

4/9/17

## Invitation to Tender – CS WASH Fund – Effective WASH approaches and innovations in the CS WASH Fund

<b>Project:</b>	<b>Civil Society Water, Sanitation and Hygiene (CS WASH) Fund Management Facility</b>
<b>Tender for:</b>	Effective WASH approaches and innovations in the CS WASH Fund
<b>Activity Number</b>	201709
<b>The Company:</b>	Palladium International Pty Ltd
<b>Closing Date and Time:</b>	5pm Australian Eastern Standard Time, 2 October 2017
<b>Contact Person:</b>	Amanda Morgan +61 7 3025 8532
<b>Details for submission:</b>	cswashfundonline@thepalladiumgroup.com
<b>Tender Validity Period:</b>	60 days
<b>Number of Hard Copies of Tender:</b>	N/A
<b>Delivery Address:</b>	N/A
<b>Jurisdiction</b>	Queensland, Australia

Thank you for your interest in the above procurement. As the managing contractor for the Project the Company invites you to tender for this activity. This pack includes:

- ❶ Part 1: Terms of Reference (TOR)
- ❷ Part 2: Conditions of tender
- ❸ Part 3 and 4: Technical and financial selection criteria
- ❹ Part 5: Client Terms and Conditions
- ❺ Part 6: Standard contract template which the successful tenderer is required to sign once the agreed commercial terms have been included.
- ❻ Part 7: Declaration by Tenderers

Please forward your Tender in accordance with the Details for Submission above by the Closing Date and Time to CS WASH Fund Management Facility.

I look forward to your response. If you have any queries, please do not hesitate to contact me on +61 7 3025 8532 or by e-mail [cswashfundonline@thepalladiumgroup.com](mailto:cswashfundonline@thepalladiumgroup.com)

Yours sincerely,

Amanda Morgan

Fund Manager

## Part 1 – Terms of reference

### 1. Background

The purpose of the research to be commissioned by the Civil Society Water, Sanitation and Hygiene Fund (CS WASH/ 'the Fund') and managed by the Fund Management Facility (FMF) is to further interrogate the extensive monitoring and evaluation data available for the Fund and supplement this with primary research **to address particular Fund-wide areas of interest**. The areas of interest listed here have been identified by Civil Society Organisations (CSOs) as emerging issues from Fund-wide monitoring and evaluation by the Monitoring Evaluation Review Panel (MERP), and as management and effective WASH programming concerns by the Department of Foreign Affairs and Trade (DFAT) and the FMF. These areas of research will both build from and contribute to the existing WASH knowledge base. While recognising that the contexts and enabling environments of each project vary significantly, the research will draw on Fund-wide data and experiences where possible as well as specific case studies of success and failure. The research will assist stakeholders (DFAT, CSOs, researchers and WASH actors) understand in more depth lessons from the CS WASH Fund and capture these to inform future programming and effectiveness.

### 2. Objectives of the assignment

Specific research areas prioritised by DFAT and the FMF are:

- Effective WASH approaches used by CSOs over the course of the Fund, especially with respect to
  - CSOs influencing WASH policy
  - Gender and social inclusion
  - WASH markets (optional)
- Challenges and opportunities for CSOs working to improve Schools WASH (optional)
- CSOs fostering innovation in WASH across the Fund as an integrated approach to programming

### 3. Scope of the assignment

#### 1) Effective approaches to influence WASH policy

WASH services, and particularly sanitation, have been consistently under-resourced in many countries. Concerted efforts to address this during the MDG period did increase focus and resources to sanitation. Nonetheless, estimates show that while current levels of global financing could achieve basic access during the SDG period if appropriately targeted, a three-fold increase in funding (from current levels of \$28.4 billion per year to \$114 billion per year) is required to achieve higher levels of service set by SDG6 targets.<sup>1</sup>

Adequate government support articulated in coherent policy and financing (including recurrent budgeting), is essential to the sustainable provision of WASH services and a supportive enabling environment. Many CSOs within the Fund have played (and continue to play) a role in WASH policy advocacy and increasing government support and resources for service provision. Even though only a few CSOs have explicit deliverables to influence policy, anecdotal evidence is that there are numerous instances of policy influence. In some contexts influence on national policy has already affected resourcing and WASH service coverage and quality (e.g. Pakistan), while in others the operationalisation of new WASH policies remains a challenge for governments (e.g. PNG). In other contexts policy influence has increased the affordability of water access (e.g. Sri Lanka) and sanitation desludging services (e.g. Zimbabwe), while in others it has helped direct government financing to sanitation (e.g. Indonesia and Vietnam).

Indicative key questions:

---

<sup>1</sup> Dutton, G. and M. Varughese. (January 2016) *The Cost of Meeting the 2030 Sustainable Development Goal Targets on Drinking Water, Sanitation, and Hygiene*. Water and Sanitation Program, World Bank.  
<http://www.worldbank.org/en/topic/water/publication/the-costs-of-meeting-the-2030-sustainable-development-goal-targets-on-drinking-water-sanitation-and-hygiene>

- Across the Fund, where have CSOs effectively influenced WASH policy? What is the context of this influence, and how have they achieved this? How have they worked with other policy advocates? What are the most and least effective entry points for CSOs?

## 2) Effective approaches to improve gender and social inclusion through WASH

DFAT's Office of Development Effectiveness Mid-Term Review of the CS WASH Fund indicated that the design of the Fund requiring gender and social inclusion (GESI) components, had the effect of pushing CSOs to explore and work in these areas more than they would otherwise have done. Aside from a few examples (e.g. SNV Bhutan's work in disability inclusive WASH), there has not been an analysis of the extent to which and how having a GESI component has encouraged CSOs to move beyond their comfort zones and fully incorporate GESI in programming.

Indicative key questions:

- Across the Fund, where have CSOs been effective in supporting gender transformation through WASH? What approaches have CSOs used? What are the contexts of effective approaches, and how much have approaches been tailored to specific contexts? How has effectiveness been measured and quantified?
- Across the Fund, where have CSOs been effective in promoting disability inclusive WASH programming and programming for other marginalised groups? What approaches have CSOs used? What variation is there amongst approaches? Where some approaches are more effective, explain the reasons for this.
- Have there been noticeable trends and/or changes of approach over the course of the Fund in the way that CSOs are working in GESI?

## 3) Effective approaches to support WASH markets (Optional)

The support CSOs have been giving to WASH markets was explored in-depth at the East Asia Regional Learning Event (EARLE), and is well documented in the EARLE Synthesis Report, [Bridging public and private spheres for improved sanitation](#). While CSO projects in other regions have also been working in this area, their work has not been analysed or documented to the same extent. It would be beneficial to extend the analysis of CSO support to WASH markets to the Pacific, Southern Africa and South Asia.

Indicative key questions:

- Across the Fund, where have CSOs been effective in supporting WASH markets? What approaches have CSOs used (e.g. sanitation marketing, support to financial systems, establishing sanitation businesses, advocacy for public sector support to private sanitation enterprises, combining CLTS and sanitation marketing, etc.)? What variation is there amongst approaches? What are the contexts of effective approaches, and how much have approaches been tailored to specific contexts?
- How have CSO efforts to support WASH markets resulted in improved WASH service delivery?
- Are there noticeable trends and/or changes of approach in the way that CSOs are working in sanitation, particularly sanitation marketing across the Fund?

## 4) Innovation across the Fund

Within the CS WASH Fund there has been a specific focus on supporting innovation and building the WASH evidence-base. Innovation has been supported explicitly through the Innovation and Impact Grant Fund which has supported five CSOs to run one- or two-year projects of approximately \$100,000 per year. An internal evaluation of this grant mechanism is currently underway. In addition to these grants there are numerous examples of innovation by CSOs during implementation of the Fund grants. For example, iDE developed a pit latrine gauge and a modular disability toilet design in Cambodia, a number of CSOs have applied savings and loans schemes to sanitation for the first time (Plan in Malawi, Habitat for Humanity in Bangladesh and Live and Learn in Papua New Guinea), and both Thrive and iDE have trialed and demonstrated various models for smart-subsidies or rebates for sanitation in Cambodia.

It is recognised that CSOs play roles in all stages of the innovation cycle from concept development, piloting, adapting, adopting and advocating. Innovation by CSOs can encompass new approaches, methods, techniques or technologies adopted and applied to WASH challenges. There are specific areas in the WASH

sector where innovation is required to help meet the targets set by the SDGs, and it is in the interests of governments, CSOs and donors that projects do not support 'just another pilot'. Effective innovations are most useful when they address a specific issue or have the potential to influence at scale.

Indicative key questions:

- 1) What innovations have occurred as part of the CS WASH Fund? (identified by the CSOs and their partners, MERP, KALM and DFAT) How effective have these been in improving WASH services, and how well progressed are they along the innovation cycle (concept development, piloting, adapting, adopting and advocating)?
- 2) What role have CSOs played in supporting WASH innovation, demonstration and uptake at scale?
- 3) How well and how extensively has innovation been an integrated component of Fund projects and Fund-wide knowledge learning? What lessons are there for integrating innovation within CSO WASH programming in the future?

## 5) Schools WASH (Optional)

Throughout the course of CS WASH Fund, it has become clear both from decreasing project targets, but also through data emerging from project and MERP trip reporting, that implementing schools WASH is particularly challenging for CSOs. Schools WASH targets have dropped for nine of the 29 Fund projects, increased for five projects, and Fund-wide there has been a 56% reduction in KPI 5.08 (number of additional students with access to improved school latrines) from 349,628 to 154,137. Schools WASH is notoriously difficult for WASH programming due for the most part, to the cross-sectoral nature of activities: in most cases education and health ministries are involved, as are communities and parent-teacher bodies.

Indicative key questions:

- 1) What are the primary reasons for Schools WASH targets reducing or increasing over the course of the Fund?
- 2) Where CSOs have been working in schools WASH, what have they found to be effective or less effective approaches? What challenges have they faced? What successes have they had, and what are the contributing factors to this?
- 3) Drawing on existing literature and the CS WASH Fund experience, what recommendations can be made to CSOs aiming to work on Schools WASH moving forward?

### 1.1 Benefits

The benefits expected from this research include:

- Further learning, documentation and capture of the CS WASH Fund Phase 2 experiences which builds on and extends existing Fund evaluation and metrics.
- Outputs which capture Fund lessons to inform and improve CSO WASH programming for greater impact based on evidence and good practice.

The primary audiences for this research are DFAT, CSOs and the wider WASH sector.

### 1.2 Methodology

The research is expected to use mixed methods including:

- A workshop (may be remote) with key informant interviewees including the Monitoring, Evaluation and Review Panel, Knowledge and Learning Manager and others to identify and prioritise data sources and analysis approaches;
- Analysis of knowledge and learning products, project reports and monitoring visit reports as required;
- Qualitative and quantitative analysis of Fund Key Performance Indicators and Key Performance Questions and other relevant monitoring and evaluation data;
- Literature review as required to support approach and findings;
- An online survey of Fund CSOs and partners and Fund Management Team (DFAT, FMF, MERP); and
- Interviews with key informants as required (minimum 13 interviews).

## 1.3 Outputs

The outputs of this research will be:

1. A research report (maximum 30 pages). The report will include the following sections: executive summary; literature review; methodology; results; data analysis/discussion; and, annexes containing the raw data collected.
2. Briefing notes (maximum four pages) for each topic. Presentation of findings to be highly visual and engaging.
3. A webinar on research findings with a PowerPoint presentation.

Research papers are encouraged but not required.

The outputs of this research will be shared with CS WASH Fund grantees, DFAT and the wider WASH sector.

### Scope

Researchers applying should indicate extent (depth and breadth) to which they can address the research areas outlines above within an upper budget limit of AUD 90,000 excluding GST. Core areas to be addressed include topics 1, 2 and 4 with topic 3 and 5 being optional.

#### 4. Duration and phasing

##### Milestones for services

Milestone output	Deadlines
Inception meeting	mid October 2017
Data collection and scoping meeting with FMF, DFAT and MERP (remote or face-to-face tbc)	end October 2017
Draft research methodology and tools and Research Report outline	5 November 2017
Draft data analysis provided in presentation format	11 February 2018
Draft Research Report and Briefing Notes. Delivery of Webinar	18 March 2018
Final Research Report and Briefing Note	15 April 2018

#### 5. Financial component

Please refer to Part 5 for details relating to preparation of the financial submission.

#### 6. Responsibilities of the Company

N/A

#### 7. Contractor responsibilities

- To be prepared to sign the Standard Contract Terms.
- To have in place insurance policies covering Professional Indemnity and Public Liability.
- To have any relevant registrations (including tax registrations) in the activity Jurisdiction.

[Click here to enter text.](#)

## Part 2 – Conditions of tender

### 1. Tender content

- 1.1. The tender must contain the following:
  - 1.1.1 a cover letter (no longer than 1 page) to the tender for the activity (specify the Activity number), including the signed declaration contained in Part 7;
  - 1.1.2 a technical submission (in the form detailed in Part 3);
  - 1.1.3 a financial submission (in the form detailed in Part 4).
- 1.2. Every Tender needs to state in the submission:
  - 1.2.1 in the case of an individual, full or given names, surname and address;
  - 1.2.2 in the case of a trust, the full names and addresses of each trustee of the trust;
  - 1.2.3 in the case of a company, NGO or other registered entity, the full name of the entity, the address of the registered office of the entity, the relevant registration number and a copy of the certificate of registration; and
  - 1.2.4 If relevant, a list (including CVs if requested) of all the nominated personnel expected to contribute to the performance of the TOR, including their names, surnames, title of their position and their proposed level of effort.
- 1.3. Tenders are to be written in English, Arial font 12
- 1.4. 'The Tenderer' (where capitalised) means the person or organisation to whom this invitation has been sent, the person or organisation responding to this invitation (as applicable). Depending on the context, an uncapitalised version of 'tenderer' may also refer to the Tenderer.

### 2. Tender Assessment Process

- 2.1. Tenders must comply with the requirements of the TOR. Failure to submit a Tender including the information required by the TOR (or this Tender generally) will factor into The Company's assessment of the level of compliance of the Tender and may result in rejection of the Tender.
- 2.2. The Company will evaluate Tenders on the following basis:
  - 2.2.1 a technical assessment;
  - 2.2.2 a financial assessment;
  - 2.2.3 any other factors which may impact on the Tenderer's potential performance.
- 2.3. The Company reserves the right:
  - 2.3.1 to accept or reject any tender, and to annul the tendering process thereby rejecting all tenders, at any time prior to the award of contract at its sole discretion;
  - 2.3.2 to cancel or vary the Invitation to Tender process at any time whether before or after the closing date;
  - 2.3.3 to reject any tender that does not adhere to the structure and content requirements as outlined in these Terms and Conditions;
  - 2.3.4 to recall tenders from any source including those tenderers who have already submitted tenders, without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for this action;
  - 2.3.5 to accept Tenders for the whole or any part of the requirement;
  - 2.3.6 to require that tenderers submit to the Company's Due Diligence process prior to or after the submission of Tenders; and
  - 2.3.7 to negotiate with the most favourable tenderer should it be deemed that the offered prices are unreasonable or greater than the targets set in the planning process.
- 2.4. The Company shall not be bound by any advice given or information furnished by it.
- 2.5. The conduct of this Invitation to Tender is not intended to give rise to any legal or equitable relationship.
- 2.6. Any inducements and rewards intended to influence the outcome of the Tendering process will result in Tenderer's immediate suspension from the process.
- 2.7. Your Tender will be valid for the Tender Validity Period specified on p.1.

### 3. Technical Assessment

- 3.1. The Technical Assessment will be undertaken by an internal procurement committee.
- 3.2. The Company may specify weighting for assessment criteria in Part 4.

### 4. Financial Assessment

- 4.1. Following consideration of the technical merit of Tenders, a like-for-like price assessment may be undertaken by The Company of the Tenders assessed as technically suitable.
- 4.2. Tenderers should note that financial submissions for those Tenders assessed by the Procurement Committee as not technically acceptable will not be subject to financial assessment.
- 4.3. Unless otherwise specifically stated, prices quoted must be provided as a fixed maximum price and show the tax exclusive price, the tax component and the tax inclusive price.

- 4.4. The contract price, which must include any and all other charges and costs, will be the maximum price payable by the Company for the Goods and/or Services.
- 4.5. Additionally, if requested by the Company, potential suppliers must be able to demonstrate their financial stability and ability to remain viable as a provider of the Goods and/or Services over the term of any agreement.
- 4.6. If requested by the Company, the potential supplier must promptly provide the Company with such information or documentation as the Company reasonably requires in order to evaluate the potential supplier's financial stability.

## **5. Acceptance of Tenders**

- 5.1. The Company is not bound or required to accept the lowest priced Tender or any Tender.
- 5.2. A Tender will not be deemed to be accepted unless and until a Contract in the form listed in Part 7 is signed by the Company and the Tenderer (with the agreed commercial terms included).
- 5.3. The Company reserves the right to enter into negotiation with any other tenderer if contract negotiations cannot be concluded with the preferred Tenderer.

## **6. Alternative Tenders**

- 6.1. The Company reserves the right to accept and consider alternative Tenders providing they:
  - 6.1.1 are submitted with a compliant Tender;
  - 6.1.2 clearly identify the differences and improvements offered.

## **7. Non-Compliant Tenders**

- 7.1. Tenders will be regarded as non-compliant if they do not comply with any part of the requirements of this Invitation to Tender.
- 7.2. The Company may, however, in its absolute discretion evaluate any non-compliant Tender.

## **8. Lodgement of Tenders**

- 8.1. It is the responsibility of the Tenderer to ensure that the Tender is received by the Company by the closing date and time prescribed in this Invitation to Tender. A Tender lodged after the closing date is a late Tender.
- 8.2. A late Tender will normally not be considered unless it can be demonstrated by the Tenderer that the Tender would have arrived at the tender point by the required date and time as prescribed in this Invitation to Tender but, for reasons proven by the Tenderer, it did not. The Company may allow a late Tender to be assessed at its absolute discretion.
- 8.3. The Company will not consider or entertain any queries about a decision to assess or reject a late Tender.

## **9. Tenderer Costs**

- 9.1. Tenderers are responsible at their own cost to:
  - 9.1.1 make all arrangements and obtain and consider all information relating to the TOR;
  - 9.1.2 prepare, deliver and lodge their tender;
  - 9.1.3 deal with any issues, including disputes, that may arise out of the tendering process.

## **10. Confidentiality**

- 10.1. The Tenderer acknowledges that in the course of this Tender, it may become acquainted with or have access to the Company's Confidential Information (including the existence and terms of this Tender and the TOR). It agrees to maintain the confidence of the Confidential Information and to prevent its unauthorised disclosure to any other person.
- 10.2. The Tenderer will not disclose or use any Confidential Information except to the extent that such disclosure or use:
  - 10.2.1 is strictly necessary for submitting the Tender;
  - 10.2.2 is required by relevant laws;
  - 10.2.3 is authorised by prior written approval from the Company; or
  - 10.2.4 occurs after the Confidential Information already is or comes into the Tenderer's possession (or in the public domain) otherwise pursuant to this Tender, pursuant to a separate confidentiality undertaking by the Tenderer or a third parties' (or that parties') unauthorised disclosure.
  - 10.2.5 If the Tenderer is required to disclose Confidential Information due to a relevant law or legal proceedings, it will provide reasonable notice of such disclosure to the Company.
  - 10.2.6 The parties agree that this obligation applies during the Tender and after the completion of the process.

**11. Request for Information**

11.1. Any prospective tenderer may within a reasonable time before the closing date request information on any point of clarification in this Tender. The information requested shall be given in writing by the Company as soon as practicable. Where in the opinion of the Company the information could have an effect on other tenderers, that information may at the Company's sole discretion be given in writing to all known prospective tenderers.

**12. Business Partner Code of Conduct**

12.1. Tenderers shall comply with the Company's Business Partner Code of Conduct in the submission of any tenders. The Code is currently available at [thepalladiumgroup.com/policies](http://thepalladiumgroup.com/policies).

**13. Unsuccessful Tenders**

13.1. Unsuccessful Tenders will be notified in writing and shall be entitled to feedback regarding their tender.

**14. Tenderer Acceptance of Conditions**

14.1. A Tender lodged in response to this Invitation to Tender does so with agreement to these Conditions of Tender unless any departures from these Conditions are detailed in the cover letter of the submission. The Company reserves the right to reject any departure from these Conditions of Tender, and thereby determine that the tender submission is non-conforming for that reason.

**15. Conflict of Interest**

15.1. Tenderers must notify the Company immediately if any actual, potential or perceived conflict of interest arises (a perceived conflict of interest is one in which a reasonable person would think that the person's judgement and/or actions are likely to be compromised, whether due to a financial or personal interest (including those of family members) in the procurement or the Company).

**16. Inconsistencies**

16.1. If there is inconsistency within this ITT, the following order of precedence shall apply:

- 16.1.1 these Terms and Conditions;
- 16.1.2 the Cover Page of this ITT; and
- 16.1.3 Part 5 – Client Terms
- 16.1.4 Part 6 – Standard Contract
- 16.1.5 Part 1 – Terms of Reference
- 16.1.6 Part 4 – Financial Assessment Selection Criteria
- 16.1.7 Part 3 – Technical Assessment Selection Criteria
- 16.1.8 the Schedule

so that the provision in the higher ranked document will prevail to the extent of the inconsistency.

**17. Jurisdiction**

17.1. This Tender process shall be subject to the laws of the Jurisdiction.

17.2. The Supplier and the Company will use their best efforts to settle amicably any dispute, controversy, or claim arising out of, or relating to this Agreement or the breach, termination, or invalidity thereof.

17.3. If no agreeable settlement can be found, any dispute, controversy, or claim arising out of or relating to this Agreement or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of this Agreement. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration. The Parties will be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute.

17.4. The place of arbitration shall be the headquarters location of Company at the time the claim is filed and the language of the arbitration will be English. The relevant laws shall be the laws of the Jurisdiction.

17.5. Should the claim involve a State, a State-controlled entity, or an intergovernmental organization, the case shall be administered by the International Bureau of the Permanent Court of Arbitration.

## Part 3 – Technical assessment selection criteria

### **Technical Assessment**

1. The Technical Assessment will be undertaken by an internal Procurement Committee.
2. The Technical Assessment of the Tender will account for 80% of the overall score using the following formula:

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

3. The Procurement Committee, in assessing the technical part of the Tender, will consider the Selection Criteria.

### **Selection Criteria**

- Responds to and builds upon the key research questions outlined in the Terms of Reference. The research proposed will expand the existing knowledge base of how CSOs learn and improve WASH programming and lead to clear recommendations.
- Demonstrates a good understanding of the CS WASH Fund, CSO learning and WASH evidence-base.
- Clear conceptual framework identified to guide research methodology;
- Rigorous methodology described including appropriate scoping and timeframe;
- Clear plan to critically analyse the results
- Realistic timeframes for research activities provided
- Demonstrated and relevant organisational capacity and research background
- Demonstrated and relevant team capacity and research background

### **Requirements for the Technical Submission.**

The Technical Submission must:

1. Include
  - a. an outline of work to undertake the research outlined in the TOR (maximum 12 pages). The quotation should make clear which research core and additional topics will be included within the scope, and the depth and breadth for each
  - b. an organisational or individual profile illustrating relevant background, experience, capacity and suitable personnel (maximum 4 pages),
  - c. details for two referees who can comment on recent organisational or lead researcher experience relevant to the application.
2. indicate the Tenderer's nominated contact person on the front page;
3. be in a type font of no less than 12 points;
4. be maximum 16 pages long (A4 sized pages) (excluding annexes);
5. Declaration by Tenderers should be included as an annex.

## Part 4 – Financial assessment selection criteria

### **Financial Assessment**

Following consideration of the technical merit of Tenders, a like-for-like price assessment will be undertaken by Palladium of the Tenders assessed as technically suitable (a score of 70 or more out of 100). The like-for-like price assessment will represent 20% of the overall score.

The following formula for the scoring and ranking of Tenders on the basis of price will be used:  
Price Score = (Bid Price of Lowest Priced Technically Acceptable Bid)/Tenders Bid Price x 20%

Tenderers should note that financial submissions for those Tenders assessed by the Procurement Committee as not technically acceptable will not be subject to financial assessment.

### **Financial assessment selection criteria**

The Financial Assessment Criteria must be a fully costed-fixed price based on the outputs / inputs as specified in the Terms of Reference, included in Part 2, including:

1. Management Fee (Table 1);
2. Reimbursable Personnel Table (Table 2)
3. Reimbursable Costs (Table 3);

The Financial Schedule must contain the information required and adhere to the format detailed in this Clause.

The Financial Schedule will have three purposes:

1. to provide information that will enable Palladium to assess the value for money of the Tender.
2. to provide information that will enable provision to be made in the Subcontractor Agreement with the successful Tenderer for variation to the Agreement in the event that the Project inputs are subsequently varied by DFAT either within the term of the Agreement or to facilitate possible extension to the Agreement term and
3. to provide information that will facilitate subsequent negotiation of the progressive flow of payments to the Subcontractor over the life of the Agreement.

### **Management Fee**

The fixed costs for delivering the services as outlined in the Terms of Reference are to be detailed in Table 1. This includes the items such as but not limited to; relevant insurances including; professional indemnity, workers insurance, audit report etc. The fixed costs are not to include any costs outlined in the reimbursable table. Additional items may be added under 'other' with an additional line item added clearly detailed what other includes.

**Table 1: Management Fee**

Item	Cost (AUD)
Management fee; to include profits, financial management costs, insurance, taxation, reporting and liaison responsibilities, risks and contingencies.	
Other: <i>(to be specified and additional line added for each additional costs Tenderer to add rows as required.</i>	
<b>Total Management Fee</b>	

### **Reimbursable Personnel Costs**

The Tenderer is to identify technical and management positions required to manage, design and deliver the training course, with consideration of the **Terms of Reference**. There is no limit to the number of positions that a Tenderer may nominate in order to perform the ToR. All positions must be costed on the number of days estimated to be required to fulfil the ToR. Positions may be either part-time or full-time and may be filled by more than one person (determined by the Tenderer's approach/response to ToR).

**Table 2: Reimbursable Personnel Costs**

Position	Personnel	No. of days	Fee per day	Total cost (AUD)

**Reimbursable Activity Costs**

This table is to include all costs relating to the delivery of services and other costs directly associated with performing the services described in the ToR. All items must be directly related to the Services.

**Table 3: Reimbursable Activity Costs**

Activity / Output	Unit	Unit Cost	Quantity	Total Cost (AUD)
Flights				
Accommodation				
Per Diem				
Graphic design				
Reports				
Other (to be specified)				
<b>Total Reimbursable Activity Costs</b>				

**Total Financial Proposal**

The total cost from all three tables will be used in the financial assessment.

**Table 4: Total Financial Proposal**

Item	Maximum Amount Payable (AUD)
Management Fee	Insert Total Cost from Table 1
Personnel Costs	Insert Total Cost from Table 2
Reimbursable Activity Costs	Insert Total Cost from Table 3
<b>Total Tender Price (excluding GST)</b>	

The Management Fee will be fixed and will be paid out against the following schedule as outlined below;

Activity	% off Management Fee
Signing of Contract	20%
Mid-term report	40%
Final report	40%

Reimbursable Personnel Costs (Table 2), Reimbursable Activity Costs (Table 3) will be paid on a quarterly reimbursable basis upon submission of an authorized invoice.

## Part 5 – Client Specific Provisions

Tenders are bound by conditions under Palladium's Head Contract with DFAT. Take note that on 1 November 2013 AusAID was absorbed into DFAT. AusAID has been absorbed into DFAT. As such, any reference to AusAID is and should be read as analogous to DFAT.

### 1. EARLY NOTIFICATION

- 1.1 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
- 1.2 The Contractor must immediately notify AusAID if the Contractor or a Sub-Contractor is:
- (a) listed on a World Bank List or on a Relevant List;
  - (b) subject to any proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List;
  - (c) temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process;
  - (d) temporarily suspended from tendering by a donor of development funding other than the World Bank; or
  - (e) the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.

### 2. PROCUREMENT SERVICES

- 2.1 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 Rules, 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.
- 2.2 The Contractor shall bear the loss or damage in respect of Supplies until handover of Supplies to the Partner Government.
- 2.3 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.
- 2.4 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.

2.5 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.

2.6 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.

### 3. **SUB-CONTRACTING**

3.1 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 Rules for the engagement of all sub-contracting of the Services, with the exception of Associates;
- (c) the Contractor must ensure that any sub-contractor to be engaged during the term of this contract is not:
  - (i) listed on a World Bank List or on a Relevant List;
  - (ii) subject to any proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List;
  - (iii) temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process;
  - (iv) temporarily suspended from tendering by a donor of development funding other than the World Bank; or
  - (v) the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.
- (d) If the Contractor has engaged a sub-contractor in contravention of **Clause 11 (c)**, the Contractor must immediately on becoming aware or being notified of the breach, terminate the sub-contract. Any costs incurred by the Contractor in relation to termination shall be borne by the Contractor.
- (e) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:
  - (i) comply with relevant and applicable laws, regulations and development policies, including AusAID's *Child protection policy* (<http://www.ausaid.gov.au/aidissues/childprotection/Pages/home.aspx>) and child protection compliance standards (Attachment 1 to the policy), both in Australia and in the Partner Country, and also *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.ausaid.gov.au/Publications/Documents/fam-plan-principles.pdf>);
  - (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** Error! Reference source not found. (Accounts and Records), Error! Reference source not found. (Audits), **19**

(Access to Premises), **26** (Privacy), and Error! Reference source not found. (Anti-corruption) below and as required by Project Specific Contract Conditions **Clause 3** (Accounts and Records) as the Contractor; and

(iv) be bound by appropriate obligations in relation to ongoing software licensing, computer maintenance requirements and handover arrangements to the Partner Country;

- (f) if requested by AusAID, the Contractor must provide to AusAID an executed Deed of Novation and Substitution in the form at **Schedule 4** (Deed of Novation), contemporaneously with or within 10 Business Days of execution of the sub-contract by the Contractor;
- (g) the sub-contract must include the right of AusAID, in the event of AusAID issuing a notice of substitution under the Deed of Novation at **Schedule 4** (Deed of Novation), to further novate the sub-contract to another contractor;
- (h) the Contractor must maintain up-to-date records of the names of all sub-contractors engaged by the Contractor to perform part of the Services. If requested by AusAID, the Contractor must, within five (5) working days, provide to AusAID a copy of the records of sub-contractors' names, in the format specified by AusAID. The sub-contract must include the right of AusAID to disclose the name of the sub-contractor, in accordance with **Clause** Error! Reference source not found. (AusAID Use of Contract Information) below;
- (i) 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
- (j) if requested by AusAID, the Contractor must provide to AusAID a copy of any proposed or executed sub-contract.

3.2 The obligations of **Clause** Error! Reference source not found. above apply equally to Associates.

3.3 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.

#### 4. **ACCOUNTS AND RECORDS**

4.1 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.

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

4.3 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..

## 5. REPORTS

- 5.1 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.
- 5.2 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.
- 5.3 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.

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

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 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.

## 7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Subject to **Clause** Error! Reference source not found., 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.
- 7.2 **Clause** Error! Reference source not found. 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** Error! Reference source not found. 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.
- 7.3 The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.
- 7.4 The Contractor must deliver all Contract Material to AusAID or to the Partner Government counterpart agency as may be directed in writing by AusAID.

## 8. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 8.1 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.

## 9. MORAL RIGHTS

9.1 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..

## 10. CONFIDENTIALITY

10.1 Subject to this clause, the Contractor must not, without the prior written approval of AusAID, make public or disclose to any person any AusAID Confidential Information. In giving written approval, AusAID may impose such terms and conditions as in AusAID's opinion are appropriate.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

10.6 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.

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

## 11. PRIVACY

11.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services.

11.2 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*.

- 11.3 The Contractor acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services:
- (a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;
  - (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
  - (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
  - (d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Information Officer who has power to award compensation against the Contractor in appropriate circumstances;
  - (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to 10) where that section or NPP is applicable to the Contractor, unless:
    - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or
    - (ii) in the case of a NPP – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorized by this Contract is inconsistent with the NPP;
  - (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with a NPP binding a party to this Contract;
  - (g) to immediately notify AusAID if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any sub-contractor;
  - (h) not to transfer such information outside Australia, except to the Partner Country, or to allow parties outside Australia or the Partner Country to have access to it, without the prior approval of AusAID; and
  - (i) to ensure that any employee of the Contractor who is required to deal with Personal Information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause.

11.4 The Contractor agrees to ensure that any sub-contract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the sub-contractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to sub-contracts.

11.5 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause, or a sub-contractor under the sub-contract provisions referred to in **Clause** Error! Reference source not found. above.

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

## 12. ACCESS TO DOCUMENTS

12.1 In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

12.2 The Contractor acknowledges that this Contract is a Commonwealth contract.

12.3 If AusAID receives a request for access to a document created by, or in the possession of, the Contractor or any subcontractor that relates to the performance of this Contract (and not to the entry into the Contract), AusAID may at any time by written notice require the Contractor to provide the document to AusAID and the Contractor must, at no additional cost to AusAID, promptly comply with the notice.

12.4 The Contractor must include in any subcontract relating to the performance of this Contract provisions that will enable the Contractor to comply with its obligations under this **Clause Error!** eference source not found..

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

### 13. **AusAID USE OF CONTRACT INFORMATION**

13.1 AusAID may disclose matters relating to the Contract, including the Contract and the names of sub-contractors as specified in **Clause Error!** Reference source not found.(f) above, except where such information may breach the *Privacy Act 1988*, to Commonwealth governmental departments and agencies, Commonwealth Ministers and Parliamentary Secretaries, and to the Commonwealth Parliament, including responding to requests for information from Parliamentary committees or inquiries.

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

### 14. **PUBLICITY**

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

14.2 The Contractor must not make any media or other announcements or releases relating to this Contract and the Services either during or after the implementation of the project without the prior approval of AusAID Communications and Media Branch as to the form, content and manner of the announcement or release.

14.3 The Contractor must only use the Australian Government/AusAID crest logo (in-line version or stacked version) in Australia or the Australian Aid identifier overseas 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 Guidelines for managing Contractors (or NGOs or multilateral agencies) on the use of logos and other forms of acknowledgement" at all times. When advertising for sub-contractors or personnel, and on any stationery, only the Australian Aid identifier may be used. The Guidelines are available from the AusAID website.

14.4 The Contractor shall, where appropriate, erect a sign at each Project site that acknowledges the funding of the Project. Where AusAID is the major funder, signage will comply with AusAID's branding requirements. Such signs shall in all cases be discussed and agreed between AusAID and the Partner Government. Signs should use the Australian Aid identifier. No independent project or program logos or emblems are to be devised. Contractor logos may be included on the sign as per branding guidelines, or separate signs may be displayed, but not in greater number or prominence than acknowledgments to Australian Aid. Contractor signs must be removed at the completion of the Project.

### 15. **WARRANTIES**

15.1 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.

15.2 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.

15.3 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.

## 16. TERMINATION FOR CONTRACTOR DEFAULT

16.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor terminate this Contract, with effect from the date in the notice, if the Contractor:

(a) commits a breach of this Contract and:

(i) that breach is not capable of remedy;

(ii) fails to remedy that breach within **[10]** Business Days (or such further time as AusAID may, in its absolute discretion, specify), after receiving a notice from AusAID requiring the Contractor to remedy the breach; or

(iii) does not commence to remedy that breach, within a reasonable time (having regard to the nature of the breach) after being given notice by AusAID requiring the Contractor to remedy the breach;

(b) becomes, or in AusAID's reasonable opinion is likely to become, bankrupt, insolvent or otherwise financially unable to fulfil its obligations under this Contract;

(c) becomes subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act 2001*;

(d) is wound up by resolution or an order of the court;

(e) ceases to carry on business;

(f) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;

(g) suffers any execution against its assets having, or which in AusAID's reasonable opinion is likely to have, an adverse effect on its ability to perform this Contract;

(h) ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Contract (except to the extent that this is outside the Contractor's reasonable control);

(i) assigns its rights otherwise than in accordance with the requirements of this Contract;

(j) suffers a change in Control which in AusAID's reasonable opinion may adversely affect the Contractor's ability to perform the Services under this Contract;

(k) is in breach of any of the warranties, regarding pre-listing proceedings, temporary suspension from tendering or listing on a World Bank List or Relevant List, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;

- (l) is during the term of this Contract, listed on a World Bank List or Relevant List, or is subject to any proceedings, or an informal process, which could lead to being listed or temporarily suspended from tendering for World Bank or other donors of development funds contracts, or is subject to an investigation whether formal or informal by the World Bank or another donor of development funding.
- (m) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, bribery of a public official, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (n) is in breach of the warranty, regarding unsettled judicial decisions relating to employee entitlements, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (o) is, during the term of this Contract, convicted of an offence of, or relating to, bribery of a public official. In this **Clause** Error! Reference source not found. Error! Reference source not found. the Contractor includes Contractor Personnel;
- (p) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, child abuse, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract; or
- (q) is in breach of the warranty, regarding the good fame and character of Contractor Personnel, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract.

16.2 If this Contract is terminated under this **Clause** Error! Reference source not found.:

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

## 17. TERMINATION FOR CONVENIENCE

17.1 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.

17.2 Where notice is given under **Clause** Error! Reference source not found. the Contractor must:

- (a) comply with all directions given by AusAID;
- (b) cease or reduce (as applicable) the performance of work under the Contract; and

- (c) immediately do everything possible to mitigate its Losses, and all other loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination (including those arising from affected sub-contracts) arising in consequence of termination of this Contract under this **Clause Error! Reference source not found.**

17.3 In the event of termination or reduction in scope under this **Clause Error! Reference source not found.**, subject to **Clause Error! Reference source not found.**, 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.

17.4 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 Error! Reference source not found.**

## 18. INDEMNITY

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

18.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause Error! Reference source not found.** above for the benefit of each of such persons in the name of AusAID or of such persons.

18.3 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.

18.4 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.

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

## 19. INSURANCE

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

- (a) public liability insurance with a limit of at least \$5 million for each and every claim which covers:
  - (i) loss of, or damage to, or loss of use of any real or personal property; or
  - (ii) personal injury to, illness (including mental illness) or death of any person arising from the performance of the Contract;
- (b) motor vehicle third party property damage insurance;

- (c) workers' compensation insurance:
  - (i) which fully insures the Contractor for any amount it becomes liable to pay under any statute relating to workers' or accident compensation or for employer's liability at common law;
  - (ii) to be effected in the Partner Country as well as every state or territory in Australia where the Contractor Personnel normally reside or in which their contract of employment was made; and
  - (iii) which, where possible at law extends to indemnify AusAID as principal for AusAID's liability to persons engaged by the Contractor.

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

- (d) property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value;
- (e) professional indemnity insurance to cover the Contractor's obligations under this Contract. The Contractor's professional indemnity policy must respond to claims arising under the *Competition and Consumer Act (Cth) 2010*, 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.

19.2 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.

19.3 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.

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

## 20. **CONFLICT OF INTEREST**

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

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

20.3 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.

## 21. **ANTI-CORRUPTION**

21.1 The Contractor warrants that the Contractor shall not make or cause to be made, nor shall the Contractor receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind,

which would or could be construed as an illegal or corrupt act, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Contract. In addition, the Contractor shall not bribe public officials and shall ensure that all Contractor Personnel comply with this provision. Any breach of this clause shall be grounds for immediate termination of this Contract under Standard Contract Conditions **Clause 32** (Termination for Contractor Default) by notice from AusAID.

## 22. FRAUD

- 22.1 For the purpose of this Contract, 'fraud' or 'fraudulent activity' means dishonestly obtaining a benefit, or causing a Loss, by deception or other means, and includes suspected, alleged or attempted fraud.
- 22.2 This clause applies to any fraud which relates to the Project or this Contract.
- 22.3 The Contractor must not, and must ensure that its subcontractors do not, engage in any fraudulent activity.
- 22.4 Within one month of the Project Start Date, the Contractor must prepare a fraud risk assessment and zero tolerance fraud control strategy. The risk assessment and strategy must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures that comply with the Commonwealth Fraud Control Guidelines.
- 22.5 The Contractor is responsible for preventing and detecting fraud including fraud within those functions outsourced / performed by a sub-contractor or under any other arrangement established by the Contractor relating to the management or administration of the Project. The Contractor must ensure that Contractor Personnel are responsible and accountable to the Contractor for preventing and reporting any fraud as part of their routine responsibilities.
- 22.6 If the Contractor becomes aware of a fraud, it must report the matter to AusAID in writing within 5 Business Days. The written report to AusAID must include the following (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.
- 22.7 If the Contractor becomes aware of a fraud, the Contractor must, in consultation with AusAID, develop and implement a strategy to investigate the fraud based on the principles set out in the *Australian Government Investigations Standards*.
- 22.8 The Contractor must investigate any fraud at the Contractor's cost and in accordance with any directions or standards required by AusAID. If the Contractor appoints an investigator to conduct an investigation, the investigator 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.

- 22.9 AusAID reserves the right to appoint its own investigator, conduct its own investigation or report fraud to the appropriate law enforcement agencies or any other person or entity AusAID deems appropriate in Australia or in the Partner Country for investigation. If AusAID exercises its rights under this clause, the Contractor must provide all reasonable assistance that may be required at its sole expense.
- 22.10 After the investigation is finished, if a suspected offender has been identified, the Contractor must promptly report the fraud to the local police and any other appropriate law enforcement agency in the country where the incident has occurred, unless the Director of AusAID's Fraud section agrees otherwise in writing.
- 22.11 If the investigation finds the Contractor or Contractor Personnel have engaged in fraudulent activity, the Contractor must:
- (a) if AusAID funds have been misappropriated, pay to AusAID or the Project the full value of the AusAID funds that have been misappropriated; or
  - (b) if AusAID-funded property has been misappropriated, either return the property to AusAID or the Project or, if the property cannot be recovered or has been damaged so that it is no longer usable, replace the property with property of equal quality.
- 22.12 If the investigation finds that a person other than the Contractor or Contractor Personnel has engaged in fraudulent activity, the Contractor must, at the Contractor's cost, take all reasonable action to recover any AusAID funds or AusAID-funded property acquired or distributed through fraudulent activity, including 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.
- 22.13 The Contractor must keep AusAID informed, in writing, on a monthly basis, of the progress of its efforts to recover the AusAID funds or AusAID-funded property, including any recovery action.
- 22.14 If the Contractor considers that all reasonable action has been taken to recover the AusAID funds or AusAID-funded property and 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 give AusAID all information, records and documents required by AusAID to enable AusAID to decide whether to approve the request.
- 22.15 If an investigation finds that the Contractor or Contractor Personnel have engaged in fraudulent activity, or if AusAID discovers that a fraud has not been reported to AusAID in accordance with **Clause** Error! Reference source not found., AusAID reserves the right to:
- (a) terminate this Contract by giving the Contractor notice in writing specifying the date on which the termination will take effect (in which case **Clause** Error! Reference source not found. shall apply); and / or
  - (b) not enter into any further agreements 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 fraud to AusAID; and / or
  - (c) consider the fraud or the failure to report the fraud in evaluating future tenders submitted to AusAID by the Contractor.

- 22.16 Without limitation to AusAID's rights pursuant to **Clause** Error! Reference source not found. and Error! Reference source not found., if the Contractor fails to comply with its obligations under this **Clause** Error! Reference source not found. with respect to a Contract Fraud, the Director of AusAID's Fraud Section may give the Contractor a written notice which specifies:
- (a) the obligation(s) with which the Contractor has not complied;
  - (b) the action that the Contractor must take to rectify the failure; and
  - (c) the date by which the Contractor must rectify the failure.
- 22.17 If the Contractor does not comply with a notice issued pursuant to **Clause** Error! Reference source not found., AusAID reserves the right to:
- (a) terminate this Contract in accordance with **Clause** Error! Reference source not found.; and / or
  - (b) exercise its rights pursuant to **Clause** Error! Reference source not found.; and / or
  - (c) withhold payments (or parts of payments) due to the Contractor under this Contract until the Contractor has complied with the notice.
- 22.18 This **Clause** Error! Reference source not found. shall survive termination or expiration of this Contract in relation to:
- (a) any fraud which was not detected by the Contractor before the date of termination or expiry of this Contract;
  - (b) any fraud detected by the Contractor before the date of termination or expiry of this Contract but which the Contractor had not begun to investigate under **Clause** Error! Reference source not found. before that date,
  - (c) any investigation commenced by the Contractor under **Clause** Error! Reference source not found., but not completed, before the date of termination or expiry of this Contract, and
  - (d) any investigation commenced by AusAID under **Clause** Error! Reference source not found., but not completed, before the date of termination or expiry of this Contract.

## 23. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

- 23.1 The Contractor must at all times have regard to and comply with, and as far as practicable must ensure that all Contractor Personnel comply with, the laws in Australia, the Partner Country and applicable laws of other countries.
- 23.2 A list, as amended from time to time, of Australian laws that may apply to the delivery of developmental aid to foreign countries can be found on the AusAID website: <http://www.ausaid.gov.au/business/Documents/lists-of-laws-and-guidelines-for-contractors-2010.pdf>.
- This list is not exhaustive and is provided for information only. The provision of this list does not relieve the Contractor from complying with the obligations contained in **Clause** Error! Reference source not found..
- 23.3 The Contractor and all Contractor Personnel must at all times have regard to and operate in accordance with relevant guidelines, as amended from time to time, and listed on the AusAID website: <http://www.ausaid.gov.au/business/pages/contracting.aspx>.
- 23.4 Notwithstanding paragraph 4.3 on page 4 of the Fair Work Principles User Guide, the Contractor must comply with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at [www.deewr.gov.au/fairworkprinciples](http://www.deewr.gov.au/fairworkprinciples)), including by:

- (a) complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;
  - (b) informing AusAID of any adverse court of tribunal decision for a breach of workplace relations law, occupational health and safety laws, or workers' compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
  - (c) providing AusAID any information AusAID reasonably requires to confirm that the Contractor (and any subcontractor) is complying with the Fair Work Principles;
  - (d) participate in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.
- 23.5 Compliance with the Fair Work Principles shall not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.
- 23.6 If the Contractor does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Commonwealth, the Commonwealth shall be entitled to publish details of the Contractor's failure to comply (including the Contractor's name) and to otherwise provide those details to other Commonwealth agencies.
- 23.7 As far as practicable, the Contractor must:
- (a) not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and
  - (b) ensure that all subcontractors impose obligations on subcontractors equivalent to the obligations under **Clauses** Error! Reference source not found. to Error! Reference source not found. above.
- 23.8 In addition to any other rights or remedies it has at law or in equity, or under this Contract, AusAID may, by notice in writing to the Contractor, terminate this Contract, with effect from the date in the notice, if the Contractor is in breach of **Clause** Error! Reference source not found. above.
- 23.9 The Contractor must notify AusAID of any material breach by the Contractor or Contractor Personnel of a law or guideline referred to in this **Clause** Error! Reference source not found..
- 23.10 On becoming aware of a material breach by the Contractor or Contractor Personnel of a law or guideline, whether or not such a breach is notified to AusAID by the Contractor, AusAID may, in addition to any other rights available to AusAID, terminate this Contract under **Clause** Error! Reference source not found..
- 23.11 The Contractor must in carrying out its obligations under this Contract comply with those laws in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the *Criminal Code Act 1995 (Cth)* and listed in regulations made under that Act and regulations made under the *Charter of the UN Act 1945 (Cth)*. The Contractor must ensure that funds provided under this Contract do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform AusAID immediately.
- 23.12 The Contractor and all Contractor Personnel must when providing any Services and procuring the Supplies have regard to and operate in accordance with Australian policies on developmental aid to foreign countries including:
- (a) the gender thematic strategy *Promoting Opportunities for All: Gender Equality and Women's Empowerment* (2011), accessible on the AusAID website: <http://www.ausaid.gov.au/aidissues/gender/pages/home.aspx>;

- (b) the disability inclusive strategy *Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014*, accessible on the AusAID website: <http://www.ausaid.gov.au/aidissues/did/Pages/home.aspx>. Particular attention must directed towards the strategy's six (6) guiding principles;
- (c) the *Work Health and Safety Act 2011 (Cth)*, accessible on the ComLaw website: <http://www.comlaw.gov.au/Details/C2011A00137>;
- (d) child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child Protection Policy*, accessible on the AusAID website: <http://www.ausaid.gov.au/aidissues/childprotection/Pages/home.aspx>;
- (e) the *Family Planning and the Aid Program: Guiding Principles* (2009), accessible on the AusAID website: [http://www.ausaid.gov.au/publications/pages/5045\\_1822\\_5780\\_5045\\_6070.aspx](http://www.ausaid.gov.au/publications/pages/5045_1822_5780_5045_6070.aspx);
- (f) the *Environmental Management Guide for Australia's Aid Program 2012*, accessible on the AusAID website: <http://www.ausaid.gov.au/aidissues/environment/pages/emguidelines.aspx>.

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.

## Part 6 – Standard Contract Template

### SUBCONTRACTOR AGREEMENT (“Agreement”)

#### COVER SHEET

<b>Company Name</b> (“Company”)	Click here to enter text.
<b>ABN/Company Number/RN (if applicable)</b>	Click here to enter text.
Address	Click here to enter text.
Company Representative Name and Title	Click here to enter text.
Company Representative Phone/Email	Click here to enter text.
<b>Subcontractor Name</b> (“Subcontractor”)	Click here to enter text.
Subcontractor’s Vendor ID Number (If applicable)	Click here to enter text.
Address	Click here to enter text.
Subcontractor’s Representative Name and Title	Click here to enter text.
Subcontractor’s Representative Phone/Email	Click here to enter text.
Project Name (“Project”)	Click here to enter text.
Subcontractor Agreement Number (if applicable)	Click here to enter text.
Services (“Services”)	The obligations set out or referred to in Annex A.
Client (“Client”)	Click here to enter text.
Head/Prime Contract date and parties (“Head/Prime Contract”)	Click here to enter text.
Head/Prime Contract Currency	Click here to enter text.
Effective Date of this Agreement (“Effective Date”)	Click here to enter a date.
Term (“Term”)	<b>Start:</b> Click here to enter a date. <b>End:</b> Click here to enter a date.
Recipient Country (“Recipient Country”)	Click here to enter text.
Jurisdiction (“Jurisdiction”)	Click here to enter text.
Agreement Currency (“Agreement Currency”)	Click here to enter text.
Total Agreement Sum - The total sum to be paid to the Contractor for the Services shall not exceed this amount. If VAT/GST or any similar sales tax is not included, check the box. If any reimbursable expenses are not included, check the box.	<b>Total:</b> Click here to enter text.
Funding details can be found in Annex B, Part 3.	<input type="checkbox"/> Total Agreement Sum is exclusive of VAT/GST or any similar sales tax <input type="checkbox"/> Total Agreement Sum is exclusive of any reimbursable expenses
Records Retention Period (“Records Retention Period”)	Choose an item.  Other – If other, please specify: Click here to enter text.
Payment by	Local Currency Other – If other, please specify: Click here to enter text.
Damage Calculation	Percentage: Click here to enter text. % per day  <input type="checkbox"/> Not applicable
Professional Indemnity Insurance Amount (all sums in AUD)	<input type="checkbox"/> None
<input type="checkbox"/> Total Agreement Sum 0 – 10,000	Level of Cover Required (higher of) 100,000 or 10x Total Agreement Sum
<input type="checkbox"/> Total Agreement Sum 10,001 – 25,000	200,000 or 10x Total Agreement Sum

<input type="checkbox"/>	25,001 – 100,000	500,000 or 5x Total Agreement Sum
<input type="checkbox"/>	100,001 – 250,000	1,000,000 or 5x Total Agreement Sum
<input type="checkbox"/>	250,001 – 500,000	2,000,000 or 4x Total Agreement Sum
<input type="checkbox"/>	500,000 – 1,500,000	4,000,000 or 3x Total Agreement Sum
<input type="checkbox"/>	Over 1,500,000	Must contact Contracts and Compliance for approval

This Agreement is governed by the laws of the Jurisdiction and the Parties submit to the jurisdiction of the courts of such place. This Agreement constitutes the entire agreement between the Parties. Any prior understanding, representation or warranty of any kind preceding the date of this Agreement is hereby superseded by this Agreement.

Signed for the Company:		Signed for the Subcontractor:	
Name:	<a href="#">Click here to enter text.</a>	Name:	<a href="#">Click here to enter text.</a>
Title/Role:	<a href="#">Click here to enter text.</a>	Title/Role:	<a href="#">Click here to enter text.</a>
Date:	<a href="#">Click here to enter a date.</a>	Date:	<a href="#">Click here to enter a date.</a>

**TO BE SIGNED FOR THE SUBCONTRACTOR:**

The Subcontractor confirms that it has read, understood, and will comply with all the provisions of Annexes C (Part 3), E, and F. Further, the Subcontractor confirms that it will obtain a signed confirmation in this form from each individual or entity contracted by the Subcontractor to undertake any part of this Agreement.

Signed for the Subcontractor:

Name:	<a href="#">Click here to enter text.</a>
Title/Role:	<a href="#">Click here to enter text.</a>
Date:	<a href="#">Click here to enter a date.</a>

## **TERMS AND CONDITIONS**

This Agreement is made and is in full force as of the Effective Date between the Company and the Subcontractor. The Company and the Subcontractor are collectively referred to as “the Parties”.

### **1. BACKGROUND**

The Company requires the Goods and/or Services provided by the Subcontractor.

The Subcontractor has represented that it has the necessary expertise and skills to assist the Company.

Based on the Subcontractor’s representations, the Company has decided to engage the Subcontractor to provide Goods and/or Services to the Company.

The Subcontractor has agreed to provide the Goods and/or Services as defined in this Agreement for the consideration and on the terms and conditions contained in this Agreement.

### **2. ANNEXES, DEFINITIONS, AND INTERPRETATION**

Annex A – Details of Representatives and Description of Goods and/or Services

Part 1 – Details of Representatives

Part 2 – Description of Goods and/or Services

Annex B - Payment

Part 1 – Payment Terms

Part 2 – Invoices and Taxes

Part 3 – Accounting Records

Part 4 – Rates

Annex C – Special Terms and Conditions

Part 1 – Insurance Requirements

Part 2 – Special Conditions

Part 3 – Anticorruption

Part 4 – Duty of Care

Annex D – Definitions

Annex E – Policies and Procedures

Annex F – Client Terms and Conditions

Part 1 – Standard Terms and Conditions

Part 2 – Special Conditions

The words used in this Agreement will be defined as set out in the Definitions at Annex D to this Agreement. If any word in Annex D is defined specifically within the Agreement, the definition within the Agreement will be controlling.

Within this Agreement, a reference to this Agreement or another instrument will include any variation, amendment, novation, or replacement of this Agreement or the instrument to which there is a reference.

If there is any inconsistency, whether express or implied from this Agreement or otherwise, between the Client Terms and Conditions (Annex F), the Terms and Conditions of this Agreement, and the Annexes of this Agreement, then the order of these documents as listed in this paragraph shall apply to resolve the discrepancy, ambiguity, or inconsistency subject to any explicit changes to this priority set out in this Agreement.

In case of any ambiguities or inconsistencies in this Agreement not covered by this section, the Client Terms and Conditions, when applicable, followed by the requirement with the higher standard or which requires the higher performance or additional work or obligations will prevail.

### **3. ADMINISTRATIVE PROVISIONS**

No rights or obligations of or services to be rendered by the Subcontractor under this Agreement will be assigned, transferred, or subcontracted to any third party without the prior written consent of the Company.

Any modification or amendments to this Agreement will only be made by the mutual agreement of the Parties, in a written document signed by both Parties.

In the event that the Subcontractor consists of more than one entity, then each of those entities is jointly and severally liable for the performance of the Subcontractor's obligations under this Agreement.

A right under this Agreement will only be waived if the waiver is in writing and signed by the relevant Party. A waiver by either Party will not prejudice its rights in respect of any subsequent breach of this Agreement by the other Party.

Each provision of this Agreement will, unless the context otherwise necessarily requires, be read and construed as a separate and severable provision or part. If any provision or part is illegal, void, invalid or otherwise unenforceable for any reason then that provision or part will be severed and the remainder will be read and construed as if the severable provision or part had never existed.

The following terms and conditions will survive the expiration or termination of this Agreement:

- a. Services (penalty portion);
- b. Joint and several liability;
- c. Survival;
- d. Intellectual Property;
- e. Promotion and Publicity;
- f. Confidentiality;
- g. Data Protection;
- h. Indemnity; and
- i. Insurance and Duty of Care.

#### 4. NOTICES AND DISPUTE RESOLUTION

Notices will be in writing and addressed to the other Party's Representative at the address specified in this Agreement or such other address as is subsequently notified in writing by the Party.

Notices will be deemed to have been received:

- a. If sent by courier or a form of posting requiring confirmation of delivery, the date of such delivery;
- b. If sent by regular mail, on the third business day from the date mailed;
- c. If hand delivered by 17h00 on a business day in the place of receipt, that business day, and otherwise the following business day in the place of receipt; or
- d. If sent by email, delivery as demonstrated by no intimation having been received that the notice has not been received.

The Company and the Subcontractor will use their best efforts in good faith to settle amicably any dispute, controversy or claim in connection with this Agreement.

If no agreeable settlement can be found, the dispute, controversy, or claim shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of this Agreement. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration. The Parties will be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim, or dispute.

The place of arbitration shall be the headquarters location of Company at the time the claim is filed and the language of the arbitration will be English.

Should the claim involve a State, a State-controlled entity, or an intergovernmental organisation, the case shall be administered by the International Bureau of the Permanent Court of Arbitration.

#### 5. SERVICES

Save as otherwise directed in writing by the Company, the Subcontractor will provide the Services during the Term of this Agreement to the satisfaction of the Company and where any part of the Services is approved by the Client such work shall be deemed to be to the satisfaction of the Company.

The Subcontractor will:

- a. ensure its Personnel exercise the highest standard of Good Industry Practice;
- b. ensure its Personnel are of good fame and character;

- c. when necessary, obtain at its cost appropriate visas and work permits for its Personnel and ensure that correct visas and work permits are in place whenever its Personnel are in the Recipient Country or Countries;
- d. ensure its Personnel are adequately briefed and understand the environment and culture of the Recipient Country or Countries;
- e. notify the Company as soon as it becomes aware of any event, issue or circumstances which may adversely affect the performance of the Services;
- f. comply with and ensure its Personnel comply with the provisions of Annex C and any documents referred to in such Annex; and
- g. comply with and ensure its Personnel comply with all Legislative Requirements affecting the performance of the Services, including Data Protection Legislation and all Legislative Requirements, official protocols and procedures of the Recipient Country and the Subcontractor's country of registration.

The Subcontractor and its Personnel will at all times:

- a. keep accurate, systematic and up to date Records, including all invoices and other financial data and paperwork, relating to the performance of its obligations under this Agreement and in accordance with all requirements of the Head/Prime Contract;
- b. retain copies of all Records for the Records Retention Period after termination or expiration of this Agreement;
- c. allow all persons authorised in writing by the Company or the Client full access, at reasonable times, to premises occupied by the Subcontractor where the Services are being carried out, or where Records or Project Material are held or are available, and will permit such persons to inspect, audit, take extracts from and copy any information, or Project Material or Records, relating to the Services or the Project or this Agreement generally; and
- d. provide all reasonable assistance requested by the Company or the Client for any administrative or statutory review or audit relating to this Agreement, the Goods and/or the Services.

The following additional provisions apply in connection with the Subcontractor's Personnel:

- a. The Subcontractor will ensure the persons in the Personnel List set out in Annex A perform the Services in accordance with the inputs set out in Annex A and the terms and conditions of this Agreement. The Subcontractor will not vary the Personnel List or replace anyone on the Personnel List without the Company's prior written approval which will not to be unreasonably withheld;
- b. All Personnel will be vetted in accordance with Good Industry Practice and the requirements of the Business Partner Code of Conduct;
- c. If a person in the Personnel List is unable for whatever reason to complete his/her engagement with the Subcontractor or terminates his/her engagement with the Subcontractor, the Subcontractor will as soon as possible replace that person at its own cost with a person of at least equivalent experience, ability and expertise approved in writing by the Company whose approval will not to be unreasonably withheld and, if required by the terms of the Head/Prime Contract, also approved in writing by the Client;
- d. The Company, whether pursuant to a direction by the Client or in its own discretion, may direct the Subcontractor, at the Subcontractor's cost, to remove any person from the Project or from performing the Services. The Subcontractor accepts that the Company may not be in a position to provide reasons for this direction, and the Client and the Company will not be liable for any claim or costs in connection with the removal;
- e. The Subcontractor, by engaging Personnel to perform part(s) of the Services, will not be relieved from any of its liabilities or obligations under this Agreement and will remain responsible for all Personnel and all work which is performed by them; and
- f. The Subcontractor and its Personnel will not represent themselves as either the Client or the Company.

If unsatisfied with the quality or any other aspect of any part of the Services or any Project Material, the Company may, at its sole discretion, amend or reject any such part of the Services or Project Material, or request amendment by the Subcontractor and it will give the reasons for such rejection or request for amendment. If required to do so by Company, the Subcontractor will correct or amend such part of the

Services or the Project Material, at its own cost, within the time period that is specified by the Company in writing which will be a reasonable time period under the circumstances.

Where the Subcontractor fails to meet any deadline or milestone for any aspect of the Services, whether due to the rejection of or request for amendment to any part of the Services or Project Material by the Company, or for any other reason save where the Company determines that a Force Majeure Event has occurred, save for where the Cover Sheet to this Agreement states otherwise, the Subcontractor will be liable to pay a penalty to the Company as compensation for the delay.

Where the Company requires the Subcontractor to pay damages, the amount will be a daily rate calculated on the basis of the percentage set out in the Cover Sheet to this Agreement applied to that part of the Total Agreement Sum that relates to the Services in question. The damages will be payable beginning after the day the Services were due up until the Services in question are performed in full in accordance with the terms of this Agreement.

All contact, communication, and dealings with the Client and its representatives in relation to the Project will be through the Company and not directly through the Subcontractor or any of its Personnel unless the Company agrees otherwise with the Subcontractor in writing.

## 6. HEAD/PRIME CONTRACT

The Subcontractor acknowledges that the Head/Prime Contract requires that this Agreement adequately protects the interests of the Client and ensures compliance with the Client's policies and other requirements.

The Subcontractor accepts, and will follow, and comply fully with, and will assist the Company in complying fully with all the Client Terms and Conditions (Annex F) in relation to itself and the Services or any work undertaken or actions taken pursuant to this Agreement and insofar as such terms and conditions are applicable to the Subcontractor and the Services and in addition to the other terms of this Agreement.

Where the Client Terms and Conditions are amended or updated at any time, the amended or updated version will apply to this Agreement provided the Company has informed the Subcontractor of the amendment or updating.

The Subcontractor will ensure that all its employees, contractors, subcontractors, and Personnel generally are bound by and comply with the terms of this clause.

The Subcontractor acknowledges the right of the Client to:

- a. enforce any of the obligations of the Subcontractor under this Agreement against the Subcontractor directly or indirectly;
- b. exercise all rights of the Client in the Head/Prime Contract in relation to this Agreement; and
- c. exercise all the rights of the Company set out in this Agreement.

## 7. WARRANTIES AND REPRESENTATIONS

The Subcontractor warrants, represents and undertakes for the duration of the Term that:

- a. it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Subcontractor's obligations under this Agreement;
- b. at the Effective Date no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement and that it will use its best endeavours to ensure that no conflict of interest arises in relation to the performance of any aspect of this Agreement;
- c. it has full corporate power and authority to enter into, perform and observe its obligations under this Agreement;
- d. its Personnel have the necessary experience, skill, knowledge, qualifications, expertise and competence to perform the Services;
- e. it has and will continue to have all necessary rights in, and to, the Subcontractor's software or the third party software or any other materials required to perform the Subcontractor's obligations under this Agreement;
- f. all statements and representations made to the Company by the Subcontractor prior to, or in, this Agreement are to the best of its knowledge, information and belief true and accurate and that it will advise the Company of any fact, matter or circumstance of which it may become aware which might render any such statement or representation false or misleading;

- g. the Subcontractor will immediately notify the Company if at any time it becomes aware that a warranty or representation given by it under this Agreement has been breached, is untrue or is misleading; and
- h. where this Agreement is terminated prior to the completion of the Services (for whatever reason) the Subcontractor will supply all necessary information and explanation required by the Company in relation to the Services provided and any software used by the Subcontractor to enable the Company to use and complete the Services.

## 8. POLICIES AND PROCEDURES

The Subcontractor confirms that it has been made aware of, has read and understood and will comply with in full all the policies and procedures listed or referred to in Annex E.

Where the Subcontractor is notified of any changes in such policies and procedures it will ensure that its Personnel are duly updated.

The Subcontractor will also comply with and follow any Standard Operating Procedures and Guidelines, Procedural Manuals, Safety and Security Plans, or any other policies and procedures for the Project when required to do so by the Company.

The Subcontractor will immediately inform the Company if the Subcontractor becomes aware of any information indicating that any action in breach of the terms of this clause has been committed or may possibly be committed.

The Subcontractor will include the terms and requirements of Annex E in all subcontracts or other contracts the Subcontractor makes in connection with this engagement to ensure that all individuals and other entities contracted by the Subcontractor comply with the terms of this clause.

The Company will be entitled to require the Subcontractor to provide reasonable evidence that it is complying with the obligations in this clause.

## 9. PAYMENT

In consideration of the Subcontractor providing the Services, the Company will pay the Subcontractor in accordance with the payment details set out in Annex B.

## 10. PROJECT MATERIAL

The Subcontractor will:

- a. ensure the safekeeping and maintenance of the Project Material including being responsible for preserving its integrity and preventing its corruption or loss;
- b. not delete or remove any proprietary notices contained within or relating to Project Material;
- c. not store, copy, disclose, or use Project Material except as necessary for the performance by the Subcontractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Company;
- d. use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete malicious software from its ICT environment;
- e. notwithstanding the above, if malicious software is found, cooperate with the Company to reduce the effect of the malicious software and, particularly if malicious software causes loss of operational efficiency or loss or corruption of Project Material, assist to mitigate any losses and to restore the Services to their desired operating efficiency. Any costs arising out of the actions of the Parties taken in compliance with the provisions of this clause will be borne by the Subcontractor except where the source of the malicious software is shown to be the Company;
- f. perform secure back-ups of all Project Material and will ensure that up-to-date back-ups are stored at a secondary location, in accordance with any requirements of the Head/Prime Contract, and also in accordance with any other similar rules or procedures of the Company confirmed in writing to the Subcontractor. The Subcontractor will ensure that such back-ups are available to the Company at all times, upon request;
- g. ensure that the system on which the Subcontractor holds any Project Material, including back-up data, is a secure system that complies with the requirements of the Prime/Head Contract and any other similar rules or procedures of the Company confirmed in writing to the Subcontractor;

- h. where Project Material is corrupted, lost, or sufficiently degraded so as to be unusable when under the control of the Subcontractor, and on written request from the Company:
  - i. at the Subcontractor's expense, restore or procure the restoration of the Project Material as soon as practicable but not later than seven (7) days following the written request from the Company; and/or
  - ii. reimburse the Company for all reasonable expenses incurred by the Company in restoring or procuring the restoration of the Project Material.
- i. if at any time the Subcontractor suspects or has reason to believe that Project Material has or may become corrupted, lost or degraded in any way, notify the Company immediately and inform the Company of the remedial action the Subcontractor proposes to take; and
- j. at the expiration or termination of this Agreement, deliver to the Company or as directed by the Company, all Project Material and other property of the Company and the Client, which is in the Subcontractor's possession or control.

## 11. INTELLECTUAL PROPERTY

Any Pre-existing Intellectual Property is the property of the Subcontractor.

In the event the Subcontractor includes any Pre-existing Intellectual Property in any Project Material the Subcontractor will clearly identify such Pre-existing Intellectual Property to the Company and the Subcontractor provides the Company and the Client with a perpetual, non-exclusive, worldwide, royalty-free, transferrable licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate the Pre-existing Intellectual Property for the purpose of conducting or completing the Project, any extension or later phase of the Project, or any related programme.

Subject to the above, all Project Material whether or not patentable or subject to copyright, which may be made, written, conceived, or otherwise provided by the Subcontractor or its Personnel in performing the Services, either alone or in conjunction with others, in whole or in part, is work made for hire and is the sole and exclusive property of the Company or the Client if so directed by the Company. The Subcontractor agrees, upon the Company's request and at the Company's expense, to provide reasonable cooperation and assistance in the prosecution, defence and maintenance of any Intellectual Property Rights (IPR) relating to any such Project Material. Unless and until covered by Letters of Patent or otherwise disclosed to the public by the Company, the Subcontractor will treat all Project Material as Confidential Information. Upon the completion or termination of the Services, the Subcontractor will promptly turn over to the Company all Project Material developed in the course of providing the Services.

The Subcontractor undertakes to complete and sign all documentation and do all things necessary to evidence ownership and copyright.

The Subcontractor may not publish, exhibit, or lecture on matters directly relating to the Services unless the Subcontractor first obtains the Company's prior written consent, which will not be unreasonably withheld. The Company and/or the Client specifically reserves the right to use for any purpose, to reproduce, use, and disseminate all or part of any paper written utilising data generated from this Agreement or the Services and any such written paper will be treated as an Project Material.

The Subcontractor will ensure that no part of any Project Material will contain Third Party Material without first obtaining the written permission of the IPR owner to use such data or material and any such data or material will clearly be identified to the Company by the Subcontractor prior to or at the time of delivery to the Company.

## 12. PROMOTION AND PUBLICITY

The Subcontractor will not, without prior written approval of the Company, make or issue any Promotional Material except to the extent required by law. Prior approval will not be unreasonably withheld.

The Subcontractor will submit the request for approval of Promotional Material at least 30 days prior to the intended publication or promotion. If the Company determines that any amendments are necessary to the Promotional Material, the Subcontractor will make these amendments and submit amended Promotional Material to the Company for approval.

The Subcontractor must ensure that all Promotional Material is accurate and not misleading in any way and complies with all requirements of the Head/Prime Contract.

## 13. CONFIDENTIALITY

The Parties acknowledge that during the Term of this Agreement the Parties and their Personnel may become acquainted with or have access to Confidential Information and they agree to maintain the confidence of the Confidential Information and to prevent its unauthorised disclosure to, or use by, any other person, firm, or company. The Parties will ensure compliance with this obligation by their respective Personnel.

The Parties will not disclose or use any Confidential Information except to the extent that such disclosure or use:

- a. is strictly necessary for the performance of the Services;
- b. is required by Legislative Requirements or is reasonably required for legal proceedings;
- c. is authorised by prior written approval from the Party who owns the Confidential Information; or
- d. already is or comes into the public domain otherwise than through a Party's unauthorised disclosure or that of any of its Personnel.

The Parties and their Personnel will not use any Confidential Information received otherwise than for the purposes of this Agreement.

The Parties will only disclose Confidential Information to Personnel who are directly involved in the provision of the Services and who need to know the information and the Parties will ensure that such Personnel are aware of, and will comply with, these obligations and will sign any required confidentiality undertakings provided by the Company, the Subcontractor, and/or the Client on request.

If a Party is required to disclose Confidential Information due to Legislative Requirements or legal proceedings, it will provide reasonable notice of such disclosure to the other Party.

The Parties agree that this obligation applies during the Term and after termination of the Agreement.

#### 14. DATA PROTECTION

The Parties agree to take all reasonable steps to ensure the integrity and confidentiality of the Personal Data obtained pursuant to this Agreement.

The Parties will:

- a. observe the privacy principles in any Data Protection Legislation in the Recipient Country and also the countries of their respective registrations;
- b. not disclose, use or hold any Personal Data in breach of any Data Protection Legislation; and
- c. indemnify each other and the Client for any Loss due to any breach of any Data Protection Legislation.

The Parties consent to the holding, processing, and accessing of Personal Data by either Party relating to either Party or its Personnel for all purposes relating to the performance of this Agreement including, but not limited to, transferring such Personal Data to any country or territory.

#### 15. NO EMPLOYMENT OR AGENCY

Nothing contained in this Agreement will be construed or have effect as constituting any relationship of employer and employee between the Company and the Subcontractor.

Nothing in this Agreement will constitute the Subcontractor as acting as an agent of the Company. The Subcontractor will not have any right or power whatsoever to contract on behalf of the Company or bind the Company in any way in relation to third parties unless specifically authorised to do so by the Company and the Subcontractor will not hold itself out as having any such authority.

Nothing contained in this Agreement will constitute a partnership or joint venture between the Company and the Subcontractor.

#### 16. INDEMNITY, DUTY OF CARE, AND INSURANCE

The Subcontractor will indemnify and keep indemnified the Company, and the officers, employees, and agents of the Company, from and against any loss, damages, expenses or costs, including costs of any settlement, arising from any Claim or any Loss suffered or incurred, including personal injury, death, legal costs and expenses, and the cost of time and resources arising from or as a consequence of:

- a) a breach of the terms of this Agreement;
- b) any third party claims relating to this Agreement;

- c) any negligence by the Subcontractor or its Personnel in connection with the Services and/or this Agreement;
- d) a breach of warranty or representation, statutory duty, and/or tortious or illegal acts or omissions by the Subcontractor or its Personnel;
- e) a claim made against the Company by any Subcontractor's Personnel in respect of any breach of the terms of this Agreement or any Legislative Requirements concerning remuneration, income tax, worker's compensation, annual leave, long service leave, pension or superannuation or any award, determination or agreement of a competent industrial tribunal; or
- f) any penalty imposed for breach of any Legislative Requirement in connection with the provision of the Services by the Subcontractor.

The Subcontractor has responsibility for and indemnifies the Company in respect of any tax, employee pension, and/or social security payments or similar payments whether payable in the Recipient Country or elsewhere relating to its Personnel together with any interest or penalties, costs or expenses incurred or arising out of or in connection with any such payments.

The obligations of the parties in relation to Duty of Care and Insurance are set out in Annex C.

## 17. TERMINATION

### Termination for breach or Insolvency Event

The Company may, without prejudice to any other rights which the Company may have, terminate the whole or part of this Agreement by written notice to the Subcontractor, to be effective from the date specified in the notice, if:

- a) an Insolvency Event occurs in relation to the Subcontractor;
- b) the Company is dissatisfied with the Services provided; in the case of termination due to dissatisfaction with the Services, notice will be given including the reasons for dissatisfaction and such notice will state the actions required by the Subcontractor to remedy any dissatisfaction with the Services and the time in which it must be completed or the Agreement will be terminated; where such dissatisfaction is not subsequently remedied within the time period specified, the Company shall be entitled to confirm termination of this Agreement by written notice to the Subcontractor;
- c) other than as set out in subclause b) above, the Subcontractor breaches a provision of this Agreement and, if the breach is capable of being remedied, does not remedy such breach within five working days from the date of written notice by the Company to the Subcontractor requiring the breach to be remedied;
- d) the Subcontractor or its Personnel behave in a way that is fundamentally inconsistent with the conduct of a technical professional including serious misconduct, or conduct in private life that is likely to bring the Company into disrepute;
- e) the Subcontractor or any of its Personnel is convicted of a criminal offence; or
- f) the Subcontractor provides to the Company a clear indication that it will not or is unable to perform its duties under this Agreement.

Upon such termination for breach, the Company will:

- a) pay any outstanding invoices that relate to Services provided they are not in dispute with the Subcontractor. The Company will also pay for any work done properly but not invoiced at the time the Company provides notice of termination on a pro rata basis but only where such payment is permitted pursuant to the terms of the Head/Prime Contract (this will not apply where a Subcontractor milestone is not achieved or a deliverable has not been submitted or is not satisfactory). The Company is not required to pay to the Subcontractor any money which is the subject of an invoice relating to Services provided which are in dispute whether such invoice is delivered before or after the notice of termination; and
- b) be entitled to recover from the Subcontractor any Loss incurred by it as a result of the termination including all or a fair proportion, calculated on the basis of satisfactory delivery of Services, of any payment made to the Subcontractor in advance of delivery of the Services to which that payment relates.

Termination or suspension other than for breach or Insolvency Event

- a) The Company may terminate or suspend the whole or part of this Agreement where a direction is made by the Client, the Head/Prime Contract is terminated or suspended, or otherwise at its sole discretion.
- b) Termination or suspension made pursuant to this clause must be made by notice in writing to the Subcontractor and will be effective from the date specified in the notice.
- c) The lifting of any suspension of this Agreement will only take place if the Client confirms its agreement to the lifting of the suspension or if the Company considers that the reasons for the suspension no longer exist or have been dealt with satisfactorily by the Subcontractor. In any such case the Company will confirm the lifting of the suspension to the Subcontractor in writing.

Upon such termination or suspension other than for breach or Insolvency Event:

- a) The Subcontractor will be entitled to payment for all work in respect of the terminated or suspended Services completed satisfactorily before the effective date of termination or suspension including Services which have not been invoiced;
- b) in respect of the terminated or suspended Services commenced before but not completed by the effective date of termination or suspension, payment for the work already performed on a pro rata basis but only where such payment is permitted pursuant to the terms of the Head/Prime Contract (this will not apply where a Subcontractor milestone is not achieved or a deliverable has not been submitted or is not satisfactory); and
- c) The Company will be entitled to recover from the Subcontractor any payment made to the Subcontractor in advance of delivery of the Services where those Services are not delivered due to termination pursuant to this Agreement.

Obligations on termination for whatever reason:

On termination of this Agreement or at any time at the request of the Company the Subcontractor will:

- a) immediately deliver to the Company, without making copies in any form, all Project Material, on whatever media and wherever located, and also any keys and other property of the Company which are in the possession of or under the control of the Subcontractor;
- b) leave the Project and any Project offices as directed by the Company;
- c) irretrievably delete any information relating to the business of the Company or the Client stored on any magnetic or optical disk or memory and all matter derived from such sources which is in the possession of or under the control of the Subcontractor;
- d) provide a signed statement that it has complied with fully with its obligations under this clause;
- e) supply all necessary information and explanation required by the Company in relation to the Services provided and any software used by the Subcontractor to enable the Company to use and complete the Services; and
- f) ensure that any Personnel of the Subcontractor comply with the terms of this clause.

## 18. FORCE MAJEURE

Neither party will be considered in breach of this Agreement to the extent that performance of their obligations is prevented by a Force Majeure Event. Upon occurrence of an event considered by the Subcontractor to constitute a Force Majeure Event, it will immediately notify the Company in writing and recommend options to overcome the effects of the event.

Upon receipt of the notice, the Company will make a determination, at its sole discretion, as to whether the event or circumstance constitutes a Force Majeure Event and will promptly notify the Subcontractor of its determination in writing. Despite any determination by the Company, the Subcontractor will endeavour to overcome the Force Majeure Event and continue to perform its obligations under this Agreement as far as reasonably practicable, subject to the other terms of this clause.

If the Company determines that a Force Majeure Event has occurred the Company may suspend or terminate the whole or part of this Agreement by written notice to the Subcontractor. Where this Agreement is suspended pursuant to this clause, the Parties will work together to agree any steps to be taken and an appropriate timetable to enable continued provision of the Services affected by the Force Majeure Event.

Nothing in this clause shall oblige the Company to determine that a Force Majeure Event has occurred if the Client is not also willing to determine that a Force Majeure Event has occurred pursuant to the Head/Prime Contract.

The Company shall be entitled to give notice to the Subcontractor that a Force Majeure Event has occurred without receiving notice from the Subcontractor and in such case the terms of this clause shall apply.

Where this Agreement is terminated or suspended pursuant to this clause, the Subcontractor will be entitled to payment in accordance with the terms outlined in this Agreement and the terms of clause 17 (Termination) shall apply.

#### 19. NON-SOLICITATION

During the term of this Agreement and for 12 months following expiration or termination, neither Party will, without the consent of the other Party, solicit or otherwise attempt to persuade any Personnel of the other Party to cease working for the other Party.

## Annex A – Details of Representatives and Description of Goods and/or Services

### Part 1: Details of Representatives (as many as needed)

COMPANY CONTACT DETAILS	
CONTACT 1	
Name:	Click here to enter text.
Title:	Click here to enter text.
Email:	Click here to enter text.
Phone:	Click here to enter text.
CONTACT 2	
Name:	Click here to enter text.
Title:	Click here to enter text.
Email:	Click here to enter text.
Phone:	Click here to enter text.
CONTACT 3	
Name:	Click here to enter text.
Title:	Click here to enter text.
Email:	Click here to enter text.
Phone:	Click here to enter text.
SUBCONTRACTOR CONTACT DETAILS	
CONTACT 1	
Name:	Click here to enter text.
Title:	Click here to enter text.
Email:	Click here to enter text.
Phone:	Click here to enter text.
CONTACT 2	
Name:	Click here to enter text.
Title:	Click here to enter text.
Email:	Click here to enter text.
Phone:	Click here to enter text.
CONTACT 3	
Name:	Click here to enter text.
Title:	Click here to enter text.
Email:	Click here to enter text.
Phone:	Click here to enter text.

### Part 2 – Description of Goods and/or Services

#### Description

<< ENTER DESCRIPTION HERE – Be sure to include a detailed description of the services being provided including quantity, delivery dates, what the Subcontractor agrees to provide and what the Company agrees to provide including any resources/access to any locations, physical items that may also be provided (eg – training materials, spare parts, maintenance equipment, etc.), booking or paying for venue, accommodation, meals, printing costs, travel costs, etc. >>
--

#### Responsibilities of the Subcontractor

Click here to enter text.

**Subcontractor Deliverables/Outputs/Milestones**

Click here to enter text.

**Subcontractor Personnel List**

Name	Role/Position/Input	Total Amount of Input in-Country in days (if applicable)	Daily Rate (if applicable)
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

**Responsibilities of the Company**

<<Insert 'None' if there are no specific responsibilities for the Company in terms of the Services>>

## **Annex B – Payment**

### **Part 1: Payment Terms**

The total sum to be paid to the Subcontractor for the Services shall not exceed the Total Agreement Sum.

Dates for payment are as set out in Part 3: Rates.

All reimbursable expenses that are to be reimbursed must be pre-approved in writing by the Company. No costs that are not pre-approved in writing will be reimbursed. In addition, for reimbursement, a valid expense claim must be provided accompanied by full supporting documentation.

Payment will be made in accordance with this Agreement.

Amounts are in the Agreement Currency as indicated on the Cover Sheet. The Subcontractor will be entirely responsible for all risks arising out of currency fluctuations associated with this Agreement.

Payments to the Subcontractor's Personnel for salary, allowances, bonuses, taxes, insurances, superannuation, non-working days and all other overheads and expenses of whatsoever nature that may be incurred including, but without limitation, payment for vaccinations and malaria tablets and similar, except those otherwise specifically provided for in this Agreement, are the sole responsibility of the Subcontractor.

Unless otherwise specified by the Company in writing, timesheets will be submitted in accordance with Project procedures for each of the Subcontractor's Personnel. Additional details will be provided in the Operations Manual for the Project.

The Subcontractor will not be entitled to payment of an invoice unless and until:

- a) The deliverable items for which payment is claimed have been achieved or completed in accordance with the terms of this Agreement and also to the satisfaction of the Company and the Client; and
- b) All Project Material (and timesheets, if applicable) for that part of the Services for which payment is claimed has been submitted to and approved by the Company.

Any payment by the Company is payment on account only and not evidence of the Subcontractor's compliance with this Agreement, an admission of liability, or acceptance by the Company of the Services.

If the conditions for payment are met and all terms of this Agreement are complied with, the Company will make payment within 30 days of receipt of a valid and correct invoice.

The Subcontractor consents to the Company deducting from moneys otherwise due to the Subcontractor any overpayment previously made, any moneys due from the Subcontractor and any claim to money which the Company may have against the Subcontractor, whether for damages or otherwise.

Where it is found that any overpayment has been made to the Subcontractor the Company may also require reimbursement of such overpayment within 21 days of written demand.

The Subcontractor must provide the Company with the details of a bank account that accepts deposits in the Agreement Currency. Where the Agreement Currency and the Subcontractor's account currency differ, the exchange rate will be that of the date of the transfer.

### **Part 2: Invoices and Taxes**

Unless otherwise provided in this Agreement, all taxes, duties, and charges imposed or levied in connection with the performance of this Agreement will be borne by the Subcontractor.

Payment of any invoice by the Company is subject to the Subcontractor providing a valid and correct invoice to the Company. A valid invoice will be in writing, contain the details of the services provided including unit, unit rate, taxes, and any other information to be able to describe the services and charges in sufficient detail.

The amount of any VAT (or Sales Tax or similar) payable by the Company under this Agreement will be shown as a separate item on the invoice, together with the method of calculation.

The Subcontractor acknowledges that the Company will withhold any taxes which it is required by Legislative Requirements to withhold.

The Subcontractor acknowledges that it has not received any taxation advice from the Company and understands that all its taxation obligations remain the responsibility of the Subcontractor.

The Company may require the Subcontractor to provide additional information to assist the Company to determine whether an amount is payable. The payment term will be 30 days after the Subcontractor has provided the additional information to the Company's satisfaction.

Invoices shall be submitted to:

Click here to enter text.
---------------------------

**Part 3: Rates**

**For daily rate or time and consumables contracts**

ITEM	TERMS		
<b>Payment Dates</b>	Payment will be made on a monthly basis for each input, at the end of the month.		
<b>Total Input and Daily Rate for Subcontractor Personnel</b>	Name Click here to enter text.	Rate Click here to enter text.	Max. No. of days Click here to enter text.
<b>Input Term</b>	The Company is not obliged to pay the maximum number of days if they are not worked for whatever reason.		
<b>Per Diems/Subsistence</b> (Note: Per Diems do not require production of receipts. Claims for subsistence payments do require production of receipts.)	<input type="checkbox"/> Per Diem payable <input type="checkbox"/> Per Diem not payable Per Diem Rate: Per diems will be provided at prevailing DFAT rates which will be advised by the Operations Manager for the Project. <input type="checkbox"/> Subsistence payable <input type="checkbox"/> Subsistence not payable  Detailed rules and requirements for claiming Per Diems/Subsistence are contained in the Operations Manual for the Project (which will be made available to the Subcontractor).		
<b>Travel and other Project related costs and expenses</b>	Subject to the Subcontractor complying with all Project rules and procedures relating to such costs and expenses, the following costs and expenses are fully paid for by the Company <input type="checkbox"/> and are included in the Total Agreement Sum: <input type="checkbox"/> and are in addition to the Total Agreement Sum: <input type="checkbox"/> International Air Travel <input type="checkbox"/> Domestic Air Travel <input type="checkbox"/> Other <input type="checkbox"/> Other <input type="checkbox"/> Other		
<b>Rules and procedures for recovery of costs and expenses</b>	The rules and procedures for recovery of costs and expenses are set out in the Operations Manual for the Project. All travel and accommodation is to be booked and paid through the Company (unless otherwise agreed in writing). Save as set out in the Operations Manual, all costs and expenses must be approved in advance in writing by the Company.		

**For milestone based contracts**

ITEM	TERMS
<b>Payment Terms</b>	Payment will be made on completion of the milestones listed below in accordance with the terms of this Agreement.
<b>Payment Date</b>	<b>Milestone</b>
<<Details of Milestones>>	<<Details of Milestones>>
<<Details of Milestones>>	<<Details of Milestones>>
<<Details of Milestones>>	<<Details of Milestones>>
<<Details of Milestones>>	<<Details of Milestones>>
<b>Per Diems/Subsistence</b> (Note: Per Diems do not require production of receipts. Claims for subsistence payments do require production of receipts.)	<input type="checkbox"/> Per Diem payable <input type="checkbox"/> Per Diem not payable Per Diem Rate: Per diems will be provided at prevailing DFAT rates which will be advised by the Operations Manager for the Project.  <input type="checkbox"/> Subsistence payable <input type="checkbox"/> Subsistence not payable  Detailed rules and requirements for claiming Per Diems/Subsistence are contained in the Operations Manual for the Project (which will be made available to the Subcontractor).
<b>Travel and other Project related costs and expenses</b>	Subject to the Subcontractor complying with all Project rules and procedures relating to such costs and expenses, the following costs and expenses are fully paid for by the Company <input type="checkbox"/> and are included in the Total Agreement Sum: <input type="checkbox"/> and are in addition to the Total Agreement Sum: <ul style="list-style-type: none"> <li><input type="checkbox"/> International Air Travel</li> <li><input type="checkbox"/> Domestic Air Travel</li> <li><input type="checkbox"/> Other</li> <li><input type="checkbox"/> Other</li> <li><input type="checkbox"/> Other</li> </ul>
<b>Rules and procedures for recovery of costs and expenses</b>	The rules and procedures for recovery of costs and expenses are set out in the Operations Manual for the Project. All travel and accommodation is to be booked and paid through the Company (unless otherwise agreed in writing). Save as set out in the Operations Manual, all costs and expenses must be approved in advance in writing by the Company.

## Annex C – Specific Terms and Conditions

### Part 1: Insurance Requirements

ITEM	REQUIREMENT
<b>Public Liability Insurance</b>	<p>The Subcontractor will take out before the Effective Date and maintain throughout the Term of this Agreement a Public Liability Insurance Policy and have the interest of the Company noted on the policy. The Policy must cover:</p> <ol style="list-style-type: none"> <li>1. an amount in respect of any one claim or series of claims arising from the one original cause of not less than 5 million AUD; and</li> <li>2. the Subcontractor, in respect of liability to the Company and third parties, if any, and cover the Company against liability to third parties in respect of any claim for loss of or damage to property or death or injury to any person arising out of or as a consequence of any act or omission of the Subcontractor.</li> </ol>
<b>Professional Indemnity Insurance</b>	<ol style="list-style-type: none"> <li>1. The Subcontractor will take out a professional indemnity policy before the Effective Date and maintain that policy for the Term of this Agreement and for a further period of six years thereafter.</li> <li>2. The policy will have a total aggregate cover of not less than the Professional Indemnity Insurance Amount as indicated on the Cover Sheet.</li> <li>3. The policy will include provisions for one automatic reinstatement of the sum insured and for loss of documents.</li> <li>4. The Company may accept being noted on the Subcontractor’s existing and valid Professional Indemnity insurance policy.</li> <li>5. The Company may request evidence of the maintenance of the professional indemnity insurance at any time during the Term and also during the six years after the Term of this Agreement and the Subcontractor will provide such evidence within seven days of the request.</li> </ol>
<b>Insurance of Workers</b>	<ol style="list-style-type: none"> <li>1. The Subcontractor will take out before the Effective Date adequate insurance to fully cover it against any amount it may become liable to pay for death or injury to persons employed by the Subcontractor, including liability by statute and at common law and will maintain that policy for the Term of this Agreement.</li> <li>2. The Subcontractor will take out adequate medical and dental insurance for its Personnel who are engaged to operate outside their country of permanent residence.</li> <li>3. The Subcontractor will take out adequate insurance for emergency and medical evacuation for all its Personnel engaged to operate outside their country of permanent residence.</li> <li>4. The policy will, where permitted by Legislative Requirements, be extended to indemnify the Company for any statutory liability on the part of the Company for persons employed by the Subcontractor.</li> </ol>
<b>Country requirements</b>	<p>The Subcontractor will comply at all times with the Legislative Requirements of the Country in which it is incorporated relating to insurance at all times. Where the Legislative Requirements of such Country require certain insurances to be taken out for any of the Subcontractor’s Personnel working in a different Country or where there are Legislative Requirements of the Recipient Country, it will be the Subcontractor’s responsibility to take out such insurances and comply with all such Legislative Requirements in respect to all its Personnel on this Project. The onus is on the Subcontractor to make itself aware of the requirements of such insurance and all such Legislative Requirements.</p>
<b>Evidence of Insurance</b>	<p>The Company may request evidence of any insurance policy at any time during the Term of this Agreement and the Subcontractor will provide such evidence within seven days of the request.</p> <p>Failure by the Subcontractor to maintain all necessary insurances, will entitle the Company to terminate this Agreement immediately in accordance with clause 17.</p>

In the event of an insurance claim any deductible/excess payable in respect of the above insurance policies shall be the responsibility of the Subcontractor.

## Part 2: Special Conditions

- a) The Subcontractor represents and warrants that neither it nor any of its Personnel is engaged in any practice inconsistent with the rights set forth in the Convention of the Rights of the Child which requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
- b) The Subcontractor further warrants that neither it, nor any of its Personnel is engaged in the sale or manufacture of antipersonnel mines or of components used in the manufacture of such mines.
- c) The Subcontractor further warrants that neither it, nor any of its Personnel is engaged in the manufacture, sale, transportation, or distribution of any drug or narcotic substance deemed to be illegal in either the country of manufacture or delivery of the Goods and/or Services being provided to the Company under this Agreement.
- d) The Subcontractor further warrants that neither it, nor any of its Personnel is involved in the transportation or provision of services of human beings for purposes deemed illegal in either the country of origin, sale or delivery of the Goods and/or Services being provided under this Agreement.
- e) The Subcontractor further warrants that neither it, nor any of its Personnel is engaged either directly or indirectly in terrorism, or in the finance or support to terrorists.
- f) The Subcontractor will undertake its best effort to ensure that payments provided by the Company under the Agreement do not provide direct or indirect support or resources to entities and individuals as may be proscribed under the relevant international and national counter-terrorism legislation and regulations, and are not diverted to support drug trafficking.
- g) The Subcontractor warrants to pay all taxes, duties and charges imposed or levied in the country of which the Subcontractor is registered and/or in the country in which it is operating, and all taxes, entitlements, other statutory charges and/or any other amount payable to its Personnel in the relevant jurisdiction.
- h) The Subcontractor warrants that neither it, nor any of its Personnel, is engaged in anti-discriminative behaviours on basis of gender, religion and/or ethnicity.
- i) The Subcontractor warrants that it will engage in environmentally sustainable development, promoting conservation and sustainable use of natural resources, conservation of biodiversity and heritage sites, and disaster risk reduction planning, ensuring it is compliant with environmental protection legislation.
- j) The Subcontractor further warrants that it, and its Personnel, will adhere to workplace health and safety legislative requirements and in doing so, will focus on actions to prevent harm or ensure reasonable care of representatives.
- k) The Subcontractor warrants to promote gender equity and inclusive development ensuring that persons with disabilities, and other disadvantaged or vulnerable groups, are considered in the workplace and in delivering the Services.
- l) The Subcontractor warrants that neither it, nor its Personnel, is engaged in any political activity in the Recipient Country that may negatively impact on this Agreement.
- m) The Subcontractor warrants that neither it nor its Personnel engage in or support trafficking activities, procuring of commercial sex acts or using forced labour; is aware of regulatory prohibitions in the jurisdictions they are engaged; and agrees to develop project specific Trafficking in Persons (TIP) Compliance Plans where government regulations mandate.
- n) The Subcontractor shall ensure that its Personnel are expressly bound by and respect the provisions of this Part 2 of Annex C.
- o) Any breach of this Annex shall entitle the Company to terminate this Agreement and suspend payments that may be due, without liability for termination charges or any other liability of any kind

for the Company.

### **Part 3: Anticorruption**

- a) The Subcontractor hereby represents, warrants, and certifies that:

In carrying out its responsibilities under this Agreement, the Subcontractor and its directors, officers, employees, representatives, or other third parties acting on its behalf, have not and shall not pay, offer or promise to pay, or authorise the payment, directly or indirectly through any other person or entity, of any monies or anything of value to:

- i. Any person or firm employed by, or acting for or on behalf of, any customer or potential customer, whether private or governmental, for the purposes of inducing or rewarding favourable action by the customer or potential customer in any commercial transaction;
  - ii. Any person or firm employed by, or acting for or on behalf of, any governmental entity (including state-owned or controlled entities or public international organisations) for the purposes of inducing or rewarding any action, or the withholding of any action, by such entity in any governmental matter; and
  - iii. Any governmental official or employee (including employees of state-owned or controlled entities or public international organisations), political party or official of such party, or any candidate for political office, for the purposes of inducing or rewarding favourable action (or the withholding of action) or the exercise of influence by such official, party, or candidate in any commercial transaction or in any governmental matter.
- b) The Subcontractor shall conduct all activities related to this Agreement in a fair, honest, and transparent manner.
- c) The Subcontractor represents, warrants, and certifies that the Subcontractor has read and understands the Company provided Business Partner Code of Conduct. The Subcontractor agrees to be bound by the Business Partner Code of Conduct and to operate in a manner fully consistent with the letter and spirit of the Business Partner Code of Conduct. The Subcontractor agrees to inform its Personnel involved in activities related to this Agreement of the requirements of the Business Partner Code of Conduct.
- d) The Subcontractor represents, warrants, and certifies that the Subcontractor has adopted a policy to prevent corruption (“anticorruption policy”) in the conduct of business and enforces this policy. The Subcontractor further represents, warrants, and certifies that the Subcontractor has informed its Personnel, suppliers, and other individuals or entities with whom the Subcontractor does business, of its anticorruption policy. The Company may request evidence of the anticorruption policy at any time during the Term of this Agreement and the Subcontractor will provide such evidence within seven days of the request.
- e) The Subcontractor shall immediately inform the Company if the Subcontractor becomes aware of any information indicating that any action in breach of this Part 3 has been committed or has been requested or otherwise suggested by any person, including a Public Official or private individual, in connection with this Agreement.
- f) Unless otherwise disclosed in writing to the Company, the Subcontractor represents, warrants, and certifies that neither the Subcontractor, individuals employed by the Subcontractor, nor their immediate family members, are Public Officials. The Subcontractor shall immediately notify the Company in advance if any of the above become a Public Official.
- g) The Subcontractor shall include these, or substantially similar, anticorruption provisions in all subcontracts or other agreements the Subcontractor makes in connection with this Agreement.

### **Part 4: Duty of Care**

- a) All Subcontractor Personnel or contractors engaged pursuant to this Agreement will come under the duty of care of the Subcontractor.

- b) The Subcontractor will be responsible for all security arrangements and the Company accepts no responsibility for the health, safety and security of individuals or property whilst performing under this Agreement.
- c) The Subcontractor will take out and maintain throughout the Term of this Agreement insurance cover as required by Annex C, Part 1.
- d) The Subcontractor will proactively manage risks associated with performing the Services and shall provide evidence of such management of risk to the Company on reasonable request.
- e) The Subcontractor and its Personnel will also comply with and follow any Standard Operating Procedures for the Company where specifically requested to do so by the Company.

## Annex D: Definitions

The words used in this Agreement will be defined as presented in this Annex. If any word in this Annex is defined specifically within the body of this Agreement, the definition within the Agreement will be controlling.

The following terms or expressions used in this contract have the stated meanings:

“Agreement” means this document (including the Cover Sheet, Terms and Conditions, all Annexes and all attachments to this document) as may be amended or supplemented by the Parties from time to time in writing;

“Business Day” means a day that is not an accepted non-work day, public holiday, special holiday, or bank holiday or otherwise in the jurisdiction in which this Agreement is to be fulfilled;

“Business Partner Code of Conduct” means the document listed in Annex E entitled “Business Partner Code of Conduct”.

“Claim” means any claim, action, proceeding, demand, prosecution, judgement, damage, loss, cost, expense, fine, penalty or liability whatever incurred or suffered by or brought or made or recovered against a person or any company or other form of entity and however arising (whether presently ascertained, future or contingent);

“Confidential Information” means company proprietary information, technical data, trade secrets, or know-how, including, but not limited to, business information, research, marketing, technical, financial information, product plans, products, services, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, and any other information relating to its personnel, clients, customers, affiliates, or agents disclosed to one Party or its personnel by the other Party either directly or indirectly;

“Data Protection Legislation” means all applicable laws relating to the processing of Personal Data and privacy;

“Day” means calendar day of 24-hours computed without regard for non-work days, holidays, or other exceptions;

“Deliver” means hand over to, at the place specified in the Agreement, and acceptance of the item, whether it be a Good, a Service, a Premises, or other deliverable, by the Subcontractor or Company at that place and delivery has a comparable meaning;

“Force majeure” means unforeseen events not within the control of either Party, including but not limited to, laws or regulations, strikes, lock-outs or industrial disturbances, acts of terrorism, wars, whether declared or not declared, blockades, embargoes, insurrection, riots, civil disturbances, explosions, epidemics, landslides, earthquakes, storms, lightning, floods and washouts;

“Good Industry Practice” means the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from an expert supplier of services similar to the Services, such supplier seeking to comply with its contractual obligations in full and complying with all applicable Legislative Requirements;

“Goods” means any item or tangible thing provided, or to be provided, to the Company by the Subcontractor (or any of the Subcontractor’s subcontractors) pursuant to or in connection with the Agreement including, but not limited to, the materials, plant, equipment or other supplies stated in the Agreement. Where the context requires, the term “Goods” also includes “Services” as ordered in this Agreement and any ancillary services in relation to supply of goods;

“Insolvency Event” means the Subcontractor:

- a. goes into liquidation;
- b. has a liquidator, receiver or official manager appointed to it;

- c. becomes bankrupt;
- d. enters into a scheme of arrangement with creditors;
- e. becomes unable to pay the Subcontractor's debts as they become due; or
- f. is insolvent or enters into or is subject to anything which has a similar purpose or effect to any of the above.

"Invoice" means an invoice that complies with all relevant laws in the country in which the Goods and/or Services are delivered;

"Intellectual Property" means rights including, but not limited to, patents, copyrights, and trademarks, with regard to Goods and/or Services and other materials which bear a direct relation to or are produced, prepared, or collected in consequence of or in the course of the execution of this Agreement;

"Legislative Requirements" means any applicable law, statute, bye-law, regulation, order, consent, permit, approval, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

"Loss" or "Losses" means any damage, liability, cost or expense including legal expenses;

"Material" includes property, equipment, information, data, photographs, documentation or other material in any form, including software, reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights;

"Party" and/or "Parties" means either the Company or the Subcontractor or both collectively;

"Payment Milestone" means an identified deliverable for which the Subcontractor is entitled to receive a payment in accordance with this Agreement;

"Personal Data" means personal information as defined by the Legislative Requirements governing this Agreement including all Data Protection Legislation;

"Personnel" means the officers, employees, agents, advisers, contractors and subcontractors (including their respective personnel) of either party or the Client;

"Pre-existing Intellectual Property" means Material in existence prior to the date of this Agreement, developed by the Subcontractor or an associated entity, and utilised in conjunction with or for developing the Project Material;

"Project Material" means all Material including data, results, discoveries, inventions, improvements, reports, and other works of authorship, trade secrets, and any other work product or deliverables;

- a. brought into existence or supplied as part of or for the purpose of performing the Services; or
- b. copied or derived from the above Material;

"Promotional Material" means any public statement or advertisement whether in written, verbal or visual format (whether or not digital and/or web-based) relating to the Services and/or the Project.

"Record" means a document or anything constituting a piece of evidence about the past, or an account kept in writing or in some other permanent form (electronic or otherwise) that records information relevant to the Project, the Subcontractor's operations or the Company's operations;

"Regulatory Bodies" means those government departments, regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Subcontractor, the Company or the Client and "Regulatory Body" will be construed accordingly;

"Services" means any service provided, or to be provided, to the Company by the Subcontractor (or any of the Subcontractor's subcontractors) pursuant to or in connection with this Agreement including, but not

limited to, the Services expressly stated in this Agreement together with any services that are necessary to perform those Services and any Services associated with the supply of Goods; and

“Third Party Material” means any Material made available by the Subcontractor for the purposes of this Agreement in which a third party holds Intellectual Property Rights.

## **Annex E: Policies and Procedures**

### **TO BE READ, ACKNOWLEDGED, AND COMPLIED WITH:**

-  Business Partner Code of Conduct
-  Child Protection Guidelines

All documents can be downloaded in full at <http://www.thepalladiumgroup.com/policies>

**Annex F – Client Terms and Conditions (if applicable)**

**Part 1 – Standard Terms and Conditions**

<<Insert Client Standard Terms and Conditions here or attach T&Cs from Head Contract and write “See Attached Terms and Conditions” here.>>

**Part 2 – Special Conditions**

<<INSERT CLIENT SPECIAL CONDITIONS / HEAD CONTRACT PROVISIONS HERE. IF NOT APPLICABLE TYPE “NOT APPLICABLE”>>

**Subcontractor Agreement**

## Part 7 – Declaration by Tenderers

Tenderers shall submit their tender with the following declaration:

*I declare that to the best of my knowledge the answers submitted and information contained in this document are correct and accurate.*

*Where requested by the Company, I/We will promptly provide the certificates or other documents referenced in this ITT.*

*I/We understand that any information given by us will be relied on and used by the Company to assess my/our suitability to participate further in this potential procurement.*

*I understand that the Company may reject my/our Tender if it is non-compliant, or false/misleading in any way.*

*Where this statement is being provided by an individual on behalf of the Company, that individual has the necessary corporate authorisation to provide the declaration on behalf of the Company.*

*I / We have not communicated to any person other than the Company the amount of any tender, adjusted the amount of any tender by arrangement with any other person, made any arrangement with any other person about whether or not I / we or that other person should tender, or otherwise colluded with any other person in any manner whatsoever, and undertake that at any time thereafter in the tendering process for the above.*

*I/We have not engaged in any behaviour which has or could contravene Bribery Act 2010 (UK), the Foreign Corrupt Practices Act (US) or any similar legislation.*

*I/We have not provided or offered any payment, gift, item, hospitality or any other benefit to the Company, its employees, consultants, agents, subcontractors (or any other person involved in the decision-making process relating to this tender) which could give rise to a perception of bribery or corruption in relation to the Tender or any other dealings between the parties.*