



Contract

Between

Hassall and Associates International

and

**INSERT NAME OF INSTITUTION
INSERT ABN XX XXX XXX XXX if applicable**

In Relation to:

[INSERT PROJECT IDENTIFIER AND NAME]

CONTRACT made day of 200

BETWEEN:

Hassall and Associates International (a division of Hassall and Associates Pty Ltd ABN 95 001 211 007) of **10-12 Brisbane Avenue, BARTON ACT 2600**, the Australian Managing Contractor (AMC) of the Collaboration for Agriculture and Rural Development (CARD) Program (“**HAI**”).

AND

Insert Name ABN (The “**Service Provider**”), the commissioned organisation, being the Lead Australian Institution implementing the Services, having its registered office at **Insert address**.

RECITALS:

- A. HAI require the provision of Services for the purposes of improving the capacity of agricultural institutes in Vietnam and providing benefits to small-holder agriculture groups on behalf of the **CARD Program** (the “**Program**”).
- B. The Service Provider, together with its Vietnamese collaborating partners, has expertise in the provision of the Services detailed in the CARD Project Proposal and approved by the CARD Program Coordinating Committee (PCC). The Service Provider has offered to provide the Services to HAI subject to the terms and conditions specified in this Contract.

OPERATIVE:

HAI and the Service Provider promise to carry out and complete their respective obligations in accordance with the Contract and any Schedules.

Signed for Hassall & Associates International
by a duly authorised officer in the presence of

Signature of Witness

Insert Name and Title

Insert Name and Title

Signed for the Service Provider by duly
authorised officer in the presence of

Signature of Witness

Insert Name and Title

Insert Name and Title

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1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

"Associates" means an organisation or organisations who the Service Provider identified in its tender for the Project as an associate or joint venturer to provide the Services.

"AusAID" means the Australian Agency for International Development.

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

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

"Confidential Information" means information that:

- (a) both parties agree is confidential; or
- (b) either party knows or ought to know is confidential;
- (c) is comprised in or relating to the Contract Material, the Data, any Intellectual Property of HAI or third parties where the third party Intellectual Property is made available by or on behalf of HAI or the Commonwealth of Australia;
- (d) is personal information under the Privacy Act 1988,

but does not include this Contract or information which:

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

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

"Contract Conditions" means the provisions contained in this Contract excluding the Schedules and any annexes.

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

"Control" of a partnership, trust, joint venture, associates, corporation or other entity means:

- (a) the ability to cast or control the casting of more than 50% of the maximum number of votes that might be cast at any general meeting (or equivalent) of the Entity; or
- (b) the holding of more than 50% of the issued ordinary share capital, the equity, or other ownership interest, in the Entity.

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

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

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

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

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

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

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war (whether declared or not), invasion, acts of foreign enemies, mobilisation, requisition, or embargo;
- (c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution, or military usurped power, or civil war; and
- (d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosion, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly.

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

"**HAI**" means Hassall & Associates International a registered division of Hassall & Associates Pty Ltd

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

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

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

"**Party**" means either HAI or the Service Provider.

"**Partner Country**" means Vietnam.

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

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

"**Prior Material**" means all material developed by the Service Provider or a third party independently from the Services

"**Project/Program**" means CARD Program.

"**Proposal**" means any proposal submitted by the Service Provider together with accompanying documentation as an offer to undertake the Services.

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

"**Service Provider**" means [INSERT NAME OF ORGANISATION/COMPANY].

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

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

"Start Date" means the date specified in Clause 2.1 of this Contract as the date by which the Service Provider must commence the services.

"Service Provider Personnel" includes any personnel or companies employed by the Service Provider, or acting on behalf of the Service Provider to undertake services under this Contract.

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

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

"The Agreement" means this Contract and any Amendment to it agreed by HAI and the Service Provider.

1.2 General

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

- (a) the contractual obligations of the Parties must be interpreted and performed in accordance with the Contract as a whole;
- (b) Contract clause headings are for convenience only and shall not be taken into consideration in the interpretation or construction of the Contract;
- (c) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- (d) a word denoting the singular number includes the plural number and vice versa;
- (e) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;
- (f) a word denoting a gender includes both genders;
- (g) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Contract;
- (h) where used in the Contract the words "including" or "includes" will be read as "including, without limitation" or "includes, without limitation" (as the case may be);
- (i) a reference to any contract or document is to that contract or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;

- (j) "shall" and "must" denote an equivalent positive obligation;
- (k) a reference to any Party to this Contract, or any other document or arrangement, includes that Party's executors, administrators, substitutes, successors and permitted assigns; and
- (l) a reference to "dollars" or "\$" is to an amount in Australian currency.

1.3 **Contract prevails**

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

2. **TERM OF THE CONTRACT**

- 2.1 The term of this Contract is deemed to have begun on the date this Contract is signed, and continues until the specified project completion date in Schedule One unless otherwise extended under Clause 13.

3. **SCOPE OF CONTRACT**

- 3.1 The Contract sets out the terms and conditions on which the Service Provider agrees to supply of the Services.
- 3.2 The activities to be performed and responsibilities assumed by the Service Provider are detailed in **Schedule 1**.
- 3.3 Neither the Service Provider, nor any Service Provider Personnel, shall by virtue of this Contract be, or for any purpose be deemed to be, and must not represent themselves as being, an employee, partner or agent of HAI or AusAID.

4. **NOTICES**

- 4.1 For the purposes of Standard Conditions Clause 35 the address of a Party is the address set out below or another address of which that Party may from time to time give notice in writing to each other Party:

Hassall and Associates International

Attention: CARD Program Officer

Address: 10-12 Brisbane Avenue
Barton, ACT

Postal Address: GPO Box 1877, Canberra,
ACT 2601

Telephone: +61 2 6270 0200

Facsimile: +61 2 6273 1936

Email: jzhang@hassall.com.au

**[INSERT DETAILS OF SERVICE
PROVIDER]**

5. **HAI'S OBLIGATIONS**

- 5.1 HAI must:
 - (a) make payments to the Service Provider in accordance with the Contract; and

- (b) perform, fulfil, comply with, submit to and observe the terms and conditions of the Contract, which are to be performed, fulfilled, complied with, submitted to or observed by HAI.

6. NON-EXCLUSIVITY

- 6.1 The Service Provider must cooperate with any other service provider appointed by HAI or AusAID to ensure the integrated and efficient carrying on of the Project and must provide such reasonable assistance to other service providers as HAI may reasonably request.

7. PROVISION OF SERVICES

- 7.1 In providing the Services, the Service Provider must:
- (a) perform the Services as described in **Schedule 1** for the term of the Contract, unless the Contract is terminated earlier;
 - (b) accept and implement HAI's reasonable directions in relation to the management of the Project;
 - (c) liaise and cooperate with HAI and the Australian Diplomatic Mission having responsibility for the Partner Country especially in relation to security, personal safety and welfare matters;
 - (d) perform the Services in a manner which is consistent with the spirit and intent of the project, which promotes harmonious and effective relationships with all project stakeholders, which is responsive to the changing environment in the Partner Country and seeks to improve quality, effectiveness and efficiency at every opportunity;
 - (e) liaise with, and obtain all necessary consents, approvals and authorisations from, any public and other authorities in the Partner Country necessary to perform the Services;
 - (f) provide adequate support resources to secure the aims and objectives of the Project in relation to the required Services;
- 7.2 Without limiting its other obligations and liabilities under this Contract, the Service Provider must remedy at its cost any failure to comply with its obligations to perform the Services in accordance with this Contract as soon as practicable after becoming aware of the failure.
- 7.3 The Parties recognise that the performance of the Services may be affected by changes to relevant policy in the Partner Country, and that some flexibility in the performance of the Services shall be required.

8. EARLY NOTIFICATION

- 8.1 The Service Provider must report to HAI as soon as possible after it becomes aware of, and in any event within seven (7) days of 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 HAI or on the delivery or operation of the Services. If the report is first given orally, the Service Provider must promptly confirm the report in writing to HAI. The Service Provider must recommend to HAI options to prevent or mitigate the impact of problems on the Project.

9. SERVICE PROVIDER PERSONNEL

- 9.1 The Service Provider must ensure that all Personnel for the Project as specified in **Schedule 1** provide at least the level of inputs identified, subject to them being replaced in accordance with Clause 9.8.
- 9.2 The Service Provider must ensure that Service Provider Personnel are aware of, and use their best endeavours to comply with, the requirements of the Contract.
- 9.3 The Service Provider must use its best endeavours to ensure that persons nominated as Service Provider Personnel:
- (a) are of good name and character;
 - (b) are properly qualified for the tasks they are to perform;
 - (c) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in country in a safe manner;
 - (d) are adequately briefed and understand the environment and culture of the Partner Country; and
 - (e) act in a fit and proper manner while they are carrying out work or performing duties under the Contract.
- 9.4 The Service Provider must use its best endeavours to ensure that no Service Provider 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.
- 9.5 The Service Provider must ensure that media advertisements placed by the Service Provider for personnel to fill a position for the Services acknowledge that the Project is funded by AusAID as part of the Australian Government's official overseas aid program.
- 9.6 The Service Provider is responsible for the security of Service Provider personnel.
- 9.7 HAI may, if so instructed by AusAID, give notice to the Service Provider requiring the Service Provider to remove any Service Provider Personnel from work in respect of the Services. The Service Provider must promptly arrange for the removal of such Service Provider Personnel from work in respect of the Services and their replacement (if required) with Service Provider Personnel acceptable to HAI..
- 9.8 The Service Provider must use its best endeavours to secure the availability of Personnel specified in Schedule One for the term of the Contract. If a change to personnel is required the Service Provider must provide HAI with as much prior

written notice as reasonably possible. Any proposed change to the Service Provider Personnel must only be made after written consent has been received from HAI

10. **PROCUREMENT SERVICES**

- 10.1 In the case where the Service Provider is to procure Supplies to meet the Services required under the Contract, the Service Provider must implement procedures that comply with the Commonwealth Procurement Guidelines, in particular, observing the Core Principle of achieving value for money and the supporting principles;
- 10.2 The Service Provider must use its best endeavours to ensure all Supplies are free from defects in design, material, manufacture or workmanship. The Service Provider must replace defective Supplies under warranty provisions and is responsible for all Supplies until handover as directed by HAI or AusAID.
- 10.3 The Service Provider shall establish and maintain a Register of Assets which shall record any non-consumable Supplies, which at a minimum contains the following information: reference identification number; description of the asset; date of procurement; cost; location; current status; and disposal or handover details.
- 10.4 The Register of Assets and associated documentation such as import documents, invoices and warranties shall be subject to audit by or on behalf of HAI at any time and from time to time.

11. **SUBCONTRACTING**

- 11.1 The Service Provider shall not subcontract any of the Services, except where agreed in writing by HAI, and in accordance with any conditions determined by HAI.

12. **CONTRACT VARIATIONS**

- 12.1 The Service Provider must not do anything that amounts to a variation of this Contract in whole or in part otherwise than in accordance with this clause.
- 12.2 HAI or the Service Provider may propose variations to the manner of providing the Services at any time for the purpose of improving the delivery of the Services or, the efficiency, cost-effectiveness and development impact of the Services.
- 12.3 The Service Provider must prepare a "Variation Proposal" for any variation sought by HAI, or the Service Provider, at no extra cost to HAI and this must be submitted to HAI in a timely manner.
- 12.4 The Variation Proposal must include specific identification of the proposed change, associated cost implications, a cost/benefit and risk analysis, including of developmental impact improvements, a general plan for implementation of the change and a projected time schedule.
- 12.5 If HAI approves a proposal for variation under this clause, implementation shall be effected by issuing a contract variation to be executed by both parties

- 12.6 HAI may issue a contract variation omitting any part, though not whole, of the Services. The value of the omitted Services will be determined in accordance with **Schedule 2** having regard to:
- (a) the Services omitted from the Contract;
 - (b) any payments affected by the omission; and
 - (c) the extent of the work and/or inputs already performed or provided by the Service Provider in respect of any payments made.
- 12.7 HAI will not be liable upon any claim by the Service Provider as a result of any part of the Services being omitted
- 12.8 If the Service Provider disagrees with HAI's determination of the value of the omitted Services, based on the rates included in **Schedule 2**, the Parties undertake to negotiate fair and reasonable amount within 20 Business Days.
- 12.9 In the event that the Parties cannot resolve a reasonable amount within 20 Business Days, either Party may seek to have an independent third party appointed pursuant to Clause 33 (Resolution of Disputes), to determine a reasonable amount and the Parties agree that they shall be bound by that determination.
- 12.10 HAI may issue a variation order directing the Service Provider to:
- (a) suspend for such time as HAI finds necessary, the progress of the whole or any part of the Services; or
 - (b) reschedule the performance of Services to a time agreed by the Parties
- 12.11 If the suspension or rescheduling is due to:
- (a) an act, default or omission of the Service Provider or Service Provider Personnel, the Service Provider will not be entitled to any Costs or Losses arising from the suspension; or
 - (b) any other cause:
 - (i) the Service Provider will be entitled to be paid any reasonable Costs incurred by it as a result of the suspension subject to the Service Provider taking reasonable steps to mitigate the Costs incurred;
 - (ii) HAI's liability under the payments provisions of **Schedule 2** shall, in the absence of an agreement to the contrary, abate proportionately to any resulting reduction in the Services.
- 12.12 Upon receipt of a variation order suspending part or all of the Services, the Service Provider must:
- (a) stop work as specified;
 - (b) take all reasonable steps to minimise any Loss resulting from the suspension and to protect Supplies and Contract Material; and
 - (c) continue work on any part of the Services not affected by the suspension.

13. EXTENSION OF TIME

- 13.1 Subject to Clause 13.4 below neither HAI nor the Service Provider shall be in breach of the Contract to the extent that performance of their Contract obligations is prevented by any of the following causes (“Relevant Causes”) that arise during the term of the Contract:
- (a) a Force Majeure event;
 - (b) a significant change in circumstances beyond the control of the Service Provider; or
 - (c) a change in the laws of Australia or the Partner Country that directly impacts on the provision of the Services.
- 13.2 Where in the Service Provider’s reasonable opinion there is likely to be a delay in the Service Provider’s discharging an obligation under the Contract because of a Relevant Cause the Service Provider must:
- (a) immediately notify HAI in writing when the Service Provider considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;
 - (b) give details of the likely effect on the Project and any Contractual implications;
 - (c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;
 - (d) request in writing an extension of time which the Service Provider considers reasonable in all the circumstances in the form of a variation proposal in accordance with Clause 12.4 above; and
 - (e) use its best endeavours to continue to perform its obligations under the Contract.
- 13.3 HAI must give consideration to the Service Provider’s recommendations and request for an extension of time and as soon as practicable after receiving the request notify the Service Provider in writing whether it has determined that a Relevant Cause has occurred and whether all or part of the request has been granted. HAI’s approval of a request may be granted subject to conditions.
- 13.4 Where the Parties agree that a Relevant Cause has occurred, and the Service Provider’s inability to perform its obligations due to a Relevant Cause exceeds 45 Business Days, HAI may:
- (a) notify the Service Provider that the Contract is suspended for a specified period of time; or
 - (b) delete part of the Services; or
 - (c) immediately or thereafter terminate the Contract in whole or in part by providing notice in writing to the Service Provider.
- 13.5 In the event of suspension, deletion or termination of Services or the Contract under Clause 13.4 above the Service Provider may claim Fees for Services performed as payable under **Schedule 2**, prior to the date of suspension, deletion or termination, on a pro rata basis and Costs that are reasonably and properly incurred by the Service Provider in connection with the Contract to the extent to

which those Costs are unavoidable as a direct consequence of the suspension, deletion or termination of the Contract in accordance with this clause. Any Cost must be substantiated to HAI and must not include loss of profits or any other form of expectation loss.

14. ACCOUNTS AND RECORDS

- 14.1 The Service Provider 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; and
 - (d) if requested by HAI, the Service Provider shall provide to HAI a statement of Project expenditure on a regular basis for the duration of the Contract.
- 14.2 Accounts and records must be provided for inspection by HAI immediately upon the request of HAI.
- 14.3 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.

15. MILESTONE REPORTS

- 15.1 Payments to the Service Provider will be made on the basis of the agreed Milestone Schedule (Schedule 2);
- 15.2 The Service Provider must ensure that all reports required in accordance with **Schedule 2** provide the information required and conform to the quality and format requirements specified.
- 15.3 The Service Provider must amend or provide additional information as reasonably requested by HAI on reports provided in accordance with this Contract, at no additional cost to HAI.
- 15.4 HAI may reject and withhold payment of Fees for any milestone which does not conform to the requirements of the Contract until the Service Provider rectifies the milestone report.

16. REVIEWS

- 16.1 The Service Provider acknowledges that HAI has duties to AusAID to assist with reviewing the Services provided, attending meetings and formulating annual plans. The Service Provider agrees to provide all information and cooperation to HAI as requested from time to time to enable HAI to comply with its obligations.
- 16.2 The Service Provider must participate cooperatively in any reviews conducted by HAI, AusAID or their nominees. In addition the Service Provider must respond in writing to any draft review report within 28 days after the date of

receipt by the Service Provider of the draft report unless otherwise agreed in writing by HAI.

- 16.3 The Service Provider must cooperate with any review by providing all necessary information on Service Provider Personnel and ensuring its Service Provider Personnel are available and willing to assist in answering inquiries or requests for information in respect of the performance of the Services. Any additional agreed costs incurred by the Service Provider in complying with the requests of HAI in relation to this clause will be reimbursed.
- 16.4 The Service Provider must provide copies of all reports, notices, information or other Project Material which the review reasonably requires to fully and efficiently perform its monitoring and review as soon as practicable after such material is produced or received by the Service Provider.
- 16.5 Reviews may be conducted of any matter relevant to the performance of any Services.
- 16.6 Each Party must bear its own costs of any such reviews conducted by or on behalf of HAI or AusAID (except as indicated in Clause 16.3)
- 16.7 The requirement for, and participation in, reviews does not in any way reduce the Service Provider 's responsibility to perform its obligations in accordance with this Contract.

17. AUDITS

- 17.1 Where HAI has reasonable concerns regarding the Service Provider's financial management systems HAI must provide the Service Provider with written notification of those concerns and what action is required of the Service Provider. This may include:
 - (a) that an authorised person must provide a Statutory Declaration confirming that they have sighted the necessary supporting documentation and confirm the veracity of the claim for payment;
 - (b) providing HAI with additional documentation to support the claim for payment; or
 - (c) a direction that the Service Provider engage an independent, suitable organisation to undertake an audit of those financial management systems, including invoicing procedures and practices.
- 17.2 The Service Provider must respond to any notice received under Clause 17.1 above within 14 days.
- 17.3 Where the Service Provider does not respond within 14 days, or the response does not alleviate HAI's concern, HAI reserves the right, if it has not already done so, to direct the Service Provider to provide HAI with certification from an independent auditor as described in Clause 17.1(c) above.
- 17.4 If HAI directs the Service Provider to undertake an independent audit under this clause:
 - (a) the terms of reference must be agreed in writing by HAI;

- (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 Service Provider will bear the total cost of the audit; and
- (d) HAI will not make any further payments owed to the Service Provider pending certification of the reliability of the Service Provider's financial management systems and the veracity of the invoicing procedures and practices.

18. ACCESS TO THE SERVICE PROVIDER'S PREMISES, DATA AND RECORDS

- 18.1 The Service Provider must grant HAI and/or its nominees (including the Auditor-General or the Privacy Commissioner or their delegates), access to the Service Provider's premises where the work is being performed, Data, records, accounts and other financial material or material relevant to the Services, however and wherever stored, in the Service Provider's custody, possession or control, for inspection and copying.
- 18.2 Such access must be available to HAI 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 HAI.
- 18.3 In the case of documents or records stored on a medium other than in writing, the Service Provider 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 HAI.
- 18.4 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.

19. PAYMENT

- 19.1 HAI will make payment of the Fees within 30 days of:
- (a) HAI's acceptance of the satisfactory completion of the Services or relevant Payment Milestone as specified in **Schedule 2**; and
 - (b) receipt of a correctly rendered invoice.
- 19.2 HAI will make every endeavour to notify the Service Provider within 30 days of receipt whether or not identified Services, reports or other payment milestones have been accepted.
- 19.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.
- 19.4 An invoice is correctly rendered if:
- (a) the invoice details all Services provided against the Fees and records the amount payable in respect of each category of Services described in the Contract;

- (b) the invoice is based upon the calculation of Milestones referred to in **Schedule 2**; and
- (c) an authorised person of the Service Provider, has certified that the invoice:
 - i. has been correctly calculated;
 - ii. that the Services included in it have been performed in accordance with this Contract.

19.5 If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Service Provider, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due from HAI to the Service Provider.

19.6 A payment by HAI is not an admission of liability. In the event that HAI makes a payment for the completion of a Payment Milestone or the procurement of Supplies or inputs that HAI subsequently learn have not been completed to the quality or performance specifications required or provided as required, the payment shall be deemed an overpayment and recoverable from the Service Provider. Without limiting recourse to other available remedies, the overpayment may be offset against any amount subsequently due to the Service Provider.

19.7 HAI need not pay an amount that is disputed in good faith by HAI until the dispute is resolved

19.8 Except as otherwise specified in the Contract, the Fees are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Service Provider in providing the Services.

19.9 HAI will make all amounts payable to the Service Provider under this Contract into a single bank account nominated by the Service Provider. The Service Provider must provide HAI with the necessary details as soon as possible following the execution of this Contract. Requests to change bank accounts must be provided to HAI with 45 days notice.

20. **GOODS AND SERVICES TAX**

20.1 Except as provided by this clause, all taxes, duties and charges imposed or levied in Australia or in the Partner Country in connection with the performance of this Contract shall be borne by the Service Provider or its subcontractor(s), as the case requires.

20.2 All invoices issued by the Service Provider must conform to a New Tax System Act 1999 (Cth) and be in accordance with the relevant provisions of the GST legislation and regulations.

20.3 The total amount of GST payable by the Service Provider, and for which the Service Provider seeks payment from HAI, in respect of any supply shall be shown as a separate item on the Tax Invoice.

21. **INTELLECTUAL PROPERTY RIGHTS**

21.1 Subject to Clause 21.2 below, the title to all Intellectual Property rights in or in relation to Contract Material shall vest upon its creation in AusAID. If required

by HAI, the Service Provider 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.

- 21.2 Clause 21.1 does not affect the ownership of Intellectual Property in any Prior Material incorporated into the Contract Material, but the Service Provider grants to HAI and 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 21.2 includes the right of HAI and 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, HAI or AusAID. Specifically, HAI has the right to post any project reports deemed to be of public value on the official CARD website but will ensure due acknowledgement to the source and that such documents are available only in protected PDF format.
- 21.3 The Service Provider is granted a permanent, revocable, royalty-free worldwide, non-exclusive licence to use, reproduce, adapt and otherwise exploit such Prior Material in conjunction with the Contract Material for the purpose of internal research and training and activities of a non-commercial nature.
- 21.4 The Service Provider must deliver all Contract Material to HAI, AusAID, or to the Partner Government counterpart agency as may be directed in writing by HAI.
- 21.5 Indemnity provisions as outlined in clause 29 will include any 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 and which could have been avoided if the Service Provider had carried out diligent enquiries in relation to that Intellectual Property .

22. **CONFIDENTIALITY**

- 22.1 Subject to this clause, neither Party may, without the prior written approval of the other Party , make public or disclose to any person (other than the Commonwealth) any Confidential Information.
- 22.2 The Parties must take all reasonable steps to ensure their Personnel do not make public or disclose the Confidential Information and must promptly notify the other Party of any unauthorised possession, use or disclosure of Confidential Information.
- 22.3 The Parties may disclose Confidential Information:
- (a) to their legal advisers in order to obtain advice in relation to their 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 disclosing Party giving the other Party sufficient notice of any proposed disclosure to enable the other Party to seek a protective order or other remedy to prevent the disclosure.

- 22.4 The Parties must not transfer Confidential Information outside Australia or New Zealand, except to the Partner Country, or allow parties outside Australia or New Zealand to have access to it, without the prior approval of the other Party
- 22.5 Each Party must use Confidential Information held, acquired or which the Parties 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 Service Provider must either destroy or deliver to HAI all Confidential Information, as required by HAI.
- 22.6 This clause shall survive expiration or termination of this Contract.

23. **PRIVACY**

- 23.1 This clause applies only where the Service Provider deals with Personal Information when, and for the purpose of, providing the Services
- 23.2 The Service Provider acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the Privacy Act 1988 (the Privacy Act), and agrees to abide by the Act.
- 23.3 The Service Provider agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the Service Provider has the same awareness and obligations as the Contract has under this clause, including the requirement in relation to subcontracts.
- 23.4 Indemnity provisions as outlined in clause 29 include any breach of the Service Provider's obligations under this clause, or a Service Provider under the subcontract provisions referred to in Clause 23.3 above
- 23.5 This clause shall survive expiration or termination of this Contract.

24. **HAI USE OF CONTRACT INFORMATION**

- 24.1 HAI may disclose matters relating to the Contract, including the Contract, except where such information may breach the Privacy Act 1988, to governmental departments and agencies, Ministers and Parliamentary Secretaries, and to Parliament, including responding to requests for information from Parliamentary committees or inquiries.
- 24.2 This clause shall survive termination or expiration of the Contract.

25. **PUBLICITY**

- 25.1 The Service Provider must identify and implement appropriate opportunities for publicising the Project.
- 25.2 Where practical the Service Provider must not make any press, media or other announcements or releases relating to this Contract and the Services without the prior approval of the HAI.
- 25.3 The Service Provider shall provide HAI with copies of all media statements, releases, articles and electronic media pieces.

- 25.4 The Service Provider 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.
- 25.5 The Service Provider 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 HAI and AusAID. Service Provider signs may also be displayed, but not in greater number or prominence than acknowledgments to either the Australian or Partner Governments.

26. **WARRANTIES**

- 26.1 The Service Provider represents and warrants that it has made its own assessment of all information made available to the Service Provider 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.
- 26.2 Subject to any law to the contrary, and to the maximum extent permitted by law, HAI, its employees, agents and advisers each disclaim all liability for any losses (whether foreseeable or not) including legal expenses on a solicitor and own client basis suffered by any other person acting on any part of the information made available to the Service Provider 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 HAI, its employees, agents or advisers or any other person or any misrepresentation or any other cause.
- 26.3 The Service Provider warrants that it shall have full 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.

27. **TERMINATION FOR SERVICE PROVIDER DEFAULT**

- 27.1 Without prejudice to any other rights it has at law, HAI may, by notice in writing to the Service Provider terminate this Contract, with effect from the date in the notice, if the Service Provider:
- (a) becomes bankrupt or insolvent;
 - (b) 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;
 - (c) goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction, or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to supervision of a court either voluntarily or otherwise;

- (d) suffers any execution against its assets having an adverse effect on its ability to perform this Contract;
- (e) does not commence to remedy a breach, which has a material adverse affect on HAI, within 10 Business Days after being given notice by HAI requiring the Service Provider to remedy the breach, or fails to remedy the breach within 20 Business Days of being given that notice;
- (f) assigns its rights otherwise than in accordance with the requirements of this Contract; or
- (g) suffers a change in Control which in HAI's reasonable opinion may adversely affect the Service Provider's ability to perform the Services under this Contract.
- (h) Is in breach of any of the provisions of Clause 31.4 (anti-corruption)

27.2 If this Contract is terminated under Clause 27.1:

- (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 Service Provider by HAI under this Contract terminate immediately despite anything to the contrary contained in the relevant licence or authorisation;
- (c) any Confidential Information and any HAI property supplied or given to the Service Provider pursuant to this Contract must be returned to HAI;
- (d) HAI will not be obliged to make any further payments to the Service Provider. However, HAI may, in its absolute discretion, consider a payment to the Service Provider in such amount and upon such considerations as HAI determines is appropriate in the circumstances.
- (e) HAI's rights to recover damages are not affected.

28. TERMINATION FOR CONVENIENCE

28.1 In addition to any other rights it has under this Contract, HAI may terminate this Contract at any time, in whole or in part, by notifying the Service Provider in writing that this Contract, or a part of this Contract, is terminated from the date specified in the notice (which date must not be a date earlier than the date on which the notice is received by the Service Provider), and, in that event, HAI may give to the Service Provider such directions as it thinks fit in relation to subsequent performance of this Contract.

28.2 The Service Provider must comply with any such directions given and must do everything possible to mitigate its Costs arising in consequence of termination of this Contract under this clause.

28.3 HAI must pay the Service Provider for any:

- (a) Fees for Services performed, as payable under Schedule 2, prior to the termination, on a pro rata basis; and
- (b) Costs that are reasonably and properly incurred by the Service Provider in connection with the Contract to the extent to which those Costs are

unavoidable as a direct consequence of the termination or partial termination of the Contract in accordance with this clause. Any Cost must be substantiated to HAI and must not include loss of profits or any other form of expectation loss.

29. INDEMNITY

- 29.1 Each Party to this agreement indemnifies and will keep indemnified the other Party and their respective officers, employees, agents and contractors (Indemnitee) from and against all legal liabilities, actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may arise or be made or taken against the Indemnitee or be incurred or become payable by the Indemnitee in respect of any negligent act or omission on the part of the Indemnitor pursuant to this Agreement but this indemnity does not extend to any breach of the Agreement or negligent act or omission by the Indemnitee or any of its officers, employees, agents, consultants and subcontractors.
- 29.2 The indemnity given by the Indemnitor pursuant to this clause 29.1 will be reduced proportionately to the extent that any breach of this Agreement or negligent act or omission by the Indemnitee or its officers, employees, agents, consultants or subcontractors may have contributed to any legal liabilities, actions, suits, proceedings, claims demands, costs and expenses referred to in this clause 29.1.
- 29.3 Nothing in clause 29.1 will render a Party liable for any special, indirect or consequential loss or damages (including, without limiting the generality of the foregoing, loss of income or profits) arising under or pursuant to this Agreement.
- 29.4 The Service Provider agrees that HAI may enforce the indemnity in favour of the persons specified in Clause 29.1 for the benefit of each of such persons in the name of HAI or of such persons.
- 29.5 The Service Provider is responsible for all risks associated with the Data, the Supplies and any HAI property while in the possession or control of the Service Provider.
- 29.6 This indemnity shall survive termination or expiration of this Contract.

30. INSURANCE

- 30.1 The Service Provider 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) Workers' compensation insurance;
 - (i) Which fully insures the Service Provider 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 Service Provider Personnel normally reside or in which their contract of employment was made; and
- (iii) Which, where possible at law extends to indemnify HAI as principal for HAI's liability to persons engaged by the Service Provider.

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

- (c) property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Service Provider for its full replacement value;
 - (d) professional indemnity insurance to cover the Service Provider's obligations under this Contract. The Service Provider's professional indemnity policy must respond to claims arising under the Trade Practices Act (Cth) 1974, in regard to this Contract. The Service Provider may obtain the insurances 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;
 - (e) adequate medical and dental insurance for Service Provider Personnel who are engaged to operate outside their country of permanent residence; and
 - (f) adequate insurance for medical evacuation and evacuation resulting from an insured event for all Service Provider Personnel.
- 30.2 The Service Provider must, within 14 days after a request by HAI, provide for any insurance policy: a certificate of currency, a list of exclusions; and the amount of excess payable.
- 30.3 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 Service Provider under the other provisions of this Contract or at law.
- 30.4 In the event of an insurance claim any deductible/excess payable shall be the responsibility of the Service Provider.

31. CONFLICT OF INTEREST

Conflict of Interest

- 31.1 The Service Provider 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.
- 31.2 The Service Provider must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. The Service Provider must

not engage in any activity, subject to Clause 31.3 below, that may result in a conflict of interest arising or continuing.

- 31.3 Where a conflict of interest arises in the performance of the Service Provider's obligations under this Contract, the Service Provider must notify HAI immediately, and may request permission from HAI to undertake the work despite that conflict of interest.

Anti-Corruption

31.4 The Service Provider warrants:

- (a) that the Service Provider shall not make or cause to be made any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Contract. Any such practice shall be grounds for immediate termination of this Contract under Clause 27 by notice from HAI;
- (b) that it has not received and shall not accept from any sub-contractor any payment as inducement or reward relating to the selection and engagement of a sub-contractor; and
- (c) that it acknowledges that it is aware of the provisions of Section 141.1 of the Commonwealth Criminal Code in relation to the bribery of Commonwealth public officials.

32. COMPLIANCE WITH LAWS AND POLICIES

32.1 The Service Provider must when providing any Services and procuring the Supplies have regard to and comply with, and ensure that all sub-contractors comply with, relevant and applicable laws, regulations and policies, both in Australia and in the Partner Country, including:

- (a) those in relation to occupational health and safety;
- (b) the *Equal Opportunity for Women in the Workplace Act 1999* (Cth). In particular the Service Provider must not enter into any sub-contracts, under this Contract, with an employer named by the Director of the Equal Opportunity for Women Agency as currently not complying with the Act;
- (c) the *Australian Radiation Protection and Nuclear Safety Act 1998* (Cth). In particular the Service Provider must obtain a licence for any activities requiring a licence whether undertaken in Australia or overseas;
- (d) the *Archives Act 1983* ("the Act"). In particular, the Service Provider must:
 - (i) not arrange for, nor effect, a transfer of custody or ownership of any Data or Commonwealth record within the meaning of the Act without the prior written approval of HAI and the National Archives of Australia; and
 - (ii) comply with any reasonable direction given by HAI for the purpose of transferring any records to the National Archives of

Australia or providing the National Archives of Australia with full and free access to those records at HAI's cost.

- (e) the *Privacy Act 1988*;
- (f) those in relation to corrupt practices, including the Commonwealth Criminal Code provisions:
 - (i) Division 70 relating to the bribery of foreign public officials; and
 - (ii) Section 141.1 relating to the bribery of Commonwealth public officials.
- (g) those in relation to organisations and individuals associated with terrorism, including "terrorist organisations" as defined in Division 102 of the Commonwealth Criminal Code Act 1995 and listed in regulations made under that Act and regulations made under the Charter of the UN Act (Cth) 1945.

The Service Provider must use their best endeavours to ensure that funds provided under this Contract, including subcontracts, do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Service Provider discovers any link whatsoever with any organisation or individual associated with terrorism it must inform HAI immediately.

Further information about listed persons and entities is available from Department of Foreign Affairs and Trade (DFAT) at www.dfat.gov.au/icat/persons_entities/explanatory_note.html. A full list of listed persons and entities is available from DFAT at: www.dfat.gov.au/icat/freezing_terrorist_assets.html. A list of listed 'terrorist organisations' for the purpose of the Commonwealth Criminal Code is available from National Security Australia at: www.nationalsecurity.gov.au.

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

- (a) Gender and Development; In particular the Service Provider must:
 - i. ensure that the requirements of AusAID's Gender and Development policy applicable to the Services are met at all times; and
 - ii. Incorporate sufficient information in reports in the format required by the Scope of Services which allows HAI to monitor and assess the success of the Services in achieving the objectives of AusAID's Gender and Development Policy.

And

- (b) Environment; in particular the Service Provider must:
 - i ensure that all matters relating to any Services affecting the environment are fully examined and taken into account; and

- ii comply with AusAID's Environmental Management System outlined in Environmental Management Guide for Australia's Aid Program, including:
 - (A) advising HAI of any potential direct or indirect positive or negative environmental impacts of the Project,
 - (B) assessing and managing actual or potential environmental impacts to avoid or mitigate negative impacts and promote positive impacts; and
 - (C) report regularly on any such impacts as required by the Scope of Services.
- ii comply with all relevant environmental laws and regulations of the Partner Country.

33. RESOLUTION OF DISPUTES

- 33.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Contract. Subject to Clause 19.7 (Payment) and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Contract.
- 33.2 A Party may give the other Party a notice of dispute ("dispute notice") in connection with this Contract. Following the giving of a dispute notice, the dispute must be referred to a senior officer of HAI and a senior officer of the Service Provider who must use reasonable endeavours to resolve the dispute within 20 Business Days or such other period as is agreed by the Parties.
- 33.3 If the Parties have not been able to resolve the dispute in accordance with Clause 33.2 above, then the Parties may agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation.
- 33.4 In the event that the dispute, controversy or claim has not been resolved within 50 Business Days (or such other period as agreed between the Parties in writing) after the Parties have attempted to agree on a process, or the appointment of the mediator or conciliator, then either Party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.
- 33.5 Nothing in this clause prevents either Party from seeking urgent injunctive relief.

34. NOVATION

- 34.1 If requested by HAI or AusAID, the Service Provider must provide to HAI an executed Deed of Novation and Substitution in the form to be provided by HAI.
- 34.2 The Service Provider acknowledges that HAI or AusAID retains the right upon issuing a Notice of Substitution under a Deed of Novation to further novate this Contract to another Service Provider.
- 34.3 The Service Provider acknowledges that, in the event of HAI or AusAID issuing a Notice of Substitution, AusAID may substitute itself (or another Party) for HAI in this Contract as if AusAID (or another Party) was originally the party to this Contract, instead of HAI, and AusAID (or another Party) is so bound by and

must fulfil, comply with and observe all of the provisions of this Contract and enjoys all the rights and benefits of HAI under this Contract.

35. **NOTICES**

- 35.1 A notice required or permitted to be given by one Party to another under this Contract must be in writing and is treated as having been duly given and received:
- (a) when delivered (if left at that Party's address);
 - (b) on the third Business Day after posting (if sent by pre-paid mail); or
 - (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

36. **MISCELLANEOUS**

36.1 **Waiver**

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

36.2 **Liability of Party**

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

36.3 **Entire agreement**

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

36.4 **Severance**

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

36.5 **Assignment**

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

36.6 **Governing Law and Jurisdiction**

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

36.7 Contra Proferentum

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

36.8 False and Misleading Information

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

36.9 Electronic Copy of Contract

Where appropriate this Contract may be sent to the Service Provider for signature in an electronic format. In the event of any discrepancy between the Contracts held by the Service Provider and by HAI, the Contract held by HAI shall take precedence.

**SCHEDULE 1:
SCOPE OF SERVICES**

INSERT PROJECT NAME



Project Title:	Project No:
Abstract {EXTRACT FROM THE PROJECT APPLICATION}	
Project Commencement Date:	Project Completion Date:
Contracted Amount:	

PROJECT PROPOSAL & BUDGET

Refer to attached files;

- a) Full Proposal
- b) Agreed Budget
- c) Agreed Logframe

Please note that the above files form part of the Scope of Services for the project. In the event that there is any discrepancy between the project proposal and the Specified Personnel (Attachment 1) and Procurement of Assets (Attachment 2) then Attachments 1 and 2 shall prevail.

**ATTACHMENT 1
TO SCHEDULE 1**

SPECIFIED PERSONNEL

The Service Provider will procure the following Service Provider Personnel to provide the Services to HAI.

[INSERT DETAILS OF SPECIFIED PERSONNEL]

Australian Personnel Provided	Position in Project	Days in Vietnam		Days in Australia	Trips to Vietnam
		Hanoi/HCM	Elsewhere		
Total					

Vietnamese Personnel Provided	Position in Project	Days in Vietnam
Total		

**ATTACHMENT 2
TO SCHEDULE 1**

**PROCUREMENT OF ASSETS
[INSERT DETAILS OF EQUIPMENT, MATERIALS AND OTHER
EXPENDITURE THAT IS SPECIFIED IN BUDGET]**

Equipment Description	Budget Limit	
	Total	AusAID

SCHEDULE 2:**BASIS OF PAYMENT****1. FINANCIAL LIMITATION**

- 1.1 The total amount payable by HAI to the Service Provider shall not exceed the sum of \$AXXX plus GST, if any to a maximum of \$AXXX. HAI shall not be liable for any Costs or expenditure incurred by the Service Provider in excess of this amount.
- 1.2 This Schedule will be amended on the anniversary of the date of the contract to formalise the contract financial limit for the following twelve months, and to detail input schedules and Milestone Payments to be made throughout the following twelve months.

2. BASIS OF PAYMENT

- 2.1 For the performance of services described in the Contract, HAI shall pay the Service Provider as follows:
- (a) Fixed Fees, comprising Milestone Payments payable in accordance with Clause 4 of this Schedule (up to a maximum amount of \$XXXX)

3. FIXED FEES

- 3.1 The Fixed Fees payable to the Service Provider shall be inclusive of, but not limited to, all items of salary and salary oncost, taxation, superannuation payable to personnel, local cost of living allowances, mobilisation costs, all accommodation and utilities, personnel related insurance costs including insurance for medical and medical evacuation, international travel to and from Partner Country, leave for long term personnel, and other sundry Personnel costs associated with the supply of the required long and short term Personnel, and any other costs required to deliver the Services which are not included as Reimbursable Costs.

4. MILESTONE PAYMENTS

- 4.1 100% of the Fixed Fees will be paid to the Service Provider in the form of Milestone Payments as shown in Annex 1 to this Schedule.
- 4.2 The amount payable to the Service Provider will be paid progressively, within thirty (30) days of HAI's acceptance of the satisfactory completion of identified outputs and a correctly rendered invoice.
- 4.3 The criteria for "satisfactory completion" of an identified output will be as specified in Annex 1 to this schedule as the "Means of Verification".
- 4.4 Where a Milestone Payment is to follow acceptance of a report, HAI shall not be obliged to make payment until all of the outputs to be achieved by the Service Provider in the period covered by the report have been achieved.
- 4.5 While payment will take place following HAI's initial acceptance of the achievement of milestones, this acceptance may be subject to an assessment of

the Service Provider's achievement of outputs by an independently established Monitoring Review Group (MRG).

- 4.6 If HAI (whether advised by the MRG or not) determines that a Payment Milestone in respect of which HAI has made a payment does not meet the specifications of the Contract, without limiting clause 19.1 of this Contract, HAI may, at its absolute discretion, require the Service Provider to repay the amount paid for that Payment Milestone. At HAI's absolute discretion, the amount to be repaid may be deducted from future Fixed Fee payments or considered a debt owed by the Service Provider to HAI and recoverable in accordance with Clause 19.5 of this Contract.
- 4.7 It is HAI's corporate practice to inform Service Providers as soon as reasonably possible, and in any case within 30 days of receipt of notice of the completion of an identified output or provision of a report whether or not that output or report is accepted.
- 4.8 All claims for payment must be made to:

Attention: CARD Program Officer
Address: 10-12 Brisbane Avenue
Barton, ACT
Postal Address: GPO Box 1877, Canberra, ACT 2601
Telephone: +61 2 6270 0200
Facsimile: +61 2 6273 1936
Email: HAI@card.com.vn

ANNEX 1 OF SCHEDULE 2

TABLE OF MILESTONES

The Milestone tables in Schedule 2 below should take preference over the milestone table in the project proposal if there is any discrepancy between them.

No.	Logframe Ref (Output)	Milestone Description	Deliverables: Means of Verification for Payment	Expected Delivery Month/Year	Payment
1					
2					
3					
4					
5					
6					
TOTAL					