

Sub Contract
Activity inserted

Parties

Abt Associates Pty Ltd
ACN 091 591294

AND

Insert Entity

Insert Registration # or equivalent

REFERENCE NO.

Note: This sample contract is provided as an attachment as part of the Request for Tender/ Request for Proposal/ Expression of Interest process.

The content of this subcontract is subject to change during the tender process.

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Parties**Abt Associates Pty Ltd ACN 091 591 294**

Address	Level 2, 5 Gardner Close, Milton Queensland 4064
Telephone	+61 7 3891 4100
Facsimile	+61 7 3114 4661
Contact	–
Short name	Abt Associates

[Contractor's correct name and entity number]

Address	–
Telephone	–
Facsimile	–
Contact	–
Short name	Contractor

Background

- 1 Abt Associates is a company incorporated in Australia that carries on the business of project management and consulting, specialising in the health sector, both in Australia and internationally.
- 2 Abt Associates has been contracted by the Client to deliver the Program, and now wishes to sub-contract the Contractor to provide Services in relation to the Program.
- 3 This document sets out the terms and conditions on which the Contractor will provide the Services.

Operative provisions**1 Defined terms and interpretation**

In this document, capitalised terms have a defined meaning, as set out in Schedule A.

The rules of interpretation for this document are set out in clause 20.15.

2 Conditions Precedent to Engagement

Not used

3 Parties' relationship

3.1 Relationship between parties

Except where this document expressly states otherwise, this document does not create any relationship between the parties under which a party:

- (a) is liable generally for the acts or omissions of another party; or
- (b) may share profits.

3.2 Authority of parties

Except where this document expressly states otherwise, a party:

- (a) may not hold itself out as a partner of, or principal or agent or trustee of another party; and
- (b) does not have authority to act for, or to create or assume any responsibility or obligation on behalf of another party.

4 Term

The Engagement commences on the Commencement Date and continues until the earlier of:

- (a) the Expiry Date; and
- (b) the date that this document is terminated in accordance with clause 16.

5 Provision of Services

5.1 Contractor to provide Services

The Contractor will provide the Services to Abt Associates for the Term in accordance with this document.

Notwithstanding any other provision of this document, the obligations of the Contractor under this document are personal to the Contractor, and the Contractor must not subcontract performance of the Services, or any part of them, to a third party except with the prior written consent of Abt Associates.

5.2 Service standards

The Contractor must perform the Services at a standard that may reasonably be expected of a competent, experienced and professional person in a like position to that of the Contractor; and in a manner that will, as far as practicable, facilitate co-operation and effective working relationships between personnel of the Client, Abt Associates, the Contractor and relevant stakeholders in the Program.

5.3 Compliance with directions, Laws and policies

During the Term, the Contractor must comply with:

- (a) except as expressly otherwise provided in this document, all of Abt Associates obligations under the Head Contract, to the extent that they relate to the provision of the Services;
- (b) all lawful directions and requests of Abt Associates in connection with the performance of the Services;
- (c) all policies and procedures of Abt Associates and the Client as notified to the Contractor from time to time;
- (d) Abt Associates' Child Safe Code of Conduct (Schedule F) and Child Protection Policy (Schedule G); and
- (e) all applicable Laws.

If requested by Abt Associates, the Contractor must certify in writing, and provide any relevant supporting evidence, that it has complied with its obligations under this clause.

Except as expressly provided in this document, the policies and procedures of Abt Associates and the Client do not form part of this document. To the extent that the Contractor is required to do, or to refrain from doing, something in order to comply with a policy or procedure of Abt Associates or the Client, it is a reasonable direction from Abt Associates with which the Contractor must comply.

The Contractor must fully and truthfully answer any questions asked by Abt Associates or its nominated Representatives, the Client or the Commonwealth Ombudsman regarding the Engagement and the Contractor's compliance with this document. This obligation continues following expiry of the Term.

5.4 **Performance Assessment**

The Contractor acknowledges and agrees that Abt Associates or the Client may issue in relation to this Contract a Subcontractor Performance Assessment for the Contractor and Adviser Performance Assessments for any Specified Personnel. The performance assessments will be in accordance with the Client's requirements for Subcontractor/Adviser Performance Assessments, and the Contractor agrees to sign and return the Subcontractor Performance Assessment within 15 days of receipt and will ensure that any Adviser Performance Assessments for Specified Personnel are signed and returned within 15 days of receipt.

5.5 **Non-Exclusivity and Volume**

The Contractor acknowledges and agrees that nothing in this subcontract shall operate to constitute the Contractor an exclusive provider of the Services to Abt Associates or the Client. Nor shall Abt Associates have an obligation to acquire any minimum volume of services from the Contractor.

6 Fees

6.1 **Fees**

In consideration of the Contractor providing the Services to Abt Associates, Abt Associates will pay the Contractor the Fees in accordance with Schedule C.

6.2 **Method and timing of payments**

Abt Associates will pay all amounts owing to the Contractor in the currency nominated in Schedule C, and if no currency is nominated in Schedule C, in Australian dollars, by deposit into a nominated bank account in the name of the Contractor.

Payments will be made at the times set out in Schedule C or as otherwise determined by Abt Associates acting reasonably.

Notwithstanding any other provision of this document, Abt Associates is not required to pay any amount that is disputed in good faith by Abt Associates until the dispute is resolved.

7 Subcontractors

7.1 **No subcontracting without Abt Associates approval**

The Contractor agrees that:

- (a) it will not subcontract the performance of any part of the Services without the prior approval in writing of Abt Associates; and
- (b) the subcontractors, if any, will perform work in relation to the Services in accordance with this contract and are approved by Abt Associates to do so.

Abt Associates may impose any terms and conditions it considers appropriate when giving its approval under letter (a) above.

Where an approved subcontractor is unable to perform the work, the Contractor agrees to notify Abt Associates immediately. In this case Abt Associates may request the Contractor to secure a replacement subcontractor acceptable to Abt Associates at no additional cost and at the earliest opportunity. If the Contractor does not comply with any such request Abt Associates may terminate this Contract in accordance with the provisions of clause 16.3.

7.2 Contractor's obligations in relation to subcontractors

In respect of all approved subcontractors the Contractor must ensure that:

- (a) the subcontract facilitates compliance by the Contractor with its obligations under this Contract;
- (b) the subcontract will not conflict with or detract from the rights and entitlements of Abt Associates under this Contract;
- (c) the other party to the subcontract, has the necessary relevant expertise and the appropriate types and amounts of insurance to perform work in relation to the Services;
- (d) the other party to the subcontract has consented to the public disclosure of its name in connection with the performance of the Services;
- (e) the subcontract contains all the relevant terms of this Contract including those relating to compliance with the Law, Fair Work Principles (if applicable), subcontracting, intellectual property, audit and access, privacy, confidentiality, warranties and indemnities, disclosure and termination and in particular that the Contractor has or will secure for itself a right to terminate the subcontract on terms no less favourable than those accorded to Abt Associates under clause 16, in the event of this Contract being terminated;
- (f) the other party to the subcontract acknowledges that it may be considered a 'Commonwealth service provider' for the purposes of the Ombudsman Act 1976 and subject to investigation by the Ombudsman under that Act and that Abt Associates will not be liable for the cost of any such investigation by the Ombudsman in connection with the subject matter of the subcontract or the subject matter of this Contract;
- (g) the other party to the subcontract is prohibited from further subcontracting the Services without the prior written approval of Abt Associates; and
- (h) if requested, the Contractor will promptly provide a copy of the relevant subcontract to Abt Associates.

7.3 Contractor remains liable

If the Contractor subcontracts its performance of any part of this Contract, the Contractor will remain liable for the acts, defaults and omissions of the subcontractor as if they were the Contractor's acts, defaults or omissions.

8 Specified Personnel and other Contractor Personnel

The Contractor agrees that the Services will be provided by the Specified Personnel listed in Schedule D.

Where Specified Personnel are unable to perform the Services, the Contractor must notify Abt Associates immediately.

Abt Associates may, at its absolute discretion and acting reasonably, request the Contractor to remove Contractor Personnel (including Specified Personnel) from work in relation to the Services. Abt Associates may request the Contractor to provide replacement personnel acceptable to Abt Associates at no additional cost and at the earliest opportunity. If the Contractor does not comply with any such request, Abt Associates may terminate this Contract in accordance with the provisions of clause 16.

When engaging Contractor Personnel for work in a Partner Country, the Contractor will use its best endeavours to ensure they 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 preventative medical assistance allowing them to undertake work in-country in a safe manner.

9 General obligations of Contractor

9.1 Adviser Remuneration Framework

The Contractor must comply with all of the requirements of the Adviser Remuneration Framework (ARF) as published on the website of the Australian Government, Department of Foreign Affairs and Trade. The ARF is updated from time to time. The version current at the time that this Contract is executed shall apply.

9.2 Remedy of breaches

Without limiting its other obligations under this document, the Contractor must remedy at its own cost any failure to comply with any of the Contractor's obligations under this document or in connection with the Engagement, promptly upon becoming aware of the failure.

9.3 No representation of affiliation with Client

The Contractor must not represent itself as being an employee, agent, or partner of, or associate to, the Client.

9.4 Authorisations and compliance with Laws

The Contractor must:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required to enable it to perform its obligations under this document and must provide Abt Associates on request with certified copies of any Authorisation;
- (b) comply in all material respects with all Laws to which it is subject; and
- (c) promptly notify Abt Associates of any material breach by the Contractor of any Law to which it is subject.

9.5 Commonwealth service provider obligations

The Contractor acknowledges that it may be a 'Commonwealth Service Provider' within the meaning of section 3BA of the *Ombudsman Act 1976* (Cth).

The Contractor must use its best endeavours, in undertaking the Services, not to engage in conduct that:

- (a) would, if the Contractor were an officer of the Client, amount to a breach of duty or to misconduct; or
- (b) should be brought to the attention of the principal officer of the Client.

The Contractor must fully cooperate with the Commonwealth Ombudsman (and any delegate) should an investigation be undertaken in relation to the conduct of Abt Associates or the Contractor, including providing all documentation required by the investigator, making any employees of the Contractor available to assist the investigator and allowing the investigator, at any reasonable time of day, to enter a place occupied by the Contractor and carry on the investigation in that place.

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

9.6 **Conflicts of interest**

The Contractor must not do, or omit to do, any thing, or allow any state of affairs to subsist, that gives rise (or that could reasonably be expected to give rise) to a conflict between:

- (a) the Contractor's duties and responsibilities to Abt Associates (and the Client) in connection with the Engagement; and
- (b) the Contractor's own interests or the Contractor's obligations to any other person,

(a **Conflict of Interest**), unless the Contractor has obtained the prior written consent of Abt Associates.

The Contractor must immediately inform Abt Associates in writing if any actual or potential Conflict of Interest arises and must comply with all reasonable directions of Abt Associates regarding handling of the matter.

Without limiting the forgoing, the Contractor must not, in performing the Services, enter into any transaction with any person except on arm's length terms or otherwise with the prior written approval of Abt Associates.

9.7 **Anti-corruption**

The Contractor undertakes that neither it nor any Contractor Personnel will make or cause to be made, receive or seek to receive, whether directly or indirectly, any offer, gift or payment, consideration or benefit of any kind, if doing so would or could be construed as an illegal or corrupt act under the laws of the Commonwealth, the Partner Country or any other place.

The Contractor undertakes to not bribe public officials of any jurisdiction and will at all times comply with all applicable anti-corruption laws of the Commonwealth, the Partner Country or any other place.

The Contractor must immediately inform Abt Associates in writing of any actual or suspected breach of this clause.

Abt Associates will be entitled to immediately terminate the Engagement if the Contractor breaches this clause.

9.8 **Fraud**

For the purposes of this clause, 'fraudulent activity' or 'fraud' means dishonestly obtaining a benefit by deception or other means, and includes suspected, alleged or attempted fraud.

This clause applies to any fraud or fraudulent activity which relates to or is connected with the Project or the Engagement.

The Contractor must not engage in any fraudulent activity and must immediately report in writing to Abt Associates any actual or suspected fraudulent activity by any person in connection with the Program or the Services of which the Contractor becomes aware. The Contractor must ensure that all of its Representatives involved in providing the Services are aware of its obligations under this clause.

Without limiting any other clause of this document, the Contractor must, at its cost, do all things required by Abt Associates to assist Abt Associates or the Client to:

- (a) investigate any actual or suspected fraudulent activity;
- (b) implement remedial or preventative measures;
- (c) recover any funds or assets of Abt Associates or the Client that have been misappropriated as a consequence of fraudulent activity;
- (d) report any suspected incidence of fraud to appropriate law enforcement authorities; and
- (e) have any person who is suspected of having engaged in fraudulent activity prosecuted or to take legal action against any such person.

The Contractors must provide such reports regarding its compliance with this clause as Abt Associates may from time to time require.

If either Abt Associates or the Client reasonably forms the view, following any investigation undertaken by either of them into any actual or suspected fraud, that the Contractor or any Representative of the Contractor has acted fraudulently, the Contractor must:

- (a) where Abt Associates or the Client determines that funds have been misappropriated or otherwise lost, repay Abt Associates or the Client (as Abt Associates directs) the total amount of any misappropriated or lost funds as determined by Abt Associates or the Client;
- (b) where Abt Associates or the Client determines that assets have been misappropriated or lost:
 - (i) return the assets to Abt Associates or the Client (as Abt Associates directs); or
 - (ii) where the original assets cannot be recovered or are damaged beyond reasonable use, pay to Abt Associates or the Client (as Abt Associates directs) the full value of any misappropriated or lost assets or replace the assets with assets of equal quality; and
- (c) pay to Abt Associates or the Client (as Abt Associates directs), on demand, any Loss suffered or incurred by Abt Associates and the Client as a consequence of the Contractor's breach of its obligations under this clause.

Abt Associates will be entitled to immediately terminate the Engagement if the Contractor breaches this clause.

The obligations of the Contractor under this clause survive termination of this document.

9.9 Obligations in relation to employees

The Contractor must:

- (a) ensure that its employees fully comply with any applicable obligations of the Contractor under this document; and

- (b) ensure that its employees fully comply with Abt Associates Child Safety Policy (as included in Schedule G) and Abt Associates Child Safe Code of Conduct (as included in Schedule F); and
- (c) comply with all relevant requirements of the Fair Work Principles, as set out in the Fair Work Principles User Guide (as published by the Commonwealth Department of Education, Employment and Workplace Relations), including by:
 - (i) complying with all applicable workplace relations, occupational health and safety and workers' compensation laws; and
 - (ii) participating in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities include, but are not limited to, responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant Government Agencies;
- (d) inform Abt Associates of any adverse court or tribunal decision regarding a breach by the Contractor of any applicable workplace relations, occupational health and safety and workers' compensation laws during the Term and any remedial action the Contractor has taken, or proposes to take, as a result of that decision; and
- (e) provide Abt Associates with any information Abt Associates reasonably requires to confirm that the Contractor is complying with the Fair Work Principles.

9.10 Work Health & Safety

- (a) The Contractor must perform its, and must ensure that all Contractor Personnel, perform their, obligations under this Contract in strict compliance with the Work Health and Safety Act 2011 (Cth) ('WHS Act') and are able to participate in:
 - (i) any necessary inspections of work in progress;
 - (ii) any necessary consultation with Abt Associates regarding implementation of the WHS Act provisions; and
 - (iii) tests and evaluations of the Goods and Services.
- (b) The Contractor agrees, when using Abt Associates or the Client's premises or facilities, to comply with all reasonable directions and procedures relating to work health and safety and security in effect at those premises or in regard to those facilities, as notified by Abt Associates or the Client or as might be inferred from the use to which the premises or facilities are being put.
- (c) Without limiting any other provision of this Contract, the Contractor agrees to, on request, give all reasonable assistance to Abt Associates, by way of provision of information and documents, to assist Abt Associates and its officers as defined in the WHS Act to comply with the duties imposed on them under the WHS Act.
- (d) The Contractor acknowledges that Abt Associates may direct it to take specified measures in connection with the Contractor's work under this Contract that Abt Associates considers reasonably necessary to deal with an event or circumstance that has or is likely to have, an adverse effect on the health or safety of persons. The Contractor must comply with the direction at its own cost.

9.11 Counter-terrorism

The Contractor must use its best endeavours to ensure that funds provided in relation to the Engagement are not used directly or indirectly to support or resource organisations or

individuals denoted by the Commonwealth of Australia or the Partner Country as being associated with terrorism. The Contractor must inform Abt Associates immediately should the Contractor reasonably suspect or discover that this has occurred or of any link whatsoever with any organisation or individual associated with terrorism.

The Contractor confirms and verifies that neither itself nor any of its associates, agents, personnel, subcontractors or sub-consultants involved in the delivery of Services is included on the Australian Government, Attorney General's Department (AGD) or DFAT terrorism lists. The Contractor must notify Abt Associates immediately if a listing on either of the mentioned terrorism lists has occurred, and or, if the Contractor has grounds to believe that a such listing may have occurred or could potentially occur. Abt Associates has the right to terminate this Contract immediately if the Contractor is in breach of this clause 9.11.

9.12 **World Bank Listings**

The Contractor must ensure that neither itself nor any of its associates, agents, personnel, sub-contractors or sub-consultants involved in the delivery of Services are

- (a) listed on the "World Bank Listing of Ineligible Firms & Individuals" accessible at <http://web.worldbank.org/> ("World Bank List") or other list similar to the World Bank List maintained by a donor of development funding other than the World Bank ("Relevant List") or are subject to any proceedings or an informal process which could lead to listing on a World Bank List or other Relevant List;
- (b) temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process;
- (c) temporarily suspended from tendering by a donor of development funding other than the World Bank; or
- (d) the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.

The Contractor must notify Abt Associates immediately if any of the events listed in letter (a) – (d) above have occurred or if the Contractor has reasonable grounds to believe that they may have occurred. Abt Associates has the right to terminate this Contract immediately if the Contractor is in breach of this clause 9.12.

9.13 **In-country activities**

In performing any part of this Contract outside Australia, the Contractor and its Contractor Personnel and Sub-Contractors (where applicable) must:

- (a) not engage in any political activity in the relevant country during the provision of the Services;
- (b) observe all laws and respect all religions and customs of that country; and
- (c) conduct themselves in a manner consistent with the Public Service Act 1999 (Cth) (including the Australian Public Service Values and Employment Principles and Code of Conduct).

9.14 **Criminal Records Checks for Personnel**

The Contractor must ensure that criminal record checks are obtained for all Contractor Personnel involved in the delivery of the Services who will work with children or have contact with children, and for all Expatriate staff engaged to work in the Partner Country. Criminal record checks must be conducted for each country in which the Contractor Personnel has worked for 12 months or longer over the last five years prior to engagement, and for the Contractor

Personnel's country/ies of citizenship. In limited circumstances where a country does not provide a criminal record check of adequate reliability, statutory declarations/local legal equivalent should be obtained instead.

10 Goods and services tax (GST)

10.1 Interpretation

In this clause 10:

- (a) **GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related Acts; and
- (b) **Recipient** means a person who receives a taxable supply made under or in connection with this document; and
- (c) **Supplier** means a person who makes a taxable supply under or in connection with this document.

Other words or expressions that are defined in the GST Legislation have the same meaning in this clause 10.

10.2 Consideration is GST exclusive

The consideration to be paid or provided for a supply made under or in connection with this document does not include GST.

10.3 Increase for GST

Despite any other provision in this document, if GST is imposed on a supply made under or in connection with this document then:

- (a) the party who makes the payment or provides the other consideration for the supply must pay the Supplier an additional amount equal to the amount of the payment or value of the consideration multiplied by the rate of GST; and
- (b) the additional amount must be paid with the payment or other consideration on which it is calculated.

10.4 Reduction for input tax credits

If a payment to a party is calculated on the basis of a loss, cost or expense incurred by that party, then the amount payable must be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

10.5 Tax invoices

For payments under or in connection with this document:

- (a) if the payment is to be made on demand, the demand must include a tax invoice; and
- (b) if the payment is to be made without demand, a tax invoice must be provided to the payer within a reasonable time after the payment is due.

11 Record keeping

11.1 Records

The Contractor must at all times maintain full, true, separate and up-to-date records regarding the Engagement that comply with all applicable requirements:

- (a) in this document;
- (b) specified by the Client;
- (c) specified by Abt Associates in writing; or
- (d) of the Law,

(Records).

11.2 Manner in which Records must be kept

The Records must:

- (a) include a record all receipts and expenses relating to the provision of the Services, including those involving foreign exchange transactions;
- (b) be kept in a manner that permits them to be conveniently and properly audited; and
- (c) enable the extraction of all information relevant to the Engagement,

and must otherwise be kept and maintained in the manner that Abt Associates may from time to time direct.

Subject to the Contractor's obligations in relation to Confidential Information below, the Contractor must maintain the Records, and keep them within its possession or control, during the Term and for a period of seven years following the expiry of the Term.

11.3 Access to Contractor's premises and records

During the Term and for a period of seven years following the expiry of the Term, the Contractor must, upon request by Abt Associates or the Client, provide Abt Associates or the Client (or their nominated Representatives) with access to any premises owned, occupied or used by the Contractor and to all Data, Records, accounts, financial information or other material or information relevant to, or connected with, the Services however and wherever stored that are in the possession or control of the Contractor, for the purposes of inspection and/or copying.

The Contractor must grant Abt Associates or the Client (or their nominated Representatives) the access required by this clause:

- (a) during the hours of 9am and 5pm on a Business Day;
- (b) subject to reasonable prior notice; and
- (c) at no charge.

In the event of an actual or anticipated breach of this document, the Contractor must grant access immediately upon being requested to do so.

Where documents or Records are stored on a medium other than in writing, the Contractor must make available on request such facilities as may be reasonably necessary to enable a legible reproduction to be created, for no charge.

12 Reporting

12.1 Requirements as to financial statements

Any financial statements provided to Abt Associates pursuant to this document must, except as otherwise provided or as Abt Associates otherwise permits, be prepared in accordance with the accounting standards applicable to the Contractor and if not inconsistent with those accounting

standards, generally accepted accounting principles and practices in Australia consistently applied.

Where there is any change in the basis upon which financial statements that the Contractor is required to prepare under this document are prepared, the Contractor must provide Abt Associates with sufficient information to assess the change.

12.2 Exception reports and other information

The Contractor must report to Abt Associates and the Client (and any other necessary party) immediately any actual, perceived or anticipated problems or risks of which the Contractor is aware that may have an adverse effect on the performance of the Services. These reports must be provided in accordance with applicable reporting protocols in the Program procedures manuals.

The Contractor must provide Abt Associates with such other reports relating to the Engagement as required by the Services or as Abt Associates reasonably requests from time to time.

12.3 Requirements of reports

Reports prepared by the Contractor (financial or otherwise) must:

- (a) be provided by the date requested, or if no date is specified, promptly;
- (b) must be complete and accurate and not contain any information that is misleading or deceptive, or likely to mislead or deceive,

and, to the extent not inconsistent with any of the forgoing:

- (c) be of a high professional standard, including in relation to report structure, content, drafting and formatting; and
- (d) contain such information, and be in the format and prepared to the standard, that Abt Associates directs from time to time.

If requested by Abt Associates, the Contractor must address any comments (from Abt Associates or the Client) on a report prepared by the Contractor.

The Contractor is responsible for the costs of preparing or updating any report required by this clause.

12.4 Audits

Where Abt Associates has reasonable concerns regarding the Contractor's financial management systems, or its compliance with its accounting or reporting obligations, Abt Associates may by written notice require the Contractor to:

- (a) confirm, by statutory declaration, that the Contractor has complied with its obligations under this document including that it has, and/or it has sighted, all documentation necessary to evidence payments to third parties or to support any claims for payment made in connection with the Engagement;
- (b) provide Abt Associates with any additional documentation necessary to demonstrate its compliance with its obligations under this document, including additional evidence of payments to third parties or to support a claim for payment made in connection with the Engagement; and
- (c) engage, at the Contractor's cost, an independent organisation acceptable to Abt Associates to undertake an audit of the Contractor's financial management systems

including invoicing procedures in accordance with such terms of reference determined by Abt Associates or otherwise agreed with Abt Associates.

The Contractor must comply with any notice received under this clause within 10 Business Days.

If Abt Associates requires an audit to be undertaken under this clause:

- (a) the audit must be undertaken according to the standards of the professional body relevant to the particular audit and the standards (if any) detailed in the terms of reference; and
- (b) Abt Associates may, in its discretion, withhold all payments owing to the Contractor pending positive certification by the auditor of the Contractor's financial management systems, invoicing procedures and practices.

13 Confidentiality

13.1 Obligations of confidentiality

- (a) In this clause 13:
 - (i) Recipient means a party to this document who receives Confidential Information of the other; and
 - (ii) Discloser means a party to this document who discloses its Confidential Information to the other.
- (b) Subject to clause 13.1(d), the Recipient must keep the Confidential Information confidential and must not:
 - (i) use, disclose or reproduce the Confidential Information for any purpose other than for the purposes of complying with its obligations under this document; or
 - (ii) without the prior written consent of the Discloser, disclose any of the Confidential Information to any person other than those Representatives of the Recipient who need to know the information for the purposes of this document.
- (c) The Recipient must take all action reasonably necessary to maintain the confidential nature of the Confidential Information. Without limiting the Recipient's obligations under this clause, it must:
 - (i) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure;
 - (ii) use the same degree of care as it uses to protect its own confidential information; and
 - (iii) promptly notify the Discloser of any potential, suspected or actual unauthorised use, copying or disclosure of the Confidential Information.
- (d) The Recipient may disclose Confidential Information if:
 - (i) the Discloser has consented in writing to the disclosure and the disclosure is made in accordance with the terms of that consent; or
 - (ii) the disclosure is required by the Client in accordance with the Head Contract, by Law, any legally binding order or direction of any Government Agency or to comply with the Client Confidentiality Undertaking.

- (e) If the Recipient considers that disclosure is required by clause 13.1(d)(ii), it must, before making the disclosure, to the extent it is reasonably practicable to do so:
 - (i) consult with the Discloser before making the disclosure; and
 - (ii) use its best endeavours to agree on the form and content of the disclosure with the Discloser.

13.2 Ownership of Confidential Information

The Recipient acknowledges that:

- (a) the Confidential Information constitutes valuable and proprietary information of the Discloser; and
- (b) this document does not grant to the Recipient any licence or other right in relation to the Confidential Information except as expressly provided in this document.

13.3 Return of Confidential Information

- (a) Subject to clause 13.3(c), within 21 days of a written request by the Discloser, the Recipient must, at its own expense:
 - (i) deliver to the Discloser or, if the Discloser requests, destroy (and certify in writing that destruction), any material that is in the possession, power or control of the Recipient that contains any Confidential Information; and
 - (ii) delete any Confidential Information that the Recipient has entered into a computer, database or other electronic means of data or information storage.
- (b) Despite anything else in this document, the Recipient may retain material containing Confidential Information to the extent that the Confidential Information necessarily forms part of:
 - (i) any board paper or accompanying memoranda submitted to, or any presentation given at, a meeting of the board of directors of the Recipient or a related entity;
 - (ii) the minutes of a meeting of the board of directors of the Recipient or a related entity; or
 - (iii) any other document that the Recipient or a Representative of the Recipient is required by Law to keep.
- (c) Subject to clause 13.3(d), to the extent that material containing Confidential Information is copied or stored as a result of automated computer back-up procedures conducted by the Recipient's computer systems, the Recipient may retain that Confidential Information in its archival or back-up computer storage for the period it normally archives backed-up computer records.
- (d) The Recipient may only retain Confidential Information pursuant to clause 13.3(c) provided that the Recipient does not access or use that Confidential Information except as expressly permitted under this document.
- (e) For the purposes of this clause 13.3, material containing Confidential Information includes:
 - (i) any material created or generated by the Recipient that contains Confidential Information;

- (ii) material in any form of storage from which the Confidential Information can be reproduced; and
- (iii) material in any form in which the Confidential Information is embodied or encoded.

13.4 Additional obligations of Contractor

The Contractor must:

- (a) execute, and must ensure that every staff member of the Contractor engaged in the provision of Services who will have access to Confidential Information executes in favour of the Client a deed of confidentiality in the form specified in Schedule E (Client Confidentiality Undertaking) and at all times complies with the Client Confidentiality Undertaking; and
- (b) immediately notify Abt Associates of any potential, actual or suspected breach any of the obligations stipulated under this clause 13 or of the Client Confidentiality Undertaking.

14 Privacy, Intellectual Property & Publicity

14.1 Privacy

The Contractor acknowledges it is or may be a “contracted service provider” within the meaning of the Privacy Act.

The Contractor agrees in respect of the provision of the Services pursuant to the Engagement to comply with the Australian Privacy Principles as they apply to the Client, including:

- (a) to use or disclose personal information obtained during the course of the Engagement only for the purposes of the Engagement;
- (b) to take necessary steps to ensure adequate security measures are in place to protect personal information from misuse, interference and loss and from unauthorised access, modification or disclosure;
- (c) to comply with the requirements of Australian Privacy Principle 8 regarding the disclosure of personal information to an overseas recipient;
- (d) not to do any act or engage in any practice that would – if done or engaged in by the Client – breach the Australian Privacy Principles;
- (e) to comply with any reasonable request or direction of the Client or the Privacy Commissioner in relation to access to, or handling of, personal information;
- (f) to immediately notify Abt Associates if it becomes aware of a breach or possible breach of any obligations referred to in this clause, or the initiation of any action by the Privacy Commissioner relevant to this Contract; and
- (g) to investigate any complaint arising out of a breach or possible breach of any obligations referred to in this clause, and notify Abt Associates of that investigation and outcome.

If applicable, the Contractor agrees to ensure that any sub-contract entered into for the purposes of fulfilling its obligations under this document 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 sub-contracts.

The Contractor agrees to indemnify DFAT and or Abt Associates in respect of any loss, liability or expense suffered or incurred by DFAT and or Abt Associates which arises directly or indirectly from a breach by the Contractor of any obligations referred to in this clause 14.1.

This clause will survive expiration or termination of the Engagement.

14.2 Intellectual Property rights

The Contractor must not, in performing the Services, breach the Intellectual Property rights of any person.

The title to all Intellectual Property rights in relation to Contract Material will vest, upon their creation, in the Client.

If required by Abt Associates or the Client, the Contractor must bring into existence, sign, execute or otherwise deal with any document that may be necessary to enable the vesting of such title or rights in the Client.

The preceding paragraph does not affect the ownership of Intellectual Property in any Prior Material incorporated into the Contract Material, but the Contractor grants to each of Abt Associates and the Client a permanent, irrevocable, royalty free worldwide, non-exclusive licence to use, reproduce, adapt and otherwise exploit such Prior Material that is incorporated into Contract Material. Each licence confers on each of Abt Associates and the Client the right to sub-licence any of their respective employees, agents or contractors to use, reproduce, adapt and otherwise exploit the Prior Material incorporated into Contract Material for the purposes of performing functions, responsibilities, activities or services for, or on behalf of, Abt Associates or the Client.

At the request of the Client the Contractor must provide any consent, authorisation or approval required by the moral rights provisions of the *Copyright Act 1968* (Cth) in order to enable the use of any Contract Material.

14.3 Contractor Information

Abt Associates may collect Contractor Information, including Personal Information, contained in this document and other Personal Information requested by, and provided by the Contractor or other persons to, Abt Associates in connection with the Engagement.

Abt Associates may collect and use Contractor Information for the purposes of the Engagement and the Program, to comply with Abt Associates contractual obligations to the Client, and for internal business purposes, including satisfying applicable legal requirements.

Abt Associates may disclose Contractor Information to the Client, its related bodies corporate and service providers, to any prospective financier of, investor in or purchaser of Abt Associates or any of its business or assets and to Government Agencies.

If Personal Information the Contractor provides to Abt Associates is incomplete or inaccurate, the Contractor may be in breach of its contractual obligations and Abt Associates may be entitled to terminate the Engagement or seek damages from the Contractor or may otherwise be unable to provide the Contractor with the benefits the Contractor is seeking in connection with the Engagement.

To the extent required under the Privacy Act, Abt Associates will give the Contractor access to Personal Information Abt Associates holds about the Contractor in accordance with Abt Associates privacy policy, as it exists from time to time.

The Contractor consents to:

- (a) Abt Associates providing Contractor Information to the Client at any time; and

- (b) the Client providing Contractor Information to other Government Agencies at any time.

Without limiting the foregoing, the Contractor acknowledges that Contractor Information includes records of performance reviews and assessments and any related documentation and consents to the Client including such information in an Contractor database and agrees that information of the Contractor's performance may be accessed by Abt Associates or the Client for future reference, including access to applications by the Contractor for future positions with the Client, as a contractor to the Client or as a subcontractor to a contractor to the Client.

This clause survives the Term.

14.4 **Publicity**

The Contractor must not make any press, media or other announcements or releases relating to this Contract, the Services and the Program without the prior written approval of Abt Associates as to the form, content and manner of the announcement or release, except to the extent that the announcement or release is required to be made by law.

15 Insurance required by Contractor

The Contractor must take out and maintain for the Term insurances:

- (a) in respect of all risks that are required to be insured against under any applicable law or regulation, whether in Australia, the Partner Country or elsewhere;
- (b) that are commercially prudent having regard to the activities to be undertaken by the Contractor as part of the Services;
- (c) public liability insurance to a value of AUD 10 million per event;
- (d) adequate medical and dental insurance for Contractor Personnel including Specified Personnel who are engaged to operate outside their country of permanent residence; and
- (e) adequate insurance for medical evacuation and evacuation resulting from an insured event for all Contractor Personnel engaged for the provision of Services;

(Required Insurances).

The Contractor must ensure that its Required Insurances provide cover up to a limit that Abt Associates reasonably requests or, if no request is made, up to a limit a prudent owner would buy.

The Contractor must, within seven Business Days of a request by Abt Associates, provide Abt Associates with certificates of currency for all Required Insurances.

The Contractor is responsible for the costs of taking out and maintaining Required Insurances and any deductible or excess payable if any claim is made.

The Contractor must notify Abt Associates in writing immediately upon becoming aware of:

- (f) any actual, threatened or likely claims under any Required Insurances; and
- (g) if an insurer proposes to repudiate, rescind or cancel any Required Insurances or to treat any such insurances as avoided in whole or in part or otherwise decline any valid claim.

The Contractor must ensure that:

- (h) it promptly pays all premiums and does all things necessary to keep each of its Required Insurances in full force and effect;
- (i) it does not do or allow anything to be done, or fail to do any thing, that may entitle any insurer to repudiate, rescind or cancel any Required Insurance or to treat any Required Insurances as avoided in whole or in part or otherwise decline any valid claim; and
- (j) if requested, it keeps Abt Associates advised of the progress of any claim.

If the Contractor fails to maintain any Required Insurances Abt Associates may, at its election, purchase the requisite insurance on the Contractor's behalf. The Contractor must, on demand, pay the reasonable costs and expenses of Abt Associates or its agents incurred in purchasing the relevant insurance and authorises Abt Associates to deduct any amounts owing under this clause from any amounts from time to time owing to the Contractor under this document.

16 Termination of Engagement

16.1 Termination

In addition to any other rights or remedies a party may have at law, or in equity, or under this document, Abt Associates may terminate the Engagement in accordance with:

- (a) clause 16.2 (termination on notice); and
- (b) clause 16.3 (termination for Contractor default).

16.2 Termination on notice

Abt Associates may terminate the Engagement immediately, by notice to the Contractor, if:

- (a) the Client terminates the Program, Abt Associates contract in relation to the Program or takes or indicates an intention to take, any action that in Abt Associates opinion will adversely affect its commercial interests in connection with the Program; or
- (b) the Client requests Abt Associates to terminate the Engagement;

or at any time for convenience by giving the Contractor one month's written notice.

The consequences of termination under this clause by Abt Associates are set out in clause 16.4.

16.3 Termination for default

Abt Associates may terminate the Engagement immediately by notice in writing to the Contractor where:

- (a) the Contractor commits a Serious Breach;
- (b) the Contractor breaches a material term of this document that is not capable of remedy;
- (c) the Contractor becomes Insolvent; or
- (d) without limiting the forgoing, the Contractor breaches any of clauses 7.1, 8, 9.7, 9.8, 9.11 or 9.12.

16.4 Consequences of termination

Except as otherwise expressly provided in this document, where the Engagement is terminated by either party Abt Associates is not required to pay Fees, or to reimburse any expenses incurred by the Contractor, other than in respect of Services performed by the Contractor to the reasonable satisfaction of Abt Associates up to the date the Engagement is terminated.

Termination of the Engagement will not in any way affect a party's rights that:

- (a) accrued prior to termination; or
- (b) relate or may arise at any future time from any breach of a party's obligations under this document arising prior to termination.

17 Warranties

17.1 Warranties by parties

Each party represents and warrants that each of the following statements is true and accurate as at the date of this document and on each anniversary of the date of this document:

- (a) it is validly existing under the laws of its place of incorporation;
- (b) it has the power to enter into and perform its obligations under this document and to carry out the transactions contemplated by this document;
- (c) it has taken all necessary action to authorise its entry into and performance of this document and to carry out the transactions contemplated by this document;
- (d) its obligations under this document are valid and binding and enforceable against it in accordance with their terms;
- (e) the entry into and performance by it of, and the transactions contemplated by, this document do not and will not conflict with any Law applicable to it, its constitutional documents, any agreement or instrument binding on it or any of its assets or the rights (including intellectual property rights) of any third party;
- (f) it is entitled to use and provide all information, data and materials provided by it in the performance of its obligations under this document without the consent of any third party, or where consent is required, it has obtained that consent; and
- (g) it has not entered into this document as trustee of any trust.

17.2 Additional Contractor warranties

The Contractor represents and warrants to Abt Associates that each of the following statements is true and accurate as at the date of this document and on each day of the Term:

- (a) it has the financial capacity, capability, resources and personnel to provide the Services in accordance with and on the basis set out in this document;
- (b) no Conflict of Interest exists or, to the best of the Contractor's knowledge and belief after making due enquiry, is likely to arise in the Contractor's performance of the Engagement;
- (c) all information, data and materials provided by or on behalf of it in connection with the performance of its obligations under this document was true and accurate and complete in all material respects and not misleading or deceptive or likely to mislead or deceive as at the date it is provided or as at the date (if any) at which it is stated to be prepared;
- (d) nothing has occurred and no information has been given or withheld, that results in any information, data or materials provided by it in the performance of its obligations under this document being untrue or misleading in any material respect; and
- (e) it has complied, in all material respects, with all applicable Laws in performing the Services.

18 Resolution of disputes

18.1 No proceedings

A party must not commence court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this document (**Dispute**) unless:

- (a) it has complied with this clause 18; or
- (b) the Client has commenced legal proceedings in relation to matters that are a wholly or substantially the subject of the Dispute.

18.2 Notice of Dispute

A party claiming that a Dispute has arisen must give each party to the Dispute (**Disputant**) a notice setting out details of the Dispute.

18.3 Best efforts to resolve Dispute

Each Disputant must conscientiously and in good faith attempt to resolve the Dispute within:

- (a) 10 Business Days of the date notice is given under clause 18.2 (or any longer period agreed by the Disputants); or
- (b) if matters the subject of the Dispute are also the subject of a dispute under the Head Contract and the dispute resolution process under the Head Contract has been enlivened, and Abt Associates gives the Contractor notice of that fact for the purposes of this clause

(Initial Period).

18.4 Referral to CEOs

If the Disputants cannot resolve the Dispute within the Initial Period, the Dispute must be referred to the chief executive officer (or his or her nominee) of each Disputant who must conscientiously and in good faith attempt to resolve the Dispute or agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation.

18.5 Termination of Dispute resolution process

If the Dispute has not been resolved within:

- (a) 20 Business Days of the date notice is given under clause 18.2 (or any longer period agreed by the Disputants); or
- (b) if matters the subject of the Dispute are also the subject of a dispute under the Head Contract and the dispute resolution process under the Head Contract has been enlivened, and Abt Associates gives the Contractor notice of that fact for the purposes of clause 18.3(b) or this clause, within the period required by clause 40.4 of Part B of the Head Contract,

a Disputant that has complied with this clause 18 may terminate the dispute resolution process by giving notice to the other party and may, if it wishes, commence legal proceedings.

18.6 Breach of this clause

If a Disputant breaches clauses 18.1 to 18.4 (inclusive), each other Disputant does not have to comply with those clauses.

19 Risk and liability

19.1 Consequential loss

Despite any other clause in this document, to the fullest extent permitted by law, Abt Associates is not liable to the Contractor for, nor will any indemnity under this document in favour of the Contractor extend to, any Consequential Loss suffered or claimed against the Contractor, including for:

- (a) any breach of this document;
- (b) any act or omission (including any negligent act or omission) of Abt Associates arising out of or in any way in connection with the performance or non-performance of the Engagement; or
- (c) the termination of the Engagement (whether as a result of breach, repudiation or otherwise).

This clause survives termination of the Engagement.

19.2 Limitation of liability

Despite any other clause in this document, to the fullest extent permitted by law, the liability of Abt Associates arising out of or in connection with the Engagement, including for any breach of any Engagement Condition, any act or omission (including any negligent act or omission) of Abt Associates arising out of or in any way in connection with the performance or non-performance of this document or the termination of the Engagement, to the extent not expressly excluded, is limited to the Fees.

19.3 General indemnity

The Contractor indemnifies Abt Associates and each of its Representatives from:

- (a) all Loss that Abt Associates or any of its Representatives suffers or incurs by reason of; and
- (b) all Claims made by any third party in relation to, any of the following:
 - (c) any failure by the Contractor to fulfil its obligations in connection with the Engagement, including under this document or any document required to be signed by the Contractor pursuant to this document;
 - (d) any investigation by the Client or Commonwealth Ombudsman in connection with the performance of the Services; and
 - (e) to the extent not covered by the forgoing, any wilful, negligent, reckless, fraudulent or unlawful act or omission of the Contractor.

The Contractor's liability to indemnify Abt Associates shall be reduced proportionally to the extent that any act or omission of Abt Associates contributed to the loss, damage, death or injury.

20 General matters

20.1 Notices

A party's address for service is the address shown in the description of the Parties unless the party has, by notice, notified the other party of a new address.

Notices must be given in writing in English and sent by facsimile, post or delivered to the address of the recipient.

A notice is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post and sent to an address in the same country, three Business Days after the date of posting;
- (c) if sent by prepaid post and sent to an address outside the country of posting, seven Business Days after the date of posting; and
- (d) if sent by facsimile, when the sender's facsimile machine prints confirmation that the number of pages in the notice have been successfully transmitted.

20.2 Entire agreement

This document constitute the entire agreement between the parties regarding the matters set out in them and supersede any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

20.3 Variation

Abt Associates may, by notice in writing, amend this document to the extent it reasonably considers necessary to comply with a direction given by the Client.

Subject to the forgoing, the Engagement Conditions cannot be varied except in writing signed by all parties.

20.4 Waiver

A right created by this document cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

20.5 Rights of Client

The Contractor acknowledges and agrees, for the purposes of section 55 of the *Property Law Act 1974* (Qld), that to the extent this document confer rights on the Client, the Client may by notice to Abt Associates or to the Contractor, accept the benefit conferred on the Client under this document, require the Contractor to comply with any relevant obligation.

20.6 Assignment

The Contractor cannot assign or transfer any of its rights under this document without the prior written consent of Abt Associates.

20.7 Novation and substitution

If requested by Abt Associates or the Client, the Contractor must promptly execute a deed of novation and substitution, in the form provided to the Contractor pursuant to which, among other

things, Abt Associates rights and obligations in connection with the Engagement are assumed by a third party. If the Client requires the Contractor to execute a deed of novation and substitution in favour of the Client, the Client may request the Contractor to execute a further deed of novation and substitution in favour of a third party.

20.8 **Acts of Representatives**

For the purposes of this document generally, an act or omission of an employee or other Representative of the Contractor is deemed to be an act or omission of the Contractor.

20.9 **Further assurances**

Each party agrees, at its own expense, on request of the other party, to do everything reasonably necessary to give effect to this document and the transactions contemplated by them, including the execution of documents.

20.10 **Applicable law**

The law in force in Queensland applies to this document. Each party irrevocably and unconditionally submits to the nonexclusive jurisdiction of the courts of Queensland and any courts that have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

20.11 **Provisions can be severed**

If a provision of this document is illegal or unenforceable then that provision must be severed from this document and the remaining provisions of this document continue in force. If only part of a provision is illegal or unenforceable then this clause applies to that part only.

20.12 **Counterparts**

This document may consist of a number of counterparts and the counterparts taken together constitute one and the same agreement. The parties consent to the exchange of counterparts by facsimile or by attachment to email.

20.13 **Contra proferentem**

No rule of construction will apply in the interpretation of this document to disadvantage a party on the basis that that party drafted this document or any provision of this document.

20.14 **Continuance of rights**

The effect of any clause of this document related to confidential information, intellectual property rights, Abt Associates right to recover money and those clauses containing warranties, indemnities, guarantees, securities or those clauses expressly or impliedly intended to continue beyond the Term will continue after the Term.

20.15 **Interpretation**

In this document:

- (a) headings are for reference only and do not affect the meaning of a clause;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;

- (d) “person” includes a firm, a body corporate, an unincorporated association or an authority;
- (e) an agreement, representation or warranty:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally;
 - (ii) on the part of two or more persons binds them jointly and severally;
- (f) a reference to a party is to a party to this document, and a reference to a party to a document includes the party’s executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to:
 - (i) a document includes any variation or replacement of it and all schedules, annexures and exhibits to the document
 - (ii) a law includes regulations and other instruments under it and amendments or replacements of any of them;
 - (iii) a thing includes the whole and each part of it;
 - (iv) a group of persons includes all of them collectively, any two or more of them collectively and each of them individually;
- (h) a reference to “\$” or “dollars” is a reference to Australian currency;
- (i) a reference to a specific time means the time in Brisbane, Queensland; and
- (j) “including” when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind.

Schedule A – Definitions

In this document, unless the context otherwise requires:

Adviser Remuneration Framework means the set of rates and allowances for individuals who provide advice on the strategic direction and implementation of the Australian Aid Program. For details visit the website of the Australian Government, Department of Foreign Affairs and Trade (www.dfat.gov.au).

Australian Privacy Principles has the meaning given in the Privacy Act 1988 (Cth).

Authorisation means an authorisation, consent, visa, permit, approval, resolution, licence, registration, filing or lodgement required by a Government Agency or any Law.

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in the Partner Country.

Client means the Australian Government, Department of Foreign Affairs and Trade (DFAT).

Client Confidentiality Undertaking means the confidentiality deed to be entered into by the Contractor's personnel in favour of the Client in the form of Schedule E.

Commonwealth means the Commonwealth of Australia.

Commonwealth Ombudsman means the Commonwealth Ombudsman as defined in the Ombudsman Act 1976 (Cth) and any delegate.

Commencement Date means *insert date* or such other date as the parties agree in writing.

Confidential Information means, in the case of a Discloser, information that is by its nature confidential, the Discloser has designated confidential or that the Recipient knows or ought to know is confidential and includes, in the case of Abt Associates:

- (a) information designated by the Client as confidential;
- (b) the Agreement Material or information comprised in or relating to the Agreement Material, the Data, Intellectual Property of Abt Associates or third parties (including the Client) where third party Intellectual Property is made available by Abt Associates or the Client, or to the internal management and structure of the Department of Foreign Affairs and Trade, the Client or the Commonwealth of Australia;
- (c) Personal Information (other than Personal Information of the Contractor); and
- (d) this document,

but does not include in the case of Abt Associates or the Contractor:

- (e) information that is or becomes public knowledge other than by breach of this document or other obligation of confidentiality;
- (f) has been independently developed or acquired by the Recipient prior to the Commencement Date; or
- (g) is in the Recipient's possession without restriction regarding disclosure prior to the Commencement Date.

Consequential Loss means any special, indirect or consequential losses; any economic loss in respect of any claim in tort; any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of goodwill, loss of opportunity, loss of reputation or wasted overheads

whatsoever and any loss arising out of any claim by a third party, but does not include a loss in respect of the cost of repairing, replacing or reinstating any real or personal property of any person that has been lost, damaged or destroyed or personal injury to or death of any person or in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims.

Contract means this document as amended from time to time and includes its Schedules and any attachments.

Contract Material means all material created or required to be developed or created as part of, or for the purposes of performing, the Services, including documents, equipment, information and data stored by any means, and any software and associated instrumental/operations manuals.

Contractor Information means any information relating to the Engagement and the Contractor. It may be Personal Information.

Contractor Personnel means:

- (a) officers, employees, agents or subcontractors of the Contractor;
- (b) officers, employees, agents or subcontractors of the Contractor's subcontractors; and
- (c) includes those individuals (if any) engaged by the Contractor or its subcontractors on a voluntary basis;

engaged in the performance of the Services;

Corporations Act means the *Corporations Act 2001* (Cth).

Data means any information provided to the Contractor from any source, or collected or created by the Contractor, in connection with the Engagement, whether in magnetic, electronic, hardcopy or any other form.

Engagement means the Contractor's engagement by Abt Associates to provide the Services in connection with the Program on the terms and conditions contained in this document.

Expiry Date means *insert date*.

Fees means the amounts payable to the Contractor in consideration for providing the Services, as calculated in accordance with Schedule C.

Government Agency means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Head Contract means the contract between Abt Associates and the Client in respect of the Program as amended from time to time.

Insolvent: a person is Insolvent if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined under the Corporations Act);
- (b) it has a controller (as defined under the Corporations Act) appointed or is in liquidation or provisional liquidation, under administration or wound up or has had a receiver or receiver and manager appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a

- reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any event or circumstance referred to in paragraph (a), (b) or (c) to this definition of Insolvent, above occurring;
 - (e) it is taken (under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
 - (f) it is the subject of an event described in section 459C(2)(b) of 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);
 - (g) it is otherwise unable to pay its debts as and when they fall due; or
 - (h) something having a substantially similar effect to any event or circumstance referred to in paragraphs (A) to (G) above happens in connection with that person under the law of any jurisdiction.

Intellectual Property means all copyright and all rights in relation to inventions (including patent rights), trade marks, designs and confidential information, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

Law includes any law or legal requirement, including at common law, in equity, under statute, regulation or by-law, any condition of any Authorisation and any decision, directive, guidance, guideline or requirements of a Government Agency.

Loss means any loss, damage, liability, cost or expense including legal expenses on a solicitor and own client basis, and includes Consequential Loss.

Partner Country means [insert Country].

Personal Information has the meaning given in the *Privacy Act 1998* (Cth).

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

Privacy Act means the Privacy Act 1988 (Cth).

Privacy Commissioner means the person so named in the Australian Information Commissioner Act 2010 (Cth).

Program means the *insert program*.

Record has the meaning given in clause 11.1.

Representative of a person means any related body corporate of the person (within the meaning of the Corporations Act and any director, employee, agent or contractor of the person or any related body corporate.

Research Activity means a research activity that is financed, wholly or in part, using funds of the Client that are distributed or made available in connection with the performance of the Services.

Serious Breach means:

- (a) a breach of term of this document that is capable of remedy, where the Contractor fails to remedy the breach, within five Business Days of receiving written notice to remedy from Abt Associates; or
- (b) directly or indirectly making, causing to be made or accepting any offers to provide gifts, payments, bribes of any other kind or any other benefits to any party that may be perceived of as being illegal or corrupt.

Services means the services specified in Schedule B as may be varied by the parties in writing.

Specified Personnel means the Contractor Personnel specified in Schedule D.

Term has the meaning given in clause 4.

Schedule B – Services

1. Background

Guidance Note: Short overview of the circumstances giving rise to the need for the services required.

2. Scope of Services

Guidance Note: This section will be developed from the Scope of Works attachment provided in the RFT document and the description of work activities you provide in your Tender Response.

3. Deliverables

Guidance Note: This table will be developed based on the deliverables identified in your Tender Response and the Scope of Works attachment provided in the RFT document.

No.	Deliverable	Indicative Date/s	Acceptance By
1			Abt Program Manager
2			Abt Program Manager

4. Reporting Requirements

Any reports the Contractor is requested to provide must:

- be accurate and not misleading in any respect;
- be prepared as directed by Abt Associates;

- be delivered at the time specified by Abt Associates
- be provided in the format and on the media approved or requested by Abt Associates or DFAT
- unless directed otherwise, not incorporate either DFAT's, Abt Associates or the Contractor's logo or branding

Guidance Note: Specific reports may be required, e.g. weekly, monthly status reports.

Type of Report	Timeframe	Acceptance By
		Abt Program Manager
		Abt Program Manager

6. Performance Assessment

Abt Associates will conduct regular performance assessments of the Contractor and its Specified Personnel in accordance with Abt Associates subcontracting policies and as required by DFAT. The Contractor agrees that the results of the performance assessments may be shared with DFAT in accordance with the requirements of the Head Contract.

Schedule D – Specified Personnel

The Contractor will provide the Services through the following Specified Personnel:

Name	Role

Guidance Note: It is important you submit in your Tender Response the names of all the personnel from your organisation that will work on this project, and what role they will play, e.g. Project lead, Consultant, etc.

Schedule E – Deed of Confidentiality

THIS DEED POLL is made on the _____ day of _____ [year] in favour of **COMMONWEALTH OF AUSTRALIA** represented by the Department of Foreign Affairs and Trade (“DFAT”).

BY Insert Name and Address (the “**Recipient**”).

RECITALS

1. DFAT and **Abt Associates** have entered into a Contract for the purposes of a project/program in [insert Country].
2. The Recipient has been engaged by Abt Associates to work on the project/program.
3. The Recipient will, in carrying out that work, be given access to Confidential Information.
4. DFAT requires the Recipient to enter into this Deed in relation to use of Confidential Information.

THE RECIPIENT DECLARES AS FOLLOWS:

1. INTERPRETATION

1.1 In this Deed, unless the contrary intention appears:

“**Confidential Information**” means information that:

- (a) is designated by DFAT as confidential; or
- (b) the Recipient knows or ought to know is confidential, but does not include information which:
- (c) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality; or

“**Personal Information**” has the same meaning as in the *Privacy Act 1988 (Cth)*.

2. CONFIDENTIAL INFORMATION

2.1 The Recipient acknowledges and agrees that:

- (a) the Confidential Information is confidential and that any Confidential Information disclosed to the Recipient is disclosed to the Recipient only pursuant to the terms of this undertaking;
- (b) it must not, other than with the prior written approval of the Commonwealth, use, disclose, divulge or deal with any Confidential Information, nor allow any act, matter or thing to be done or occur whereby any Confidential Information may be ascertained or used by, or disclosed or communicated to, any other person, except in accordance with the terms of this undertaking; and
- (c) improper use or disclosure of Confidential Information would damage the Commonwealth.

Schedule F – Abt Associates Child Safe Code of Conduct for Partners

Version 1.3_21/11/2018

Overview

This Child Safe Code of Conduct for Partners articulates the behavioural expectations in relation to working with children for the purposes of undertaking program delivery activities. It serves as a guide for all Partners of Abt Associates to make ethical decisions in their professional lives, and at times in their private lives. For the purposes of this Code of Conduct, a child is any person under the age of 18 years.

Any breach of this code will be taken seriously and may result in administrative actions or termination of the contractual agreement with Abt Associates.

All Abt Associates Partners are responsible for encouraging, advocating and promoting the dissemination of this Child Safe Code of Conduct for Partners. When carrying out duties for the delivery of activities, Partners of Abt Associates have a role in implementing, monitoring and enforcing the Child Safe Code of Conduct for Partners standards and to join Abt Associates in upholding them.

Commitment

In my capacity as the representative of an Organisation that is partnering with Abt Associates for the purpose of delivering an Activity, I acknowledge that I have read and understand Abt Associates' *Child Protection Policy for Partners*. I understand and agree that for the purpose of this Policy, the organisation that I represent, its employees, advisers, consultants, contractors, sub-contractors, sub-organisations, sub-partners, volunteers and the like involved in the implementation of the Activity are bound to comply with the *Child Protection Policy for Partners*, and therefore shall:

- Treat all children with respect regardless of their race; colour; gender; language; religion; political or other opinion; national, ethnic or social origin; property; disability; birth or other status.
- Not use language or behaviour towards children that is inappropriate, harassing, abusive, sexually provocative or suggestive (even as a joke), demeaning or culturally inappropriate.
- Irrespective of any local jurisdictional laws, not engage children¹ under the age of 18 in any form of sexual intercourse² or sexual activity³ including paying for sexual services or acts.
- Wherever possible ensure that another adult is present when working in the proximity of children.
- Not invite unaccompanied children into private residences, unless the child/children are at immediate risk of injury or are in physical danger.
- Not sleep close to unsupervised children unless absolutely necessary, in which case I must obtain my supervisor's permission, and ensure that another adult is present if possible (noting that this does not apply to an individual's own children).

¹ Where the child is 16 years or older and the other party is not more than 2 years older; and it can be established that the child consented to the relationship, an exception can be recorded promptly on personnel files.

² As defined under the Criminal Code Act 1995

³ As defined under the Criminal Code Act 1995

- Never use any computers, mobile/smart phones, video cameras, cameras or social media to exploit or harass children or access child exploitation material through any medium. See also “Use of Children’s Images for Work-Related Purposes” below.
- Not use physical punishment on children.
- Not hire children for domestic or other labour which is inappropriate given their age and developmental stage, which interferes with their time available for education and recreational activities, or which places them at significant risk of injury.
- Comply with all relevant Australian and local legislation, including labour laws in relation to child labour.
- Immediately report concerns or allegations of child exploitation, abuse or non-compliance with Abt Associates’ *Child Protection Policy for Partners* or this Code of Conduct in accordance with Abt Associates’ *Child Protection Policy for Partners*.
- Immediately disclose all charges, convictions and other outcomes of an offence which occurred before or occurs during the organisation’s association with Abt Associates that relate to child exploitation and abuse, including those under traditional law, by any of the organisation’s employees, partners, subcontractors, sub-partners, and staff.
- Be aware of behaviour and avoid actions or behaviours that could be perceived by others as child exploitation or abuse.

These behaviours are not intended to interfere with normal family interactions.

Use of Children’s Images for Work-Related Purposes

When photographing or filming a child or using children’s images for work-related purposes, all of my organisation’s employees, partners, subcontractors, sub-partners, and staff must:

- Take care to ensure local traditions or restrictions for reproducing personal images are adhered to before photographing or filming a child.
- Obtain informed consent from the child and parent or guardian of the child before photographing or filming a child. As part of this, it must be explained how the photograph or film will be used.
- Ensure photographs, films, videos and DVDs present children in a dignified and respectful manner and not in a vulnerable or submissive manner. Children should be adequately clothed and not in poses that could be seen as sexually suggestive.
- Ensure images are honest representations of the context and the facts.
- Ensure file labels, meta-data or text descriptions do not reveal identifying information about a child when sending images electronically or publishing images in any form.
- Treat with the utmost importance the confidentiality of the children in our programs, and never provide a child’s personal details to unauthorised person/s.

I understand that the onus is on me as an individual, as well as it is on every other individual, entity or organisation bound by this Code of Conduct, to use common sense and avoid actions or behaviours that could be construed as child exploitation and abuse (of any kind) when implementing Abt Associates program activities. As the representative of an Organisation that is partnering with Abt Associates, I also understand and acknowledge that it is my responsibility to undertake everything I reasonably can to ensure that the principles set out in this Code of Conduct and the underlying Abt Associates *Child Protection Policy for Partners* are implemented by all of the Partner Organisation’s

employees, advisers, consultants, contractors, sub-contractors, sub-organisations, partners, volunteers and the like involved in the implementation of the Activity.

Name:

As representative for:

Signature:

Date:



Schedule G – Abt Associates Child Protection Policy for Partners

Version 1.0_21/11/2018

Attached as a separate document.



Execution

Executed as an agreement

**Executed by Abt Associates Pty Ltd
ACN 091 591 294:**

Abt Associates Authorised Representative

Witness

Name of Authorised Representative (print)

Name of Witness (print)

Date:

**Executed by Enter Entity Name &
Registration #:**

Contractor Authorised Representative

Witness

Name of Authorised Representative (print)

Name of Witness (print)

Date:

