



Sub-Consultancy Agreement

Dated: _____ 20 __

SMEC INTERNATIONAL PTY LTD (“SMEC”)
ABN 32 065 440 619

AND

<insert full company name> (the “Sub-Consultant”)
ABN _____

Sub-Consultancy Agreement

Details

Interpretation – definitions are at the end of the General terms

Parties

SMEC	Name	SMEC International Pty Ltd
	ABN	32 065 440 619
	Address	Unit 2, 10-14 Wormald Street, Symonston ACT 2609 Australia
	Telephone	+61 2 6126 1900
	Fax	+61 2 6126 1966
	Attention	Trevor Temple, General Manager – Social Development Group

Sub-Consultant	Name
	ABN
	Address
	Telephone
	Fax
	Attention

Recitals SMEC has signed a contract with Commonwealth of Australia, represented by the Australian Agency for International Development - AusAID (the “Client”) for the provision of services for the Indonesia Infrastructure Initiative (the “Project”) dated the 28th day of July 2008 (the “Main Contract”).

The Sub-Consultant has agreed to provide services as described in Schedule 2 (the “Services”) to SMEC to assist in carrying out the Main Contract on the terms and conditions of this Agreement (including all schedules and attachments) (“Agreement”).

Governing law	Laws of Australia
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Date of agreement	See Signing page
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General Terms

1 Agreement Effective

- 1.1 Subject to this Agreement, the Services will be commenced and completed within the periods set out in Schedule 1.
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2 Main Contract

- 2.1 The Sub-Consultant will comply with such the terms of the Main Contract as are set out in Schedule 5.
- 2.2 The Sub-Consultant must not hinder the SMEC from complying with its obligations under the Main Contract. The Sub-Consultant will do its best to assist such compliance.
- 2.3 The Sub-Consultant must comply with all provisions of the Main Contract governing the ownership and confidentiality of information disclosed, developed or obtained during the course of the project (refer to Schedule 5).
- 2.4 Unless otherwise provided under the Main Contract, copyright in any intellectual property arising from the performance of the Services shall vest in the SMEC on creation.
- 2.5 In case of conflict between the provisions of the Main Contract which are expressed to form part of this Agreement and the other clauses of this Agreement, then unless provided otherwise, the clauses of this Agreement have precedence.
-

3 Services

- 3.1 The Sub-Consultant shall perform the services in good faith and in the interests of SMEC.
- 3.2 For the purposes of this Agreement, services include normal services, additional services and exceptional services.
- 3.3 Normal services are set out in Schedule 2.
- 3.4 Additional services are those set out in Schedule 2 and those which SMEC and the Sub-Consultant agree in writing are additional to normal services.
- 3.5 Exceptional services are those which are not normal or additional services but which are necessarily performed by the Sub-Consultant in accordance with Clause 13.
- 3.6 The Sub-Consultant will exercise reasonable skill, care and diligence in the performance of the services and its obligations under this Agreement.
- 3.7 The Sub-Consultant will carry out the services so that no act or omission of the Sub-Consultant shall cause or contribute to any breach by SMEC of its responsibilities, obligations or liabilities under the clauses of the Main Contract expressed to form part of this Agreement.
- 3.8 If SMEC forms the opinion on reasonable grounds that work carried out by the Sub-Consultant is not in accordance with the standards required by this Agreement or the Main Contract, it shall give written notice of such opinion to the Sub-Consultant specifying the nature of the deficiency and if appropriate

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requiring the Sub-Consultant to rectify or reinstate the work within a reasonable period of time to the satisfaction of SMEC provided the deficient work was attributable to the failure on the part of the Sub-Consultant, its employees, or agents to exercise the standard of diligence, skill and care normally exercised by duly qualified personnel in the performance of comparable work, the Sub-Consultant must, if required by SMEC, bear the complete costs and expenses of rectification or reinstatement.

4 Instructions and Directions

- 4.1 The Sub-Consultant shall comply with all reasonable instructions and directions from SMEC in relation to the Services and this Agreement.
 - 4.2 The Sub-Consultant shall not comply with any instructions or directions which are issued by the Client directly to the Sub-Consultant. If the Sub-Consultant receives any such direct instructions or directions, it will immediately inform SMEC and provide a copy of the instruction or direction, if it were given in writing.
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5 Program of Work

- 5.1 The Sub-Consultant will, so far as is practicable, provide the services in accordance with the program of work set out in Schedule 2.
 - 5.2 Notwithstanding Clause 5.1, SMEC may direct the Sub-Consultant to amend the periods or modify the sequence of work shown in the program of work if, in the opinion of SMEC, such amendment or modification is necessary.
 - 5.3 SMEC may direct the Sub-Consultant to amend the times or the periods in Schedule 1 or 2. If SMEC makes such directions, the Sub-Consultant will be entitled to the reasonable costs and damages arising from and relating to the directions.
 - 5.4 The reimbursement due to the Sub-Consultant under this Agreement will be adjusted equitably in respect of any such amendments or variations.
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6 Confidentiality and Conflict of Interest

- 6.1 The Sub-Consultant acknowledges that information disclosed to it by SMEC under this Agreement may be proprietary, confidential or a trade secret of SMEC or the Client.
- 6.2 Unless it is in accordance with this Agreement, the Sub-Consultant must not and must not permit any of its officers, employees, agents, contractors, or related companies to use or to disclose to any person any information disclosed to it by SMEC under this Agreement without the prior written consent of SMEC.
- 6.3 Clause 6.2 does not apply to any information which:
 - (a) is generally available to the public (other than as a result of the wrongful disclosure by the Sub-Consultant); or
 - (b) is required to be disclosed by any law.
- 6.4 Clauses 6.1 and 6.2 continue despite the termination of this Agreement.

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- 6.5 Unless otherwise agreed in writing by SMEC, the Sub-Consultant will not engage in any activity which might conflict with the interests of SMEC or the Client under this Agreement or the Main Contract.
- 6.6 The Sub-Consultant must disclose in writing to SMEC the fact, nature and extent of any interest which is or may be or become in conflict with the duties or obligations of the Sub-Consultant under this Agreement, whether direct or indirect, and whether as a partner, contractor, servant, shareholder, principal, agent, officer or otherwise.
- 6.7 If the interest is acquired, or the potential conflict arises, after this Agreement is signed, the disclosure in writing must be made immediately the interest is acquired, or the potential conflict arises, as the case may be.
- 6.8 Neither party may disclose to any person (other than the Client in the case of SMEC) anything contained in this Agreement without the prior written authority of the other party.

7 Obligations of SMEC

- 7.1 SMEC will give its prompt comments on all sketches, drawings, reports, recommendations and other matters referred to it for decision by the Sub-Consultant where required.
- 7.2 SMEC will pay the Sub-Consultant at the intervals and stages, within the times, at the places and in the currencies as set out in Schedule 4 against written invoices from the Sub-Consultant of the amounts due to the Sub-Consultant, calculated in accordance with the payment provisions in Schedule 4 and any other provisions of this Agreement.
- 7.3 Invoices will be in the form and contain such details as SMEC may reasonably require from time to time.
- 7.4 SMEC shall provide the equipment and facilities stated in Schedule 3 for use by the Sub-Consultant for as long as may be necessary for the performance of the services.
- 7.5 Equipment provided by SMEC for the use of the Sub-Consultant or purchased by the Sub-Consultant with funds wholly supplied or reimbursed by SMEC shall become the property of SMEC and shall be so marked. Upon completion or termination of the services the Sub-Consultant shall furnish to SMEC inventories of this equipment and dispose of the equipment as directed by SMEC.
- 7.6 If SMEC is in breach of its obligations under Clause 7.5, it will reimburse the Sub-Consultant, on demand, for any expenses reasonably incurred by the Sub-Consultant by reason of such breach, or if incurred by the Sub-Consultant to avoid delay resulting from such breach. The Sub-Consultant must give SMEC at least 14 days written notice of intent to provide the equipment and facilities as stated in Schedule 3. The Sub-Consultant will not be able to claim under this clause if SMEC is making the necessary steps to obtain the equipment and facilities but is delayed by a third party.

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8 Representatives

- 8.1 For the administration of this Agreement the Sub-Consultant shall designate an individual as its representative. The representative shall have written authority to act on behalf of the Sub-Consultant for all purposes in connection with this Agreement. The Sub-Consultant's representative from the date of this Agreement will be the person so designated in Schedule 1.
- 8.2 The Sub-Consultant may from time to time replace the Representative and will give SMEC prior notice of the replacement.
- 8.3 SMEC will designate an individual to be its Representative. SMEC's Representative will have full written authority to act on behalf of SMEC for all purposes in connection with this Agreement. SMEC's Representative will be the person so designated in Schedule 1.
- 8.4 SMEC may from time to time replace its Representative and will give the Sub-Consultant notice of any such replacement.

9 Liability

- 9.1 The Sub-Consultant indemnifies SMEC against:
- (a) all losses suffered by the SMEC;
 - (b) all liabilities incurred by the SMEC; and
 - (c) all legal costs (on a solicitor and own client or full indemnity basis, whichever is the greater) and other costs and expenses incurred by the SMEC in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);
- arising from the death or injury of any employee or agent of the Sub-Consultant, directly or indirectly as a result of or in connection with a breach of contract or any negligent act or omission or non-performance of this Agreement by the Sub-Consultant, its agents and officers.
- 9.2 The Sub-Consultant assumes all liability for, and indemnifies SMEC and its staff against, all claims, damages, liabilities and expenses, including the cost of defence of suits, arising from any breach of copyright, or from any violation of literary property, intellectual property or patented invention, article or appliance, used by the Sub-Consultant or its personnel in respect of the provision of the services or the project.

10 Insurance

- 10.1 The Sub-Consultant will effect and maintain a professional indemnity insurance policy in a form and content reasonably acceptable to SMEC with a reputable insurer for the currency of this Agreement for an amount not less than that stated in Schedule 1.
- 10.2 The Sub-Consultant will maintain a public liability policy of insurance in a form and content reasonably acceptable to SMEC with a reputable insurer for the currency of this Agreement and for an amount not less than that stated in Schedule 1 covering the Sub-Consultant in respect of any claim or loss or

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damage arising from any negligent act, error or omission of the Sub-Consultant in relation to the Project and the provision of the Services.

- 10.3 The Sub-Consultant will effect and maintain a suitable insurance policy for its employees and agents against any liability, loss, damage, claim, costs and expenses arising at common law or under any statute as a result of personal injury to or death of any person employed by the Sub-Consultant or the Sub-Consultant's agent in or about the project.
- 10.4 The Sub-Consultant will also effect and maintain a suitable insurance policy covering:
- (a) any other risks or events stipulated in the Agreement or required by the laws of the Country in which the Project is being undertaken or the Services provided;
 - (b) third Party motor vehicle liability insurance in respect of motor vehicles operated by the Sub-Consultant or its personnel in relation to the Project; and
 - (c) insurance against loss of or damage to equipment purchased in whole or in part with funds provided under this Agreement and the Sub-Consultant's property used in the performance of the Services.
- 10.5 The Sub-Consultant will provide certificates of insurance or other evidence of insurance as may be required by SMEC from time to time.

11 Termination

- 11.1 SMEC may, by prior written notice to the Sub-Consultant, at any time, required the Sub-Consultant to cease the provision of Services, in whole or in part, or terminate this Agreement. The date of termination of this Agreement will be 7 days after receipt of the notice by the Sub-Consultant. Upon receipt of the notice the Sub-Consultant will take immediate steps to cease the Services and to reduce expenditure.
- 11.2 If the Main Contract with the Client is terminated for any reason or if the engagement of the Sub-Consultant is terminated by either SMEC or the Client in accordance with the provisions of the Main Contract, then SMEC may terminate this Agreement immediately by notice to the Sub-Consultant.
- 11.3 If the Sub-Consultant is in material breach of this Agreement and does not rectify such breach within 14 days of receiving written notice requesting it to do so from SMEC, SMEC may terminated this Agreement by delivery of a written notice of termination with immediate effect.
- 11.4 If either party suffers an insolvency event or is wound up or becomes subject to administration or any form of receivership or external control then the other party may immediately terminate this Agreement.
- 11.5 Upon termination of this Agreement under Clauses 11.1, 11.2 or 11.3 and subject to the obligation of the Sub-Consultant to reduce expenditure to a minimum, the Sub-Consultant is entitled to be paid:
- (a) all amounts which are due to it for services already performed under this Agreement up to the date of such termination or postponement,

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less the amounts previously paid by SMEC to the Sub-Consultant in respect of them;

- (b) all costs reasonably incurred for the orderly termination of the Services (except where termination of the Agreement was caused by material breach by the Sub-Consultant of its obligations under this Agreement); and
- (c) an agreed amount, (except where termination of the Agreement was caused by material breach by the Sub-Consultant of its obligations under this Agreement), in respect of any loss or damage suffered by the Sub-Consultant as a direct result.

11.6 The Sub-Consultant shall not be entitled to any compensation for loss of profit on uncompleted services.

11.7 Termination of this Agreement by either party is without prejudice to the rights and remedies which either party may have against the other party at the time of termination.

12 Changed Circumstances

12.1 If circumstances arise for which the Sub-Consultant is not responsible and which make it irresponsible or impossible for the services to be performed in whole or in part in accordance with this agreement, the Sub-Consultant must immediately notify the SMEC in writing.

12.2 In these circumstances, if services have to be suspended, the time for their completion shall be extended until the circumstances no longer apply, plus a reasonable period not exceeding one month for resumption of them.

12.3 If the speed of performing certain services has to be reduced, the time for the completion of the services will be extended as required by the circumstances.

13 Exceptional Services

13.1 Upon the occurrence of circumstances described in Clause 12 or abandonment or suspension or resumption of services or upon termination of this Agreement otherwise than for material breach by the Sub-Consultant, any necessary work or expense by the Sub-Consultant extra to the normal and additional services will be regarded as exceptional services.

13.2 The performance of exceptional services may entitle the Sub-Consultant to extra time necessary for their performance and to such reasonable payment as agreed by the SMEC for the provision of the exceptional services.

14 Dispute Resolution

14.1 The parties will enter into negotiations to try and resolve in good faith any dispute relating to or arising under this Agreement.

15 Variations

15.1 This Agreement can be varied, by written Agreement of SMEC and the Sub-Consultant.

16 Assignment and Sub-Contracts

- 16.1 The Sub-Consultant shall not without the written consent of SMEC assign the benefits of this Agreement, other than by a charge in favour of the Sub-Consultant's bankers of any monies due or to become due under this Agreement.
- 16.2 Neither party may assign obligations under this Agreement without the written consent of the other party.
- 16.3 The Sub-Consultant shall not, without the prior written consent of SMEC (on terms and conditions to be agreed by SMEC), sub-contract the performance of any of the services. Any sub-contract made by the Sub-Consultant with the consent of SMEC shall not subsequently be modified without the prior written consent of the SMEC.
- 16.4 Consent by SMEC to any sub-contract does not relieve the Sub-Consultant from any liability or obligation under this Agreement.

17 Notices

- 17.1 A notice or other communication ("notice") connected with this Agreement has no legal effect unless it is in writing and is:
- (a) delivered by hand at the address for service of the Representative;
 - (b) sent by facsimile to the facsimile number of the Representative; or
 - (c) sent by e-mail to the e-mail address of the Representative and is acknowledged by the Representative either by e-mail, facsimile or post.
- 17.2 A notice is deemed given and received:
- (a) if delivered by hand, upon delivery; or
 - (b) if sent by facsimile before 4 pm on a Business Day (not a weekend or a public holiday), on the day it is sent at the place of receipt and otherwise on the next Business Day at the place of receipt.
 - (c) if the Representative sends an acknowledgement that the e-mail was received.
- 17.3 Despite Clause 17.2(b), a facsimile is not deemed given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the notice have been sent.
- 17.4 A party may change its address for service or facsimile number by giving notice of that change to each other party.
- 17.5 The address for service of the parties is set out in Schedule 1.

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Signing page

EXECUTED as an agreement

IN WITNESS WHEREOF the parties have set their hands on the _____ day
of _____ 20____ and both parties have initialled all pages of the
Agreement including the Schedules.

.....

Signed for and on behalf of SMEC International Pty Ltd

.....

Signed for and on behalf of <Insert full name of Sub-Consultant>

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SCHEDULE 1

AGREEMENT PARTICULARS

Client: Government of Australia, represented by the Australian Agency for International Development – AusAID

Project Name: Indonesia Infrastructure Initiative

Location: Jakarta, Indonesia

Commencement Date: xx xxx, 20xx

Completion Date: xx xxx, 20xx

SMEC's Representative:

SMEC: David Ray
Address: JL Wahid Hasyim, Menteng, Jakarta, Indonesia
Facsimile Number: +62 21 3190 2994
E-mail address: david.ray@indii.co.id

Sub-Consultant's Representative:

Sub-Consultant:
Address:
Facsimile Number:
E-mail address:

Professional Indemnity Insurance Cover to a Value of: \$5,000,000

Public Liability Insurance Cover to a Value of: \$10,000,000

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SCHEDULE 2

SCOPE AND PROGRAM OF THE SUB-CONSULTANCY SERVICES

[Insert Details Of Tasks Including Required Outputs For The Sub-Consultant To Perform and A Work Program Or Bar Chart Of Critical Dates For The Sub-Consultant To Follow.]

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SCHEDULE 3

FACILITIES AND EQUIPMENT TO BE PROVIDED BY SMEC

and

FACILITIES AND EQUIPMENT TO BE PROVIDED BY THE SUB-CONSULTANT

[Insert Lists of Facilities And Equipment To Be Provided]

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SCHEDULE 4

PAYMENT TO THE SUB-CONSULTANT

Period of Service

1. The term of Agreement is from [insert date] (Commencement Date) to [insert date] (Completion Date) for a total of 11 months.

Payments

2. The total amount of the Contract is:
- (a) Lump sum payment [Insert amount of contract less provisional sums]
 - (b) Provision sums [AUD 100,000]
 - (c) **Total Contract Amount** **[Insert total amount of contract]**
3. Payment for lump sum component of the Contract Sum will be made in accordance with the payment schedule below subject to the satisfactory completion of the outputs/milestones and submission of a satisfactory invoice. All amounts are exclusive of VAT.

Output/milestone	% of contract amount (excluding provisional sum)	Amount is AUD	Estimated time after commencement of assignment
Mobilisation payment	20%		Month 0
Master Plan Interim Reports <ul style="list-style-type: none"> • Pekanbaru • Cimahi 	7.5% 7.5%		Month 3
Draft Master Plans <ul style="list-style-type: none"> • Pekanbaru • Cimahi 	7.5% 7.5%		Month 5
Draft Feasibility Study Reports <ul style="list-style-type: none"> • Pekanbaru • Cimahi 	7.5% 7.5%		Month 7
Draft Capacity Building Plans (LIDAP & FOPIP) <ul style="list-style-type: none"> • Pekanbaru • Cimahi 	7.5% 7.5%		Month 9

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Output/milestone	% of contract amount (excluding provisional sum)	Amount is AUD	Estimated time after commencement of assignment
Final Master Plans <ul style="list-style-type: none">• Pekanbaru• Cimahi	10% 10%		Month 10

4. Provision items shall require prior written approval of SMEC to a detailed budget and implementation schedule. The actual costs and appropriate supporting documentation, in accordance with the approved budget, shall be included as separate reimbursable amounts in the milestone payment invoices for the period in which the costs were incurred.
5. The total payment will not exceed the total Contract amount without prior written agreement by SMEC.

Breakdown of Contract Amount

6. The following tables detail the breakdown of remuneration, reimbursable costs, and provisions sums comprising the total contract amount. This breakdown will be used as a basis for negotiation of any contract variation in the event that there is a change in scope of works.

[Insert tables or remuneration and expenses based on contract negotiations]

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SCHEDULE 5

RELEVANT CLAUSES OF MAIN CONTRACT

Relevant Excerpts from the Main Contract – No. 46379:

7. CONTRACTOR PERSONNEL

- 7.1 The Contractor must ensure that Contractor Personnel are aware of, and use their best endeavours to ensure Contractor Personnel comply with, the requirements of the Contract.
- 7.2 The Contractor must use their best endeavours to ensure that all Contractor Personnel conduct themselves in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct*.
- 7.3 The Contractor must use its best endeavours to ensure that no Contractor Personnel or their accompanying family members:
- (a) become involved in the political affairs of the Partner Country (unless citizens of the Partner Country);
 - (b) interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country); or
 - (c) share information known as a result of their work on, or relationship to, the Project, in a way that a reasonable person could foresee may be detrimental to the relationship between the Australian and Partner Governments.
- 7.4 The Contractor must not employ a currently serving Commonwealth employee in any capacity in connection with the Services without the prior written approval of AusAID.
- 7.5 The Contractor must ensure that media advertisements placed by the Contractor for personnel to fill a Project position acknowledge that the Project is funded by AusAID as part of the Australian Government's official overseas aid program.
- 7.6 AusAID may give notice to the Contractor requiring the Contractor to remove any Contractor Personnel from work in respect of the Services. The Contractor must promptly arrange for the removal of such Contractor Personnel from work in respect of the Services and their replacement (if required) with Contractor Personnel acceptable to AusAID.
- 7.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Contractor Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.

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11. SUB-CONTRACTING

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

(a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;

(b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;

(c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:

(i) comply with relevant and applicable laws, regulations and development policies, both in Australia and in the Partner Country;

(ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;

(iii) be bound by the same obligations regarding Clauses 15 (Accounts and Records), 18 (Audits), 19 (Access to Premises), 26 (Privacy), and 35.4 (Anti-corruption) below and as required by Project Specific Conditions Clause 3 (Accounts and Records) as the Contractor; and

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

(d) if requested by AusAID, the Contractor must provide to AusAID an executed Deed of Novation and Substitution in the form at **Schedule 5** (Deed of Novation), contemporaneously with or within 10 Business Days of execution of the sub-contract by the Contractor;

(e) the sub-contract must include the right of AusAID, in the event of AusAID issuing a notice of substitution under the Deed of Novation at **Schedule 5** (Deed of Novation), to further novate the sub-contract to another contractor;

(f) the Contractor must maintain records as to the performance of each of the sub-contractors engaged by the Contractor including details of any defects in such performance and the steps taken to ensure compliance with the Contract and provide to AusAID if requested; and

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

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

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

15. ACCOUNTS AND RECORDS

15.1 The Contractor must at all times maintain full, true, separate and up-to-date accounts and records in relation to the Fees, Supplies and the Services. Such accounts and records must:

(a) record all receipts and expenses in relation to the Supplies and Services, including those involving foreign exchange transactions;

(b) be kept in a manner that permits them to be conveniently and properly audited;

(c) enable the extraction of all information relevant to this Contract;

(d) contain details of the disposition of Supplies as agreed to by AusAID such as replacement, write-off or transfer to the Partner Country; and

(e) the Contractor shall provide to AusAID a statement of Project expenditure on a regular basis for the duration of the Project. The details of the timing and content of the statement of expenditure are defined in Part A Project Specific Contract Conditions.

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

15.3 The accounts and records must be held for the term of this Contract and for a period of seven (7) years from the date of expiry or termination of this Contract.

18. AUDITS

18.1 Where AusAID has reasonable concerns regarding the Contractor's financial management systems AusAID must provide the Contractor with written notification of those concerns and what action is required of the Contractor. This may include:

(a) that the Company Director must provide a Statutory Declaration confirming that they have sighted the necessary supporting documentation and confirm the veracity of the claim for payment;

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(b) providing AusAID with additional documentation to support the claim for payment; or

(c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including invoicing procedures and practices.

18.2 The Contractor must respond to any notice received under **Clause 18.1 above** within 14 days.

18.3 Where the Contractor does not respond within 14 days, or the response does not alleviate AusAID's concern, AusAID reserves the right, if it has not already done so, to direct the Contractor to provide AusAID with certification from an independent auditor as described in **Clause 18.1(c) above**.

18.4 If AusAID directs the Contractor to undertake an independent audit under this clause:

(a) the terms of reference must be agreed in writing by AusAID;

(b) the audit must be undertaken according to the standards of the professional body relevant to the particular audit and those standards must be detailed in the terms of reference;

(c) the Contractor will bear the total cost of the audit; and

(d) AusAID will not make any further payments owed to the Contractor pending certification of the reliability of the Contractor's financial management systems and the veracity of the invoicing procedures and practices.

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

19.1 The Contractor must grant AusAID and/or its nominees (including the Auditor-General or the Privacy Commissioner or their delegates), access to the Contractor's premises, the Data, records, accounts and other financial material or material relevant to the Services, however and wherever stored, in the Contractor's or its sub-contractors' custody, possession or control, for inspection and copying.

19.2 Such access must be available to AusAID and its nominees:

(a) during the hours of 9 am and 5 pm on a Business Day;

(b) except in the case of a breach of this Contract, subject to reasonable prior notice; and

(c) at no additional charge to AusAID.

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19.3 In the case of documents or records stored on a medium other than in writing, the Contractor must make available on request such reasonable facilities as may be necessary to enable a legible reproduction to be created at no additional cost to AusAID.

19.4 This clause applies for the term of this Contract and for a period of seven (7) years from the date of its expiration or termination.

22. INTELLECTUAL PROPERTY RIGHTS

22.1 Subject to **Clause 22.2**, the title to all Intellectual Property rights in or in relation to Contract Material shall vest upon its creation in AusAID. If required by AusAID, the Contractor must bring into existence, sign, execute or otherwise deal with any document which may be necessary to enable the vesting of such title or rights in AusAID.

22.2 **Clause 22.1** does not affect the ownership of Intellectual Property in any Prior Material incorporated into the Contract Material, but the Contractor grants to AusAID a permanent, irrevocable, royalty-free worldwide, non-exclusive licence to use, reproduce, adapt and otherwise exploit such Prior Material in conjunction with the Contract Material. The licence granted under this **Clause 22.2** includes the right of AusAID to sub-licence any of its employees, agents or contractors to use, reproduce, adapt and otherwise exploit the Prior Material incorporated into the Contract Material for the purposes of performing functions, responsibilities, activities or services for, or on behalf of, AusAID.

22.3 The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.

22.4 The Contractor must deliver all Contract Material to AusAID or the Partner Government counterpart agency as may be directed in writing by AusAID.

25. CONFIDENTIALITY

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

25.2 The Contractor must take all reasonable steps to ensure Contractor Personnel do not make public or disclose the AusAID Confidential Information and must promptly notify AusAID of any unauthorised possession, use or disclosure of AusAID Confidential Information.

25.3 The Contractor must ensure that any Contract Personnel who will have access to AusAID Confidential Information complete a written undertaking in the form set out at **Schedule 3**, relating to the non-disclosure of that information.

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25.4 The Contractor may disclose AusAID Confidential Information:

(a) to its legal advisers in order to obtain advice in relation to its rights under this Contract, but only to the extent necessary for that purpose;

(b) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the first-mentioned party; or

(c) if required in connection with legal proceedings,

but in the case of (b) and/or (c) above, subject to the Contractor giving AusAID sufficient notice of any proposed disclosure to enable AusAID to seek a protective order or other remedy to prevent the disclosure.

25.5 The Contractor must not transfer AusAID Confidential Information outside Australia, except to the Partner Country, or allow parties outside Australia to have access to it, without the prior approval of AusAID.

25.6 The Contractor must use AusAID Confidential Information held, acquired or which the Contractor may have had access to in connection with this Contract only for the purposes of fulfilling its obligations under this Contract. Upon expiry or earlier termination of this Contract the Contractor must either destroy or deliver to AusAID all AusAID Confidential Information, as required by AusAID.

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

26. PRIVACY

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

26.2 In this clause, the terms 'agency', 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the *Privacy Act 1988*.

26.3 The Contractor acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services:

(a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;

(b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;

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(c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;

(d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;

(e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to 10) where that section or NPP is applicable to the Contractor, unless:

(i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or

(ii) in the case of a NPP – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorized by this Contract is inconsistent with the NPP;

(f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with a NPP binding a party to this Contract;

(g) to immediately notify AusAID if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any subcontractor;

(h) not to transfer such information outside Australia, except to the Partner Country, or to allow parties outside Australia or the Partner Country to have access to it, without the prior approval of AusAID; and

(i) to ensure that any employee of the Contractor who is required to deal with Personal Information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause.

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

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

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

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28. PUBLICITY

- 28.1 The Contractor must identify and implement appropriate opportunities for publicising the Project.
- 28.2 The Contractor must not make any press, media or other announcements or releases relating to this Contract and the Services without the prior approval of AusAID Public Affairs Group as to the form, content and manner of the announcement or release.
- 28.3 The Contractor must only use the Australian Government/AusAID logo (in-line version) to denote association with Australia, the Australian Government or AusAID in any publicity or other project related materials. The Contractor must comply with the “AusAID Logo Guidelines for Managing Contractors” at all times, including when advertising for sub-contractors or personnel. The Guidelines are available from the AusAID Business website.
- 28.4 The Contractor shall, if appropriate, erect a sign at each Project site that acknowledges the contributions of the Australian and Partner Governments. Such signs shall in all cases be discussed and agreed between AusAID and the Partner Government. Signs should use the Australian Government/AusAID logo (in-line version). No independent project or program logos or emblems are to be used. Contractor signs may also be displayed, but not in greater number or prominence than acknowledgments to either the Australian or Partner Governments.

35. CONFLICT OF INTEREST

Conflict of Interest

- 35.1 The Contractor warrants that, at the date of signing this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.
- 35.2 The Contractor must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. The Contractor must not engage in any activity, subject to **Clause 35.3 below**, that may result in a conflict of interest arising or continuing.
- 35.3 Where a conflict of interest arises in the performance of the Contractor's obligations under this Contract, the Contractor must notify AusAID immediately, and may request permission from AusAID to undertake the work despite that conflict of interest.

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Anti-Corruption

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

36. FRAUD

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

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