



Australian Government

AusAID

Request for Tender

6 September 2008

Papua New Guinea - Australia Law and Justice Partnership

REQUEST FOR TENDER

Papua New Guinea – Australia Law and Justice Partnership (PALJP)

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

STRUCTURE OF THE RFT

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

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

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

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

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

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

It is AusAID’s intention to contract on the basis of the Contract Conditions provided in this RFT. Elements of a Tender lodged which are relevant to the delivery of the Services may also be incorporated into the final Contract.

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) 21 October 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:*.pdf (Portable Document Format)

(Clause 4.3, Annex C to Part 5)

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 as a separate file.

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

For hard copy tender lodgement

Technical Proposal: One (1) printed Original (marked 'original') and five (5) 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.

One (1) disc containing one *.pdf copy of the Technical proposal and one *.pdf copy of the Financial proposal and one *.pdf copy of the Financial Assessment material.

Endorsement of hard copy Tenders: “Tender for the PNG-Australia Law and Justice

(Clause 1.16, Part 5)

Partnership”

Tender Validity Period:

(Clause 1.8, Part 5)

180 days

Contact Person: Karan McKee
(Clause 2.1, Part 5) Fax: +61 2 6206 4885
Email address: karan.mckee@ausaid.gov.au

Page limits: Technical proposal fifteen (15) pages plus annexes.
(Clauses 7.15 and 7.17, Part 5) Curriculum Vitae four (4) pages per CV.

Information: The following documents are also available for download as part of the Request for Tender package:

- a) PALJP Program Design Document May 2008
- b) Framework for Australian Assistance to Papua New Guinea's Law and Justice Sector August 2007
- c) Attachments to the Framework.

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

2. PRE-TENDER BRIEFING

- 2.1 AusAID intends to hold a pre-tender briefing in Port Moresby in the week commencing 29 September 2008 at a venue and location to be confirmed.
- 2.2 Tenderers planning to attend the briefing are requested to send notification by email or fax, to Karan McKee (karan.mckee@ausaid.gov.au) before close of business 24 September 2008 indicating:
- (a) the name of the organisation;
 - (b) the name(s) of people planning to attend; and
 - (c) any questions about the Project or tender documentation the tenderer would like addressed.
- 2.3 It is proposed the briefing will comprise a general, open information session of up to half a day followed by an opportunity for prospective tendering organisations to meet individually with AusAID program and procurement management staff for up to forty-five minutes.
- 2.4 AusAID requests that no more than four (4) representatives per organisation attend the briefing due to space limitations.

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 There are two components to the technical assessment. Part A - Organisational Capability accounts for **45%** of the overall technical score; Part B Organisational Approach and Strategic Awareness accounts for **55%** of the overall technical score.
- 4.2 Only tenderers assessed as technically suitable under Part A will proceed to Part B assessment.
- 4.3 Following consideration of the technical merit of proposals, a value for money assessment will be undertaken to determine which tender represents the best value for money to the Commonwealth. The technical assessment, consideration of the financial proposal and the financial assessment may all be taken into account in the value for money assessment however the assessment may not be limited to these factors alone. As part of its technical proposal, a Tenderer may also provide narrative information relating to this criterion that demonstrates how the approach and expenditure included under its proposal would contribute to a value for money outcome. This narrative must be included within the overall page limit for the Technical Proposal.
- 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 8 of this Part** and consideration of other factors referred to in **Clause 7.8, Part 5** of the RFT, a recommendation for further action will be made to the AusAID delegate. Tenderers should be aware that the delegate is not bound to accept the Technical Assessment Panel (TAP) recommendation and may direct that other action be taken in accordance with this RFT.
- 5. TENDER EVALUATION PROCESS**
- 5.1 Tenders will be evaluated in a three stage process. These stages comprise:
- (a) A paper based assessment and short listing against Part A criteria outlined in clause 6.2 below;
 - (b) A paper based assessment and short listing of Part B criteria outlined in clause 6.2 below; and

- (c) A site visit to the office of tenderers short listed in accordance with clause 6.3 below. In the event such a visit is not possible, alternative conferencing will be arranged.
- 5.2 Only tenderers short listed in the previous stage will be admitted to the next stage of the assessment.
6. **TENDER SCHEDULE A – TECHNICAL PROPOSAL (RESPONSE TO SELECTION CRITERIA)**
- 6.1 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 6.2 of this Part** taking into consideration “other factors” under **Clause 7.8, Part 5** of the RFT; and
 - (b) the required annexes included in **Clause 6.5** of this Part.
- 6.2 **Selection Criteria**
- Part A: Organisational Capability - Operational Level Management (45%)**
- (a) Corporate capacity to provide operational level management services in support of PALJP (20%)
 - i. identification, recruitment, mobilisation, ongoing development, support and management of TA Personnel including strategies to attract and retain a team of high quality personnel with a diverse mix of gender, age and cultural backgrounds
 - ii. financial (including fraud and risk) management and procurement
 - iii. performance monitoring and assessment
 - (b) Proposed management framework to enable the delivery of the Services in support of PALJP (10%)
 - i. proposed management framework and position descriptions for the in-country Implementation Service Provider (ISP) Management Team including the roles, responsibilities and relationships of each ISP Management Team member and how this will ensure effective management of the in-country ISP team and PALJP TA Personnel and staff. Tenderers note that names of personnel and CVs are not required and will not be considered, as the GoA and GoPNG will work with the selected tenderer to jointly identify and recruit the ISP in-country Management Team prior to the ISP’s mobilisation)
 - ii. relationship between the in-country ISP Management Team and corporate resources / head office (ie. the ISP Corporate Team)
 - iii. strategies and proposed process for GoA-GoPNG and ISP joint selection and recruitment of the in-country ISP Management Team prior to the commencement of the Project

Part B: Organisational Approach and Strategic Awareness – Strategic Level Management (55%)

- (a) Demonstrated strategic awareness of the Australian aid program context in PNG including how this applies to the law and justice sector (15%)
- (b) A demonstrated understanding of the PNG Australia Law and Justice Partnership and an understanding of the role of the ISP including working within PNG government systems (15%)
- (c) Proposed strategies for addressing overarching policy issues and enabling themes, including the ISP contribution to the attainment of broader PALJP objectives (15%)
- (d) Innovative approaches to capacity building, outside traditional technical assistance personnel (10%)

6.3 For Tenderers short listed following the paper based assessment of Part B the TAP will visit each short listed tenderer’s head office, meet with key personnel and undertake a comprehensive assessment of the elements outlined in this **clause 6.3**. The TAP will seek to engage with a range of key personnel across relevant management and corporate support areas including human resource management, financial and procurement management, contract management, monitoring and evaluation, reporting and strategic management. The tenderer will be asked to ensure that most if not all of its team members proposed to be involved in supporting the Project (as listed in Annex 3) participate in this process. It is proposed at these site visits that appropriate scenarios will be tabled and a response sought from the tenderer in order to assess:

- (a) **ISP Strategic Level Management** (providing a well resourced management team), including strategic understanding of the PALJP and capacity of the bidder to “add value” in supporting PALJP management, including:
 - i. proposed management framework for the in-country ISP Management Team, its relationship to the ISP corporate team and how it will actually work;
 - ii. robustness of consortium arrangements (if applicable); and
 - iii. understanding of key overarching policy issues / enabling themes (eg. gender, HIV/AIDS, anti-corruption).
- (b) **ISP Operational Level Management** (providing efficient and effective systems and processes in three key areas) , including:
 - i. human resource management, including recruitment, mobilisation, on-going development and management of TA Personnel and associated support staff;
 - ii. financial management and procurement, including an understanding of requirements, approaches, risk management and problem solving abilities; and
 - iii. performance monitoring and assessment including supporting PALJP performance management, learning and accountability for aid effectiveness.

6.4 For tenderers short listed under **clause 6.3** above, is anticipated that site visits (or alternative conferencing) will occur between Monday 17 November and Friday 28 November 2008. Tenderers and their key corporate personnel must be available between

these dates for the site visits. Where it intends to conduct a site visit, AusAID will endeavour to give seven (7) days notice to the tenderer.

6.5 Annexes

Annex 1 – Past Experience Form

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

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

PAST EXPERIENCE FORM

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

Annex 2 – Work Plan

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

A narrative not exceeding three (3) A4 pages may accompany this Work Plan.

Annex 3 – ISP Corporate Team Member Inputs

The bar chart will show the proposed inputs per ISP Corporate Team member for this Project and indicate total person months or person days for the duration of the Project (denoting a person as “part-time” is not acceptable). This chart must be presented on A3 paper.

Annex 4 – Position Descriptions for the in-country ISP Management Team

This annex is to be prepared in accordance with the specifications outlined in **clause 6.2(b)(i)** and should also include as one component the proposed allowance package for the ISP Management Team and, if different, for the TA Personnel, including any incentive or performance payments that will be made in order to attract and recruit high quality ISP Management Team and TA Personnel from a diverse range of gender, age and cultural backgrounds.

Annex 5 – Risk Management Plan

A detailed Risk Management Plan not exceeding five (5) A4 pages critiquing the identified risks included at **Annex 3** to Part 3 of the RFT. The critique should include but need not necessarily be limited to:

- (a) the level of probability of the risk eventuating;
- (b) the impact on the Project if the risk eventuates along with possible options for ameliorating the risk;
- (c) the entity(s) responsible for managing the risk consistent with the PDD; and
- (d) the approach to be taken to mitigate any impact.

Annex 6 – Transition and Mobilisation Plan

A detailed Transition and Mobilisation Plan not exceeding eight (8) A4 pages for the first six months of the Project which includes provision for:

- (a) establishment of communication channels with AusAID, the Government of PNG and other Stakeholders;
- (b) a description of all obligations required to be performed by the ISP to implement the Services, and their timing, including but not limited to;
 - i. establishment of report preparation and delivery mechanisms;
 - ii. establishment of financial control procedures; and
 - iii. establishment of all other management and administration requirements;
- (c) how the tenderer proposes to manage the transition from the existing provider, including key actions and timelines, and roles and responsibilities of the tenderer’s team and other key stakeholders to ensure a smooth transition process, with minimal transaction costs and disruptions for PNG stakeholders in particular; and
- (d) any other matters specified in the Scope of Services, Part 3 of this RFT.

Annex 7 – Commonwealth Government Policies Compliance

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

7. TENDER SCHEDULE B – KEY PERSONNEL

- 7.1 As outlined in **clause 6.2(b)**, the in-country ISP Management Team will be recruited by the GoA, GoPNG and ISP following the conclusion of this tender process. The Key Personnel required through this tender schedule refers to those in the ISP Corporate Team that will be involved in supporting the Project. Tender Schedule B must contain all information on proposed Key Personnel for the ISP Corporate Team in the following format:
- (a) a list of proposed team members in the table (in landscape) format provided and in accordance with the instructions included in **Clauses 7.2-7.3** below;
 - (b) a skills matrix providing a summary illustration of the skills of the proposed ISP Corporate 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 ISP Corporate Team member that conforms with the requirements outlined in **Clauses 7.16 and 7.17, Part 5**.
- 7.2 Tenderers must provide the information in the Referees column of the Key Personnel table in accordance with **Clauses 7.18 - 7.21, Part 5**.
- 7.3 The Commitments column in the Key Personnel table must include details of proposed corporate 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 corporate 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.
- 7.4 Tenderers are reminded of the requirements of **Clause 8, Part 6** particularly in relation to the availability of specified personnel. AusAID will consider as materially inaccurate, and will therefore reject, any Tender which does not disclose the fact that a proposed team member has an existing and continuing commitment to another AusAID project.
- 7.5 AusAID’s strong preference is that individuals with conflicting commitments are not included in Tenders. Where team members with conflicting commitments are nominated, AusAID will assess on a case-by-case basis the impacts of the personnel changes and may require further information from the Tenderer in relation to managing the transition.

TABLE 1: KEY ISP CORPORATE TEAM PERSONNEL

Name	Position	Total Inputs in person months		Referee Contact Details		Commitments
		In Australia	Overseas	#1	#2	

Tenderer to insert rows as required

8. TENDER SCHEDULE C - FINANCIAL PROPOSAL

- 8.1 Tender Schedule C - the financial proposal must contain the information required and in the format detailed in this Clause.
- 8.2 It must:
- (a) be a fully costed fixed price based on the outputs and/or inputs as specified in the Scope of Services, including:
 - i. 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.
- 8.3 Any escalators, foreign exchange rate variations, or other price risks, must be built into the fixed price proposal.
- 8.4 AusAID will not consider any “across the board” escalators subsequently applied to any rates or Project costs.
- 8.5 Information provided in the tables will be used for any financial assessment and may be used in the value for money assessment.
- 8.6 Tender Schedule C (the Financial Proposal) must include the following four parts in accordance with the requirements of this **clause 8**:
- (a) Part A – Direct Personnel Costs (Reimbursed at Cost)
 - (b) Part B – Fixed Fees comprised of:
 - i. Monthly Management Fee;
 - ii. Supplementary Management Fee – Long Term TA Personnel outside Port Moresby; and
 - iii. Management Fee – Short Term TA Personnel.
 - (c) Part C – ISP Corporate Team Supplementary Fee

- (d) Part D – Performance Incentive.

Part A - Direct Personnel Costs

- 8.7 *Direct Personnel Costs* relate to the employment of the in-country ISP Management Team and all TA Personnel (including those novated from LJSP), the Core Support Team and Agency-based Change Management Advisers, and will be reimbursed monthly in arrears subject to receipt of a correctly rendered tax invoice. Included are:
- i. salary and allowances;
 - ii. recruitment (advertising and selection) costs in accordance with budgeted upper limits as agreed by AusAID;
 - iii. induction and ongoing learning and development costs in accordance with budgeted upper limits as agreed by AusAID;
 - iv. local and international work travel including accommodation and per diems, and personnel related taxes, insurances and levies incurred for work travel;
 - v. superannuation levy, if any, as appropriate; and
 - vi. annual leave allowances.

Profit and management overheads are excluded from Part A.

Tenderers note: as the ISP Management Team and all TA Personnel will be jointly recruited by the ISP, AusAID and the GoPNG these costs will be incorporated into the Contract following finalisation of these recruitment processes.

Part B – Fixed Management Fees

- 8.8 The *Monthly Management Fee* is payable to the ISP for:
- i. head office management costs;
 - ii. all high level management and support costs for Key Personnel;
 - iii. all costs relating to the support and management of the ISP Corporate Team;
 - iv. logistical support for the ISP Management Team and TA Personnel, including for mobilisation/demobilisation, transport and security;
 - v. taxation (other than personnel taxation which is covered at **clause 8.7** above) as applicable
 - vi. vehicle costs for the in-country ISP Management Team and TA Personnel;
 - vii. insurances (other than personnel related insurance which is covered at **clause 8.7** above);
 - viii. all domestic and international communication costs;

- ix. financial management costs;
- x. local office costs;
- xi. transport and travel costs of the ISP Corporate Team;
- xii. costs of complying with reporting obligations under this Contract
- xiii. other management overheads; and
- xiv. profit.

8.9 Payment of the *Monthly Management Fee* will be on a sliding scale based on the average number of advisers in the field each month. This will be calculated as the sum of the number of Advisers in PNG on each day of the month divided by the number of days in the month. Tenderers must nominate in this Tender Schedule C a fixed fee per month in accordance with the ranges specified in **Table 2** below.

Table 2: Monthly Management Fee

Monthly Average Number of Advisers	Fixed Monthly Management Fee
0-20	
21-40	
41-60	
61-80	
81-100	
More than 100	

8.10 The *Supplementary Management Fee – Long Term TA Personnel* is payable per TA Personnel in addition to the fixed Monthly Management Fee. It reflects the additional logistical support to be provided to TA Personnel living outside Port Moresby. Tenderers must nominate in this Tender Schedule C a fixed supplementary amount per TA Personnel in accordance with **Table 2** below:

Table 2: Supplementary Management Fee – Long Term TA Personnel outside Port Moresby

Supplementary Fee per Adviser	Amount

8.11 The *Management Fee – Short Term TA Personnel* is payable for each short term assignment (not each visit). Short term assignments are defined as being less than six

months duration. Where an assignment includes multiple visits, a single supplement only is payable for the particular assignment.

- 8.12 Tenderers must nominate in this Tender Schedule C a fixed Management Fee per Short Term TA Personnel in accordance with **Table 3** below.

Table 3: Management Fee per Short Term TA Personnel

Management Fee per Short Term TA Personnel	Amount

Part C –ISP Corporate Team Supplementary Fee

- 8.13 The *ISP Corporate Team Supplementary Fee* is paid in addition to those costs met under Part B for providing management services in support of PALJP activities that require additional ISP Corporate Team resources and input. Such costs would be incurred in the process of ensuring that the ISP is able to effectively support the management of the broad range of activities anticipated within the scope of the PALJP.

- 8.14 This may include but is not necessarily limited to:

- (a) Support for partnerships as outlined in **clause 4.10** of the Scope of Services including twinning arrangements and logistical support for twinning placements;
- (b) Logistical or other support for personnel from other GoA-funded programs such as the Strongim Gavman Program or the PNG-Australia Policing Partnership, such as mobilisation/demobilisation; and
- (c) Other activities where it is agreed by AusAID that additional ISP Corporate Team resources are required and justified.

- 8.15 Tenderers must nominate in this Tender Schedule C in accordance with **Table 4** below a schedule of rates per unit (day) for each of the following services that may be expected to be provided under **clause 8.14** above by the ISP Corporate Team:

Table 4: Supplementary ISP Corporate Team Fee

Additional ISP Corporate Team Services	Fee rate per day
Mobilisation/demobilisation of personnel	
Logistical support for new international personnel in PNG (as provided to short or long term TA Personnel or for short-term visits and including transport, communications and security)	
Logistical support for PNG personnel undertaking placements or other visits to Australia or other countries	

Additional ISP Corporate Team Services	Fee rate per day
HR services from the ISP Corporate Team including organising recruitment, induction or learning and development activities for recipients of the services outlined at clause 8.14 above.	

Part D - Performance Incentive

- 8.16 An amount of up to \$100,000 will be made available each year as a Performance Incentive to the ISP. Payment of the Performance Incentive will be linked to the PALJP ISP Contractor Performance Annual Assessment, conducted against the ISP Monitoring Framework at **Annex 1** to Schedule 3 of the RFT.
- 8.17 Assessment will be in accordance with the following grading in each of the core ISP service areas:

Strategic Level Management Services: \$25,000	Operational Level Management Services:		
	Human Resource Management: \$25,000	Financial Management and Procurement: \$25,000	Performance Monitoring and Assessment: \$25,000
Fully effective: 100%	Fully effective: 100%	Fully effective: 100%	Fully effective: 100%
Meets requirements: 50%	Meets requirements: 50%	Meets requirements: 50%	Meets requirements: 50%
Unsatisfactory: 0%	Unsatisfactory: 0%	Unsatisfactory: 0%	Unsatisfactory: 0%

9. 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:

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

each prepared on an accrual accounting basis.

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

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

Option 2

This option may be considered by a Tenderer where:

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

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

1. the date of its most recent financial assessment and the name of the tender for which this assessment was undertaken;
2. an explanation of why a Tenderer believes a further financial assessment is not warranted; and

3. a statutory declaration declaring that the Tenderer's financial position has not altered materially since the date of the previous assessment.

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

CONTRACT

BETWEEN

COMMONWEALTH OF AUSTRALIA

represented by the Australian Agency for International Development

and

CONTRACTOR'S NAME

ABN XX XXX XXX XXX

FOR

PROJECT NAME

AusAID AGREEMENT NUMBER XXXX

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 Head Office Street Address** (the "**Contractor**").

RECITALS:

- A. AusAID requires the provision of certain Services for the purposes of **Project Name** (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.

SIGNED for and on behalf of _____)
COMMONWEALTH OF AUSTRALIA)
 represented by the Australian Agency for) **Signature of Print Name Here**
 International Development by:) FMA Act s44 Delegate
 Position

In the presence of:

.....

Signature of witness _____ Name of witness
 (Print)

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

.....

Signature of director or Contractor _____ Signature of director/secretary or witness

.....

Name of director or Contractor _____ Name of director/secretary or witness
 (Print) (Print)

STRUCTURE OF THE CONTRACT

This contract has two parts and seven schedules as follows:

Part A Project specific contract conditions

Part B Standard contract conditions

Schedule 1 Scope of Services

Schedule 2 Basis of Payment

Schedule 3 Deed of confidentiality

Schedule 4A Variation order pro forma

Schedule 4B Variation summary schedule

Schedule 5 Deed of Novation and Substitution

Schedule 6 Performance Guarantee

Authority for EFT direct credit payment form

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PART A – PROJECT SPECIFIC CONTRACT CONDITIONS

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

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

"**Implementation Service Provider**" or "**ISP**" means the Contractor.

"**Core Support Team**" means the on-call TA Personnel engaged in the core areas of public administration and sector policy outlined in **clause 4.3(a) (iii)** of **Schedule 1**.

"**ISP Corporate Team**" means the team provided by the ISP (other than the ISP Management Team) to enable the ISP to provide its Services

"**ISP Management Team**" means the team provided by the ISP to support Government's of Australia and Papua New Guinea joint management of PALJP in accordance with the PALJP PDD.

"**Law and Justice Sector**" or "**the Sector**" means, as the context requires, the Australian and/or PNG law and justice sector(s)

"**LJSP**" means the Law and Justice Sector Program

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

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

"**PNG-Australia Law and Justice Adviser**" means AusAID's representative responsible for strategic level direction and management of the Contractor on behalf of AusAID.

"**Program Design Document**" or "**PDD**" means the project design document for the PALJP.

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

"**Short Term TA Personnel**" means an adviser working on the Project for less than six months continuously.

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

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

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

2. PROJECT COMMENCEMENT

- 2.1 The Contractor must commence the Services no later than **Start Date**, which date will be referred to as the Project Start Date.
- 2.2 The term of this Contract is deemed to have begun on the Project Start Date and continues until the final payment is made or earlier notice of termination under the Contract.

3. ACCOUNTS AND RECORDS

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

4. NOTICES

- 4.1 For the purposes of Standard Conditions **Clause 37** (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: Post Name
Attention: Post Officer

Postal Address: PNG Post Postal Address
Street Address: PNG Post Street Address
Facsimile: Desk/Post Fax

Contractor:

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

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

5. TRANSITION AND MOBILISATION OF SERVICES

- 5.1 As part of its tender response, the Contractor supplied a detailed Transition and Mobilisation Plan (**Annex 6** to Part 1 of the RFT) for the first six months of the Project. Once approved in writing by AusAID, the Contractor must implement its Transition and Mobilisation Plan.
- 5.2 In approving the Contractor's Transition and Mobilisation Plan, AusAID will have regard to, and require the Contractor to ensure, provision has been made for:
- (a) the establishment of communication channels with AusAID and other Stakeholders;
 - (b) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including without limitation:
 - (i) the supply and deployment of Long and Short Term Advisers and overall approach to their assignments;
 - (ii) a planned approach to coordination of all aspects of implementation of the Services, mobilisation of personnel and obtaining necessary approvals; and
 - (iii) a planned approach to coordination of all aspects of implementation and management of sub-contracts;
 - (c) the establishment of report preparation and delivery mechanisms;
 - (d) the establishment of financial control procedures;
 - (e) the establishment of all other management and administration requirements; and
 - (f) how the Contractor proposes to manage the transition from the existing provider with minimal transaction costs and disruptions, for PNG stakeholders in particular; and
 - (g) any other matters specified in **Schedule 1**.
- 5.3 In the context of its finalisation, the Contractor must make changes to the Transition and Mobilisation Plan as requested by AusAID.
- 5.4 Once approved in writing by AusAID the Transition and Mobilisation Plan will be deemed to be annexed to this Contract. Changes to the Plan will be subject to a Variation Order as described in Standard Conditions **Clause 12** (Contract Amendment and Variation).

6. MANAGEMENT SERVICES

- 6.1 The Contractor must provide all Management Services necessary for the provision of the Services. In addition to the other requirements specified by the Contract, at a minimum the Contractor must provide the following Management Services:
- (a) provide pre-mobilisation briefings to Contractor Personnel covering although not necessarily limited to the security situation in PNG, any medical/health issues associated with living in PNG, the cultural environment, detail on project objectives, relevant contract obligations and personnel conduct while engaged under the project;
 - (b) decision-making within the Contractor's organisation and advising AusAID of decisions required by AusAID;
 - (c) pro-actively identifying and rectifying problems or recommending strategies to AusAID on how to rectify problems, which may arise in, or during the performance of, the Services;
 - (d) managing those risks which are the Contractor's responsibility under the Contract in accordance with the Risk Management Plan at **Annex 3 to Schedule 1** including in relation to Supplies after delivery and before their incorporation into the Project;
 - (e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID;
 - (f) managing and monitoring of activities under the partnership, including subcontracted activities;
 - (g) developing supportive working environments and effective communications channels with all stakeholders, in particular although not limited to, the GoPNG; and
 - (h) financial management and monitoring of expenditure through the imprest account.

7. PROGRAM MANAGEMENT

- 7.1 The PNG-Australia Law and Justice Adviser will be the primary contact point for the ISP Management Team and will be responsible for strategic level direction and management of the Contractor on behalf of AusAID.
- 7.2 AusAID's designated PALJP Activity Manager will be the primary contact point on issues relating to PALJP ISP contract management (including approval of milestones, financial management and management of ISP contractor performance processes).

8. MONITORING REVIEW GROUP

- 8.1 To support the implementation of each Annual Aid Effectiveness Workplan (as set out in the PDD) AusAID may establish a Monitoring Review Group (the "MRG") whose purpose is to provide AusAID with independent technical and other advice on any aspects of the Project and to assist AusAID to assess the performance of the Services.
- 8.2 The Contractor must:
- (a) attend and participate in those MRG meetings which AusAID directs it in writing to attend;

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

9. SUB-CONTRACTING

- 9.1 In addition to the Standard Conditions **Clause 11** (Sub-Contracting) the following conditions apply to sub-contracts entered into by the Contractor:
 - (a) the Contractor must obtain the prior written approval of AusAID to sub-contracts with any party, except Specified Personnel, to the value of \$100 0000 or more. In granting its approval AusAID may impose such conditions, in AusAID's opinion are appropriate, in relation to a proposed sub-contract; and
 - (b) if AusAID objects to the Contractor's recommended sub-contractor, or AusAID nominates a particular sub-contractor, the Contractor must enter into an agreement with such other sub-contractor as directed by AusAID on the basis of remuneration approved by AusAID and provide AusAID with a copy of the executed sub-contract.
- 9.2 Standard Conditions **Clauses 11.1** (Sub-contracting) **(d)** and **(e)** (*with respect to Deeds of Novation and Substitution*) will only apply to sub-contracts valued at \$100 000 or more.
- 9.3 The Contractor must not enter into any contract for the procurement of any Supplies or services from any Related Corporation without AusAID's prior approval.

10. CONSTRUCTION SERVICES

- 10.1 The Contractor must engage specialist construction sub-contractors to undertake all construction work. However, the engagement of Construction sub-contractors shall not

relieve the Contractor from any liability for the performance of this contract in accordance with Standard Conditions **Clause 11** (Sub-contracting).

- 10.2 The Contractor must ensure that all construction design work is carried out:
- (a) in accordance with and so as to comply with any design brief or functionality requirements notified by AusAID;
 - (b) to a high standard of skill, care and diligence expected of a design professional; and
 - (c) to ensure that the design work is fit for its intended purpose.
- 10.3 The Contractor must ensure that all construction work is carried out:
- (a) in accordance with AusAID approved plans and specifications;
 - (b) so that it is fit for its intended purpose;
 - (c) using good workmanship and, unless otherwise approved or specified, new materials;
 - (d) employing competent and appropriately qualified personnel; and
 - (e) in a manner which clearly seeks to achieve the aims of the Project.
- 10.4 When engaging a Construction sub-contractor, the Contractor must undertake a competitive tendering process that complies with the Commonwealth Procurement Guidelines and AusAID's policy on applying the Mandatory Procedures in Division 2 of the CPGs.
- 10.5 If AusAID reasonably considers that the Contractor has not adhered to appropriate processes or policies with respect to advertising for, or the evaluation of, tenders, AusAID may require the Contractor to cancel the tender selection process. In such circumstances the Contractor may be required to repeat the competitive tender process at no additional cost to AusAID.
- 10.6 The Contractor warrants that it will exercise a duty of care and good faith to AusAID in performing its obligations under the Contract including the preparation of all tender documentation and the administration of any Construction sub-contract, including ensuring that such sub-contracts allow for the correction of any construction defects.

11. MEETINGS

- 11.1 In addition to regular meetings with AusAID's representative (the Law and Justice Advisor), the ISP Management Team and other personnel specified by AusAID from time to time may be required to attend meetings with AusAID Port Moresby quarterly to review or discuss the Contract, including the following matters:
- (a) the general progress of the Project;
 - (b) matters arising from the Contractors reports to AusAID;
 - (c) any issues arising as a result of communication by either Party with Stakeholders;

- (d) any other Third Party Issues and the Contractor's proposal for resolution of any issue referred to in (c) above;
 - (e) any variations proposed to the Project including in relation to timing, whether or not any such variations have been agreed to by AusAID;
 - (f) Contract performance matters;
 - (g) the accuracy of invoices; and
 - (h) such other matters in relation to which either Party provides five (5) Business Days' notice in writing to the other Party.
- 11.2 AusAID may require an implementation briefing in Port Moresby prior to mobilisation. The ISP Corporate Management Team and any other personnel as specified by AusAID must attend this meeting. AusAID may also require the relevant personnel to attend a meeting at the Australian Diplomatic Mission in or having responsibility for the Partner Country before commencement of implementation.
- 11.3 The Contractor acknowledges and agrees that the costs of any meetings under this clause are included in the Fees. AusAID may determine the length of the meetings required, but AusAID expects that such meetings shall be for approximately 8 hours (excluding meal breaks).

12. RIGHT OF AusAID TO RECOVER MONEY

- 12.1 Without limiting AusAID's rights under any provision of the Contract, any payment or debt owed by the Contractor to AusAID in relation to the Contract may be deducted by AusAID from the amount of payment of any claim for Fees, including Reimbursable Costs or from any other moneys payable or due to the Contractor or may be recovered in any court of competent jurisdiction.
- 12.2 AusAID may review any payments made to the Contractor at any time and:
- (a) if the total of the amount paid to the Contractor is greater than AusAID determines by review to be payable under the Contract, then AusAID must notify the Contractor in writing of the amount of refund it has determined to be repayable;
 - (b) the Contractor must within 28 days after receipt of AusAID's notification:
 - (i) refund the excess to AusAID; or
 - (ii) provide AusAID with evidence supporting the Contractor's opinion concerning the amount of the refund;
 - (c) failure by the Contractor to provide evidence as required in **Clause 12.2(b)(ii) above** will, in the absence of payment in full of the refund claimed, be deemed to be evidence of the Contractor's acceptance that the amount of refund is correct and payable to AusAID on demand or deductible from subsequent payments due under the Contract; and
 - (d) AusAID must, within 28 days of receipt after the Contractor's evidence supporting its opinion concerning the amount of the refund, consider the Contractor's evidence and give the Contractor written notice either:

- (i) calling for payment within 28 days of the refund determined by AusAID's review; or
- (ii) calling for payment within 28 days of the refund as re-determined following its consideration of the Contractor's evidence; or
- (iii) of AusAID's agreement that there is no refund payable.

12.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 12.2**, or pay any amount due to AusAID, the amount of the refund or payment is recoverable by AusAID from the Contractor by deducting the amount from subsequent payments owed to the Contractor or in any court of competent jurisdiction as a debt due and payable to AusAID by the Contractor.

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

13. GOVERNMENT TAXES, DUTIES AND CHARGES

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

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

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

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

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

13.4 Subject to **Clause 13.8 below** if any new or existing government tax, duty or charge ("Changed Tax") levied in Australia or the Partner Country in connection with the performance of the Services under this Contract is introduced, increases, decreases or is removed in its entirety and this affects the cost to the Contractor of providing the Services, the Contractor must give AusAID:

- (a) written notice of the increase, decrease or removal;

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

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

- 13.5 An increase in the Fees under **Clause 13.4 above** shall not be approved and AusAID is not obliged to pay the amount claimed to be attributable to the change in the Changed Tax unless and until the Contractor provides AusAID with evidence of the net effect of the change in the Changed Tax on the cost of supplying the Services and AusAID is satisfied that:
- (a) the claimed increase is actually attributable to that Changed Tax and takes into account reductions in any other Changed Tax; and
 - (b) the net change in the Changed Tax has affected the Fees for supplying the Services,
- and the increase shall take effect from the date on which the Changed Tax became effective.
- 13.6 A decrease in Fees under **Clause 13.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.
- 13.7 The Contractor may claim a Changed Tax adjustment only once in respect of any change.
- 13.8 **Clause 13.4 above** does not apply to income tax, taxes on turnover or revenue or similar taxes imposed on or in respect of income, turnover or revenue.

14. INSURANCES

- 14.1 In addition to the Contractor's obligations regarding insurance detailed in Standard Conditions **Clause 34** (Insurances) the Contractor must ensure that:
- (a) AusAID is notified immediately the Contractor becomes aware of any actual, threatened or likely claims under all of the insurances required by this Contract or any act or omission by the Contractor which could materially reduce the available limit of indemnity;
 - (b) AusAID is notified in writing whenever the insurer gives the Contractor a notice of cancellation of project-related insurances;
 - (c) in respect of public liability insurance and property insurance that:
 - (i) all insurance agreements and endorsements (with the exception of limits of liability) name, and operate as if there was a separate policy of insurance covering, AusAID, the Contractor and sub-contractors; and
 - (ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;

- (d) where AusAID is a joint insured under an insurance policy, the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against AusAID; and
 - (e) all premiums are promptly paid.
- 14.2 The Contractor undertakes that it shall use its best endeavours to ensure that it commits no act or omission which renders any of the insurances required by this Contract to be effected by it, null and void or of less value.
- 14.3 In respect of the public liability insurance, Standard Conditions **Clause 34.1(a)** is amended as follows: the Contractor must ensure that the limit for each and every claim is \$20 million.

15. COMPLIANCE WITH AusAID POLICIES

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

16. IN COUNTRY MANAGEMENT

- 16.1 The Contractor acknowledges that management of this contract will be the responsibility of AusAID's representative(s) at Port Moresby Post. The Contractor shall deal in the first instance in relation to the management of this Contract with AusAID Port Moresby.
- 16.2 The Contractor acknowledges and agrees that any costs incurred by the Contractor arising out of the management arrangements referred to in **clause 17.1** above within AusAID are included in the Fees.

17. PERFORMANCE GUARANTEE

- 17.1 The Contractor may be required to provide to AusAID, at its expense, and subject to the outcome of the financial assessment detailed in Section 1 Tender Schedule D of the Request for Tender, a performance guarantee executed by a guarantor delivered to AusAID, guaranteeing the performance by the Contractor of its obligations under the Contract, which must be substantially in the form appearing in **Schedule 6**.

Schedule 1, Annex 1 - Draft PALJP ISP Monitoring Framework (IMF)

(Note: This IMF is a draft only. A final ISP IMF will be completed by AusAID and included in the final Scope of Services.)

The ISP will be monitored by AusAID and DNPM for its performance in supporting the PALJP in accordance with the PALJP PDD and the requirements of this Contract, as further specified in Annual Statements of Contribution.

Each area of ISP Services listed in column one will be assessed against the relevant key process and action indicators of the six Enabling Themes in the PALJP Monitoring and Evaluation Framework set out in the PALJP PDD, together with the indicators listed in column 2.

The means of verification for all indicators will include:

- a. the ISP reporting, as specified in Clause 6.3; and
- b. stakeholder interviews conducted by AusAID/DNPM, or consultants engaged for this purpose, as part of the Annual Review of Aid Effectiveness process.

ISP Services	Key Performance Indicators
Strategic Level Management	
ISP and Management Team (Clauses 3.4-3.8)	<ul style="list-style-type: none"> • Relevant PALJP Enabling Theme key process and action indicators • Quality and responsiveness of advice and support provided to AusAID and the Sector • Open and effective communication with stakeholders, including compliance with the ISP Communications Strategy • Effective support for the Sector’s coordination mechanisms including the LJSWG, NCM, AMTs and LJSS • Effective support for the Sector to strengthen its linkages with key partners • Effective support for the integration and coordination of PALJP with other programs of support for the Sector or of relevance to the Sector • Effective support for the Sector’s planning and budgeting processes in accordance with the PALJP

ISP Services	Key Performance Indicators
	<p>PDD</p> <ul style="list-style-type: none"> • Effective support for the Sector’s increasing focus on service delivery at the local level • Effective management systems and procedures to support the delivery of ISP Services • Strategic management of all PALJP ISP TA Personnel through effective management structures, processes and leadership • Strong risk management and mitigation • Production of clear, succinct and audience-appropriate reports and documentation • Strong ISP head-office support for the delivery of ISP Services, including the ISP Management Team
Operational Level Management	
<p>Human Resource Management (Clause 4)</p>	<ul style="list-style-type: none"> • Relevant PALJP Enabling Theme key process and action indicators • Provision of quality TA Personnel in accordance with the PALJP principles. • An increase in the diversity of capacity development tools and options used by the Sector as alternatives to international TA Personnel over the life of the PALJP. • A decrease in the Sector’s use of international TA Personnel over the life of the PALJP except where a decrease would not be beneficial to the overall capacity development objectives of the PALJP due to contextual factors. • An increase in the proportion of local TA Personnel in the PALJP TA Personnel team except where an increase would not be beneficial to the overall capacity development objectives of the PALJP due to contextual factors. • Production of a high-quality Human Resource Management and Professional Development Plan and strong compliance with this Plan • Identification and application of best practice human resource management and continuous learning and improvement. • Opportunities for partnerships are identified and pursued by the ISP in the interests of the Sector • Appropriate partnerships are formed that support the Sector’s capacity development and operational objectives • Partnerships are effectively supported by the ISP in accordance with agreed roles and responsibilities • A culture of learning and improvement is promoted amongst TA personnel including systematically

ISP Services	Key Performance Indicators
	capturing and sharing lessons learned within PALJP and internationally
Financial Management and Procurement (Clause 5)	<ul style="list-style-type: none"> • Relevant PALJP Enabling Theme key process and action indicators • AusAID compliance with its financial management and fraud control policies is effectively supported by the ISP • ISP monitoring and reporting to AusAID on ISP financial management and procurement is timely and accurate • ISP financial management and procurement services maximises integration with GoPNG systems and processes • International best practice in relation to supporting and strengthening partner government systems and processes is applied
Performance Monitoring and Assessment (Clause 6)	<ul style="list-style-type: none"> • Relevant PALJP Enabling Theme key process and action indicators • Sector capacity to monitor its performance is systematically strengthened across agency, Sector and central agency levels • Sector capacity to use performance information to make decisions, determine policy, allocate resources and engage with key partners including at central agency, Ministerial and community levels is increased. • Effective ISP support is provided for the Sector to access and use independent advice to support its policy analysis and decision making • In monitoring the effectiveness of the PALJP, AusAID and DNPM are satisfied with the participation and support provided by the ISP • ISP monitoring and reporting to AusAID and DNPM is timely relevant and accurate • The sector is increasingly collecting gender disaggregated data to monitor its performance.

Schedule 1, Annex 2 Estimates of Procurement under PALJP

Under the PALJP, various kinds of procurement will be undertaken or supported using GoA funds. The ISP will assess the size and nature of the procurement to be undertaken under the PALJP as part of the Fiduciary Risk Assessment conducted in accordance with Clause 5.3. The following table provides estimates of the likely types of procurement that will be undertaken under the PALJP, based on the experience under the LJSP.

Total GoA Funds – 2009 (in AUD) – approximation	Type of Item	Cost of Item and as percentage of budget (AUD)	Who will procure	How it will be procured
30,000,000	Advisory services (PALJP TA Personnel)	10,200,000 (34%)	ISP	Recruitment managed by the ISP
	Consultancy services	1,500,000 (5%)	L&J Agencies	Using GoPNG systems, with support of PALJP TA Personnel
	Locally engaged staff	1,500,000 (5%)	L&J Agencies	As above
	Capital Works	7,500,000 (25%)	L&J Agencies using private sector contractors	Using GoPNG systems with significant support by the PALJP Facilities TA Personnel
	Equipment purchase	2,400,000 (8%)	L&J Agencies	Using GoPNG systems, possibly with support of PALJP TA Personnel
	Training (costs may include training providers, venues, travel)	2,100,000 (7%)	L&J Agencies	Using GoPNG systems, possibly with support of PALJP TA Personnel
	Other costs – miscellaneous and covers costs that should be in other categories but are yet to be defined.	4,800,000 (16%)	L&J Agencies Civil Society organisations provided with small grants	Using GoPNG systems, possibly with support of PALJP TA Personnel

Schedule 1, Annex 3 Risk Management Plan

Risk	Response	Tenderer Critique / Comment(s)
1. Macro level instability and external shocks		
<p>International economic downturn, domestic or regional political instability, conflict, health pandemics, natural disasters and/or other climate-related events, lead to a reduction in growth and/or a significant shift to short term priorities, and as a result reduces GoPNG capacity to fund and implement law and justice reforms</p>	<p>The sector-specific policy dialogue, together with high level consultations on the aid program, will include consideration of macro-level shocks and the need for modification of aid program assistance. PALJP support for planning, budgeting, together with increased coordination and partnership among sector stakeholders will also improve the sector's capacity to respond more effectively to external shocks, including strategic reprioritisation of available resources as required</p>	
2. Political/bureaucratic commitment for PNG's law & justice policy framework		
<p>GoPNG bureaucratic and political commitment to the sector's program of reform is reduced and/or the role of key sector partners changes significantly as part of broader public sector reform processes, implementation of sector initiatives is negatively affected and policy priorities of both governments become less well-aligned</p>	<p>PALJP will support sector partners to build and maintain political and bureaucratic commitment by supporting the implementation of priority reform initiatives and addressing new policy priorities as they emerge. In doing so, PALJP will seek to support reform champions and their efforts to build a solid base of commitment across government, at sub-national levels and within communities. PALJP support to strengthen planning and budgeting processes will assist the sector to assess the technical and financial feasibility of proposed initiatives to increase the likelihood of success and thereby bolster ongoing commitment from stakeholders. Support for improved performance monitoring and reporting will be critical to these efforts.</p> <p>The alignment of GoPNG and donor resources, as well as the effectiveness of the GoA-GoPNG development partnership, are identified as two of the six PALJP enabling themes. Key actions and</p>	

Risk	Response	Tenderer Critique / Comment(s)
	processes in support of these themes will be tracked as part of ongoing assessment of aid effectiveness.	
3. Status of critical sector coordination mechanisms		
<p>The longer term status of the sector's coordination mechanisms, particularly the LJSS and the CJLU, within PNG's policy, bureaucratic and budgetary frameworks remains unresolved, resulting in ongoing dependence on donor funding to sustain core operational costs, uncertainties about the roles and responsibilities of these mechanisms and their relationship to sector and central agencies and, consequently, a negative impact on the sector's reform efforts and the effectiveness of GoA's assistance</p>	<p>PALJP assistance provided under Component 1 will be critical to the mitigation of this risk. This assistance will be responsive to changes in the policy and operating environment, with detailed requirements for GoA support under Component 1 being agreed on an annual basis through PNG's planning and budgeting process.</p> <p>In this context, PALJP will support the sector to access the required coordination, facilitation and implementation support functions currently performed by the LJSS and the CJLU, adjusted and targeted as necessary in light of future GoPNG policy decisions about the sector's institutional arrangements and their relationship to the roles of key central agencies such as DNPM, Treasury and DPLGA. PALJP support for regular reviews of the functioning of the sector's coordination mechanisms to ensure they are performing effectively and contributing to improved service delivery, will also be important to the management of this risk, as will support for improved alignment and integration of development and recurrent budget expenditure</p>	

Risk	Response	Tenderer Critique / Comment(s)	
4. Use of and integration with PNG systems			
4a. PNG systems becoming overwhelmed, dominated or distorted	<p>PALJP's integrated approach results in too much focus on issues relating to GoA's resource contribution, rather than addressing the coordinated management of all resources to the sector. For example, attention given to the performance management of aid program funded TA personnel may distract attention away from a focus on the management of agencies' own staff. Similarly, attention to development budget expenditure may distract attention away from expenditure under recurrent and supplementary budgets</p>	<p>PALJP will minimise transaction costs associated with joint management of the PALJP. For example, GoA engagement with sector management mechanisms will be strategic and planned around key decision-making points within PNG's budget cycle timeline. All PALJP support, particularly under Component 1, will adopt a whole-of-budget approach in strengthening the sector's systems and processes to make effective use of all available resources. GoA-GoPNG cooperation and collaboration in the joint management arrangements for</p> <p>PALJP will ensure emerging issues are identified early and alternative arrangements will be developed and agreed should particular processes prove to be problematic or ineffective. Integration with and building capacity of PNG systems, as well as an effective GoA-GoPNG development partnership, are identified as two of six PALJP enabling themes. Key actions and processes in support of these themes will be tracked as part of ongoing assessment of aid effectiveness.</p>	
4b. Financial mismanagement, fraud and corruption	<p>The use of PNG's financial management systems as the primary conduit for the delivery of assistance to the law and justice sector leads to misallocation, misappropriation and/or fraudulent use of GoA and GoPNG funding</p>	<p>PALJP will support and strengthen agency and sector level planning, budgeting, financial management and accountability capacity, including internal audit and fraud control functions. To complement these efforts, AusAID and DNPM will work closely together (with ISP support) and with sector partners to monitor key budget and financial management processes to ensure that all resources are used efficiently, effectively and for their intended purpose. Particular attention will be given to monitoring and managing changes, particularly</p>	

Risk		Response	Tenderer Critique / Comment(s)
		<p>deterioration, in the capacity of the sector's financial management systems and their reliability from a GoA risk management and accountability perspective.</p> <p>GoA will negotiate increased oversight of targeted resources to bolster particular processes should concerns emerge and will work closely with PNG to ensure that all appropriate administrative and, where necessary, legal processes are undertaken in cases of financial mismanagement or suspected fraud. AusAID, in close consultation with DNPM and sector partners, will also commission independent audits of the sector imprest accounts on an annual basis, as part of the annual aid effectiveness review process. Anticorruption is identified as one of six PALJP enabling themes. Key actions and processes in support of these themes will be tracked as part of ongoing assessment of aid effectiveness (refer Annex 9 for further detail).</p>	
4c. Insufficient and inadequate attention to address gender inequality, gender-based violence and disempowerment of women	Ongoing gender inequalities, gender-based violence and disempowerment of women perpetuated by the modes of operation of both the formal and informal justice system are not addressed and undermine reform efforts within the justice system, as well as broader development objectives.	PALJP will adopt a mainstreaming approach to gender-related issues to ensure that all aspects of GoA support include consideration of gender equality, gender-based violence and disempowerment of women (particular details and examples of this approach are set out in Annex 3). PALJP will also provide support for specific gender-focused activities undertaken within the sector in pursuit of the sector's Gender Strategy and SSF objectives. Specialist support in gender mainstreaming will be provided as part of the Core Support Team to bolster the sector's efforts in implementing its Gender Strategy and SSF Goal 1, Strategy 3: Reduce family and sexual violence, including monitoring and reporting on progress..	

Risk		Response	Tenderer Critique / Comment(s)
		Gender equality is identified as one of six PALJP enabling themes. Key actions and processes in support of these themes will be tracked as part of ongoing assessment of aid effectiveness (refer Annex 9 for further detail)	
4d. Insufficient and inadequate attention to impact of HIV and AIDS	Although the impact of HIV and AIDS on sector performance is as yet unknown, given its growing prevalence in PNG, this may emerge as a risk over the lifetime of PALJP. Anecdotal evidence already exists to suggest that stigma and discrimination against people living with HIV and AIDS is occurring within community and informal justice systems, and certain agencies within the justice system, such as police, correctional services, village courts and magisterial services, are considered particularly vulnerable due to the nature of their operations	PALJP support for HIV mainstreaming will strengthen the sector's capacity to identify and implement appropriate responses, including a focus on improved data collection and analysis, and the operations of particularly vulnerable agencies. Specialist support in HIV mainstreaming will be provided as part of the Core Support Team to bolster the sector's efforts in HIV mainstreaming and other responses, including monitoring and reporting on progress. HIV mainstreaming is identified as one of six PALJP enabling themes. Key actions and processes in support of these themes will be tracked as part of ongoing assessment of aid effectiveness (refer Annex 9 for further detail).	
5. Increasing complexity and uneven capacities undermine efforts to increase local level impact			
As implementation of PNG's law and justice sector reforms progresses and the emphasis shifts from Port Moresby-based sector coordinating bodies and agency head offices to regional offices, sub-national levels of government and the community, management of the reform process (including PALJP) will become correspondingly more complex and the demands on key partners more multi-faceted. The capacity of sector partners is likely to be more variable, and may present problems for law and justice sector agencies in implementing specific reforms.		PALJP's capacity building approach and treatment of overarching policy issues, including sub-national and community engagement, will support the management of this risk. In particular, PALJP will support sector agencies to build more productive relationships with partners working outside Port Moresby, including in areas such as planning and resource allocation, implementation of the sector's PEF and the operations of the CLJU. Specialist support in planning and budgeting (including issues of decentralisation and intergovernmental financing) and in sub-national and community engagement will be provided as part of the Core Support Team to bolster the sector's efforts in these	

Risk	Response	Tenderer Critique / Comment(s)	
	<p>areas.</p> <p>PALJP will also collaborate with GoA (and other donor supported) programs that are focused on building the capacity of key stakeholders in central agencies, at sub-national levels of government, and across NGOs and communities. Such collaboration will support the sector to ensure increased consideration and dialogue with key partners about local level and non-state capacities and priorities as part of the sector's efforts to improve service delivery at the local level. Support for strengthening performance monitoring within the sector to increase the focus more clearly on local level impact will also be critical to these efforts. Ongoing reviews of aid effectiveness, including the effectiveness of the ISP support to overall management of PALJP, will also be fundamental to the management of this risk.</p>		
6. Performance and effectiveness of TA personnel			
	<p>TA personnel used by the sector as part of PALJP adopt capacity building approaches that are unsatisfactory and not in accordance with the PALJP design, undermining the overall effectiveness of the PALJP.</p>	<p>The PALJP ISP's recruitment strategy will be implemented in partnership with GoA and sector partners. Ongoing strategic management of TA personnel is a core element of the ISP's support services, including the provision of professional development programs targeting capacity building, gender, cross cultural and language skills, and will be monitored as part of the ongoing assessment of aid effectiveness (refer Annex 9 for more details). Operational level management of PALJP TA personnel will progressively enable greater direct involvement by GoPNG partners, particularly to ensure improved accountability for performance.</p> <p>PALJP support, particularly under Component 1,</p>	

Risk		Response	Tenderer Critique / Comment(s)
		will encourage the sector to consider more appropriate and effective alternatives to the use of TA personnel and to avoid a default and/or over reliance on advisory assistance. As part of this approach, PALJP will support the sector to address significant underlying, long term capacity constraints relating to, for example, workforce planning, the current dearth of capacity across middle management, and the capacity constraints within NGOs and informal justice systems that currently inhibit their involvement in demanding and supporting the delivery of justice services at the local level.	
7. Donor, cross-program and GoA whole-of-government coordination			
	Ineffective donor, cross-program and GoA whole-of-government coordination and cooperation leads to duplication and/or dilution of focus across respective areas of activity and/or an overburdening of PNG partners with donor requirements, which in turn undermines the sector's reform efforts and the effectiveness of the PALJP.	PALJP will support the sector to strategically align and, wherever possible, integrate the contributions of other donors through the use of the sector's planning, budget and implementation processes. Coordination and coherence across the GoA aid program and with other donors, particularly in relation to areas of overlapping assistance and common objectives, will be managed as a key role of AusAID Port Moresby in partnership with DNPM and in accordance with the Kavieng Declaration. GoA governance and management arrangements will further strengthen coordination and coherence across all elements of GoA assistance to the law and justice sector, including any future and expanded engagement from key partners such as the AFP, AGD and CO.	
8. Transition from current LJSP and JAG managing contractors to new ISP			
	Inadequate planning and poor communication with stakeholders leads to uncertainty and confusion about the transition from the current LJSP and JAG managing contractors to the new ISP approach set out in this design, undermining the confidence of key stakeholders and causing disruption to the	AusAID Port Moresby will play a key role in managing the transition from the current phase of GoA assistance to the next. A detailed transition plan (forthcoming at the time of writing) will	

Risk	Response	Tenderer Critique / Comment(s)
work of the sector	outline key actions and timelines, as well as roles and responsibilities of the AusAID team, including the PNG-Australia Law & Justice Adviser, as well as current and future contractors, to ensure a smooth process, with minimal transaction costs and disruptions for PNG stakeholders in particular. Key issues and elements of the transition arrangements are set out in the PDD.	

PART 3 – DRAFT SCOPE OF SERVICES

Note to Tenderers: This Part forms a key Schedule of the Contract Conditions. Although this Scope of Services is presented as Part 3 of this RFT, in the consolidated Contract it will appear as Schedule 1. It reflects the most current version of the services required of the Contractor but may be updated by AusAID during contract negotiations, particularly in light of information included in the Tenderer's response to the RFT.

SCHEDULE 2

DRAFT SCOPE OF SERVICES

Papua New Guinea – Australia Law and Justice Partnership (PALJP)

ACRONYMS AND DEFINITIONS

AMTs	Activity Management Teams
Annual Aid Effectiveness Workplan	Workplan developed by AusAID and DNPM to set out key PALJP monitoring and evaluation processes for each calendar year as per p.42 of the PALJP PDD
Annual Statement of Contribution	Document developed by AusAID each year outlining the agreed program of GoA assistance to the Sector for the following calendar year for submission to DNPM and the Sector, as per p.34 of the PALJP PDD
Central Imprest Account	Imprest Account established under the LJSP into which GoA (and GoPNG) deposit funds for use under the PALJP.
CJLU	Community Justice Liaison Unit
DNPM	Department of National Planning and Monitoring (PNG)
GoA	Government of Australia
GoPNG	Government of Papua New Guinea
ISP	Implementation Service Provider
ISP Services	All services required to be provided by the ISP in accordance with this Scope of Services
LJSWG	Law and Justice Sector Working Group
LJSP End Date	Date that the LJSP ends is 19 April 2009
LJSS	Law and Justice Sector Secretariat
NCM	National Coordinating Mechanism
PALJP	Papua New Guinea – Australia Law and Justice Partnership
PALJP – LJSP Transition Phase	The period starting with the Program Mobilisation Date and ending with the LJSP End Date
PALJP TA Personnel	Technical Assistance personnel provided by the ISP in support of the PALJP
PNGAPP	PNG-Australia Policing Partnership – between the Australian Federal Police and the RPNGC
PNG-Australia Law and Justice Adviser	Role created to support the PALJP as per the PALJP PDD and as described in the Position Description in Annex 7 of the PDD
Program Mobilisation Date	Date that the ISP must mobilise in PNG as defined in the Contract.

Sanap Wantaim	GoA and GoPNG program to address HIV/AIDS in PNG
Sector	The law and justice sector in PNG and/or Australia
SGP	Strongim Gavman Program – a program between GoA and GoPNG to strengthen elements of the PNG government.
Strongim Pipol Kirapim Nesen	GoA and GoPNG program to strengthen democratic governance in PNG
Sub national Strategy	GoA and GoPNG program to strengthen sub national levels of government in PNG

1. BACKGROUND AND CONTEXT

1.1 The PALJP Program Design Document

This Scope of Services outlines the role of the Implementation Service Provider (ISP) in supporting the implementation of the PALJP and must be read in conjunction with the PALJP PDD. The PALJP Program Design Document (PDD) sets out the context, scope, objectives and principles of the PALJP and is the primary reference document from which to gain an understanding of the intent, purpose and features of the PALJP. Where there is an inconsistency between the PDD and the Contract, the Contract will take precedence.

1.2 Role of the PALJP ISP

The PALJP is a partnership between the Governments of Papua New Guinea (GoPNG) and Australia (GoA), and is strategically led and governed by them. The role of the ISP is to provide appropriate support to both governments, furthering the development of an effective GoPNG-GoA partnership within the Sector.

2. ISP SERVICES

2.1 General principles

In providing the ISP Services, the ISP must adhere to the principles and intent of the PALJP as set out in the PDD, including:

- (a) to avoid supplanting either of the government partners in key decision making and management processes; and
- (b) to avoid setting up separate or parallel systems contrary to GoA's commitment to use and support PNG systems wherever possible.

3. STRATEGIC LEVEL MANAGEMENT SERVICES

3.1 The ISP must provide a Management Team (ISP Management Team) to support GoA-GoPNG joint management of PALJP in accordance with the PALJP PDD.

3.2 The ISP will support the GoA and GoPNG to jointly select and recruit the ISP Management Team prior to mobilisation.

- 3.3 The ISP Management Team must contain no less than four people and include expertise in the following areas:
- (a) role and operations of formal and informal justice systems;
 - (b) capacity building and change management;
 - (c) gender and HIV mainstreaming; and
 - (d) aid effectiveness and the measurement of aid effectiveness.
- 3.4 The ISP Management Team must provide the following:
- (a) high level strategic and technical advice in relation to GoPNG-GoA joint management of the PALJP and its operations, including to support AusAID in developing the Annual Statement of Contribution and to support AusAID and DNPM in developing the Annual Aid Effectiveness Workplan;
 - (b) strategic management of the ISP Services in accordance with the aid effectiveness principles set out in the PALJP PDD, particularly the key action and process indicators for the six Enabling Themes and including:
 - (i) scheduling, mobilisation and management of all resources provided by the ISP, with particular attention to resources, including PALJP TA Personnel, directed to locations outside the national capital;
 - (ii) identification and resolution of emerging risks associated with ISP Services and PALJP operations more broadly, including in relation to the performance of PALJP TA Personnel and staff; and
 - (iii) flexibility and responsiveness to emerging GoPNG/GoA needs and priorities, with any changes to the ISP Services agreed and implemented in accordance with Clause 8 below;
 - (c) open and effective communication with GoPNG/GoA in accordance with the principles outlined in the PALJP PDD, as further articulated in the PALJP ISP Communications Strategy required under Clause 3.6 below, including preparation, review and quality control of ISP-produced documentation, ensuring that it is clear, succinct and in plain English;
 - (d) effective leadership, management and coordination of all PALJP TA Personnel in accordance with the principles outlined in the PALJP PDD, including to ensure the appropriate involvement in and delivery of ISP Services by PALJP TA Personnel and Staff; and
 - (e) Support the PALJP's renewed emphasis on gender equality by: mainstreaming support for gender and HIV/AIDS in all of the ISP's operations and functions and supporting all ISP staff to do so in an integrated and practical manner; supporting the sector's gender strategy as a critical success factor in boosting sector performance and the

achievement of PNG's law and justice objectives; and generally supporting the PALJP's emphasis on the empowerment of women.

- 3.5 As directed by the L&J Adviser, the ISP Management Team must also:
- (a) support the Sector's coordination mechanisms (including the NCM, LJSWG, AMTs, LJSS and CJLU) in accordance with Component One of the PALJP, including regular reviews of the functioning of these coordination mechanisms to ensure that they are able to function effectively and contribute to improved service delivery;
 - (b) support the Sector to improve and strengthen its linkages with key partners including central agencies, other line agencies, provinces, districts, communities, non-government organisations, government agencies and other institutions in Australia and the region;
 - (c) support the integration and coordination between the PALJP and other GoA-funded programs of assistance to (or affecting) the Sector including the PNGAPP, SGP, other AusAID programs (including Sanap Wantaim, Sub-National Strategy and Strongim Pipol Kirapim Nesen) and the programs of other development partners including UN agencies and New Zealand Aid (NZAID);
 - (d) support the Sector's annual planning and budgeting process in accordance with the principles of the PALJP, including:
 - (i) a holistic approach to resource prioritisation and allocation that addresses recurrent, development and supplementary budgets and the linkages between these at national and sub-national levels;
 - (ii) more systematic monitoring and analysis of expenditure trends to improve transparency and enable a better understanding of longer term resource needs within the Sector; and
 - (iii) documentation of all PALJP resources in the GoPNG's Development Budget;
 - (e) support GoA and GoPNG to ensure that PALJP investments in Sector infrastructure are strategic, take into account other available resources and are eventually part of a long-term financing strategy for an affordable and sustainable stock of Sector infrastructure;
 - (f) support the Sector's increasing focus on service delivery at the local level through its Provincial Engagement Framework, provincial pilot programs and other initiatives, including:
 - (i) to continue to develop, sequence and expand this focus and to engage constructively with key partners including DPLGA, PLSSMA, NEFC, provincial and local level governments and other relevant programs including the Sub-National Strategy; and

- (ii) to support GoA's overarching Strategy for Development Assistance on Bougainville including the agreed specific support for Bougainville's law and justice sector;
 - (g) support the PALJP's increased focus on building capacity of the Sector's monitoring, evaluation and reporting systems and ensure that a focus on performance monitoring, evaluating and learning is incorporated into all relevant aspects of the ISP Services, including to ensure that the PALJP ISP Management Team, TA Personnel and staff contribute to an open, accountable and learning culture that models best practice;
 - (h) support the GoPNG and GoA in their annual policy dialogue and other strategic engagements as appropriate; and
 - (i) perform other management tasks as reasonably required for the effective delivery of the ISP Services in support of the PALJP.
- 3.6 The ISP must develop a **PALJP ISP Management Strategy** in accordance with Clause 7 below, outlining:
- (a) how the PALJP ISP Management Team will be structured including roles, responsibilities and accountabilities;
 - (b) relationships between the ISP Management Team, the Law and Justice Adviser and key GoA and GoPNG stakeholders;
 - (c) a Communications Strategy setting out engagement protocols to enable effective communication between the ISP and relevant GoPNG and GoA stakeholders, ensuring in particular that the ISP does not have a separate voice in the Sector, but rather that it supports GoPNG-GoA communications

The ISP must submit the PALJP ISP Management Strategy and Communications Strategy to AusAID within 1 month of mobilisation.

- 3.7 The ISP must develop a Capacity Development Strategy (CD Strategy) within six months of mobilisation and submit this to AusAID in accordance with Clause 7 below. The CD Strategy must:
- (a) outline how the ISP will support the capacity development objectives of the PALJP through all of its operations including:
 - (i) strategic level management services;
 - (ii) operational level management services including human resource management, financial management and procurement and performance monitoring and assessment.
 - (b) be a tool to ensure that the ISP has a shared vision of capacity development with the GoPNG and GoA which draws on international best practice and can be adapted and improved continuously over time;

- 3.8 The ISP must establish appropriate project and financial management systems to manage the ISP Services detailed in this Scope of Services. The ISP must develop an Administration Manual for submission to AusAID within six months of mobilisation in accordance with Clause 7 below, that will:
- (a) outline a range of procedures and policies in relation to systems and processes put in place to support the PALJP;
 - (b) draw on the existing LJSP Program Administration Manual where relevant;
 - (c) be a reference tool that enables all PALJP TA Personnel and other stakeholders to understand how the ISP operates; and
 - (d) refers to other appropriate PALJP ISP manuals or strategies where relevant (rather than duplicating them).

4. **OPERATIONAL LEVEL MANAGEMENT SERVICES**
– **HUMAN RESOURCE MANAGEMENT**

4.1 **PALJP capacity building support for Sector human resource management**

Further to Clause 3 above, in providing the human resource management services required under this Clause, the ISP and ISP Management Team must have regard to the principles and capacity building objectives set out in the PALJP PDD and the CD Strategy and must ensure that the ISP Services support and encourage the Sector to:

- (a) undertake more detailed analysis of its resource needs and objectives through its planning processes in order to identify the most effective form of external assistance required to meet its particular objectives, including the use of local and international TA personnel, volunteers, institutional partnerships, twinning programs, and short or long term consultants contracted directly to the GoPNG, and taking account of the relative costs and benefits of these different options;
- (b) use TA Personnel strategically and effectively, including through more detailed consideration of underlying managerial, structural and workforce planning issues that require attention in the Sector over the medium to longer term, together with greater attention to capacity constraints faced by Sector partners at sub-national levels and outside government;
- (c) provide strong ownership and leadership in accessing and utilising TA Personnel, and move towards greater GoPNG management of TA Personnel over time in accordance with relevant GoPNG systems and processes, including:
 - (i) identifying needs, defining roles, functions and accountabilities of TA Personnel (and/or other technical assistance) through the development of terms of reference and workplans;

- (ii) participating in recruitment processes for TA Personnel (and/or undertaking recruitment processes for other technical assistance); and
- (iii) managing the performance of TA Personnel (and/or other technical assistance) through supervision and accountability processes.

4.2 The ISP must develop a **PALJP ISP Human Resource Management & Professional Development Plan** for submission to AusAID within six months of Mobilisation (with the exception of the Security Plan in Clause 4.2(e) below which must be submitted one month prior to Mobilisation). This will outline how the ISP and ISP Management Team will recruit, support and manage the performance of PALJP TA Personnel and Staff, including:

- (a) **PALJP ISP TA Personnel Recruitment Manual** outlining strategies and processes for the recruitment of all PALJP TA Personnel;
- (b) **PALJP ISP TA Personnel and Staff Performance Management Manual** outlining processes and principles for the performance management of all CST, ACM Advisers, other TA Personnel and ISP Corporate Team;
- (c) **PALJP ISP TA Personnel Ongoing Learning and Development Manual** outlining how all PALJP TA Personnel will be supported to continually enhance and develop their skills, knowledge and attributes through induction, mentoring and ongoing training programs, in accordance with Clause 4.7. This will include a proposed budget for submission to AusAID on the approximate costs of the ongoing learning and development and an annual budgetary upper limit;
- (d) **PALJP ISP Code of Conduct** for the PALJP ISP Management Team, TA Personnel and Staff, required in accordance with Clause 4.5(c); and
- (e) **PALJP ISP Security Plan** for the PALJP ISP Management Team, TA Personnel and Staff, which must be submitted one month prior to Mobilisation;

4.3 Provision of Technical Assistance Personnel and Staff

Further to Clauses 3 and 4.1 above, the ISP must provide TA Personnel and Staff in accordance with the requirements of the PALJP PDD as follows:

(a) **Core Support Team**

The ISP Management Team must ensure that the Core Support Team (CST) supports the Sector in accordance with the PALJP PDD, by performing the following functions:

- (i) supporting the L&J Adviser to work with GoPNG to review and identify the CST composition for each calendar year, as part of the Sector's annual planning and budgeting process;

- (ii) subject to the outcome of the process outlined in paragraph (i), ensuring that the CST possesses appropriately skilled advisers to support the Sector in core public administration and sector policy areas including, but not limited to:
 - (A) planning and budgeting (including development, recurrent, and supplementary budgets and issues of decentralisation and intergovernmental financing);
 - (B) financial management and procurement;
 - (C) human resource management and workforce planning;
 - (D) asset and infrastructure management; and
 - (E) information management.
- (iii) as agreed by GoPNG and GoA in the PALJP PDD and unless directed otherwise by the L&J Adviser, ensuring that the CST includes at least two advisers in each of the following areas for the life of the PALJP:
 - (A) sub-national and community engagement;
 - (B) performance monitoring;
 - (C) gender equality;
 - (D) HIV and AIDS mainstreaming; and
 - (E) family and sexual violence.
- (iv) supporting the Sector to develop, and review at least annually, appropriate terms of reference for each CST member, building on the generic position description for all CST advisers contained in the PALJP PDD;
- (v) developing management systems, principles and processes to:
 - (A) determine the focus and workplans of individual CST members;
 - (B) enable the Sector agencies and coordination mechanisms to flexibly and strategically draw on CST support in accordance with their needs and priorities;
 - (C) enable the CST to work as a team and work effectively with Agency-Based Change Management Advisers and other TA Personnel in the Sector (including those provided under other GoA or donor programs);

- (D) enable the CST to foster and support cross-sectoral learning and development;
 - (E) create efficiencies and obtain value for money for the Sector, including through the availability of CST support for a broad range of stakeholders across the sector's agencies, AMTs and other bodies;
 - (F) enable the CST to operate strategically and flexibly across the Sector, without relying on a traditional 'counterpart' model;
 - (G) determine an appropriate base location(s) for the CST advisers; and
 - (H) facilitate the increased use of CST advisers in locations outside of Port Moresby as part of the Sector's focus on improving local level service delivery;
- (vi) The ISP must outline how it will manage the CST in accordance with 4.3(a)(v) above in the CD Strategy, developed in accordance with Clause 3.7 above and the Human Resources Management and Professional Development Plan, developed in accordance with Clause 4.2 above.

(b) Agency-based Change Management Advisers

The ISP Management Team must ensure that the Agency-based Change Management Advisers (ACM Advisers) support the Sector in accordance with the PALJP PDD, by performing the following functions:

- (i) at the outset of the PALJP, supporting the L&J Adviser to work with the law and justice agencies to identify their agency-specific requirements for ACM advisers and to develop terms of reference for each ACM adviser, building on the generic position description for all ACM Advisers contained in the PALJP PDD;
- (ii) at the outset of the PALJP and as part of the process outlined in paragraph (i), supporting the Sector to implement the relevant 2009 Development Budget Project Formulation Document in respect of ACM Advisers, including to assess whether some ACM Adviser positions can be filled by redeploying from within the existing LJSP advisory pool or whether new recruitment processes are required;
- (iii) once all CMA Adviser positions are established, supporting the L&J Adviser to work with the law and justice agencies to articulate and agree on the specific roles and responsibilities for each CMA position on an annual basis in a rolling work plan, as part of the Sector's annual planning and budgeting process; and

- (iv) developing management systems, principles and processes to ensure that the ACM Advisers perform effectively, consistent with the requirements of Clause 4.3(a)(v) and in accordance with the principles and requirements of the PALJP PDD and this Scope of Services;

(c) Other Technical Assistance Personnel

Where the Sector identifies the need for additional TA Personnel through its annual planning and budgeting process, other than as part of the CST or ACM Advisers, the ISP must assist the Sector, as requested, to select, recruit, mobilise and manage TA Personnel in accordance with the principles outlined in this Clause 4; and

(d) PALJP ISP Corporate Team

The ISP must provide all necessary Staff as part of its Corporate Team required to support the provision of the ISP Services as agreed and specified in this Contract.

4.4 Recruitment of TA Personnel

Further to Clauses 3 and 4.1 above, and subject to the requirements of Clause 4.9 below, regarding the transition arrangements upon ISP mobilisation, and Clause 4.3, above, regarding the CST and ACM Advisers, where the Sector identifies the need for TA Personnel through its annual planning and budgeting process and requests ISP assistance, the ISP must provide recruitment services in respect of those TA Personnel in accordance with the requirements of the PALJP PDD as follows:

- (a) employing best practice processes in identifying, selecting and engaging TA Personnel to ensure that the aid effectiveness objectives of the PALJP are fully met;
- (b) facilitating the participation of appropriate GoPNG representatives as much as possible throughout the recruitment process, including supporting the L&J Adviser to work with relevant Sector stakeholders (ie stakeholders who have requested and/or will benefit from the support of the TA Personnel) to develop a position description and terms of reference for the TA Personnel;
- (c) at a minimum, ensuring that:
 - (i) all recruitment for TA Personnel is conducted in accordance with the Commonwealth Procurement Guidelines (CPGs), including the core principle of “value for money” (incorporating both technical and price assessments), and all relevant regulatory and AusAID requirements;
 - (ii) all TA Personnel are recruited against the GoA-GoPNG approved Terms of Reference for the position;

- (iii) all TA Personnel are recruited on the basis of demonstrated understanding and ability to integrate principles of gender equality and gender mainstreaming as part of their capacity building approach;
- (iv) a variety of recruitment methods are used, as appropriate, including (but not limited to) direct advertising in national daily/weekend newspapers and/or professional journals, use of specialist recruitment agencies, use of ISP websites or databases;
- (v) recruitment methods are innovative, flexible and tailored to meet the Sector's needs and are designed to identify, encourage and attract eligible candidates:
 - (A) who are women, in order to achieve gender equality within the PALJP TA Personnel team;
 - (B) who are PNG nationals and/or based within PNG, in order to ensure greater local expertise within the PALJP TA Personnel team;
 - (C) who have the requisite technical skills and experience, as well as strong interpersonal qualities required to support PALJP's capacity development objectives; and
 - (D) who will adhere to the PALJP ISP Code of Conduct and understand and promote the gender equality principles of the PALJP;
- (vi) except where justifiable on value for money grounds taking into account factors including the position and level of inputs the recruitment method:
 - (A) is not limited to the use of the ISP website and/or database; and
 - (B) involves advertising in private and public sector fora;
- (vii) prior to engagement of any TA Personnel, AusAID and GoPNG are provided with a copy of the preferred candidate's CV with a brief report on the recruitment strategy, interview and referee checks, together with any other assessments used (which must include price), and a comment on any alternate short-listed candidates; and
- (f) facilitating the final approval by AusAID and GoPNG of the preferred candidate, on the basis that AusAID reserves the right to reject the ISP-nominated candidate at AusAID's absolute discretion and to require the ISP to undertake further recruitment activities at the ISP's expense.

4.5 Performance Management of TA Personnel and the ISP Corporate Team

Further to Clauses 3 and 4.1 above, and subject to the requirements of Clause 4.3 regarding the CST and ACM Advisers, where the ISP recruits TA Personnel on behalf of the Sector, and in the case of the ISP Corporate Team, the ISP must provide performance management services in accordance with the requirements of the PALJP PDD as follows:

- (a) ensuring that the performance of all TA Personnel and the ISP Corporate Team is managed effectively;
- (b) ensuring genuine GoPNG input into the performance management processes of all TA Personnel and enabling increasing GoPNG involvement in these processes over time:
 - (i) based on clear identification of demand and capacity for increasing involvement by the agency or Sector coordination mechanism in question; and
 - (ii) in a manner that makes use of or at least replicates, where system weakness prevents their use, existing GoPNG personnel management processes, moving towards greater GoPNG management of TA Personnel as systems are strengthened.
- (c) ensuring that all TA Personnel and the ISP Corporate Team are made aware of, fully comply with, and are managed appropriately in the event of non-compliance with, a PALJP ISP Code of Conduct that:
 - (i) sets out clear expectations in relation to appropriate and professional conduct;
 - (ii) contains workplace policies and protocols addressing issues related to gender equality, HIV and AIDS, discrimination and harassment; and
 - (iii) is based as closely as possible on the Australian Public Service Overseas Code of Conduct;
- (d) ensuring that all TA Personnel and the ISP Corporate Team integrate principles of gender equality and HIV mainstreaming as part of their capacity building approach;
- (e) ensuring that all TA Personnel and the ISP Corporate Team, as appropriate, participate in ongoing professional development programs provided by the ISP in accordance with Clause 4.7; and
- (f) ensuring that all PALJP TA Personnel and the ISP Corporate Team work in cooperation, coordination and harmony with personnel working under other programs of support to the Sector.

4.6 Workplans for TA Personnel

Further to Clauses 3 and 4.1 above, and subject to the requirements of Clause 4.3 regarding the CST and ACM Advisers, the ISP must support all PALJP TA Personnel to develop individual annual workplans for TA Personnel, in accordance with the requirements of the PALJP PDD as follows:

- (a) ensuring workplans are developed collaboratively with relevant GoPNG personnel within one month of TA Personnel commencement in PNG and reviewed within six months to ensure ongoing appropriateness;
- (b) at a minimum, ensuring workplans contain:
 - (i) a clear statement of roles and responsibilities, including lines of reporting and accountability requirements;
 - (ii) agreed capacity development objectives, including the balance of indirect and direct assistance and an explicit gender mainstreaming objective; and
 - (iii) a simple monitoring framework to support individual performance management and to provide data for the ISP Monitoring Framework; and
- (c) submitting work plans to relevant Agency personnel as determined by the L&J Adviser, as well as to AusAID and the Sector to ensure transparency and accountability.

4.7 Ongoing Professional Development of TA Personnel

- (a) Further to Clauses 3 and 4.1 above, the ISP must ensure that all TA Personnel are familiar, comply and work in accordance with the PALJP PDD. To ensure that TA Personnel retain and develop their knowledge and capabilities the ISP will provide:
 - (i) an induction program for any new TA Personnel that will include a well rounded introduction to PNG (specific to the location where the TA Personnel will be based eg Port Moresby), GoPNG systems and processes, the law and justice sector and the PALJP;
 - (ii) an ongoing program of professional development for all PALJP TA Personnel in areas that are most critical to the PALJP including:
 - (A) approaches to capacity development, particularly to support TA Personnel to understand and balance indirect and direct approaches, to move beyond the more traditional ‘counterpart model’, to take a strategic and flexible approach and to realise benefits of inter-agency cooperation and coordination;
 - (B) overarching policy issues, including gender equality, HIV mainstreaming, anti-corruption, sub-national and community engagement and restorative justice;

- (C) cross-cultural communication, involving mandatory Tok Pisin lessons for all international TA personnel up to an agreed minimum standard and/or length of instruction; and
 - (D) performance monitoring and aid effectiveness.
- (b) The ISP may be required by AusAID to allow other participants to take part in the induction and/or professional development programs including personnel working on the PNGAPP, SGP or other programs.

4.8 Ongoing logistical and other support for TA Personnel

- (a) Further to Clauses 3 and 4.1 above, the ISP must provide all logistical and other support to PALJP TA Personnel that is necessary to enable the TA Personnel to fulfil their roles in accordance with the PALJP PDD, their terms of reference and workplans, such as support for personal welfare, travel, physical working arrangements, information technology, vehicles and other transport, security and all other personnel issues, including but not limited to:
- (i) assistance to mobilise to PNG and to the specific location of the position, including providing information before arrival (if relevant), visas, flights, transfer of personal effects and transport upon arrival;
 - (ii) assistance, as required, to find appropriate accommodation, to obtain a PNG drivers licence and to establish banking arrangements;
 - (iii) assistance to make work travel arrangements including flights, accommodation and per diems;
 - (iv) provision of a comprehensive orientation briefing covering issues such as medical facilities, shopping options and security;
 - (v) provision of security briefing, equipment and training, including security radios and mobile phone sim cards;
 - (vi) provision of safe, reliable and suitable land transport for official use; and
 - (vii) provision of adequate medical insurance including emergency medical evacuation insurance.
- (b) The ISP must maintain close ties with PALJP TA Personnel at all times to ensure they are well informed of PALJP implementation issues and to ensure a positive relationship among the TA Personnel and as between TA Personnel and GoPNG counterparts.
- (c) The ISP must ensure that all support provided to PALJP TA Personnel is tailored to meet the specific needs of all TA Personnel, including taking into account whether TA Personnel are internationally or locally engaged and whether TA Personnel are male or female.

- (d) The ISP must provide specific and tailored personal welfare and other support, as reasonably required, to:
 - (i) PALJP TA Personnel working in the areas of gender violence and gender advocacy, in recognition of additional social and emotional demands associated with work in these areas; and
 - (ii) PALJP TA Personnel working in locations outside of Port Moresby, in recognition of the challenges of living and working in more remote or isolated areas, noting that the placement of TA Personnel outside Port Moresby is expected to increase over the life of the PALJP.

4.9 Transition of LJSP TA Personnel: 2008 to 2009

- (a) Further to Clauses 3, 4.1 and 11, the ISP must support a smooth and seamless transition from the existing Law and Justice Sector Program (LJSP) to the PALJP, including the provision and management of TA Personnel specified by the Sector and agreed with GoA in the GoPNG Development Budget for 2009 as follows:
- (b) The ISP must, upon mobilisation, provide the option to existing LJSP advisers to continue under the PALJP, on terms at least commensurate with their current conditions at the time of transition, if the following conditions are met:
 - (i) the advisory position filled by the LJSP long-term adviser in 2008 has been identified by the Sector as required in 2009 in the Sector's approved Development Budget;
 - (ii) the LJSP long-term adviser has agreed with AusAID to continue under the PALJP and has agreed to share his or her contract and performance assessment information to the ISP; and
 - (iii) the LJSP long-term adviser has been assessed as performing effectively by LJSP management in his or her last annual and/or six-monthly performance assessment.
- (c) Where the conditions in paragraph (b) are met and LJSP long-term advisers are transitioned to the PALJP, the ISP must contract these advisers as PALJP TA Personnel from the LJSP End Date on these terms and conditions for the duration of calendar year 2009.
- (e) After calendar year 2009, these advisers will be subject to the terms and conditions established by the ISP for PALJP TA Personnel.
- (f) All PALJP TA Personnel will have their performance assessed and managed by the ISP as of the LJSP End Date in accordance with the management principles, systems and processes established by the ISP in accordance with Clause 4.5.

4.10 Support for Partnerships

- (a) Further to Clauses 3 and 4.1 above, and in accordance with the PALJP PDD, the ISP must ensure that the ISP Services enable the Sector to consider a range of capacity building options to meet its objectives, including options other than TA personnel such as partnerships with PNG, Australian and/or regional institutions.
- (b) As requested by the Sector and under the direction of the L&J Adviser, the ISP must take a flexible approach in providing support for the continuation of existing or the development of new institutional partnerships, including:
 - (i) initiating or facilitating contact or engaging with a range of potential or actual partner institutions in PNG, Australia or the region;
 - (ii) assisting with the development of partnerships including identifying appropriate mechanisms, supporting the development of agreements between the parties (including the partner institution, GoPNG, AusAID and the ISP) and informing parties of any risk assessments if necessary; and
 - (iii) subject to the terms and requirements of this Contract and as agreed with AusAID, providing logistical and other support to personnel from partner institutions.

5. OPERATIONAL LEVEL MANAGEMENT SERVICES - FINANCIAL MANAGEMENT AND PROCUREMENT

5.1 PALJP capacity building support to Sector financial management and procurement

- (a) Further to Clause 3 above, in providing the financial management and procurement services required under this Clause, the ISP and ISP Management Team must have regard to the principles and capacity building objectives set out in the PALJP PDD and ensure that the ISP Services:
 - (i) support the management of and accountability for PALJP funds including aid program funds contributed to the PALJP by the GoA and funds contributed to the PALJP by the GoPNG.
 - (ii) provide support wherever possible to the management of all funds in the sector regardless of:
 - (A) whether GoA or GoPNG funded; and
 - (B) whether through development, recurrent or supplementary budgets,

in compliance with relevant GoPNG and GoA financial management and procurement legislation, policies and procedures;

- (iii) support AusAID, DNPM and LJSS collaboration to meet the financial management requirements of both governments, in accordance with agreed GoA-GoPNG procedures, including:
 - (A) to jointly monitor and report on expenditure to GoPNG and GoA;
 - (B) to support coordinated release of funds by both governments to the Sector;
 - (C) to identify, mitigate and manage any risks that may become evident in the administration of the PALJP Financial Management System;
 - (D) to ensure that the Sector's Imprest Account Procedures Manual is updated to reflect any changes to the management and accountability requirements of either government on an ongoing basis;
 - (E) to undertake an annual independent audit of the Sector imprest accounts (commissioned by AusAID), to complement and bolster the regular internal audits undertaken by the LJSS and any external audit processes commissioned by individual law and justice agencies and/or undertaken by PNG's Auditor-General;
 - (iv) support the Sector agencies and the LJSS to supervise and oversee the work of the imprest account clerks, internal auditors and other GoPNG personnel engaged to support the administration of the PALJP Financial Management System, including to ensure they are appropriately trained and supported to use the system correctly;
 - (v) support the Sector to continuously improve and strengthen its internal auditing processes over time in relation to both donor and GoPNG funds, including Sector capacity at all levels to manage appropriate responses to audit findings;
 - (vi) in collaboration with the AusAID-funded Sub-National Strategy, support the Sector to ensure that operation of the PALP Financial Management System at sub-national levels of government is consistent with the GoPNG inter-governmental financing arrangements, uses relevant GoPNG systems wherever possible, and is administered in close consultation and collaboration with key partners at the national, provincial and local levels of government; and
- (b) Further to Clauses 4.3 and paragraph (a) above, and in the context of the level of integration between the PALJP Financial Management System and GoPNG's financial management and procurement policies and procedures and in accordance with the principles of accountability in the PALJP PDD, the ISP must ensure that:

- (i) all PALJP TA Personnel and Staff understand and are trained in the PALJP Financial Management System, including use of the PALJP imprest account mechanism and, more broadly, the GoPNG financial management and procurement policies and procedures; and
- (ii) the CST provides sufficient specialist expertise to support the Sector in financial management and the procurement of goods and services in accordance with GoPNG financial management and procurement policies and procedures.

5.2 ISP management of PALJP imprest account mechanism

- (a) Upon the LJSP End Date, the ISP must take over responsibility and accountability for the Sector's existing Central Imprest Account from the LJSP Contractor, working closely with the LJSS.
- (b) Upon completion of the Fiduciary Risk Assessment undertaken in accordance with clause 5.3 below, the ISP must:
 - (i) revise the PALJP ISP Financial Management & Procurement Manual and support the Sector to revise the Imprest Account Procedures Manual, in accordance with the recommendations of the Fiduciary Risk Assessment; and
 - (ii) commence the transfer of responsibility of the Central Imprest Account to the LJSS or the GoPNG nominated body (if this is not the LJSS), as agreed by AusAID and GoPNG, in full compliance with the recommendations of the Fiduciary Risk Assessment, including specified timeframes.

5.3 PALJP Fiduciary Risk Assessment

- (a) Prior to or immediately upon mobilisation, the ISP will conduct a fiduciary risk assessment (FRA) of the Sector's existing financial management and procurement systems for donor funds established under the LJSP, which must be submitted to AusAID and the Sector within two months of mobilisation.
- (b) The ISP must prepare Terms of Reference for the FRA, to be agreed with AusAID and the Sector, including separate financial management and procurement assessments as follows:
 - (i) Financial Management:
 - (A) an independent assessment of the fiduciary risk levels associated with both GoPNG and GoA use of the PALJP Financial Management System, including in each agency/organisation/province where imprest accounts exist;

- (B) recommendations for measures to address the risks identified and any necessary changes to the existing Imprest Account Procedures Manual;
 - (C) identification of required capacity building measures to overcome any identified problems over time; and
 - (D) suggestions for performance benchmarks, for both GoA and GoPNG, that would indicate progress towards better fiduciary practices over the life of the PALJP and the adjustment of control requirements in the PALJP Financial Management System in response to the meeting of these benchmarks; and
- (ii) Procurement:
- (A) identification of the entity/ies that will be responsible for conducting procurement under the PALJP;
 - (B) identification of the categories of procurement (eg goods, works, services) and their respective values to be conducted by the entity/ies, and the expected timeframes for these;
 - (C) taking into account the relevant GoPNG procurement legislation and regulations, examination of the systems, procedures and operational practices of the procuring entity/ies as well as its/their capacity, skills, experience, competence and track record in the field of procurement, including the personnel that will be responsible for executing the procurement;
 - (D) an assessment of the risks to AusAID in the PALJP procurement activities being conducted by the procuring entity/ies through its/their own systems and procedures;
 - (E) recommendations to AusAID as to whether or not the identified risks are acceptable and/or manageable;
 - (F) where the identified risks are acceptable and/or manageable, additional recommendation to AusAID regarding any controls and/or risk mitigation measures required in order to ensure the efficient and effective completion of PALJP procurement activities and/or any linked capacity building measures to be adopted for the benefit of the procuring entity/ies.
- (c) The ISP will support AusAID and the Sector to introduce any changes required to address fiduciary risks identified in relation to either financial management or procurement in the FRA.

5.4 Ongoing assessments and review of PALJP Financial Management System

- (a) The ISP must conduct ongoing assessments as well as an in-depth annual review into the effectiveness of the PALJP Financial Management System and support for procurement and advise AusAID and the Sector of the following:
 - (i) whether the PALJP Financial Management System and support for procurement is meeting the needs of GoPNG, GoA and the ISP in accordance with the PALJP PDD;
 - (ii) whether there are opportunities to improve the PALJP Financial Management System and support for procurement, particularly to further integrate the system with GoPNG's systems including at the sub-national level, and if so, how this might be done; and
 - (iii) whether there are any new or emerging risks associated with the PALJP Financial Management System and support for procurement and how these risks might be addressed.
- (b) The ISP must provide the advice under paragraph (a) above to AusAID and the Sector:
 - (i) immediately, in cases where a significant risk emerges, including a suspected case of fraud, as part of the communication protocols agreed in accordance with Clause 3.6;
 - (ii) otherwise, on an exceptions basis through its Monthly Updates provided in accordance with Clause 6.3(c)(i); and
 - (iii) in any event, at least annually through its Annual Report provided in accordance with Clause 6.3(a)(i).

5.5 PALJP Fraud Control Plan

- (a) To ensure that it meets its accountabilities in detecting, investigating and reporting all incidents of fraud or suspected fraud in compliance with the Commonwealth Fraud Guidelines and AusAID's Fraud Control Policy the ISP must provide a **PALJP Fraud Control Plan** to AusAID, as part of the **PALJP ISP Financial Management & Procurement Manual** required under Clause 5.7, within four months of Mobilisation.
- (b) The PALJP Fraud Control Plan must set out how the ISP will deal with instances of fraud or suspected fraud in accordance with AusAID requirements and drawing on the findings of the Fiduciary Risk Assessment conducted in accordance with Clause 5.3.

5.6 Other PALJP ISP financial management & procurement requirements

- (a) Further to Clauses 3 and 5.1-5.5 above, the ISP must provide efficient and effective systems and processes to manage the procurement of goods and

services required for the provision of the ISP Services, in accordance with the requirements of this Contract.

- (b) The ISP must provide to AusAID:
 - (i) a regular financial summary of expenditure under PALJP generally and, specifically, under this Contract through its Monthly Updates in accordance with Clause 6.3(c)(i); and
 - (ii) any other specific reports or financial information as reasonably requested by AusAID on an as needed or ad hoc basis.

- (c) AusAID may in some cases require the ISP to directly manage the procurement and delivery of Construction Works, in which cases, the ISP must, in addition to those matters set out in **clause 10 of Part A** to this Contract:
 - (i) manage the procurement and delivery of Construction Works within the financial limit approved by AusAID for the particular package(s) of Construction Works;
 - (ii) submit to AusAID for approval a written proposal in relation to each package of proposed Construction Works, which must contain:
 - (A) detailed costings and technical specifications for the construction output(s) to be delivered;
 - (B) a specific timeframe for delivery; and
 - (C) any other information, as requested by AusAID; and
 - (iii) undertake the roles of project manager and FIDIC Engineer (or equivalent) in relation to the Construction Works;
 - (iv) sub-contract design work in relation to the relevant Construction Work, where required by AusAID, in which case:
 - (A) the ISP must undertake the role of project manager and the design sub-contractor must undertake the role of FIDIC Engineer (or equivalent); and
 - (B) the ISP's responsibilities as project manager include managing the relationship between the design and construction sub-contractors.
 - (v) in all cases, undertake the full range of project management responsibilities.

- (d) In exceptional circumstances, and subject to prior agreement by AusAID in writing, the ISP may be required to directly procure goods and services on behalf of an Agency using its own funds, where such procurement would normally be undertaken by the Agency itself, using PALJP Imprest

Account funds, in which case the ISP must seek reimbursement from the relevant PALJP Imprest Account for the actual cost of the goods and services procured, in accordance with the requirements of the Imprest Account Procedures Manual.

5.7 **PALJP ISP Financial Management & Procurement Manual**

The ISP must prepare and submit to AusAID, within 2 months of mobilisation, a **PALJP ISP Financial Management & Procurement Manual** that outlines how the ISP will provide the Financial Management and Procurement Services outlined in this clause 5, including:

- (a) detailed arrangements, including imprest account signatories and authorisation processes, for ISP management of the Central Imprest Account; and
- (b) detailed arrangements for joint ISP-LJSS (or other GoPNG-nominated body) management of the PALJP Financial Management System as a whole, including clear delineation of ISP and LJSS (or equivalent) roles and responsibilities.

6. **OPERATIONAL LEVEL MANAGEMENT SERVICES - PERFORMANCE MONITORING AND ASSESSMENT**

6.1 **PALJP capacity building support for Sector performance monitoring**

Further to Clause 3 above, in providing the performance monitoring and assessment services required under this Clause, the ISP and ISP Management Team must have regard to the principles and capacity building objectives set out in the PALJP PDD and ensure that the ISP Services support and encourage the Sector:

- (a) to strengthen performance monitoring in a systematic and practical manner across agency, Sector and central agency levels, including:
 - (i) a whole-of-budget approach with greater integration of performance monitoring and reporting across development, recurrent and supplementary budgets;
 - (ii) improved assessment of service delivery standards, local level impact and change; and
 - (iii) increasing accessibility of performance information and reporting to stakeholders both within and outside government;
- (b) to strengthen engagement with partners at the ministerial, central agency, sub-national and community levels:
 - (i) to better understand and meet the information needs of key Sector stakeholders;
 - (ii) to clarify roles and responsibilities;

- (iii) to improve the accuracy and availability of performance data; and
- (iv) to track progress at local levels more effectively;
- (c) to use performance management processes more effectively to inform and drive budgeting, planning and service delivery;
- (d) to address and contribute to the collective understanding of critical overarching policy issues, as they relate to law and justice, including:
 - (i) to track progress against the Sector's Gender Strategy, including increasing the collection and use of sex and age disaggregated data and data related to gender equality; and
 - (ii) to collect information about the impact of HIV and AIDS within the Sector and the effectiveness of the Sector's responses; and
- (e) to plan for, access and manage external and independent evaluation and advisory services, whether through partnerships with local research institutions or the use of private consultancies, with particular requirements determined and planned for on an annual basis, including:
 - (i) any additional services required to support the Sector in undertaking Community Crime Surveys;
 - (ii) support for the Sector to undertake targeted, longitudinal impact studies in selected SSF result areas;
 - (iii) independent reviews of the Sector's annual development budget process; and
 - (iv) any additional services required to support the Sector to produce its Annual Performance Report.

6.2 PALJP ISP performance monitoring and assessment

Further to Clauses 3 and 6.1 above, to support GoPNG-GoA joint performance management, learning and accountability for aid effectiveness in accordance with the PALJP Monitoring and Evaluation Framework (MEF) set out in the PALJP PDD, the ISP must:

- (a) support AusAID and DNPM to develop and implement the PALJP Annual Aid Effectiveness Workplan in accordance with the PALJP PDD, including:
 - (i) to provide assistance in the establishment of a PALJP baseline at the outset of the PALJP;
 - (ii) to participate in quarterly PALJP aid effectiveness discussions with AusAID and DNPM to discuss progress against the PALJP Annual Statement of Contribution, including key actions and processes against PALJP Enabling Themes, identification of emerging risks

and ISP contractor performance (drawing on ISP Monthly Update reports);

- (iii) to participate in the Annual Aid Effectiveness Review, Biennial Independent Contribution Analysis and Independent Completion Report processes, as outlined in the PALJP PDD and further specified in the Annual Aid Effectiveness Workplan each year; and
- (b) provide efficient and effective systems and processes for performance monitoring and assessment, including:
 - (i) to monitor the effectiveness of its own performance in the provision of ISP Services required:
 - (A) under this Contract; and
 - (B) as further specified in the PALJP ISP Annual Implementation Plan set out in Clause 8.1(a) below, in accordance with the ISP Monitoring Framework (IMF) set out in Annex 1 to this Scope of Services; and
 - (ii) to learn lessons about its own effectiveness for the purposes of continuous improvement in the provision of ISP Services; and
 - (iii) to report to AusAID and DNPM in accordance with the requirements set out in Clause 6.3 below;

6.3 PALJP ISP Performance Reporting

- (a) The ISP must report on its performance to AusAID and DNPM every six months, including the following:
 - (i) PALJP ISP Contractor Performance - Annual Report; and
 - (ii) PALJP ISP Contractor Performance - Six Monthly Progress Report.
- (b) The ISP must ensure that the reporting required under paragraph (a):
 - (i) focuses on the quality and scope of the ISP contribution to the PALJP as against the requirements of this Contract, including as further specified on an annual basis in the PALJP Annual Statement of Contribution;
 - (ii) is streamlined, appropriately pitched to meet the expectations of both GoA and GoPNG audiences and feeds directly into the joint GoPNG-GoA aid effectiveness review process;
 - (iii) represents the views of the PALJP ISP only. This reporting and the ISP's performance more broadly, will be independently verified and assessed as part of the Annual Review of Aid Effectiveness and the Biennial Contribution Analysis.

- (iv) is no more than 10-15 pages in length and includes:
 - (A) a summary of key issues and lessons learned;
 - (B) self-assessment of ISP performance in each of the core ISP Service areas, based on verifiable evidence wherever possible, and with analysis linked to the IMF;
 - (C) a summary of the status of inputs provided by the ISP, tracking against the requirements under this Contract;
 - (D) an Annexure that provides a financial summary of PALJP ISP expenditure under this Contract and PALJP expenditure more broadly, linked to PNG reporting on Development Budget expenditure in the Sector;
 - (E) an Annexure that provides a human resources summary including status of TA Personnel positions and other PALJP Staff;
 - (v) is submitted to AusAID and DNPM in draft form:
 - (A) in the case of the Annual Report, by the last day of January each year, starting in 2010; and
 - (B) in the case of the Six Monthly Progress Report, by the last day of July each year, starting in 2009,with any extensions on these deadlines approved in writing by AusAID;
 - (vi) unless otherwise agreed, is submitted to AusAID and DNPM in final form, incorporating any changes requested by AusAID and DNPM, within two weeks of receipt of AusAID and DNPM comments, which will be provided to the ISP within 30 days of receiving a draft report; and
 - (vii) is submitted in both electronic and hard copy, with the number of hard copies required to be determined by AusAID.
- (c) In addition to the reports required under paragraph (a), the ISP must provide:
- (i) a Monthly Update report to AusAID containing a summary of current information on the status of PALJP ISP financial and human resources, in a format similar to the two Annexures in the Annual and Six Monthly Progress Reports; and
 - (ii) timely and up-to-date information as requested by AusAID or DNPM:

- (A) as part of AusAID's Quality at Implementation and Annual Program Performance Report processes; or
- (B) as part of any other reporting or briefing request that is required by AusAID or DNPM; and
- (iii) an Activity Completion Report in accordance with AusAID's guidelines and requirements with:
 - (A) a draft report submitted to AusAID three months prior to the PALJP ISP Contract completion; and
 - (B) a final report submitted to AusAID two weeks after receipt of AusAID comments.
- (d) The ISP must maintain a collection of all reports, technical papers and publications produced as part of the ISP Services, for and on behalf of AusAID and GoPNG.
- (e) The ISP must work collaboratively with AusAID and DNPM to continuously improve its reporting quality and ensure that its reports are meeting the needs of PALJP stakeholders.

7. **PALJP ISP MANAGEMENT STRATEGIES, PLANS AND MANUALS**

- 7.1 The ISP must ensure that the management strategies, plans and manuals required under this Scope of Services:
- (a) are prepared in consultation with and subject to the direction of the L&J Adviser;
 - (b) are designed as practical tools to ensure a clear, transparent and shared understanding of the role of the ISP across all PALJP stakeholders;
 - (c) draw on existing approaches and lessons learned, as contained in the equivalent management documentation developed and in use under the LJSP and, in relation to the Capacity Development Strategy, outlined within AusAID's *PNG Law & Justice Sector – Approaches to Capacity Building 2007*, so to ensure:
 - (i) continuity of effective approaches;
 - (ii) introduction of changes or innovations only where necessary and adding value; and
 - (iii) minimal disruption to ongoing processes and procedures;
 - (d) are submitted to AusAID in draft form by the dates of submission listed in the following Table 1:

Document	Draft Submitted to AusAID
PALJP ISP Management Strategy (including PALJP ISP Communications Strategy)	Within 1 month of Mobilisation
PALJP ISP Capacity Development Strategy	Within 6 months of Mobilisation
PALJP ISP Administration Manual	Within 6 months of Mobilisation
PALJP ISP Human Resource Management & Professional Development Plan (including TA Personnel Recruitment Manual, TA Personnel and Staff Performance Management Manual, TA Personnel and Staff Ongoing Learning and Development Plan, Code of Conduct and Security Plan)	Security Plan 1 month prior to Mobilisation, complete HRM & Professional Development Plan within 6 months of Mobilisation
PALJP ISP Fiduciary Risk Assessment	Within 2 months of Mobilisation
PALJP ISP Financial Management & Procurement Manual (including PALJP ISP Fraud Control Plan)	Within 4 months of Mobilisation
PALJP ISP Annual Implementation Plan 2009	Within 2 months of Mobilisation

- (e) are updated as required, but at least annually, to ensure they reflect current GoPNG-GoA requirements, draw on international best practice and are continuously improved over time.

8. PALJP ISP ANNUAL PLANNING PROCESSES

8.1 In response to GoPNG-GoA decisions made as part of the GoPNG annual planning and budgeting process in each year of the PALJP and articulated in the PALJP Annual Statement of Contribution, the ISP must develop an ISP Annual Implementation Plan that:

- (a) specifies ISP implementation arrangements in support of the PALJP Annual Statement of Contribution; and
- (b) once finalised, will form part of the PALJP Annual Statement of Contribution, which in turn, will become part of this Contract.

8.2 Further to Clause 8.1, the ISP must produce:

- (a) a draft ISP Annual Implementation Plan that draws on AusAID’s Preliminary PALJP Annual Statement of Contribution and the Sector’s draft Development Budget by 15 September each year; and
- (b) a final ISP Annual Implementation Plan, making any revisions required by AusAID or the Sector, by 15 November each year, for inclusion in the final PALJP Annual Statement of Contribution which AusAID will submit to DNPM and the sector in December each year .

8.3 The ISP must determine and agree the specific content and format of the ISP Annual Implementation Plan with AusAID and the L&J Adviser, but at a minimum it must contain the following:

- (a) planned ISP activities to support the PALJP in the following year in each area of the ISP Services;
 - (b) updated information on the key ISP management strategies, plans and manuals required under Clause 7.1(e);
 - (c) identification of any risks or issues that may affect the provision of ISP Services and proposed responses;
 - (d) projected annual budget for the ISP.
- 8.4 In the first year of the PALJP, the ISP must develop the ISP Annual Implementation Plan based on the Sector's approved 2009 Development Budget and submit it to AusAID and the Sector within 2 months of Mobilisation.
- 8.5 Any changes to the ISP Annual Implementation Plan that are necessary in the course of the year will be discussed and approved by the L&J Adviser.

9. **ISP MANAGEMENT AND LINES OF ACCOUNTABILITY**

9.1 **Role of the PNG-Australia Law and Justice Adviser**

- (a) The ISP must operate under the strategic direction and management of the L&J Adviser who is directly contracted to AusAID and reports to AusAID's First Secretary Law and Justice.
- (b) The ISP Management Team must support the L&J Adviser in accordance with Clauses 3 and 9.2 below.

9.2 **Role of the PALJP ISP Management Team**

- (a) The ISP Management Team is responsible to the L&J Adviser for ensuring that the ISP Services are managed effectively in accordance with the PALJP PDD, this Contract and the PALJP Annual Statement of Contribution.
- (b) All PALJP TA Personnel are accountable to the ISP Management Team and not directly to the L&J Adviser.

9.3 **Role of the AusAID PALJP Activity Manager**

- (a) The ISP must report to the designated AusAID PALJP Activity Manager in relation to any issues of or regarding the ISP Contract including:
 - (i) contract negotiation issues (amendments, variations etc);
 - (ii) financial management;
 - (iii) ISP performance assessment; and

- (iv) approvals for contractual requirements required from AusAID, such as milestone approvals.
- (b) The AusAID PALJP Activity Manager may consult with the L&J Adviser on any issues arising under paragraph (a) above.

9.4 Relative roles, responsibilities and accountabilities

The relative roles, responsibilities and accountabilities between the ISP, ISP Management Team, L&J Adviser and other AusAID representatives are described in detail in the PALJP PDD, will be further detailed in the PALJP ISP Management Strategy and are summarised in the following table:

Role	Responsibility	Works with:	Reports to:
Strategic direction and management of the ISP to ensure it provides services in accordance with the PALJP	L&J Adviser	ISP Management Team	AusAID First Secretary Law & Justice
Management of the contract between the ISP and AusAID	AusAID PALJP Activity Manager	Designated ISP representative/s ISP Management Team, as required L&J Adviser, as required	AusAID First Secretary Law & Justice
Day-to-day management of the PALJP TA Personnel and ISP Staff	ISP Management Team	L&J Adviser, where broader strategic issues are involved	L&J Adviser on strategic issues Otherwise, as set out in the PALJP ISP Management Strategy

10. ISP MOBILISATION

- 10.1 The ISP must mobilise the ISP Management Team and any necessary support staff in PNG by the Program Mobilisation Date unless agreed otherwise with the L&J Adviser and AusAID.
- 10.2 The ISP must establish a Program Office in Port Moresby within one month of the Program Mobilisation Date.

11. ISP TRANSITION ARRANGEMENTS

- 11.1 The ISP must support GoPNG and GoA to make a smooth transition from the LJSP to the PALJP in a way that minimises disruptions to the Sector’s operations and activities.

- 11.2 To support the LJSP-PALJP Transition Period, the ISP must facilitate a five-day planning workshop immediately upon mobilisation involving members of the PALJP Design Team, AusAID, DNPM, the L&J Adviser and the LJSP Management Team.
- 11.3 During the LJSP-PALJP Transition Period, the ISP must work with the LJSP team cooperatively and collaboratively, under the direction of the L&J Adviser and with the support of AusAID to:
- (a) receive a ‘handover’ of relevant information that will support the smooth transition from the LJSP to the PALJP; and
 - (b) communicate with all stakeholders about the transition.

PART 4 – DRAFT BASIS OF PAYMENT

Note to Tenderers: This Part forms a key Schedule of the Contract Conditions. Although this Basis of Payment is presented as Part 4 of this RFT, in the consolidated Contract it will appear as Schedule 2. It may be updated by AusAID during contract negotiations, particularly in light of information included in the Tenderer's response to the RFT.

SCHEDULE 2 – DRAFT BASIS OF PAYMENT
Papua New Guinea – Australia Law and Justice Partnership (PALJP)

1. TOTAL AMOUNT

- 1.1 The total amount payable by AusAID to the Contractor shall not exceed the sum of A\$xx plus GST, if any to a maximum of A\$xx *[no more than 10% of the Financial Limitation]*.
- 1.2 AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.

2. PAYMENTS

2.1 Payments will be made as indicated below:

- (a) Part A - Direct Personnel Costs (in accordance with **clause 3** below) reimbursed at cost
- (b) Part B – Fixed Fees
 - (i) Monthly Management Fee (in accordance with **clause 4** below)
 - (ii) Supplementary Management Fee – Long Term TA Personnel outside Port Moresby (in accordance with **clause 5** below)
 - (iii) Management Fee – Short Term TA Personnel (in accordance with **clause 6** below)
- (c) Part C – ISP Corporate Team Supplementary Fee (in accordance with **clause 7** below)
- (d) Part D – Performance Incentive (in accordance with **clause 8** below)

2.2 Any escalators, foreign exchange rate variations or other price risks must be built into each payment type. AusAID will not accept any “across the board” escalators subsequently applied to any rates or Project costs.

3. DIRECT PERSONNEL COSTS

- 3.1 The total amount payable in Direct Personnel costs by AusAID to the Contractor shall not exceed A\$xx plus GST if any to a maximum of A\$xx.
- 3.2 Direct Personnel costs will be reimbursed monthly in arrears subject to receipt of a correctly rendered tax invoice.
- 3.3 Direct Personnel Costs are payable for the in-country ISP Management Team and all TA Personnel (including those novated from the existing LJSP Contract), the Core Support Team and Agency-based Change Management Advisers, in relation to the following items:
- (i) salary and allowances;

- (ii) recruitment (advertising/selection) costs in accordance with budgeted upper limits as agreed by AusAID;
- (iii) induction and ongoing learning and development costs in accordance with budgeted upper limits as agreed by AusAID;
- (iv) local and international work travel including accommodation and per diems, and personnel related taxes, insurances and levies incurred for work travel;
- (v) superannuation levy, if any, as appropriate; and
- (vi) annual leave allowances

but excluding

- (vii) profit and management overheads.

3.4 Direct Personnel Costs will be paid in accordance with **Table 1** below.

Table 1: Direct Personnel Costs

Personnel Title	Name of Personnel	Cost Project Year 1	Cost Project Year 2	Cost Project Year 3	Cost Project Year 4	Cost Project Year 5

To be completed once personnel are recruited and/or novated from LJSP

4. MONTHLY MANAGEMENT FEES

- 4.1 The total amount payable in Monthly Management Fees shall not exceed A\$xx plus GST if any to a maximum of A\$xx.
- 4.2 Monthly Management Fees are fixed for the life of the Program and include the following costs:
 - (i) head office management costs;
 - (ii) all high level management and support costs for Key Personnel;
 - (iii) all costs relating to the support and management of the ISP Corporate Team;
 - (iv) logistical support for the ISP Management Team and TA Personnel, including for mobilisation/demobilisation, transport and security;
 - (v) vehicle costs for in-country ISP Management Team and TA Personnel;
 - (vi) travel costs for the ISP Corporate Team

- (vii) taxation (other than personnel taxation which is covered at **clause 3.4** above) as applicable
- (viii) insurances (other than personnel related insurance which is covered at **clause 3.4** above);
- (ix) all domestic and international communication costs;
- (x) financial management costs;
- (xi) local office costs;
- (xii) transport and travel costs of the ISP Corporate Team;
- (xiii) costs of complying with reporting obligations under this Contract
- (xiv) other management overheads; and
- (xv) profit.

4.3 Payment of the *Monthly Management Fee* will be in accordance with **Table 2** below. The monthly average number of advisers is calculated as the sum of the number of Advisers in PNG on each day of the month divided by the number of days in the month.

Table 2: Monthly Management Fee Long Term Advisers

Monthly Average Number of Advisers	Fixed Monthly Management Fee
0-20	
21-40	
41-60	
61-80	
81-100	
More than 100	

5. SUPPLEMENTARY MANAGEMENT FEE – LONG TERM TA PERSONNEL

5.1 The total amount payable in Supplementary Management Fees – Long Term TA Personnel shall not exceed A\$xx plus GST if any to a maximum of A\$xx.

5.2 The Supplementary Management Fee – Long Term TA Personnel is payable per Long Term TA Personnel in addition to the Fixed Monthly Management Fee to reflect the additional logistical support to be provided to TA Personnel living outside Port Moresby.

- 5.3 Supplementary Management Fees – Long Term TA Personnel shall be paid monthly in arrears, subject to receipt by AusAID of a correctly rendered invoice in accordance with **Table 3** below.

Table 3: Supplementary Management Fee – TA Personnel outside Port Moresby

Supplementary Fee per Adviser	Amount

6. **MANAGEMENT FEE – SHORT TERM TA PERSONNEL**

- 6.1 The total amount payable in Management Fee – Short Term TA Personnel shall not exceed A\$xx plus GST if any to a maximum of A\$xx.
- 6.2 The Management Fee – Short Term TA Personnel is payable for each short term assignment of less than six (6) months in duration. It is payable for each assignment, not each visit, and payable only once per assignment, including instances where an assignment includes multiple visits.
- 6.3 The Management Fee – Short Term TA Personnel shall be paid monthly in arrears subject to the receipt by AusAID of a correctly rendered invoice in accordance with **Table 4** below.

Table 4: Management Fee – Short Term TA Personnel

Management Fee per Short Term TA Personnel	Amount

7. **ISP CORPORATE TEAM SUPPLEMENTARY FEE**

- 7.1 The total amount payable as ISP Corporate Team Supplementary Fees shall not exceed A\$xx plus GST if any to a maximum of A\$xx.
- 7.2 The ISP Corporate Team Supplementary Fee is paid in addition to those costs met under clauses 4, 5 and 6 to this **Schedule 2** for providing management services in support of PALJP activities that require additional ISP Corporate Team resources and input.
- 7.3 The ISP Corporate Team Supplementary Fee will be reimbursed monthly in arrears subject to receipt by AusAID of a correctly rendered tax invoice and is payable per day in relation to the costs outlined in **Table 5** below.
- 7.4 AusAID may at its sole and absolute discretion amend **Table 5** on the basis of additional activities introduced through **clause 4.10** of Schedule 1.

Table 5: Supplementary ISP Corporate Team Fee

Additional ISP Corporate Team Services	Fee rate per day
Mobilisation/demobilisation of personnel	
Logistical support for new international personnel in PNG (as provided to short or long term TA Personnel or for short-term visits and including transport, communications and security)	
Logistical support for PNG personnel undertaking placements or other visits to Australia or other countries	
HR services from the ISP Corporate Team including organising recruitment, induction or learning and development activities	

8. PERFORMANCE INCENTIVE

- 8.1 An amount of \$100,000 will be made available each year as a Performance Incentive to the Contractor. Payment of the Performance Incentive will be linked to the PALJP ISP Contractor Performance Annual Assessment, conducted against the ISP Monitoring Framework at **Annex 1** to Schedule 1.
- 8.2 Assessment will be in accordance with the following grading in each of the core ISP service areas:

Strategic Level Management Services: \$25,000	Operational Level Management Services:		
	Human Resource Management: \$25,000	Financial Management and Procurement: \$25,000	Performance Monitoring and Assessment: \$25,000
Fully effective: 100%	Fully effective: 100%	Fully effective: 100%	Fully effective: 100%
Meets requirements: 50%	Meets requirements: 50%	Meets requirements: 50%	Meets requirements: 50%
Unsatisfactory: 0%	Unsatisfactory: 0%	Unsatisfactory: 0%	Unsatisfactory: 0%

9. ABSENCES FROM THE PROJECT

- 9.1 ISP Management Team and Long Term Adviser Personnel may be absent for up to four (4) weeks per year. AusAID will pay the Monthly Management Fee during those periods of absence. Periods of absence cannot be accumulated for use in subsequent years unless agreed in writing by AusAID.

9.2 In addition, ISP Management Team and Long Term Adviser Personnel will be entitled to up to 13 Public Holidays per annum as designated by the Australian High Commission in Port Moresby, which includes a mixture of Australian and Papua New Guinean holidays.

10. **CLAIMS FOR PAYMENT**

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

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

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

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

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

10.4 Tax invoices should be sent to the above address. Alternatively, AusAID will accept electronic tax invoices. These can be sent to accountsprocessing@ausaid.gov.au

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

SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

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

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PART 5 – STANDARD TENDER CONDITIONS

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

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

- (a) Electronically, via AusTender at <https://tenders.gov.au> before the **Closing Time** and in accordance with the tender lodgement procedures set out in Annex 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.

Part 5, Standard Tender Conditions

- 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.

Part 5, Standard Tender Conditions

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

Part 5, Standard Tender Conditions

- (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.

Part 5, Standard Tender Conditions

- 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

Part 5, Standard Tender Conditions

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.

Part 5, Standard Tender Conditions

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

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(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.

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- 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.ausaid.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.ausaid.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.ausaid.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

Part 5, Standard Tender Conditions

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

Part 5, Standard Tender Conditions

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.
- 3.15 Neither the Tenderer nor any of its employees, agents or contractors provided information to any other tenderer, person or organisation, to assist another tenderer for the Services to prepare

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 receipted before the Closing Time and **Clause 6.2** above will only apply to the final upload.
- 6.4 Late Tenders, incomplete tenders, including those with electronic files that cannot be read or decrypted, tenders which AusAID believes to potentially contain any virus, malicious code or anything else that might compromise the integrity or security of AusTender and/or AusAID's computing environment, will be excluded from evaluation.

7. **PROOF OF LODGEMENT**

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

8. **AUSTENDER SECURITY**

- 8.1 Tenderers acknowledge that although the Commonwealth has implemented the security measures described on AusTender, the Commonwealth does not warrant that unauthorised access to information and data transmitted via the Internet will not occur.
- 8.2 Tenderers acknowledge that:
- (a) lodgement of their tender on time and in accordance with these conditions of tender is entirely their responsibility; and

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

PART 6 - STANDARD CONTRACT CONDITIONS

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

PART B – STANDARD CONTRACT CONDITIONS

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

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PART B – STANDARD CONTRACT CONDITIONS

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

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

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

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

but does not include this Contract or information which:

- (e) is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation; or
- (f) has been independently developed or acquired by the Contractor, as established by written evidence.

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

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

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

"**Commonwealth Procurement Guidelines**" means the guidelines issued by the Minister for Finance and Administration that governs purchasing by Commonwealth agencies and

departments. Details are available at:

http://www.finance.gov.au/procurement/procurement_guidelines.html.

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

"**Contract Conditions**" means the provisions contained in Part A "**Project Specific Conditions**" and Part B "**Standard 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 by the Contractor or Associates, engaged by the Contractor or Associates on a sub-contract basis, including the Specified Personnel, or agents of the Contractor or Associates engaged in the provision of the Services.

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

"**Cost**" or "**Costs**" means any actual costs or expenses.

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

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

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

"**document**" includes:

- (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.

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

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

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

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war (whether declared or not), invasion, acts of foreign enemies, mobilisation, requisition, or embargo;

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- (c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution, or military usurped power, or civil war; and
- (d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosion, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

General

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

- (e) the contractual obligations of the Parties must be interpreted and performed in accordance with the Contract as a whole;
- (f) Contract clause headings are for convenience only and shall not be taken into consideration in the interpretation or construction of the Contract;
- (g) 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;
- (h) a word denoting the singular number includes the plural number and vice versa;
- (i) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;
- (j) a word denoting a gender includes all genders;
- (k) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Contract;

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- (l) 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);
- (m) 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;
- (n) “shall” and “must” denote an equivalent positive obligation;
- (o) 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
- (p) a reference to "dollars" or "\$" is to an amount in Australian currency.

1.2 Counterparts of the Contract

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

1.3 Contract prevails

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

1.4 Inconsistency

If there is any inconsistency (whether expressly or to be implied from the Contract or otherwise) between the Project Specific 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. SCOPE OF CONTRACT

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

3. AUSAID'S OBLIGATIONS

- 3.1 AusAID must:

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

4. NON-EXCLUSIVITY

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

5. PROVISION OF SERVICES

- 5.1 In providing the Services, the Contractor must:
 - (a) perform the Services as described in **Schedule 1** for the term of the Contract, unless the Contract is terminated earlier;
 - (b) accept and implement AusAID's reasonable directions in relation to the management of the Project;
 - (c) use its best endeavours to ensure the spirit and intent of the Project are fully met by the Services, including acting within the spirit and intent of the Treaty, MOU or Subsidiary Arrangement;
 - (d) liaise and cooperate with AusAID, with the stakeholders, and the Australian Diplomatic Mission in or having responsibility for the Partner Country especially in relation to security, personal safety and welfare matters;
 - (e) subject to any flexibility permitted in the Contract, ensure all timing obligations included in the Contract are fully met;
 - (f) within the term of the Contract assist AusAID in the maintenance and ongoing implementation of the Services, including monitoring and evaluating the Services to ensure results accord with the aims of the Project, and provide necessary handover assistance to any subsequent service provider and to the Partner Country;
 - (g) ensure that the Services are provided to a standard which shall promote Australia's international reputation and standing as a source of skill and expertise in the provision of international assistance;
 - (h) perform the Services in a manner which, as far as possible, establishes and maintains a harmonious, cooperative and effective working relationship with stakeholders and any personnel from the Partner Country involved in the Project;
 - (i) if a Risk Management Plan for the Project has not been prepared prior to the Project Start Date, the Contractor must prepare a Risk Management Plan within 30 days after the Project Start Date. If requested by AusAID, the Contractor will make the Risk Management Plan available to AusAID;

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- (j) whether a Risk Management Plan is prepared under paragraph (i) above, or was prepared prior to the Project Start Date (for example, as part of the Contractor's tender for the Project or as part of the Project Design Document or similar document), the Contractor must maintain and update the Risk Management Plan, as necessary, to ensure that at all times it adequately reflects Project risks and includes risk-minimisation strategies. The Contractor must promptly advise AusAID of any significant risks in accordance with **Clause 6 below**. The Contractor must also ensure the Risk Management Plan contains provisions for advance notification of AusAID of risks that may lead to disruption or delay of the Project;
- (k) liaise with, and obtain all necessary consents, approvals and authorisations from any public and other authorities in the Partner Country;
- (l) provide adequate support resources to secure the aims and objectives of the Project;
- (m) be responsive to the changing needs and environment of the Partner Country; and
- (n) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity.

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

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

6. EARLY NOTIFICATION

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

7. CONTRACTOR PERSONNEL

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

7.2 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*.

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

- (a) become involved in the political affairs of the Partner Country (unless citizens of the Partner Country);
- (b) interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country); or

(c) share information known as a result of their work on, or relationship to, the Project, in a way that a reasonable person could foresee may be detrimental to the relationship between the Australian and Partner Governments.

7.4 The Contractor must not employ a currently serving Commonwealth employee in any capacity in connection with the Services without the prior written approval of AusAID.

7.5 The Contractor must ensure that media advertisements placed by the Contractor for personnel to fill a Project position acknowledge that the Project is funded by AusAID as part of the Australian Government's official overseas aid program.

7.6 AusAID may give notice to the Contractor requiring the Contractor to remove any Contractor Personnel from work in respect of the Services. The Contractor must promptly arrange for the removal of such Contractor Personnel from work in respect of the Services and their replacement (if required) with Contractor Personnel acceptable to AusAID.

7.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Contractor Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.

8. **SPECIFIED PERSONNEL**

8.1 The Contractor must provide all Specified Personnel for the Project and for the minimum periods specified in **Schedule 1**.

8.2 During the minimum periods specified in **Schedule 1**, the Long Term Advisers included in the Specified Personnel must be exclusively dedicated to the Project and only perform the duties required under this Contract unless otherwise agreed in writing by AusAID.

8.3 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:

- (a) are of good fame and character;
- (b) are properly qualified for the tasks they are to perform;
- (c) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner;
- (d) are adequately briefed and understand the environment and culture of the Partner Country; and
- (e) act in a fit and proper manner while they are carrying out work or performing duties under the Contract.

8.4 The Contractor must use its best endeavours to secure the availability of Specified Personnel for the term of the Contract. If a change to Specified Personnel is required the Contractor must provide AusAID with not less than 3 months prior written notice of such change except where circumstances beyond the reasonable control of the Contractor make the giving of such notice impracticable. Any proposed change to the Specified Personnel must only be made after written consent from AusAID and in accordance with the procedure set out in **Clause 8.8 below**.

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

9. PROJECT VEHICLE CONTRIBUTION

- 9.1 For the purposes of this clause, "Project Vehicles" are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Project and that are provided for Project activities. Vehicles purchased by the Project, but handed over to the Partner Country immediately (where maintenance and insurance are Partner Country responsibilities and Contractor Personnel do not use the vehicles or only use them on an exceptional basis) are not considered Project Vehicles for the purposes of requiring a financial contribution by the Contractor.
- 9.2 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute \$250.00 for each Project Vehicle for each month of the

Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor's invoices.

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

10. **PROCUREMENT SERVICES**

- 10.1 In procuring all Supplies, the Contractor must:
- (a) determine what Supplies are required for proper implementation of the Services and advise AusAID;
 - (b) keep AusAID informed of ongoing requirements for Supplies in connection with the Project;
 - (c) implement procedures so that procurement is undertaken in a manner that is consistent with the Commonwealth Procurement Guidelines, in particular, observing the Core Principle of achieving value for money and the supporting principles;
 - (d) maintain complete and accurate records documenting the procedures followed in procuring, and the particulars of Supplies; and
 - (e) use its best endeavours to ensure Supplies are maintained including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed.
- 10.2 The Contractor shall bear the loss or damage in respect of Supplies until handover of Supplies to the Partner Government.
- 10.3 The Contractor must use its best endeavours to ensure all Supplies are free from defects in design, material, manufacture or workmanship. The Contractor must replace defective Supplies under warranty provisions or at its own cost.
- 10.4 The Contractor shall establish and maintain a Register of Assets which shall record any non-consumable Supplies valued at \$2,000 or more, which at a minimum contains the following information: reference identification number (which may be for example, a serial number, engine number or chassis number); description of the asset; date of procurement; cost; location; current status; and disposal or handover details.

10.5 The Register of Assets and associated documentation such as import documents, invoices and warranties shall be subject to audit by or on behalf of AusAID at any time and from time to time.

10.6 The Contractor must use the Supplies for purposes permitted under this Contract only and must ensure that the Supplies at all times remain free from any Encumbrance.

11. **SUB-CONTRACTING**

11.1 The Contractor may not sub-contract the whole of the Services. The sub-contracting of parts or elements of the performance of the Services is subject to compliance with the following requirements:

- (a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;
- (b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;
- (c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:
 - (i) comply with relevant and applicable laws, regulations and development policies, both in Australia and in the Partner Country;
 - (ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;
 - (iii) be bound by the same obligations regarding **Clauses 15** (Accounts and Records), **18** (Audits), **19** (Access to Premises), **26** (Privacy), and **35.4** (Anti-corruption) **below** and as required by Project Specific Conditions **Clause 3** (Accounts and Records) as the Contractor; and
 - (iv) be bound by appropriate obligations in relation to ongoing software licensing, computer maintenance requirements and handover arrangements to the Partner Country;
- (d) if requested by AusAID, the Contractor must provide to AusAID an executed Deed of Novation and Substitution in the form at **Schedule 5** (Deed of Novation), contemporaneously with or within 10 Business Days of execution of the sub-contract by the Contractor;
- (e) the sub-contract must include the right of AusAID, in the event of AusAID issuing a notice of substitution under the Deed of Novation at **Schedule 5** (Deed of Novation), to further novate the sub-contract to another contractor;
- (f) the Contractor must maintain records as to the performance of each of the sub-contractors engaged by the Contractor including details of any defects in such performance and the steps taken to ensure compliance with the Contract and provide to AusAID if requested; and

- (g) if requested by AusAID, the Contractor must provide to AusAID a copy of any proposed or executed sub-contract.

11.2 The obligations of **Clause 11.1 above** apply equally to Associates.

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

12. **CONTRACT AMENDMENTS AND VARIATION**

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

Contract Amendment

12.2 Changes to Contract Conditions 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

12.3 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” as described below.

12.4 The Contractor must prepare a “Variation Proposal” for any variation sought by AusAID, or the Contractor, at no extra cost to AusAID and this must be submitted to AusAID in a timely manner.

12.5 The Variation Proposal must include specific identification of the proposed change, associated cost implications, a cost/benefit and risk analysis, including of developmental impact improvements, a general plan for implementation of the change and a projected time schedule.

12.6 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).

Costing Variations

12.7 If AusAID approves the Contractor’s Variation Proposal including any increase or decrease in the amount payable, implementation shall be effected by issuing a Variation Order in the form of **Schedule 4A** and the Contractor must promptly perform the variation.

12.8 If AusAID does not approve the Contractor’s cost estimate in the Variation Proposal and appropriate rates on which to cost the variation are not included in **Schedule 2**, the Parties undertake to negotiate a fair and reasonable amount within 20 Business Days.

12.9 In the event that the Parties cannot resolve a reasonable amount within 20 Business Days, either Party may seek to have an independent third party appointed pursuant to **Clause 39** (Resolution of Disputes), to determine a reasonable amount and the Parties agree that they shall be bound by that determination.

- 12.10 If AusAID does not approve the Contractor's cost estimate in the Variation Proposal and there are appropriate rates included in **Schedule 2**, AusAID may nevertheless issue a Variation Order requiring the Contractor to carry out the variation in the form of **Schedule 4A** and subject to the appropriate rates and fees detailed **Schedule 2**.
- 12.11 Where no agreement can be reached, AusAID reserves the right to perform itself, or engage another service provider to perform, the services which were the subject of the Variation Proposal.

Omission of Services

- 12.12 AusAID may issue a Variation Order omitting any part, though not the whole, of the Services. AusAID shall notify the Contractor in writing of its determination in respect of the valuation of the omitted services. The value of the omitted Services will be determined in accordance with **Schedule 2** having regard to:
- (a) the Services omitted from the Contract;
 - (b) any particular Payment Milestone affected by the omission;
 - (c) other relevant payments; and
 - (d) the extent of the work and/or inputs already performed or provided by the Contractor in respect of any such Payment Milestones.
- 12.13 AusAID will not be liable upon any claim by the Contractor as a result of any part of the Services being omitted, whether or not AusAID performs the omitted Services itself, or engages another service provider to carrying out the omitted Services.
- 12.14 If the Contractor disagrees with AusAID's determination of the value of the omitted Services, based on the rates included in **Schedule 2**, the Parties undertake to negotiate fair and reasonable amount within 20 Business Days.
- 12.15 In the event that the Parties cannot resolve a reasonable amount within 20 Business Days, either Party may seek to have an independent third party appointed pursuant to **Clause 39** (Resolution of Disputes), to determine a reasonable amount and the Parties agree that they shall be bound by that determination.

Suspension and rescheduling of Services

- 12.16 AusAID may issue a Variation Order directing the Contractor to:
- (a) suspend for such time as AusAID thinks fit, the progress of the whole or any part of the Services; or
 - (b) reschedule the performance of Services to a time determined by AusAID.

AusAID does not have a duty to exercise this right for the benefit of the Contractor.

- 12.17 If the suspension or rescheduling is due to:
- (a) an act, default or omission of the Contractor or Contractor Personnel, the Contractor will not be entitled to any Costs or Losses arising from the suspension; or
 - (b) any other cause:

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- (i) the Contractor will be entitled to be paid any extra reasonable Costs incurred by it as a result of the suspension subject to the Contractor taking reasonable steps to mitigate the extra Costs incurred;
- (ii) AusAID's liability under the payments provisions of **Schedule 2** shall, in the absence of an agreement to the contrary, abate proportionately to the reduction in the Services.

12.18 Upon receipt of a Variation Order suspending part or all of the Services, the Contractor must:

- (a) stop work as specified;
- (b) take all reasonable steps to minimise any Loss resulting from the suspension and to protect Supplies and Contract Material; and
- (c) continue work on any part of the Services not affected by the suspension.

12.19 The Contractor must promptly recommence the performance of the Services when so directed by AusAID.

13. EXTENSION OF TIME

13.1 Subject to **Clause 13.6 below** neither AusAID nor the Contractor shall be in breach of the Contract to the extent that performance of their Contract obligations is prevented by any of the following causes ("**Relevant Causes**") that arise during the term of the Contract:

- (a) a Force Majeure Event;
- (b) a significant change in circumstances beyond the control of the Contractor;
- (c) an Australia-wide or Partner Country-wide industrial dispute; or
- (d) a change in the laws of Australia or the Partner Country that directly impacts on the provision of the Services.

13.2 Where in the Contractor's reasonable opinion there is likely to be a delay in the Contractor's discharging an obligation under the Contract because of a Relevant Cause the Contractor must:

- (a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;
- (b) give details of the likely effect on the Project and any Contractual implications;
- (c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;
- (d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances in the form of a Variation Proposal in accordance with **Clause 12.5 above**; and
- (e) use its best endeavours to continue to perform its obligations under the Contract.

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

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

15. ACCOUNTS AND RECORDS

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

- 15.3 The accounts and records must be held for the term of this Contract and for a period of seven (7) years from the date of expiry or termination of this Contract.
16. **REPORTS**
- 16.1 The Contractor must ensure that all reports required in accordance with **Schedule 1**, provide the information required and conform with the quality and format requirements specified.
- 16.2 The Contractor is responsible for any extra costs occasioned by any clarifications, discrepancies, errors or omissions in reports provided to AusAID or other information supplied in writing by the Contractor, provided such discrepancies, errors or omissions are not due to inaccurate information supplied in writing to the Contractor by AusAID.
- 16.3 AusAID may reject and withhold payment of Fees for any report which does not conform to the requirements of the Contract until the Contractor rectifies the report.
17. **REVIEWS**
- 17.1 For the purpose of ensuring that this Contract is being properly performed, AusAID may itself, or may appoint an independent person or persons to assist in the performance of, or to perform, a review of this Contract at the frequency and in relation to any matter specified by AusAID.
- 17.2 The Contractor must participate cooperatively in any reviews conducted by AusAID or its nominees. In addition the Contractor must respond in writing to any draft review report within 28 days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.
- 17.3 Reviews may be conducted of:
- (a) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services, including procurement and risk management procedures;
 - (b) the accuracy and reliability of the Contractor's financial management systems;
 - (c) the Contractor's compliance with their obligations under the Contract in relation to foreign exchange transactions;
 - (d) the accuracy of the Contractor's reports in relation to the provision of the Services;
 - (e) the Contractor's compliance with its Contractor Personnel, confidentiality and privacy obligations; or
 - (f) any other matters relevant to the performance of any Services including user satisfaction.
- 17.4 Each Party must bear its own costs of any such reviews conducted by or on behalf of AusAID.
- 17.5 The requirement for, and participation in, reviews does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

18. **AUDITS**

- 18.1 Where AusAID has reasonable concerns regarding the Contractor's financial management systems AusAID must provide the Contractor with written notification of those concerns and what action is required of the Contractor. This may include:
- (a) that the Company Director must provide a Statutory Declaration confirming that they have sighted the necessary supporting documentation and confirm the veracity of the claim for payment;
 - (b) providing AusAID with additional documentation to support the claim for payment;
or
 - (c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including invoicing procedures and practices.
- 18.2 The Contractor must respond to any notice received under **Clause 18.1 above** within 14 days.
- 18.3 Where the Contractor does not respond within 14 days, or the response does not alleviate AusAID's concern, AusAID reserves the right, if it has not already done so, to direct the Contractor to provide AusAID with certification from an independent auditor as described in **Clause 18.1(c) above**.
- 18.4 If AusAID directs the Contractor to undertake an independent audit under this clause:
- (a) the terms of reference must be agreed in writing by AusAID;
 - (b) the audit must be undertaken according to the standards of the professional body relevant to the particular audit and those standards must be detailed in the terms of reference;
 - (c) the Contractor will bear the total cost of the audit; and
 - (d) AusAID will not make any further payments owed to the Contractor pending certification of the reliability of the Contractor's financial management systems and the veracity of the invoicing procedures and practices.

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

- 19.1 The Contractor must grant AusAID and/or its nominees (including the Auditor-General or the Privacy Commissioner or their delegates), access to the Contractor's premises, the Data, records, accounts and other financial material or material relevant to the Services, however and wherever stored, in the Contractor's or its sub-contractors' custody, possession or control, for inspection and copying.
- 19.2 Such access must be available to AusAID and its nominees:
- (a) during the hours of 9 am and 5 pm on a Business Day;
 - (b) except in the case of a breach of this Contract, subject to reasonable prior notice; and
 - (c) at no additional charge to AusAID.

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- 19.3 In the case of documents or records stored on a medium other than in writing, the Contractor must make available on request such reasonable facilities as may be necessary to enable a legible reproduction to be created at no additional cost to AusAID.
- 19.4 This clause applies for the term of this Contract and for a period of seven (7) years from the date of its expiration or termination.
20. **PAYMENT**
- 20.1 AusAID must make payment of the Fees within 30 days of:
- (a) AusAID's acceptance of the satisfactory completion of the Services or relevant Payment Milestone as specified in **Schedule 2**; and
 - (b) receipt of a correctly rendered invoice.
- 20.2 It is AusAID corporate practice to inform Contractors as soon as reasonably possible, and in any case within 30 days of receipt of notice of the completion of an identified output or provision of a report whether or not that output or report is accepted.
- 20.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.
- 20.4 The Contractor must make all foreign exchange transactions at arms length and at commercially competitive rates. Supporting documentation must be retained in accordance with Standard Conditions **Clause 15.1** (Accounts and Records) and may be audited by AusAID in accordance with Standard Conditions **Clause 17** (Reviews).
- 20.5 Where the Contractor is entitled to reimbursement for expenditure in a currency other than Australian dollars under this Contract, the Contractor must invoice AusAID for the equivalent Australian dollar amount as recorded by the Contractor in their general ledger converted at an exchange rate which is calculated in accordance with appropriate accounting standards.
- 20.6 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.
- 20.7 Subject to the Contract AusAID shall pay Reimbursable Costs within 30 days of receipt of a correctly-rendered invoice.
- 20.8 An invoice is correctly rendered if:
- (a) the invoice details all Services provided against the Fees and records the amount payable in respect of each category of Services described in the Contract;
 - (b) the invoice details the Contractor's monthly contribution toward Project Vehicles in accordance with **Clause 9.2**;
 - (c) the invoice is based upon the calculation of Fees referred to in **Schedule 2**; and
 - (d) a company director of the Contractor, or their delegate has certified that the invoice:
 - (i) has been correctly calculated;

- (ii) that the Services included in it have been performed in accordance with this Contract; and
 - (iii) in the case of Reimbursable Costs that these costs have been paid.
- 20.9 If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Contractor, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due from AusAID to the Contractor.
- 20.10 A payment by AusAID is not an admission of liability. In the event that AusAID makes a payment for the completion of a Payment Milestone or the procurement of Supplies or inputs that AusAID subsequently learns have not been completed to the quality or performance specifications required or provided as required, the payment shall be deemed an overpayment and recoverable from the Contractor. Without limiting recourse to other available remedies, the overpayment may be offset against any amount subsequently due to the Contractor.
- 20.11 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.
- 20.12 AusAID need not pay any amount due to the Contractor until the Contractor delivers to AusAID a written statement which satisfies the requirements of section 127 of the *Industrial Relations Act 1996* (NSW) or the requirements of similar State or Territory legislation, in relation to the payment of employees or sub-contractors of the Contractor who were engaged in the performance of the Contract.
- 20.13 Except as otherwise specified in this Contract, the Fees are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Contractor in providing the Services.
- 20.14 If the Contractor does not have an Australian Business Number (ABN), AusAID, in accordance with the relevant provisions of the Pay as You Go (PAYG) legislation, shall be required to withhold a prescribed proportion of the amount payable to the Contractor under the Contract, unless the exceptions under Division 12 of the PAYG legislation apply.
- 20.15 AusAID will make all amounts payable to the Contractor under this Contract into a bank account 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.
- 21. **GOODS AND SERVICES TAX**
 - 21.1 Except as provided by this clause, all taxes, duties and charges imposed or levied in Australia in connection with the performance of this Contract shall be borne by the Contractor or its sub-contractor(s), as the case requires.
 - 21.2 The amount shown against each item in **Schedule 2** is the 'value' of the 'periodic supplies' to be made under this Contract, as these terms are used in the *A New Tax System Act 1999* (Cth).
 - 21.3 The amount payable under the Contract for each supply listed in **Schedule 2** is the value of that supply plus any GST payable by the Contractor under the GST legislation. Payment by AusAID to the Contractor of the GST shall be subject to the Contractor providing AusAID

with a valid Tax Invoice issued in accordance with the relevant provisions of the GST legislation and regulations.

- 21.4 The total amount of GST payable by the Contractor, and for which the Contractor seeks payment from AusAID, in respect of any supply shall be shown as a separate item on the Tax Invoice.
- 21.5 AusAID shall not pay to the Contractor any amount referable to GST, except as provided in this clause.

22. INTELLECTUAL PROPERTY RIGHTS

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

23. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

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

24. MORAL RIGHTS

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

25. CONFIDENTIALITY

- 25.1 Subject to this clause, the Contractor must not, without the prior written approval of AusAID, make public or disclose to any person any AusAID Confidential Information. In

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giving written approval, AusAID may impose such terms and conditions as in AusAID's opinion are appropriate.

- 25.2 The Contractor must take all reasonable steps to ensure Contractor Personnel do not make public or disclose the AusAID Confidential Information and must promptly notify AusAID of any unauthorised possession, use or disclosure of AusAID Confidential Information.
- 25.3 The Contractor must ensure that any Contract Personnel who will have access to AusAID Confidential Information complete a written undertaking in the form set out at **Schedule 3**, relating to the non-disclosure of that information.
- 25.4 The Contractor may disclose AusAID Confidential Information:
- (a) to its legal advisers in order to obtain advice in relation to its rights under this Contract, but only to the extent necessary for that purpose;
 - (b) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the first-mentioned party; or
 - (c) if required in connection with legal proceedings,
- but in the case of (b) and/or (c) above, subject to the Contractor giving AusAID sufficient notice of any proposed disclosure to enable AusAID to seek a protective order or other remedy to prevent the disclosure.
- 25.5 The Contractor must not transfer AusAID Confidential Information outside Australia, except to the Partner Country, or allow parties outside Australia to have access to it, without the prior approval of AusAID.
- 25.6 The Contractor must use AusAID Confidential Information held, acquired or which the Contractor may have had access to in connection with this Contract only for the purposes of fulfilling its obligations under this Contract. Upon expiry or earlier termination of this Contract the Contractor must either destroy or deliver to AusAID all AusAID Confidential Information, as required by AusAID.
- 25.7 This clause shall survive expiration or termination of this Contract.
26. **PRIVACY**
- 26.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services.
- 26.2 In this clause, the terms 'agency', 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the *Privacy Act 1988*.
- 26.3 The Contractor acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services:
- (a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;

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- (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
- (d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to 10) where that section or NPP is applicable to the Contractor, unless:
 - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or
 - (ii) in the case of a NPP – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorized by this Contract is inconsistent with the NPP;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with a NPP binding a party to this Contract;
- (g) to immediately notify AusAID if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any 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.

26.4 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.

26.5 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause, or a subcontractor under the subcontract provisions referred to in **Clause 26.4 above**.

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

27. AusAID USE OF CONTRACT INFORMATION

27.1 AusAID may disclose matters relating to the Contract, including the Contract, except where such information may breach the *Privacy Act 1988*, to Commonwealth governmental

departments and agencies, Commonwealth Ministers and Parliamentary Secretaries, and to the Commonwealth Parliament, including responding to requests for information from Parliamentary committees or inquiries.

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

28. PUBLICITY

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

28.2 The Contractor must not make any press, media or other announcements or releases relating to this Contract and the Services without the prior approval of AusAID Public Affairs Group as to the form, content and manner of the announcement or release.

28.3 The Contractor must only use the Australian Government/AusAID logo (in-line version) to denote association with Australia, the Australian Government or AusAID in any publicity or other project related materials. The Contractor must comply with the “AusAID Logo Guidelines for Managing Contractors” at all times, including when advertising for sub-contractors or personnel. The Guidelines are available from the AusAID Business website.

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

29. WARRANTIES

29.1 The Contractor represents and warrants that it has made its own assessment of all information made available to the Contractor in respect of the Services and sought appropriate professional advice concerning:

- (a) any information, statements or representations;
- (b) the regulatory regime applicable to the delivery of the Services both in Australia and in the Partner Country;
- (c) the assumptions, uncertainties and contingencies which may affect the future business of the Services; and
- (d) the impact that a variation in future outcomes may have on any Services.

29.2 Subject to any law to the contrary, and to the maximum extent permitted by law, AusAID, its employees, agents and advisers each disclaim all liability for any Losses (whether foreseeable or not) suffered by any other person acting on any part of the information made available to the Contractor in respect of the Service, whether or not the loss arises in connection with any negligence, default or lack of care on the part of AusAID, its employees, agents or advisers or any other person or any misrepresentation or any other cause.

29.3 The Contractor warrants that it shall have full corporate power and authority to enter into, perform and observe its obligations under this Contract and that the execution, delivery and

performance of this Contract shall be duly and validly authorised by all necessary corporate action.

30. PERSONNEL SECURITY

- 30.1 The Contractor is responsible for the security of Contractor Personnel and for taking out and maintaining appropriate insurances in respect of Contractor Personnel.
- 30.2 The Contractor is responsible for the immediate development and implementation of a Security Plan to ensure the safety and security of Contractor Personnel. The Security Plan should incorporate prevention strategies and response plans, including evacuation plans where appropriate. The Contractor shall submit a copy of the Security Plan to AusAID prior to mobilisation in the Partner Country. The Contractor shall review and update the Security Plan whenever considered necessary by the Contractor and shall submit the revised document to AusAID.
- 30.3 The Contractor must keep abreast of the security situation in the Partner Country including where relevant having regard to travel advisories and notices including those issued by the Australian Department of Foreign Affairs and Trade. The Australian advisories and notices are available at: www.dfat.gov.au
- 30.4 The Contractor acknowledges and confirms that, notwithstanding any other provisions of the Contract:
- (a) it is not the function or responsibility of AusAID or any person acting or purporting to act on behalf of AusAID, to comment on or approve the Contractor's Security Plans; and
 - (b) the Contractor has not entered the Contract based on any representation, statement or assurance by AusAID or any person acting or purporting to act on behalf of AusAID, in respect of the safety or security of the Contractor, Contractor Personnel or any person acting on behalf of the Contractor, in the Partner Country or in any other location.

31. TERMINATION FOR CONTRACTOR DEFAULT

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

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

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

- (a) subject to this Contract, the parties are relieved from future performance of this Contract, without prejudice to any right of action that has accrued at the date of termination;
- (b) subject to this Contract, all licences and authorisations granted to the Contractor by AusAID under this Contract terminate immediately despite anything to the contrary contained in the relevant licence or authorisation;
- (c) the AusAID Confidential Information, Supplies and any other property supplied or given to the Contractor by AusAID pursuant to this Contract must be immediately returned to AusAID;

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- (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).

32. TERMINATION FOR CONVENIENCE

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

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

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

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

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

to the extent that such Costs are substantiated to AusAID.

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

33. INDEMNITY

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

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caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the Contractor, or any Contractor Personnel in connection with this Contract.

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

34. INSURANCE

34.1 The Contractor must arrange and maintain for the duration of the Contract unless otherwise specified:

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

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

- (d) property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value;
- (e) professional indemnity insurance to cover the Contractor's obligations under this Contract. The Contractor's professional indemnity policy must respond to claims

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arising under the *Trade Practices Act (Cth)* 1974, in regard to this Contract. The Contractor may obtain the insurance on an annual basis if necessary, but must maintain the necessary insurance each year until the expiration of three (3) years after the full Term of the Contract or earlier termination of the Contract;

- (f) adequate medical and dental insurance for Contractor Personnel who are engaged to operate outside their country of permanent residence; and
- (g) adequate insurance for medical evacuation and evacuation resulting from an insured event for all Contractor Personnel.

34.2 The Contractor must, within 14 days after a request by AusAID, provide for any insurance policy: a certificate of currency, a list of exclusions; and the amount of excess payable.

34.3 Neither the effecting of insurance nor any failure to effect such insurance shall in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the other provisions of this Contract or at law.

34.4 In the event of an insurance claim any deductible/excess payable shall be the responsibility of the Contractor.

35. CONFLICT OF INTEREST

Conflict of Interest

35.1 The Contractor warrants that, at the date of signing this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.

35.2 The Contractor must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. The Contractor must not engage in any activity, subject to **Clause 35.3 below**, that may result in a conflict of interest arising or continuing.

35.3 Where a conflict of interest arises in the performance of the Contractor's obligations under this Contract, the Contractor must notify AusAID immediately, and may request permission from AusAID to undertake the work despite that conflict of interest.

Anti-Corruption

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

36. FRAUD

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

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

- 36.3 The Contractor must prepare a fraud risk assessment and zero tolerance fraud control strategy. These must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures that comply with the *Commonwealth Fraud Control Guidelines*.
- 36.4 The Contractor is responsible for preventing and detecting fraud including fraud within those functions outsourced / performed by a 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.
- 36.5 The Contractor must report in writing within 5 working days to AusAID any detected, suspected, or attempted fraudulent activity involving AusAID provided funds. Where a matter is reported in writing to AusAID by a Contractor, the advice must provide where known:
- (a) the name of the Project under which AusAID funding is being provided;
 - (b) name of any personnel or subcontractors involved;
 - (c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);
 - (d) the names of the suspected offender(s) (where known);
 - (e) details of witnesses;
 - (f) copies of relevant documents;
 - (g) references to any relevant legislation;
 - (h) a nominated contact officer;
 - (i) any other relevant information (eg, political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and
 - (j) the current status of any inquiries commenced by the Contractor.
- 36.6 The Contractor must, in consultation with AusAID, develop and implement a strategy to investigate the detected, suspected or attempted fraud based on the principles set out in the *Australian Government Investigations Standards* which are available from AusAID when a demonstrated need to distribute them exists. The Contractor will be responsible for the conduct of the investigation. Any investigator appointed by the Contractor should possess the minimum qualifications specified in the *Commonwealth Fraud Control Guidelines*. Before engaging a qualified investigator, the Contractor may consult with AusAID regarding the appointment and may request assistance from AusAID in meeting the actual costs of a qualified investigator. Provided that the Contractor has consulted with AusAID before engaging an investigator, AusAID may in its absolute discretion agree to meet some or all of those costs.
- 36.7 AusAID reserves the right to appoint its own investigator, conduct the investigation, conduct a concurrent investigation or refer the allegations to the appropriate law enforcement agencies or any other person or entity AusAID deems appropriate in Australia or in the partner countries for investigation. In this instance the Contractor shall provide all assistance that may be required at the Contractor's sole expense.

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- 36.8 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.
- 36.9 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.
- 36.10 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.
- 36.11 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.

37. COMPLIANCE WITH LAWS AND POLICIES

- 37.1 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*;
 - (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 visa requirements of the Partner Country or country in which the Services are being provided. The Contractor must ensure that all Contractor Personnel have the correct visa for the work to be undertaken in the Partner Country or other country.
- 37.2 The Contractor must in carrying out its obligations under this Contract comply with those laws in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the Criminal Code Act 1995 (Cth) and listed in regulations made under that Act and regulations made under the Charter of the UN Act 1945 (Cth). The Contractor must ensure that funds provided under this Contract do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link

whatsoever with any organisation or individual associated with terrorism it must inform AusAID immediately.

- 37.3 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, as amended from time to time and outlined on the AusAID website (<http://www.ausaid.gov.au/keyaid/default.cfm>) 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.
- 37.4 The Contractor shall comply with the *Lobbying Code of Conduct* where they are required to or likely to be required to have contacts with lobbyists. The Code and Register of Lobbyists are available at <http://lobbyists.pmc.gov.au/lobbyistsregister>
38. **INVESTIGATION BY THE OMBUDSMAN**
- 38.1 In carrying out the Services, the Contractor, and an employee or subcontractor of the Contractor, may be a "Commonwealth service provider" under section 3BA of the Ombudsman Act 1976.
- 38.2 The Contractor must use its best endeavours, and must ensure that employees and subcontractors of the Contractor use their best endeavours, in undertaking the Services, not to engage in conduct that:
- (a) would, if the Contractor or an employee or subcontractor were an officer of AusAID, amount to a breach of duty or to misconduct; or
 - (b) should be brought to the attention of the principal officer of AusAID.
- 38.3 If the Commonwealth Ombudsman commences an investigation of conduct of the Contractor, as a Commonwealth service provider, the Contractor, at the cost of the Contractor, must cooperate with the investigator including:
- (a) providing all documentation required by the investigator,

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

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

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

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

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

39. RESOLUTION OF DISPUTES

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

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

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

39.4 In the event that the dispute, controversy or claim has not been resolved within 50 Business Days (or such other period as agreed between the Parties in writing) after the Parties have attempted to agree on a process, or the appointment of the mediator or conciliator, then either Party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.

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

40. NOTICES

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

- (a) when delivered (if left at that Party's address);
- (b) on the third Business Day after posting (if sent by pre-paid mail); or

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

41. MISCELLANEOUS

41.1 Waiver

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

41.2 Liability of Party

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

41.3 Entire agreement

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

41.4 Severance

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

41.5 Assignment

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

41.6 Governing Law and Jurisdiction

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

41.7 Contra 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.

41.8 False and Misleading Information

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