:

(Clause 4.3, Annex C to Part 5)

PDF (Portable Document Format)

Number of Copies of Tender:

(Clause 1.6, Part 5)

For electronic tender lodgement

Technical Proposal: One (1) electronic copy.

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

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

For hard copy tender lodgement

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

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

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

CD: In the package, Tenderers must provide one (1) CD which contains the Tenderer's response to each Schedule in a separate file.

Endorsement of hard copy Tenders:

(Clause 1.16, Part 5)

“Tender for the ‘Reducing the Cost of Remittances to the Pacific’ project”

Tender Validity Period:

(Clause 1.8, Part 5)

180 days

Contact Person:

(Clause 2.1, Part 5)

Rebecca Clack

Email address: RemittancesWebsite@ausaid.gov.au

Page limits:

(Clauses 7.15 and 7.17, Part 5)

Technical proposal: 10 pages plus annexes

Curriculum Vitae: 2 pages each

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

2. CONTRACT SEQUENCING

- 2.1 Tenderers should note Clause 1 of the Project Specific Contract Conditions (Part 2, Section 1 of this RFT). The initial contract will be for a period of 4 months – sufficient for the ‘Design Phase’ of the contract. The ‘Design Phase’ shall involve implementation of **Clauses 3.7 - 3.11 and 3.13 (k)(a) and (k)(b)** of the Scope of Services (Part 3, Section 1 of this RFT).
- 2.2 Subject to AusAID’s acceptance of the Website design and a decision to proceed with the project, the contract will be extended for a further 32 months for implementation of the remainder of the Scope of Services – the ‘Implementation Phase’.
- 2.3 Following the ‘Implementation Phase’ AusAID may extend the term of the Contract for a period of up to two years, for ongoing monitoring and maintenance. The exact Services required for this ‘Option Period’ and the Fees to be paid will be subject to negotiation and agreement, but it is AusAID’s expectation that these will be based substantially on those in the initial contract.

3. ALTERNATIVE TENDERS

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

4. SCORE WEIGHTINGS

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

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

- 4.2 Following consideration of the technical merit of Tenders, a like-for-like price assessment will be undertaken by AusAID of the proposals that are assessed by the Technical Assessment Panel (TAP) as technically suitable.
- 4.3 The like-for-like price assessment will represent **20%** of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

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

- 4.4 Following the final assessment and calculation of the final aggregate scores, confirmation of the Tenderer's financial capacity to meet its 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.

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

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

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

5.2 **Selection Criteria**

(A) THE ORGANISATION – 15%

Quality of the proposed management and administrative support arrangements. This includes the qualifications and experience of personnel involved in management, administrative and financial support for the project, the appropriateness of their nominated roles and responsibilities and their time allocated to the Project.

Tenderers are required to nominate a Client Manager who will be responsible for the coordination and overall implementation of this project, and will be the primary point of call for AusAID. A CV for the proposed Client Manager is to be included in accordance with Tender Schedule B.

(B) APPROACH – 40%

Taking into account the draft Scope of Services at Part 3 of the RFT, the Tenderer should:

- (a) outline its proposed approach to project implementation;
- (b) indicate its demonstrated understanding of the issues, opportunities and constraints of the delivery of internet-based information and knowledge, including a description of the way that community involvement and feedback will be incorporated into the project; and
- (c) prepare a draft Work Plan, to be presented as ‘Annex 2’ in accordance with **Clause 5.3** below. Tenderers should note that commencement dates included in this RFT documentation are indicative only and may be varied by AusAID.

(C) PERSONNEL – 45% (broken down as follows)

Tenderers are required to nominate a team of ‘Key Personnel’ who collectively address the requirements of the project, to be assessed against the following criteria:

(i) Research capabilities and capacity to monitor and interpret economic data 15%

Demonstrated ability of the Key Personnel to undertake the research, both initial and ongoing, and the monitoring and interpretation of financial data that will be required to support the project.

(ii) **Content management, quality control and maintenance of websites** **20%**

Demonstrated experience of the Key Personnel in website production, including quality control of content and website performance, management and maintenance.

(iii) **Ability to work with diaspora communities** **10%**

Demonstrated experience of the Key Personnel in working with diaspora communities, including sensitivity to language, gender and educational barriers to the participation of communities in financial markets. Demonstrated ability to tailor information to the varying needs of diaspora communities. Tenderers should indicate the expected level of interaction with diaspora communities.

5.3 Annexes

Tenderers should provide the following annexes:

i. Annex 1 – Past Experience Form

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

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

PAST EXPERIENCE FORM

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

ii. Annex 2 – Work Plan for Year One

A detailed Work Plan showing dependencies e.g. a Gantt Chart or Critical Path Method identifying resources, dependencies and milestones. Dates referring to commencement or mobilisation are indicative only and may be varied by AusAID. This annex must be presented on A3 paper (one page only).

iii. Annex 3 – Team Member Inputs (Bar Chart)

A bar chart showing the proposed inputs per team member for this project and total person months or person days for the duration of the project (denoting a person as “part-time” is not acceptable). This chart must be presented on A3 paper.

iv. Annex 4 – Risk Management Matrix

A Risk Management Matrix (one A3 page) that must identify:

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

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

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

Clause 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.

vi. Annex 6 – Commonwealth Government Policies Compliance

Clause 17, Part 5 may require Tenderers to provide information in response to Commonwealth Government policies.

6. TENDER SCHEDULE B – KEY PERSONNEL

- 6.1 Key Personnel are those personnel proposed by the Tenderer to have a key role in implementing the project, in accordance with the Tenderer’s proposed approach. The composition of ‘Key Personnel’ is at the discretion of the Tenderer, although a designated Client Manager must be included.
- 6.2 Tender Schedule B must contain all information on the proposed Key Personnel in the following format:
- (a) a list of proposed team members in the table format provided following **Clause 6.6** below (in landscape) and in accordance with the instructions included in **Clauses 6.3 and 6.4** below;
 - (b) a skills matrix providing a summary illustration of the skills of the proposed Project team as a whole (broken down by individual team members) in the key skill areas required for the Project’s implementation; and
 - (c) a curriculum vitae for each proposed team member that conforms with the requirements outlined in **Clauses 7.16 and 7.17, Part 5**.
- 6.3 Tenderers must provide the information in the Referees column of the Key Personnel table in accordance with **Clauses 7.18 - 7.21, Part 5**.
- 6.4 The Commitments column in the Key Personnel table must include details of proposed team members’ commitments to other projects (both AusAID and others) for the period of the Project. In addition to existing commitments, tenderers must detail potential commitments. Potential commitments include nominations in any contemporaneous AusAID or other tenders. Where a proposed team member has an existing commitment to another AusAID project, Tenderers must also detail the duration of the position in the other AusAID project as reflected in the AusAID contract for that project.
- 6.5 Tenderers are reminded of the requirements of **Clause 8, Part 6** particularly in relation to the availability of specified personnel. AusAID will consider as materially inaccurate, and will therefore reject, any Tender which does not disclose the fact that a proposed team member has an existing and continuing commitment to another AusAID project.
- 6.6 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.

KEY PERSONNEL

Position	Name	Total Inputs in person months		Referee Contact Details		Commitments
		In Aust	O/s	#1	#2	

7. TENDER SCHEDULE C – FINANCIAL PROPOSAL

7.1 Tender Schedule C – Financial Proposal must contain the information required and in the format detailed in this **Clause 7**.

7.2 It must:

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

7.3 Information provided in the tables will be used for any financial assessment and for the like-for-like price assessment.

7.4 Personnel Costs – Design Phase

Tenderers are to provide a Schedule of Rates, disaggregating the total cost of their nominated Key Personnel for the Design Phase (see **Clause 2**, Part 1 of Section 1), in the format provided at **Table 1** below. The total of this table (A) will be used for the purposes of the like-for-like price assessment.

Table 1: Key Personnel Costs - Design

Position	Name	Total inputs in months	Base monthly rate (A\$)	Total (A\$)
Sub Total (A):				

7.5 Project Management and Equipment Costs – Design Phase

Tenderers are to provide a breakdown of all project management, equipment and any other costs necessary for performance of the services associated with the Design Phase (see **Clause 2**, Part 1 of Section 1). These costs are to be clearly disaggregated, and be presented in the format provided in **Table 2** below. This is to include any administrative personnel costs not factored into the calculation of 'Key Personnel' costs. The total of this table (B) will be used for the purposes of the like-for-like price assessment.

Table 2: Project Management and Equipment Costs - Design

Item	Quantity (if applicable)	Total inputs in months (if applicable)	Base rate (A\$) (if applicable)	Total (A\$)
Sub Total (B):				

7.6 Personnel Costs – Implementation Phase

Tenderers are to provide a Schedule of Rates, disaggregating the total cost of their nominated Key Personnel for the Implementation Phase (see **Clause 2**, Part 1, Section 1), in the format provided at **Table 3** below. The total of this table (C) will be used for the purposes of the like-for-like price assessment.

Table 3: Key Personnel Costs - Implementation

Position	Name	Total inputs in months	Base monthly rate (A\$)	Total (A\$)
Sub Total (C):				

7.7 Project Management and Equipment Costs – Implementation Phase

Tenderers are to provide a breakdown of all project management, equipment and any other costs necessary for performance of the services associated with implementation (see **Clause 2**, Part 1 of Section 1). These costs are to be clearly disaggregated, and be presented in the format provided in **Table 4** below. This is to include any administrative personnel costs not factored into the calculation of ‘Key Personnel’ costs. The total of this table (D) will be used for the purposes of the like-for-like price assessment.

Table 2: Project Management and Equipment Costs - Design

Item	Quantity (if applicable)	Total inputs in months (if applicable)	Base rate (A\$) (if applicable)	Total (A\$)
Sub Total (D):				

7.8 Total Tender Amount

Tenderers are to provide the total cost for implementing their tender proposal. This total tender amount will be the amount upon which a like-for-like price assessment will be conducted, and should be presented in the format provided at **Table 3** below:

Table 3: Total Tender Amount

Total for Design Phase (Sub Total A + Sub Total B):	
Total for Implementation Phase (Sub Total C + Sub Total D):	
Total (E) – Total Tender Amount:	

7.9 Contract Milestone Payments

Tenderers are advised that it is AusAID's intention to enter into a fixed-price 100% outputs-based contract with the successful tenderer, with the Total Tender Amount allocated against the milestones provided at Table 4 below. Tenderers are to include as part of Tender Schedule 3 their proposed payment allocation against these milestones, reasonably reflecting the cost of achieving each milestone. This should be presented in the format provided at Table 4 below. However, AusAID reserves the right to negotiate milestone payment amounts with the preferred tenderer.

Tenderers should note that AusAID will initially contract only for the delivery of services associated with Milestone 1, in accordance with **Clause 2**, Part 1 of Section 1 of this RFT.

Table 4: Milestone Payments

Milestone No.	Schedule 1 Reference*	Milestone Description	Verifiable Indicators	Due Date	Amount \$
1	Clauses 3.8, 3.13(k)(a),(k)(b)	Inception Report and Functional Specifications Report	Inception Report and Functional Specifications Report accepted in writing by AusAID	To be completed by the end of month 3 from project commencement	
2	Clauses 3.2, 3.4, 3.7, 3.8	Website built and Operational	Contractor advises AusAID in writing that the website is ready to go live. AusAID has used the site and is satisfied that it meets the requirements of Clauses 3.2, 3.4, 3.7, 3.8. Accepted in writing by AusAID	To be completed by the end of month 6 from project commencement	
3	Clause 3.13(k)(g)	First Annual Report	Annual Report accepted in writing by AusAID	To be completed by the end of month 12 from project commencement	

4	Clause 3.13(k)(g)	Second Annual Report	Annual Report accepted in writing by AusAID	To be completed by the end of month 24 from project commencement	
5	Clauses 3.13(k)(g),(k)(h)	Third Annual and Completion Report	Annual Report and Completion Report accepted in writing by AusAID	To be completed by month 36 from project commencement	

**This reference to Schedule 1 is to Schedule 1 (Scope of Services) of the final contract, which is contained at Part 3 of this RFT.*

8. TENDER SCHEDULE D – FINANCIAL ASSESSMENT

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

Option 1

This option is mandatory for:

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

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

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

each prepared on an accrual accounting basis.

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

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

Option 2

This option may be considered by a Tenderer where:

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

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

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

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

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

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

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

The financial information of Tenderers will be treated confidentially and returned on completion of the tender process. Tenderers financial statements will not be provided to TAP members.

PART 2 – PROJECT SPECIFIC CONTRACT CONDITIONS

Note to Tenderers: The following Project Specific Contract Conditions will appear as Part B of the contract with the successful Tenderer.

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

27. TERM OF THE CONTRACT

- 27.1 The term of this Contract is deemed to have begun on the **insert Start Date** or the date the Contract is executed by both Parties if this is earlier and continues until **insert End Date (Start Date plus 4 months)** or earlier notice of termination under the Contract. The Contract is initially valid only for the 'Design Phase', comprising the services articulated at **Clauses 3.7 - 3.11 and 3.13 (k)(a) and (k)(b)** of Schedule 1 of this Contract and payable against Milestone 1 of Schedule 2.
- 27.2 Subject to AusAID's acceptance of the Functional Specification Report, and a decision by AusAID to proceed, a Variation Order shall be issued to the Contractor triggering commencement of the 'Implementation Phase', comprising the remainder of the services, payable against Milestones 2 - 5 of Schedule 2. The Variation Order shall extend the term of the contract by 32 months.
- 27.3 AusAID, at its sole discretion, may subsequently extend the term of the Contract for a further period of up to two (2) years (the "**Option Period**"). AusAID and the Contractor shall negotiate and agree the Services and Fees for the Option Period, based substantially on those contained in this contract. Subject to agreement of these, AusAID shall exercise the option to extend by issuing a Variation Order to the Contractor prior to end of the Contract term. 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 27.3** shall no longer apply. The decision to extend the Contract shall be made at AusAID's sole and absolute discretion.

28. NOTICES

- 28.1 For the purposes of Standard Conditions clause headed **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: Pacific Growth Section
Attention: Contact Person

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

Street Address: 255 London Cct
CANBERRA ACT

Facsimile: Desk Fax

Contractor

To: Contractor's Name
Attention: Contact Person
Postal Address:

Street Address: Contractor's Street Address
Facsimile: Contractor's Fax

29. MEETINGS

29.1 The Contractor must attend meetings in Canberra at times determined by AusAID, 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 variations proposed to the Project including in relation to timing, whether or not any such variations have been agreed to by AusAID;
- (e) Contract performance matters;
- (f) the accuracy of invoices; and
- (g) such other matters in relation to which either Party provides 14 days' notice in writing to the other Party.

29.2 AusAID may require a briefing in Canberra prior to implementation involving any and all of the Project team members.

29.3 AusAID agrees that the costs of any meetings under this clause will be met as a variation/amendment to this contract and will be paid at a rate negotiated by AusAID and the Contractor in advance and in writing. AusAID may determine the length of the meetings required, but AusAID expects that such meetings shall be for a maximum of 8 hours (excluding meal breaks).

30. CONTRACTOR PERSONNEL

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

30.2 The Contractor must use their 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*.

30.3 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.

31. **SPECIFIED PERSONNEL**

- 31.1 For day to day communication between AusAID and the Contractor, the Contractor must provide a Client Manager. The Contractor will notify AusAID of the name of the Client Manager and contact details. The Contractor must notify AusAID immediately of any change in the Client Manager.
- 31.2 The Contractor must use its best endeavours to ensure that person nominated as Client Manager:
- (a) is of good fame and character;
 - (b) is properly qualified for the tasks they are to perform; and
 - (c) act in a fit and proper manner while they are carrying out work or performing duties under the Contract.
- 31.3 The Contractor must use its best endeavours to secure the availability of Client Manager for the term of the Contract.

32. **INSURANCES**

- 32.1 In addition to the requirements of Standard Conditions clause headed **Insurances**, the Contractor must arrange and maintain professional indemnity insurance. The Contractor's professional indemnity policy must respond to claims arising under the *Trade Practices Act (Cth)* 1974, in regard to this Contract. The insurance may be obtained on an annual basis if necessary, but is to be maintained for not less than three (3) years after the performance of the Services under this Contract.

PART 3 – SCOPE OF SERVICES

Reducing the Cost of Remittances to the Pacific

Note to Tenderers: This Part will form Schedule 1 (Scope of Services) of the contract with the successful Tenderer.

1. BACKGROUND

- 1.1 Official remittances are worth at least US\$400 million to the Pacific. Remittances have grown steadily in most of the Pacific, and are accounting for an increasingly large part of countries' GDP. The World Bank attributes the doubling of remittance flows over the past 5 years (worldwide) to several factors, including reductions in remittance costs and a broadening of networks in the remittance industry that allow remittances to reach more customers in developing countries.
- 1.2 AusAID is looking to improve the return to the Pacific from remittances by helping to lower the cost of remittance through a simple and low-cost initiative, a website that allows a remitter to compare all available remittance services to their destination, particularly by cost. AusAID's objective is to create greater transparency in remittance costs to stimulate competition and better service provision in the remittance sector.
- 1.3 The creation of a dedicated website that directly compares the different services on offer and provides transparent, easy to understand information on remittance products available to migrants living and working in Australia and New Zealand should not only help remitters choose a service that best meets their needs; it will also promote healthy competition between money transfer providers that will ultimately assist in reducing money transfer fees and improve the range of services on offer. It will encourage and promote the use of formal channels for remittances, and will be used as a tool to increase trust in and awareness of financial products and services, such as loans, deposit and savings accounts, thereby assisting in reducing financial exclusion.
- 1.4 Migrants living in Australia and New Zealand, remittance receivers, initially in Samoa, Fiji, Vanuatu, Papua New Guinea, Kiribati, Tonga, Tuvalu and the Solomon Islands, and their economies should all receive benefits from this program.
- 1.5 AusAID will approach this initiative in partnership with NZAID and as a contribution to a broader World Bank project to improve financial literacy and use of financial services in Pacific populations.
- 1.6 This project will extend for three years, with a substantive review in Year 3. AusAID may exercise its option to extend the program if it is proving successful in reducing the cost of remittances.

Key Documents

- 1.7 The following key document relates to this initiative:
 - (a) www.sendmoneyhome.org – see the 'About' section and general operation of the website.

Strategic Goal

- 1.8 The Strategic Goal is to increase the effectiveness of remittances from Australia and New Zealand to Pacific Island countries by providing better information to the users of available remittance services and by encouraging competition among service providers, thereby lowering remittance costs.

Goal of these Services

- 1.9 The Goal is to provide and deliver information to users of remittance services through the creation of a public information website.

Objectives

- 1.10 The objectives of this website are to:
- (a) Raise awareness among the designated diaspora communities (those Pacific islanders living in Australia and New Zealand) about the range of remittance services on offer;
 - (b) Provide information about costs, time taken to send money, security issues, rural services availability etc;
 - (c) Directly compare the services on offer with the aim of stimulating competition amongst service providers, and thereby assisting in the reduction of the costs to senders of money;
 - (d) Improve transparency and dialogue between consumers and financial service providers; and
 - (e) Promote financial inclusion by encouraging the use of the formal financial sector to remit money.

Focus Groups

- 1.11 Information will be targeting the following focus groups:
- (a) Members of the communities of Tonga, Samoa, Fiji, Vanuatu, Kiribati, Papua New Guinea, Tuvalu and Solomon Islands who live in Australia and New Zealand and use remittance services to transfer money overseas;
 - (b) Family, friends and other groups in the recipient countries;
 - (c) Financial service providers, large and small, in Australia, New Zealand and recipient countries;
 - (d) Australian and New Zealand based ethnic media; and
 - (e) National media in Australia, New Zealand and recipient countries.

2. COMMENCEMENT AND COMPLETION OF SERVICES

- 2.1 The Contractor shall commence the Services on XXX 2008 and complete the Services no later than XXX 2008 (four months later).

3. SERVICES

- 3.1 The Contractor shall perform the following Services in accordance with the terms and conditions of this Contract.

Overview

- 3.2 The Contractor shall build a website that is accessible to Pacific Island communities in Australia and New Zealand interested in remitting money home. The website will allow the remitter to compare all the possible remittance services available in the market to send money home. The website will allow users to compare the cost, security, time taken, convenience and any other issues relevant to the transfer of funds. The remitter will also be able to access more general educational articles on financial services from the site. The contractor will provide and promote this site to the target communities, market test the information it provides, and report to AusAID on the usage of the site, as directed by this contract.

Components of the Services

- 3.3 The following Components are required:

(a) **Business Process Development**, which includes:

- i. Compiling a comprehensive database of remittance service providers and the transaction costs charged for their services to the nominated Pacific Island countries;
- ii. Writing and updating all website content;
- iii. Providing a business process to update information monthly and to ensure the accuracy of information displayed through the use of random spot checks and tests of remittance services to ensure reasonable accuracy and reliability of the information obtained from the website;
- iv. The provision of outreach services at the request of AusAID, which may include information dissemination, promotional work or other activities mutually agreed in advance and in writing by the Contractor and AusAID;
- v. Reporting and monitoring the costs charged by remittance service providers and the measurement of these costs against a baseline; and
- vi. Reporting and analysis of statistics for site use.

(b) **Website Development**, which includes:

- i. Development of a detailed functional specifications for key website services including example screen shots;
- ii. Development and testing of the website; and
- iii. Ongoing maintenance and management of the website.

(c) **Other requirements** include:

- i. Full cooperation with an independent monitoring and evaluation study, to be conducted by AusAID within six months of the contract's completion.
- ii. The provision of additional services, as agreed to in writing by AusAID and the Contractor, which are not listed in this contract. These services will be undertaken as a variation/amendment to this contract and will be paid at a rate negotiated by AusAID and the Contractor in advance and in writing.

See **Clause 3.13** and **Clause 6** for a description of all reporting requirements, including the documents listed above.

Business Process Development

3.4 The Contractor will be responsible for identifying information for all of the money transfer services available for any one particular corridor covered within the study by directly contacting each provider. In addition, any further information discovered during this research period will be included in the development of the website's content should it be deemed useful to senders of money. The key to providing useful information to senders of money is to demonstrate in a clear, simple and unambiguous way, transparent, comparative, information on the following:

- (a) options for remitting money;
- (b) costs incurred when remitting money;
- (c) total funds to be received at the destination for a given remittance ;
- (d) current exchange rates offered;
- (e) documents/identification needed for the remittance to be sent;
- (f) documents/identification needed for collection of the remittance;
- (g) time taken for remitted funds to arrive at the destination;
- (h) where remittances can be collected;
- (i) bank account requirements for the remitter and the recipient;
- (j) any costs incurred by the person receiving remittances;
- (k) protection/forms of confirmation in place to ensure that money is received;
- (l) complaints mechanisms;
- (m) location, hours of operation and other relevant services provided by remittance service providers.

3.5 The key conclusions and recommendations of this initial research should be summarised in the inception report, see **Clause 3.13** below.

3.6 The Contractor shall be responsible for:

- (a) The supply and verification of all data on the website, including costs and exchange rates for all services, discovered during the first phase of research;
- (b) The development of a baseline cost of sending remittances from these services, and subsequent 6-monthly monitoring against this baseline. Baseline monitoring reports by the Contractor should inform AusAID of the results of ongoing research and monitoring exercises and detail any changes made to the website as a result;
- (c) Data collection and/or verification on a monthly basis through direct communication with remittance service providers;
- (d) Conducting spot-checks via the establishment of accounts and confirmation of costs by physically transferring money between Australia and New Zealand and the destination Pacific island countries. All organisations listed on the website will be spot-checked to at least one destination at least once per year;
- (e) The discovery of new services and entrants to the market. These entrants will be added to the database as and when they are discovered and included in future checks and monitoring. These new entrants do not, however, need to be included in the monitoring baseline established at the commencement of the project;
- (f) The development of information flyers providing country- and community-specific information to diaspora communities. They will be distributed regularly (once every 3 months) to selected community organisations (no more than 50) to build awareness about the website and its services; and
- (g) The development of specific information for provision to diaspora communities at the request of AusAID and as agreed upon in advance and in writing by AusAID and the Contractor.

Website Development

- 3.7 The Contractor shall be responsible for the domain registration, creation, hosting and maintenance of a dedicated web site, with the address: www.sendmoneypacific.org, that will employ suitable technologies such as HTML, Flash, PHP, JavaScript and MySQL.
- 3.8 The website will be compliant with WCAG 2.0 Accessibility Guidelines (see <http://www.w3.org/WAI/intro/wcag20.php>).
- 3.9 The website shall include:
- (a) An interactive map (Australia, NZ and the Pacific Islands) where users can find information about their selected remittance corridor by choosing where they are sending money from and to;
 - (b) Comparative results page dynamically generated from the above map;
 - (c) Country- and community-specific and Australia and New Zealand advice pages;
 - (d) News;

- (e) Information to assist users when they encounter issues with their remittance service providers;
- (f) A simple currency converter;
- (g) Links to websites of diaspora community groups and other relevant organisations;
- (h) Frequently asked questions;
- (i) Subscription-based monthly email updates that contain news about financial literacy events for diaspora groups and new remittance service providers added to the website;
- (j) Downloadable financial literacy educational material (with content provided by AusAID); and
- (k) Other pertinent information and background reading as agreed upon by the Contractor and AusAID.

- 3.10 To ensure that information is available when remitters have no access to the internet, each community-specific page will include basic community-specific information leaflets that can be downloaded in PDF format. These documents will be written in English. The Contractor shall be responsible for developing these leaflets, with content approved by AusAID before publication. AusAID shall provide comments on these leaflets within 10 working days or the leaflets will be deemed to have been approved.
- 3.11 Website creation is expected to occur over several phases and will include the submission to AusAID of key documents including a detailed concept document and a detailed functional specification for the website. This document must be provided to AusAID for approval. AusAID commits to providing comments on these documents within 10 working days or the documents will be deemed to have been approved.
- 3.12 The Contractor shall provide a report containing an analysis of website usage and statistics which should include the following information: the country in which users are based, which country destinations attract the most enquiries; monthly website usage statistics including unique visitors, repeat visitors, most popular downloads and frequency of download of all PDF documents on the site.

Reporting and Review Summary

- 3.13 The Contractor will provide the following reports to AusAID:
- (a) Inception Report: Provided as an electronic report compatible with Microsoft Office. The inception report will provide a detailed work plan which addresses the timing and development of the website, the way business processes will be implemented, and a monitoring and evaluation plan. It will also contain a summary of information collected during the initial phase of research as detailed in **Clause 3.4**. It should report on the contractor's progress and successes and identify any concerns or problems that the contractor has identified. It should include an annual-type plan for the next 9 months.

- (b) Functional Specifications Report: Provided as an electronic report compatible with Microsoft Office, addressing how the description of requirements at **Clause 3.8** will be met.
- (c) Baseline Monitoring Report: Provided as an electronic report compatible with Microsoft Office. See **Clauses 3.6(b)** and **5.2** for a description of requirements.
- (d) Web Analysis Report: Provided as an electronic report compatible with Microsoft Office. This report will be provided to AusAID as per the timetable at **Clause 3.14**. See **Clause 3.9** for a description of requirements.
- (e) Brief Exception Reports: Immediately upon identification of any unforeseen problems arising in the Project that may impact adversely on the achievement of the Project objectives. One electronic copy of an Exception Report should be sent to the AusAID Activity Manager. Where possible these Exception Reports should include a proposed solution or strategy.
- (f) Focus Survey: Provided as an electronic report compatible with Microsoft Office. The Contractor will conduct a focus group study of users containing at least 10 members of diaspora communities in both Australia and New Zealand. The Contractor will report to AusAID about users' experience using the website; how they discovered the website and their thoughts on its usefulness, 6 and 18 months after website launch. The outcome for the focus group report is to determine what services provide the greatest benefit to diaspora communities and to determine ways to improve the services on offer. The report should directly address these outcomes. The Focus Survey will identify differences in the use of the site by men and women, and address ways that the service can better cater to the differing needs of each.
- (g) Annual Report: Provided as an electronic report compatible with Microsoft Office and one signed hardcopy. The annual report will provide an overview of important statistics and analysis, baseline monitoring information, an overview of activities undertaken in the previous 12 months and plans for the coming year. Annual reports will include details of spot-checks, including when transactions took place and whether results deviated from those anticipated. It should also address outcomes of evaluation undertaken each year and plans for evaluation in the next year. Annual payments will be made within 30 days of AusAID's acceptance of this report.
- (h) Completion Report: Provided as an electronic report compatible with Microsoft Office and one signed hardcopy. Content of the completion component of the report will be directed by the AusAID activity manager and agreed to in writing and in advance of the provision of the report to AusAID. It is the responsibility of the Contractor to ensure that this agreement is made in advance of the submission date. The report should focus on outcomes of evaluation undertaken over the duration of the Project.

3.14 The following table outlines the report and review schedule:

Report	Due
Inception Report, including plan for the subsequent 9 months.	3 months from contract signature
Functional Specifications Document	3 months from contract signature
Baseline Monitoring Report	Website launch, 6, 12, 18, 24, 30, 36 months
Web Analysis Reports	6, 7, 8, 9, 12, 18, 24, 30, 36 months
Focus Survey	6, 18 months
Annual Report	12, 24 months
Annual Report and Completion Report	36 months

4. **MANAGEMENT ARRANGEMENTS**

4.1 There are two donors financing the Project. These are:

- (a) AusAID; and
- (b) NZAID.

NZAID and the World Bank are partners to the project. NZAID and the World Bank may send representatives to attend Project Meetings.

AusAID is the sole contract manager and the Contractor is to take formal directions only from AusAID. NZAID and the World Bank will discuss and contribute to management of the Project through AusAID;

The Contractor may discuss operational matters with the other donors but should not discuss contractual matters with them without first gaining clearance from AusAID to do so.

4.2 Project Reports to NZAID and the World Bank:

NZAID will receive copies of the Contractor's reports from AusAID.

AusAID will report on the outcomes of this activity to the World Bank and liaise with the World Bank on broader community outreach and information programs. The consultant is expected to assist the World Bank in such activities as agreed upon in advance by the consultant and AusAID and as directed by AusAID.

5. **MONITORING AND EVALUATION**

5.1 The effectiveness of this program will be assessed against two key criteria:

- (a) Reducing the cost of remittances from a baseline established at the commencement of the program from the initial sample of remittance channels.
- (b) The effectiveness of outreach and the use of financial literacy material posted on the site.

- 5.2 Real reductions in the cost of remittances will be determined from a baseline sample of remittance channels (money transfer organizations, banks, larger “formal” private suppliers) taken at the commencement of the project. These remittance channels will also form the initial group displayed on the site. A Baseline Report will be submitted to AusAID on a six-monthly basis which monitors the current cost of sending remittances, including all charges and clearly disaggregating currency spreads, against the baseline sample. AusAID will provide input regarding appropriate remittance channels to form the baseline set.

It is anticipated that as awareness of the site grows, additional remittance channels will be added. Reduction in the cost of remittances will not be measured against these additional channels.

- 5.3 The effectiveness of outreach and financial literacy material usage will be measured in file downloads from the site and from the Focus Survey detailed in **Clause 3.13(f)**. Depending on the material displayed, click-through rates and hit counts may also be appropriate measures of effectiveness.

Independent Evaluation

- 5.4 AusAID will conduct a Year 3 project review evaluation which will consider ongoing funding needs, consider regional options for future project management and which will determine project effectiveness. At this stage, a decision will be made as to how to proceed with the project. External costs for this review will be borne by AusAID but with the full support and cooperation of the Contractor.

6. REPORTING REQUIREMENTS

- 6.1 The Contractor must provide the reports specified in **Clause 3.13** by the date, in the format and the number of copies indicated.

- 6.2 All reports must:

- (a) be provided in accordance with the specification under Standard Condition **Clause 7** (Reports);
- (b) be accurate and not misleading in any respect;
- (c) be prepared in accordance with AusGUIDE;
- (d) allow AusAID to properly assess progress under the Contract;
- (e) be provided in the format, number and on the media approved or requested by AusAID;
- (f) not incorporate either the AusAID or the Contractor’s logo; be provided at the time specified in this Schedule; and
- (g) incorporate sufficient information to allow AusAID to monitor and assess the success of the Services in achieving the objectives of AusAID’s Gender and Development Policy.

SCHEDULE 2 – BASIS OF PAYMENT

Reducing the Cost of Remittances to the Pacific

Note to Tenderers: This Part 4 comprising the Basis of Payment, Deed of Confidentiality, and the Variation Order Proforma will form Schedules 2, 3, & 4 respectively of the contract with the successful Tenderer.

1. TOTAL AMOUNT – DESIGN PHASE

- 3.1 The maximum amount payable by AusAID to the Contractor for the provision of the Services shall not exceed the sum of A\$**Amount** plus GST if any up to a maximum amount of ***\$Insert 10 percent of the Agreement amount.***
- 3.2 AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.

2. MILESTONES – DESIGN PHASE

- 2.1 The milestones shall be paid progressively as follows, within thirty (30) days of the satisfactory achievement of milestones or the acceptance by AusAID in writing of outputs, as the case requires:

Milestone No.	Schedule 1 Reference*	Milestone Description	Verifiable Indicators	Due Date	Amount \$
1	Clauses 3.8, 3.13(a),(b)	Inception Report and Functional Specifications Report	Inception Report and Functional Specifications Report accepted in writing by AusAID	To be completed by the end of month 3 from project commencement	

**This reference to Schedule 1 is to Schedule 1 (Scope of Services) of the final contract, which is contained at Part 3 of this RFT.*

3. TOTAL AMOUNT – IMPLEMENTATION PHASE

- 3.1 Subject to AusAID exercising its option under Clause 27.2 of the Project Specific Contract Conditions to proceed to the 'Implementation Phase', the maximum amount payable by AusAID to the Contractor for the provision of the Services shall increase by A\$ (implementation phase costs, GST exclusive) to the sum of A\$ Amount (comprising Design Phase + Implementation Phase amounts) plus GST if any up to a maximum amount of ***\$Insert 10 percent of the Agreement amount.***

AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.

4. MILESTONES – IMPLEMENTATION PHASE

- 4.1 Subject to AusAID exercising its option under Clause 27.2 of the Project Specific Contract Conditions to proceed to the ‘Implementation Phase’, the following additional milestones shall be paid progressively, within thirty (30) days of the satisfactory achievement of milestones or the acceptance by AusAID in writing of outputs, as the case requires:

Milestone No.	Schedule 1 Reference*	Milestone Description	Verifiable Indicators	Due Date	Amount \$
2	Clauses 3.2, 3.4, 3.7, 3.8	Website built and Operational	Contractor advises AusAID in writing that the website is ready to go live. AusAID has used the site and is satisfied that it meets the requirements of Clauses 3.2, 3.4, 3.7, 3.8. Accepted in writing by AusAID	To be completed by the end of month 6 from project commencement	
3	Clause 3.13(g)	First Annual Report	Annual Report accepted in writing by AusAID	To be completed by the end of month 12 from project commencement	
4	Clause 3.13(g)	Second Annual Report	Annual Report accepted in writing by AusAID	To be completed by the end of month 24 from project commencement	
5	Clauses 3.13(g),(h)	Third Annual and Completion Report	Annual Report and Completion Report accepted in writing by AusAID	To be completed by month 36 from project commencement	

*This reference to Schedule 1 is to Schedule 1 (Scope of Services) of the final contract, which is contained at Part 3 of this RFT.

5. CLAIMS FOR PAYMENT

- 5.1 Contractor’s tax invoice must be submitted when due pursuant to this **Schedule 2** in a form identifiable with the Services and in accordance with **Standard Conditions** clause headed **Payment** in the Contract.
- 5.2 All claims for payment must be **made** to:
- Chief Finance Officer
Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601
- 5.3 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
- 5.4 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>

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 may, from time to time, require the provision of Services.
- B. The performance of the Services requires access to information confidential to AusAID.
- C. AusAID and **Contractor's Name** (the "**Contractor**") have entered into a Contract under which **Contractor's Name** shall provide Services for the purpose of a project in **Country**.

THE RECIPIENT DECLARES AS FOLLOWS:

1. INTERPRETATION

- 1.1 All terms used in this Deed must have the same meaning as is given to them in this Deed, and in the particular, the following terms must have the following meaning:

"**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.

"Contract" means the Contract between AusAID and **Contractor's Name** for the provision of the Services.

"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.

"Services" means the services specified in this Deed.

"Specified Acts" means the following 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.

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. CONFLICT OF INTEREST

- 5.1 The Recipient warrants that no conflict of interest exists or is likely to arise in the performance of the Services.
- 5.2 The Recipient warrants that it shall not permit any situation to arise or engage in any activity during the performance of the Services which may result in a conflict of interest.
- 5.3 Where a conflict of interest, or a potential conflict of interest, arises in the performance of the Services, the Recipient must declare the conflict of interest to AusAID immediately and seek permission to continue performing the Services.

6. INTELLECTUAL PROPERTY

- 6.1 The Recipient hereby assigns to AusAID any intellectual property rights in materials developed or created by the Recipient in the course of performing the Services.

7. MORAL RIGHTS

- 7.1 The Recipient hereby consents to the Specified Acts in relation to materials developed or created by the Recipient in the course of performing the Services.

8. SURVIVAL OF OBLIGATIONS

- 8.1 The obligations in this Deed are perpetual.

9. INDEMNITY

- 9.1 The Recipient indemnifies AusAID against any claim, loss, liability or expense incurred by AusAID which is caused or contributed to by the Recipient's failure to comply with this Deed.

EXECUTED as a deed poll.

SIGNED, SEALED and DELIVERED)
by the Recipient in the presence of:)
Signature of

.....
Signature of witness

.....
Name of witness

SCHEDULE 4A – VARIATION ORDER PRO FORMA

VARIATION ORDER NO. #

FOR CONTRACT #

between

COMMONWEALTH OF AUSTRALIA

represented by

The Australian Agency for International Development

(AusAID)

and

CONTRACTOR'S NAME

ABN #

in relation to

CONTRACT TITLE

2. VARIATION ORDER No. # UNDER CLAUSE # OF CONTRACT #

TO: CONTRACTOR – *insert Name*

FROM: AusAID

1. This Variation Order is given pursuant to Standard Condition clause headed **Amendments and Variation** in the Contract.
2. The Contract *Schedule 1 and/or Schedule 2* is varied as follows:

EITHER detail here under the headings of:

3. **SERVICES**
4. **COMMENCEMENT AND COMPLETION OF SERVICES**
5. **REPORTING REQUIREMENTS**

OR where variation requires a reissue of Schedules 1 and/or 2. Use paragraphs 6 and/or 7 as appropriate.

6. Delete Schedule 1, Scope of Services and replace with the attached Scope of Services.
7. Delete Schedule 2, Basis of Payment and replace with the attached Basis of Payment.
8. There will be an ***increase/decrease/no change*** of \$x,xxx.xx in the financial limit of this Contract for the performance of these Services.
9. In all other regards you are required to carry out the Services as described in the Contract.

Yours sincerely

FMA 13 Delegate
Insert date

SCHEDULE 4B - VARIATION SUMMARY SCHEDULE

The Contract has been varied in accordance with Standard Condition clause headed **Amendments and Variation** of the Contract on the following dates relating to:

Variation Order #	Date signed by AusAID	Very Brief Summary of variation	Increase/Decrease in financial limit	Adjusted Financial Limit

Please attach the appropriate EFT Direct Credit Payment Form here

Domestic:

http://newintranet.ausaid.gov.au/sites/contracttemplates/documents/1/CONTRACT%20%20EFT%20Form_Domestic.dot

International:

http://newintranet.ausaid.gov.au/sites/contracttemplates/documents/1/CONTRACT%20%20EFT%20Form_International.dot

SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

AusAID has developed standard conditions which are the foundation of our request for tenders for aid delivery.

Recent substantive changes to these standard conditions are identified below. This information is provided to help tenderers keep up to date with ongoing improvements to AusAID standard conditions.

Please note clause numbering of earlier changes is not updated when clauses are added or deleted later. References to clause headings however do not change.

Amendment to clause 1 regarding electronic submission of tenders via AusTender	8 December 2006
Addition of new Annex C regarding electronic submission of tenders via AusTender	8 December 2006
Deletion of Clause 13 Eligibility to Tender to align with AusAID's untied aid policy	27 April 2006
Addition of new sub-clause 7.17(c) (Part 5) and clause 3.13 (Annex B) regarding bribery of a public official	7 February 2006
New Clause 14 Ineligibility to Tender	23 March 2005
Addition of new sub-clause 1.1(c) requiring lodgement of a Tender Schedule D	23 March 2005
Addition of a new Tender Schedule D	23 March 2005
Additional sub-clause 3.12 Annex B regarding declaration relating to Listing on a World Bank List or Relevant List	23 March 2005
Amendment to sub-clause 16.1	2 February 2005
Addition of new sub-clause 17.1 regarding anti-terrorism regulations to Further Requirements Clause 17	11 Dec 2003
Addition of language requirement in Documents that Must be Lodged Clause 1	28 Nov 2003
Deletion of old Eligibility to Tender and replacement with new Eligibility to Tender Clause 13	1 Oct 2003
Deletion of Sub-Contractors and Joint Tenders clauses 8 & 9 and replacement with a Joint Ventures Clause 8 and Associates and Sub-Contractors Clause 9	10 June 2003
Amendment of Further Requirements Clause 17.3 to account for release of the new environmental management guide	21 Mar 2003
Addition of new Project Vehicles clauses 7.14-7.16	10 Oct 2002

CONTENTS

PART 5 – STANDARD TENDER CONDITIONS	1
1. DOCUMENTS THAT MUST BE LODGED	1
2. TENDERER ENQUIRIES	2
3. LATE TENDERS	3
4. NON-CONFORMING TENDERS	3
5. CLARIFICATION OF TENDERS	3
6. AMENDMENT OF THE RFT	4
7. ASSESSMENT OF TENDERS	4
8. JOINT VENTURES	7
9. ASSOCIATES AND OTHER SUB-CONTRACTORS	8
10. OWNERSHIP OF TENDERS AND RFT	8
11. CONFLICT OF INTEREST	9
12. TENDERING CONDUCT	9
13. INELIGIBILITY TO TENDER	9
14. AusAID’s RIGHTS	10
15. TENDERER’S ACKNOWLEDGEMENT	10
16. DEBRIEFING OF TENDERERS	11
17. FURTHER REQUIREMENTS	11
18. CONTRACT NEGOTIATIONS	12
19. CONTRACT PLANS	12
20. APPLICABLE LAW	13
ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION	14
ANNEX B – TENDERER DECLARATION	16
1. DEFINITIONS	16
2. BASIS OF DECLARATION	16
3. THE OFFER	16
4. ADDENDA TO TENDER DOCUMENTS	18
5. ADDRESS OF TENDERER	18
ANNEX C – CONDITIONS FOR USE OF AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM	19
1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM	19
2. REGISTERED TENDERERS AND NOTICES	19
3. AUSTENDER HELP DESK	19
4. PREPARING TO LODGE A TENDER ELECTRONICALLY	20
5. ELECTRONIC LODGEMENT PROCESS	21
6. LATE TENDERS, INCOMPLETE TENDERS AND CORRUPTED FILES	22
7. PROOF OF LODGEMENT	22
8. AUSTENDER SECURITY	22
PART 6 - STANDARD CONTRACT CONDITIONS	1
PART A – STANDARD CONTRACT CONDITIONS	1
1. INTERPRETATION	1
2. PROVISION OF SERVICES	5
3. NON-EXCLUSIVITY	6
4. CONTRACT AMENDMENTS AND VARIATION	6

5.	EXTENSION OF TIME	6
6.	ACCOUNTS AND RECORDS	8
7.	REPORTS	8
8.	ACCESS TO THE CONTRACTOR’S PREMISES, DATA AND RECORDS	8
9.	PAYMENT	8
10.	GOODS AND SERVICES TAX	10
11.	REDUCTION IN FEES FOR NON-PERFORMANCE	10
12.	INTELLECTUAL PROPERTY RIGHTS	10
13.	CONFIDENTIALITY	11
14.	PRIVACY	11
15.	AusAID USE OF CONTRACT INFORMATION	12
16.	PUBLICITY	12
17.	TERMINATION FOR CONTRACTOR DEFAULT	13
18.	TERMINATION FOR CONVENIENCE	14
19.	INDEMNITY	15
20.	CONFLICT OF INTEREST	15
21.	FRAUD	15
22.	COMPLIANCE WITH LAWS AND POLICIES	18
23.	INVESTIGATION BY THE OMBUDSMAN	19
24.	RESOLUTION OF DISPUTES	20
25.	NOTICES	20
26.	MISCELLANEOUS	21

PART 5 – STANDARD TENDER CONDITIONS

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

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

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

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

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

- (a) the technical proposal which includes:
 - (i) Tender Schedule A addressing the selection criteria and including the required annexes in the form specified in **Part 1**; and
 - (ii) Tender Schedule B providing details of Key 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**.

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 accordingly.

Conditions Applying to Electronic Tender Lodgement

- 1.11 Electronic tenders must be lodged electronically via the Australian Government Tender System, AusTender, at <https://www.tenders.gov.au> before the **Closing Time** and in accordance with the tender lodgement procedures set out in **Annex C of this Part** and on AusTender.
- 1.12 Tenders not submitted in accordance with **Clause 1.11** will be excluded from evaluation.
- 1.13 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

- 1.14 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.
- 1.15 The Original Tender document and any copies requested should be bound using a plastic comb binding, and should contain no plastic page separators.
- 1.16 The Tender should be endorsed with the name of the Project and marked: "Tender Box: Attention **Contact Person**."

2. TENDERER ENQUIRIES

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

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

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

3. **LATE TENDERS**

Conditions Applying to Tenders Lodged Electronically

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

Conditions Applying to Tenders Lodged in Hard Copy

- 3.4 A hard copy Tender lodged after the **Closing Time** is a late Tender. Late Tenders lodged in hard copy will be registered and opened separately.
- 3.5 AusAID will reject a late Tender lodged in hard copy, unless the delay in receipt of the Tender is solely due to mishandling by AusAID.
- 3.6 AusAID will not enter into correspondence about the treatment of a late Tender lodged in hard copy.

4. **NON-CONFORMING TENDERS**

- 4.1 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 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. Key Personnel, such as the proposed in-country team leader and the project director, will be required to attend at the presentation. If Key Personnel are unable to attend, a teleconference presentation may be arranged. Key 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 Key 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; and
- (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 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

8.1 AusAID intends to contract with a single legal entity which may comprise either of:

- (a) a single company; or
- (b) two or more organisations who have formed a legally constituted “Joint Venture” for the purpose of undertaking the Contract.

8.2 Tenders by a Joint Venture must be submitted on the basis that details on the activities to be performed and responsibility assumed by each party of the Joint Venture must be clearly specified in the body of the text in Tender Schedule A.

8.3 AusAID may require parent company guarantees from the parent companies of parties to a Joint Venture.

9. ASSOCIATES AND OTHER SUB-CONTRACTORS

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

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

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

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

9.3 In addition to Associates, Tenderers are required to include detailed information on other work to be sub-contracted (excluding Specified Personnel) and proposed sub-contractors, where these are reasonably known at the time of the Tender and have expressed their willingness to be involved in the Project. These details must also be included in a separate annex to Tender Schedule A in the form described in **Clause 9.4 below**.

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

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

10. OWNERSHIP OF TENDERS AND RFT

10.1 All Tenders become the property of AusAID on lodgement.

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

10.3 The Tenderer authorises AusAID to copy, adapt, amend, disclose, including to AusAID contractors and advisers, or do anything else necessary, in AusAID’s sole discretion, to all

materials including that which contains intellectual property rights of the Tenderer or other parties contained in the Tender.

10.4 Copyright in the RFT is reserved to AusAID.

11. **CONFLICT OF INTEREST**

11.1 Tenderers must:

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

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

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

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

12. **TENDERING CONDUCT**

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

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

13. **INELIGIBILITY TO TENDER**

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

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

13.3 AusAID will exclude any tender where the Tenderer is in breach of the warranty, or does not disclose any circumstance required under clause 13.2. AusAID also reserves the right to

exclude any tender, where the Tenderer or a subcontractor of the Tenderer becomes listed on a World Bank List or Relevant List, or is subject to proceedings which could lead to such a listing.

- 13.4 Tenderers should note that if they tender in breach of this Clause 13, or are subsequently listed on a World Bank List or Relevant List, AusAID may terminate any contract subsequently entered into with that Tenderer.
- 13.5 For the purpose of this clause 13, a reference to a Tenderer or a subcontractor of a Tenderer, includes any company in the same group as the Tenderer or the subcontractor (including but not limited to, related bodies corporate of the Tenderer or subcontractor within the meaning of the *Corporations Act 2001*) and parties with whom the Tenderer or subcontractor is associated in respect of this Tender.

14. **AusAID's RIGHTS**

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

15. **TENDERER'S ACKNOWLEDGEMENT**

- 15.1 A Tender is submitted on the following basis:
- (a) no legal obligation or agreement whatsoever is intended to be or is created between AusAID and any Tenderer by virtue of the tender process (including but not limited to statements contained in this RFT) unless and until contract negotiations are completed and a formal written agreement acceptable to AusAID is entered into and executed by an authorised officer of AusAID and by the successful Tenderer, if any;
 - (b) the Tenderer acknowledges and agrees that AusAID, its employees, agents and advisers are not, and will not be responsible, or liable for the accuracy or completeness of any information contained in this RFT; and

- (c) the Tenderer is responsible for all costs of and incidental to the preparation and delivery of the Tender, including obtaining this RFT, or any subsequent stage of the procurement process, including answering any queries and providing any further information sought by AusAID.

16. DEBRIEFING OF TENDERERS

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

17. FURTHER REQUIREMENTS

- 17.1 Tenderers are reminded that Australian law prohibits the direct or indirect provision of support or resources to persons or entities listed by the Minister of Foreign Affairs under the Charter of the United Nations Act and/or listed in regulations made under Division 102 of the Commonwealth Criminal Code.

Further information about listed persons and entities is available from Department of Foreign Affairs and Trade at www.dfat.gov.au/icat/persons_entities/explanatory_note.html. The national security website includes the list of listed terrorist organisations at: www.nationalsecurity.gov.au.

- 17.2 Tenderers should note that the Commonwealth Government has directed all Commonwealth agencies to give the fullest consideration in Commonwealth contracting to Australian or New Zealand goods, materials and associated Services where they represent value for money.
- 17.3 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. See AusAID's Frequently Asked Questions website for further information: www.aisaid.gov.au/business/frequent.cfm.
- 17.4 Tenderers attention is drawn to 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 Internet site at <http://www.aisaid.gov.au/keyaid/envt.cfm>.
- 17.5 Tenderers should note AusAID's policy on Gender and Development as contained in "Gender Equality in Australia's Aid Program – why and how" (March 2007). These documents are available on AusAID's Internet site at <http://www.aisaid.gov.au/keyaid/gender.cfm>.
- 17.6 The Commonwealth Government has adopted a policy of not purchasing goods or services from suppliers who do not comply with their obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* ("Act"). If you are currently named as non-compliant for the purposes of the Act you must include, as an annex to your Technical Proposal, a letter of compliance from the Equal Opportunity for Women in the Workplace Agency. Enquiries should be directed to the Equal Opportunity for Women in the Workplace Agency on (02) 8255 6300.

- 17.7 The Tenderers attention is drawn to Commonwealth Government policy to maximise employment opportunities for Aboriginal and Torres Strait Islander people through Commonwealth purchasing. Where opportunities exist, the Tenderer should indicate in its Tender how it will provide employment opportunities for Aboriginal and Torres Strait Islander people, the nature and duration of the employment it proposes to provide and the number of Aboriginal and Torres Strait Islander people who would be involved.
- 17.8 The 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. AusAID contracts contain an obligation for a Contractor to provide access to premises and records associated with the Contract, and to ensure sub-contractors also provide such access.
- 17.9 The attention of Tenderers is drawn to the fact that AusAID contractors are bound to comply with the Information Privacy Principles under the *Privacy Act 1988* and to obligations under the *Privacy Amendment (Private Sector) Act 2000*, in particular to the National Privacy Principles contained in Schedule 3 of the Act.
- 17.10 Tenderers should be aware that the *Freedom of Information Act 1982* gives members of the public rights of access to official documents and information in the possession of the Commonwealth Government and its agencies.
- 17.11 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.

18. **CONTRACT NEGOTIATIONS**

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 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.

19. **CONTRACT PLANS**

- 19.1 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.

20. **APPLICABLE LAW**

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

ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION

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

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

ANNEX B – TENDERER DECLARATION

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

1. DEFINITIONS

1.1 In this declaration:

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

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

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

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

2. BASIS OF DECLARATION

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

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

3. THE OFFER

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

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

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

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

3.5 I acknowledge and agree to the matters specified in Clauses 134 (AusAID’s Rights) and 15 (Tenderer’s Acknowledgement) of Part 5.

- 3.6 I agree:
- (a) that the Tenderer will be bound by this Tender for the Tender Validity Period of 180 days after the Closing Time; and
 - (b) that this Tender may be accepted by AusAID at any time before the expiration of that period or any additional period to which we may agree.
- 3.7 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.
- 3.8 I understand that AusAID is not bound to accept the lowest priced or any Tender.
- 3.9 I warrant that in preparing the Tender for the Services the Tenderer did not act in any way which did or could have had the effect of reducing the competitiveness of the tender process for the Services. In particular I warrant that the Tenderer did not engage in:
- (a) any discussion or correspondence with other tenderers concerning the amount of the Tender;
 - (b) any collusive tendering or other anti-competitive practices with any of the other Tenderers or any other person; or
 - (c) any conduct or have any arrangement or arrive at any understanding with any of the other Tenderers.
- 3.10 **[This clause applies to government owned Tenderers only.]** I warrant that in preparing the Tender, the Tenderer has complied with the principles of competitive neutrality.
- 3.11 I warrant that the Tenderer, and any subcontractor of the Tenderer are not:
- (a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of Part 5 of this RFT;
 - (b) listed on any similar list maintained by any donor of development funding (Relevant List), or;
 - (c) subject to any proceedings which could lead to listing on a World Bank List or listing on a Relevant List.
- 3.12 Neither the Tenderer nor any of its employees, agents or contractors have been convicted of an offence of, or relating to bribery of a public official, nor are they subject to any proceedings which could lead to such a conviction.
- 3.13 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.
- 3.14 Neither the Tenderer nor any of its employees, agents or contractors disclosed the technical proposal or the Tender Price for the Services submitted by the Tenderer to any other tenderer who submitted a tender for the Services or to any other person or organisation prior to the Closing Time.

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

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

Number _____ Dated _____

Telephone Number: Fax Number:

)

Signature

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

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

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

2. REGISTERED TENDERERS AND NOTICES

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

3. AUSTENDER HELP DESK

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

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

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

4. PREPARING TO LODGE A TENDER ELECTRONICALLY

Virus Checking

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

Tender File Formats, Naming Conventions and Sizes

- 4.2 Tenderers must lodge their tender in accordance with the requirements set out in this **Clause 4** for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the tender not uploading successfully and/or may eliminate the bid from consideration.
- 4.3 AusAID will accept tenders lodged in the **File Formats for Electronic Tenders** specified in the Tender Particulars (**Clause 1 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 include spaces, non-alpha/numeric characters and symbols; and
 - (d) not exceed 20 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 Officer (**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 received 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 A.

CONTRACT

BETWEEN

COMMONWEALTH OF AUSTRALIA

represented by the Australian Agency for International Development

and

CONTRACTOR'S NAME

ABN XX XXX XXX XXX

FOR

REDUCING THE COST OF REMITTANCES TO THE PACIFIC

CONTRACT made day of []

BETWEEN:

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

AND

Contractor's Name ABN xx xxx xxx xxx of **Contractor's Street Address** (the "**Contractor**").

RECITALS:

- A. AusAID requires the provision of certain Services for the purposes of Reducing the Cost of Remittances to the Pacific (the "**Project**").
- B. The Contractor has expertise in the provision of the Services and has offered to provide the Services to AusAID subject to the terms and conditions specified in this Contract.

OPERATIVE:

AusAID and the Contractor promise to carry out and complete their respective obligations in accordance with the attached Parts A and B and Schedules 1 to 4.

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

.....	
Signature of witness	Name of witness

SIGNED for and on behalf of
Contractor's Name by:

.....	
Signature of director <i>or Contractor</i>	Signature of director/secretary <i>or witness</i>

.....	
Name of director <i>or Position</i>	Name of director/secretary <i>or witness</i>

CONTENTS

PART A – STANDARD CONTRACT CONDITIONS	1
1. INTERPRETATION	1
2. PROVISION OF SERVICES	5
3. NON-EXCLUSIVITY	6
4. CONTRACT AMENDMENTS AND VARIATION	6
5. EXTENSION OF TIME	6
6. ACCOUNTS AND RECORDS	8
7. REPORTS	8
8. ACCESS TO THE CONTRACTOR’S PREMISES, DATA AND RECORDS	8
9. PAYMENT	8
10. GOODS AND SERVICES TAX	10
11. REDUCTION IN FEES FOR NON-PERFORMANCE	10
12. INTELLECTUAL PROPERTY RIGHTS	10
13. CONFIDENTIALITY	11
14. PRIVACY	11
15. AusAID USE OF CONTRACT INFORMATION	12
16. PUBLICITY	12
17. TERMINATION FOR CONTRACTOR DEFAULT	13
18. TERMINATION FOR CONVENIENCE	14
19. INDEMNITY	15
20. CONFLICT OF INTEREST	15
21. FRAUD	15
22. COMPLIANCE WITH LAWS AND POLICIES	18
23. INVESTIGATION BY THE OMBUDSMAN	19
24. RESOLUTION OF DISPUTES	20
25. NOTICES	20
26. MISCELLANEOUS	21
PART B – PROJECT SPECIFIC CONTRACT CONDITIONS	
27. TERM OF THE CONTRACT	
28. NOTICES	
29. MEETINGS	
30. CONTRACTOR PERSONNEL	
31. SPECIFIED PERSONNEL	
32. INSURANCES	
SCHEDULE 1 – SCOPE OF SERVICES	
SCHEDULE 2 – BASIS OF PAYMENT	
SCHEDULE 3 – DEED OF CONFIDENTIALITY	
SCHEDULE 4A – VARIATION ORDER PRO FORMA	
SCHEDULE 4B – VARIATION SUMMARY SCHEDULE	

PART A – 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).

"**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* (Cth),

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.

"**AusGUIDE**" means AusAID's basic reference manual for achieving high quality project preparation and implementation and means AusGUIDE 1999 and any amendments thereto.

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

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

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

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

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

"Contractor Personnel" means personnel either employed or engaged by the Contractor on a sub-contract basis or agents of the Contractor 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.

"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.

"document" includes:

- (g) 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
- (h) 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.

"Fees" means the fees for the Services, as the fees are 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:

- (i) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (j) acts of war (whether declared or not), invasion, acts of foreign enemies, mobilisation, requisition, or embargo;
- (k) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution, or military usurped power, or civil war; and
- (l) 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, 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 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 Country" means the country (other than Australia) in which the Services are to be delivered in whole or in part.

"Party" means AusAID or the Contractor.

"Payment Milestone" means a milestone identified in Schedule 2 for which the Contractor is entitled to receive a payment in accordance with the Contract.

"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).

"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.

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

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

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

"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.

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

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

"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.

1.2 **General**

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

- (a) the contractual obligations of the Parties must be interpreted and performed in accordance with the Contract as a whole;
- (b) Contract clause headings, except for this clause 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.

1.3 **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.

1.4 **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.

1.5 **Inconsistency**

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

2. **PROVISION OF SERVICES**

2.1 In providing the Services, the Contractor must:

- (a) perform the Services at minimum to a standard which would be expected of a competent, experienced and professional contractor in like position to that of the Contractor under this Contract;
- (b) accept and implement AusAID's reasonable directions in relation to the management of the Project;
- (c) conduct itself in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct*;
- (d) subject to any flexibility permitted in the Contract, ensure all timing obligations included in the Contract are fully met;
- (e) 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;
- (f) not 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;
- (g) provide adequate support resources to secure the aims and objectives of the Project; and
- (h) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity.

2.2 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.

2.3 The Contractor shall not by virtue of this Contract be, or for any purpose be deemed to be, and must not represent itself as being, an employee, partner or agent of AusAID.

3. **NON-EXCLUSIVITY**

- 3.1 The Contractor may not be the exclusive provider of services to AusAID similar to those provided under this Contract.
- 3.2 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.

4. **CONTRACT AMENDMENTS AND VARIATION**

- 4.1 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.

Contract Amendment

- 4.2 Changes to Contract Conditions or significant changes to the Services that require substantial negotiation shall not be legally binding upon either party unless agreed in writing and signed by both Parties in the form of a Deed of Contract Amendment.

Contract Variation

- 4.3 AusAID or the Contractor may propose variations 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. These changes shall be subject to a “Variation Order”.
- 4.4 If AusAID decides to implement a proposal for variation under this clause, implementation shall be effected by issuing a Variation Order in the form of **Schedule 4A** and subject to the appropriate rates and fees detailed in **Schedule 2**.
- 4.5 No proposed variation must take effect unless it is in writing, titled a Variation Order and signed by AusAID. A summary of changes effected by Variation Orders will be maintained in the form set out in **Schedule 4B** (Variation Summary Schedule).

5. **EXTENSION OF TIME**

- 5.1 Subject to **Clause 5.6 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.
- 5.2 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 a Variation Order in accordance with **Clause 4.3 above**; and
 - (e) use its best endeavours to continue to perform its obligations under the Contract.
- 5.3 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.
- 5.4 If AusAID approves in writing a request, the approval should be titled a "Variation Order" and recorded in the Variation Schedule, **Schedule 4B** (Variation Summary Schedule). The Contract shall be deemed to have been varied accordingly.
- 5.5 Even if the Contractor has not given notice under **Clause 5.2 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.
- 5.6 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.
- 5.7 A notice of suspension, deletion or termination of the Contract under **Clause 5.6 above** takes effect on the date that the notification is received by the Contractor.
- 5.8 In the event of suspension, deletion or termination of Services or the Contract under **Clause 5.6 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.

6. ACCOUNTS AND RECORDS

- 6.1 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, including those involving foreign exchange transactions.
- 6.2 Accounts and records must be provided for inspection by AusAID immediately upon the request of AusAID.
- 6.3 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.

7. REPORTS

- 7.1 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.
- 7.2 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.
- 7.3 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.

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

- 8.1 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.
 - 8.2 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.
 - 8.3 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.
 - 8.4 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.
- 9. PAYMENT**
- 9.1 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.
- 9.2 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.
- 9.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.
- 9.4 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.
- 9.5 Subject to the Contract AusAID shall pay Reimbursable Costs within 30 days of receipt of a correctly-rendered invoice.
- 9.6 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 is based upon the calculation of Fees referred to in **Schedule 2**; and
 - (c) an authorised representative of the Contractor 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.
- 9.7 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.
- 9.8 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.
- 9.9 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.
- 9.10 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.

- 9.11 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.
- 9.12 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.
- 9.13 AusAID will make all amounts payable to the Contractor under this Contract into a bank account or accounts 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 accounts must be provided to AusAID with 45 days notice.

10. GOODS AND SERVICES TAX

- 10.1 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.
- 10.2 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).
- 10.3 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.
- 10.4 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.
- 10.5 AusAID shall not pay to the Contractor any amount referable to GST, except as provided in this clause.

11. REDUCTION IN FEES FOR NON-PERFORMANCE

- 11.1 If the Contractor fails to supply the Services in accordance with the Contract, the Fees shall be reduced to cover the reduced level of Services rendered to AusAID or loss or damage suffered by AusAID (as appropriate) because of that failure as is reasonably assessed by AusAID.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Subject to **Clause 12.2**, 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.
- 12.2 **Clause 12.1** 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 12.2** 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.

- 12.3 The Contractor warrants that any use of Contract Material by AusAID or others will not infringe any moral rights of authors with regards to the rights of attribution and integrity of authorship or the right against false attribution.
- 12.4 The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.

13. **CONFIDENTIALITY**

- 13.1 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.
- 13.2 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.
- 13.3 This clause shall survive expiration or termination of this Contract.

14. **PRIVACY**

- 14.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services.
- 14.2 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*.
- 14.3 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 Information Privacy Principle (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 subcontractor;
- (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.

14.4 The Contractor agrees to 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 the requirement in relation to subcontracts.

14.5 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 subcontractor under the subcontract provisions referred to in **Clause 14.4**.

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

15. **AusAID USE OF CONTRACT INFORMATION**

15.1 AusAID may disclose matters relating to the Contract, including the Contract, 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.

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

16. **PUBLICITY**

16.1 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.

16.2 The Contractor is encouraged to identify and implement appropriate opportunities for publicising the Project.

16.3 The Contractor must acknowledge the Australian Government contribution in publicity of any form relating to the Project. 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.

17. **TERMINATION FOR CONTRACTOR DEFAULT**

17.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, immediately 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 **[5]** 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; or

- (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.

17.2 If this Contract is terminated under this **Clause 17**:

- (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 subcontracts).

18. **TERMINATION FOR CONVENIENCE**

18.1 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.

18.2 Where notice is given under **Clause 18.1** 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 subcontracts) arising in consequence of termination of this Contract under this **Clause 18**.

18.3 In the event of termination or reduction in scope under this **Clause 18**, subject to **Clause 18.4**, 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.

18.4 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 18**.

19. INDEMNITY

19.1 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.

19.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 19.1 above** for the benefit of each of such persons in the name of AusAID or of such persons.

19.3 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.

19.4 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.

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

20. CONFLICT OF INTEREST

20.1 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.

20.2 The Contractor must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. Where a conflict of interest, or a potential 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.

21. FRAUD

21.1 For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means.

21.2 The Contractor and its subcontractors must not engage in any fraudulent activity.

21.3 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*.

- 21.4 The Contractor is responsible for preventing and detecting fraud including fraud within those functions outsourced / performed by a subcontractor 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.
- 21.5 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.
- 21.6 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*. 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.
- 21.7 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.
- 21.8 Following the conclusion of an investigation, where the investigation finds the Contractor, an employee of the Contractor or a subcontractor of the Contractor has acted in a fraudulent manner, the Contractor shall:
- (a) where money has been misappropriated, pay to AusAID or the project the full value of the AusAID funds that have been misappropriated; or

- (b) where an item of property has been misappropriated, either return the item to AusAID or the project or if the item cannot be recovered or has been damaged so that it is no longer usable, replace the item with one of equal quality.

21.9 Following the conclusion of an investigation, where the investigation finds that a party other than the Contractor, an employee of the Contractor or a subcontractor of the Contractor, has acted in a fraudulent manner, the Contractor shall at the Contractor's cost:

- (a) make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, one or both of the following:
 - (i) taking recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country. Before commencing any recovery action, the Contractor may consult with AusAID regarding the proposed course of action and may request assistance from AusAID in meeting the costs of the recovery action. Provided that the Contractor has consulted with AusAID before commencing recovery action, AusAID may in its absolute discretion agree to meet some or all of those costs.
 - (ii) referring the matter to the relevant Partner Country police or other authorities responsible for prosecution of fraudulent activity.
- (b) keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.

21.10 If the Contractor considers that after all reasonable action has been taken to recover the funds or funded property and full recovery has not been achieved or recovery has only been achieved in part, the Contractor may seek approval from AusAID that no further recovery action be taken. The Contractor must provide to AusAID all information, records and documents required by AusAID to enable the AusAID delegate to make a decision on whether to approve non-recovery of funds or funded property.

21.11 In the event that any investigation finds that the contractor, an employee of the Contractor or a subcontractor of the Contractor has been involved in any fraudulent activity, or in the event that AusAID discovers that a suspected, attempted or detected fraud has not been reported to AusAID, AusAID, at AusAID's sole discretion, reserves the right to:

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

22. **COMPLIANCE WITH LAWS AND POLICIES**

22.1 The Contractor must when providing any Services and procuring the Supplies have regard to and comply with, and use their best endeavours to ensure that all sub-contractors comply with, relevant and applicable laws, regulations and policies, both in Australia and in the Partner Country, including:

- (a) those in relation to occupational health and safety;
- (b) the *Equal Opportunity for Women in the Workplace Act 1999* (Cth). In particular the Contractor must not enter into any sub-contracts, under this Contract, with an employer named by the Director of the Equal Opportunity for Women Agency as currently not complying with the Act;
- (c) the *Australian Radiation Protection and Nuclear Safety Act 1998* (Cth). In particular the Contractor must obtain a licence for any activities requiring a licence whether undertaken in Australia or overseas;
- (d) the *Archives Act 1983* (“the Act”). In particular, the Contractor must:
 - (i) not arrange for, nor effect, a transfer of custody or ownership of any Data or Commonwealth record within the meaning of the Act without the prior written approval of AusAID and the NAA; and
 - (ii) comply with any reasonable direction given by AusAID for the purpose of transferring AusAID records to the NAA or providing the NAA with full and free access to those records at AusAID’s cost.
- (e) the *Privacy Act 1988*;
- (f) Part IIIA of the *Crimes Act 1914*; and
- (g) those in relation to corrupt practices, including the Commonwealth Criminal Code provisions:
 - (i) Division 70 relating to the bribery of foreign public officials; and
 - (ii) section 141.1 relating to the bribery of Commonwealth public officials; and
- (h) those in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the Commonwealth Criminal Code Act 1995 and listed in regulations made under that Act and regulations made under the Charter of the UN Act (Cth) 1945.

The Contractor must use their best endeavours to ensure that funds provided under this Contract, including sub-contracts, 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.

Further information about listed persons and entities is available from DFAT at: www.dfat.gov.au/icat/persons_entities/explanatory_note.html.

A full list of listed persons and entities is available from DFAT at:
www.dfat.gov.au/icat/freezing_terrorist_assets.html.

A list of listed 'terrorist organisations' for the purposes of the Commonwealth Criminal Code is available from National Security Australia at:
www.nationalsecurity.gov.au.

- (i) those in relation to visa requirements of the Partner Country or country in which the Services are being provided. The Contractor must ensure that, if the Contractor is an individual, the Contractor has, or if the Contractor is not an individual, all Contractor Personnel have, the correct visa for the work to be undertaken in the Partner Country or other country.

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

- (a) Gender and Development; and
- (b) Environment. AusAID is bound by the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:
 - (i) ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;
 - (ii) comply with AusAID's Environmental Management System outlined in the *Environmental Management Guide for Australia's Aid Program*, including:
 - (A) assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;
 - (B) report regularly on any such impacts as required by the Scope of Services; and
 - (iii) comply with all relevant environmental laws and regulations of the Partner Country.

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

23. INVESTIGATION BY THE OMBUDSMAN

23.1 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.

23.2 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.

23.3 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.

23.4 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.

23.5 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.

23.6 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.

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

24. **RESOLUTION OF DISPUTES**

24.1 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 9.9** (Payment) and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Agreement.

25. **NOTICES**

25.1 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).

26. **MISCELLANEOUS**

26.1 **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.

26.2 **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.

26.3 **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.

26.4 **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.

26.5 **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.

26.6 **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.

26.7 **Contra Proferentum**

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.

26.8 **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.

26.9 **Anti-Corruption**

The Contractor warrants that the Contractor shall not make or cause to be made, nor shall the Contractor receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt act, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Contract. In addition, the Contractor shall not bribe public officials and shall ensure that all Contractor Personnel comply with this provision. Any breach of this clause shall be grounds for immediate termination of this Contract under Standard Conditions **Clause 17** (Termination for Contractor Default) by notice from AusAID.