



PACIFIC ISLANDS FORUM SECRETARIAT

REQUEST FOR TENDER

PHASE ONE – THE PACIFIC PETROLEUM PROJECT

DATE OF ISSUE: 22 JUNE 2009

The Request for Tender (RFT)

The Pacific Islands Forum Secretariat (the ‘Secretariat’) is seeking proposals from organisations (‘Bidders’) invited to provide services for Phase One of the Pacific Petroleum Project (the “Project”). If your organisation chooses to lodge a proposal (the ‘Tender’) it must be submitted on the terms of this document and the provisions specified in all of its parts together referred to as the ‘Request for Tender’ (RFT). The required services are described in detail in Section Three - Scope of Services while the selection criteria used for assessment are provided in Section Two – clause 6.1.

DOCUMENT STRUCTURE:

Section One	...	Tender Particulars
Section Two	...	Terms and Conditions of Tender
Attachment A	...	Bidder’s Declaration
Section Three	...	Scope of Services
	...	Requirements for Financial Proposals
Section Four	...	Standard Contract Terms and Conditions
Section Five	...	Memorandum of Understanding on the Pacific Petroleum Project

SECTION ONE – TENDER PARTICULARS

1.0 SUBMISSION INFORMATION

1.1 The name of the Project for which Bidders are invited to tender for is:

Phase One – Implementation of the Pacific Petroleum Project

Hereafter referred to as the ‘Project.’

1.2 Closing time for the submission of tenders is Midnight (Suva time) 26 July 2009.

1.3 All tenders inclusive of technical and financial proposals must be submitted electronically via the following email address: PPP@forumsec.org.fj no later than the closing time specified in clause 1.2 above.

1.4 All tenders, inclusive of technical and financial proposals as well as any supporting annexes must be submitted in PDF format.

1.5 Technical and Financial proposals must be submitted in separate PDF files.

1.6 Tenders submitted will remain valid for a period of 180 calendar days.

1.7 The designated contact person for this tender process is:

Edward VRKIC
Executive Officer - Pacific Plane Office
Pacific Islands Forum Secretariat
Suva, Fiji

1.8 Further to the provisions specified in Section Two - clauses 4 and 5, Technical proposals should not exceed 10 pages in length.

1.9 Further to the provisions specified in Section Two - clause 5, Financial proposals should not exceed two pages in length.

1.10 Further to the provisions specified in Sections One and Two of this RFT – required annexes to technical proposals are:

(a) Annex A – Bidder’s Declaration

Bidders must complete and submit with their tenders the declaration provided at Attachment A to Section Two of this RFT. Prior to completing this declaration, Bidders should carefully read the provisions specified in Section Two – Clause 4.1 and 4.2

(b) Annex B – Curriculum Vitae of Specified Personnel (Team Leader)

Curriculum Vitae provided to support the nomination of the Team Leader by the Bidder. The CV should not exceed four pages in length. Bidders must

ensure that CVs submitted as part of this proposal contain the certification outlined in Section 2 – clause 13.2

(c) Annex C: Project Experience Sheets

Bidders are required to provide details of past relevant organisational experience. Bidders may nominate up to five such examples with no more than one page used per example. This information should be provided in the format presented below:

Activity Name:	
Activity Value:	
Activity Location(s):	
Activity Duration	
Client/Donor:	
Year Completed:	
Brief description of the activity and the Organisation’s role:	
Brief description of activity outcomes:	
Statement of the similarities between this activity and the requirements of the activity currently being tendered for and how this activity supports your statements addressing the Selection Criteria:	

SECTION TWO – TERMS AND CONDITIONS OF TENDER

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ATTACHMENT A

BIDDER'S DECLARATION

1. ELIGIBILITY TO TENDER

1.1 This RFT is openly issued.

2. INTENTION TO TENDER

2.1 Bidders choosing to tender for the Project are required to register their intention to submit tenders no later than five business days prior to the closing time prescribed in Section One – clause 1.2

2.2 Such notification must be provided in writing via email to the email address prescribed in Section One – clause 1.3

2.3 Where such notification cannot be provided in accordance with clause 2.1 above, the Bidder must endeavour to notify the Secretariat at their earliest possible convenience.

2.4 Where such notification is not provided and a tender is still submitted, the Secretariat reserves the right to reject the tender in question.

3. DOCUMENTS THAT MUST BE LODGED

3.1 To be duly considered, Bidders must lodge the following documents:

- (a) a technical proposal that sufficiently meets the requirements of this RFT inclusive of all necessary annexes and/or attachments; and
- (b) a financial proposal that sufficiently meets the requirements of this RFT.

3.2 All documentation must be submitted in English.

3.3 As a condition of tender, Bidders accept that their failure to provide all information required, in the format specified in this RFT, will result in their Tender being considered as a non-conforming Tender and liable to rejection.

3.4 Tenders submitted by facsimile or in hard copy will not be considered.

3.5 It is a condition of this RFT that each Tender must remain valid and available for acceptance by the Secretariat for the Tender Validity Period specified in Section One – clause 1.6 of this RFT.

3.6 The Secretariat may extend the Closing Time at its sole and absolute discretion. It will issue an Addendum notifying of any decision to extend.

4. BIDDER'S DECLARATION

- 4.1 Bidders must complete and submit the declaration presented at Attachment A to this RFT. Failure to adequately complete, sign and submit the declaration may render the tender non-conforming.
- 4.2 A person or persons having authority to lodge the Tender and enter into a contract on behalf of the Bidder must sign the Bidder's Declaration provided as Attachment A to Section Two of this RFT.

5. SCORES AND WEIGHTINGS

Technical Proposals

- 5.1 The score awarded for technical proposals by the technical assessment panel will account for 80% of a bidder's overall score.
- 5.2 Technical proposals must:
- a. indicate the Bidder's nominated contact person and contact details on the cover page;
 - b. be in a type font of no less than 12 point on A4 paper;
 - c. have left and right page margins of no less than 2.5 cm, and top and bottom page margins of no less than 3 cm, excluding headers, footers and page numbers;
 - d. not have the Secretariat logo or any other representation or mark which may indicate that the Bidder is in any way related to or connected with the Secretariat; and
 - e. be no longer than the page limit detailed in Section One – clause 1.8 (inclusive of tables, diagrams or graphs), but exclusive of required annexes and/or attachments.
- 5.3 Technical scores will be determined using the following formula:
- $$TS = \frac{\text{Bidder's Weighted Technical Score (out of 100)}}{\text{Highest Weighted Technical Score (out of 100)}} \times 80\%$$
- 5.4 Only technical proposals deemed technically suitable by the technical assessment panel will be awarded a technical score.
- 5.5 Bidders must ensure technical proposals substantively and individually address all selection criteria presented in clause 6.1 below. Where bidders fail to do this, their tender may be deemed technically non-conforming and subject to rejection. A

decision to reject a tender will be made by the Secretariat at its sole discretion. Such a decision will be communicated to the Bidder in writing.

Financial Proposals

- 5.6 The score awarded for financial proposals will account for 20% of the bidder's overall score.
- 5.7 Financial proposals will only be considered where a bidder's technical proposal is assessed technically suitable by the Technical Assessment Panel (see Section Two – clause 12) to undertake the services required and outlined in Section Three of this RFT.
- 5.8 Financial proposals will be assessed on a like-for-like basis and must contain the information required in the format detailed in Section Three – Basis of Payment of this RFT.
- 5.9 All prices quoted should be fully costed and based on a fixed price including as a minimum, all and any fees and associated expenses to deliver necessary services, operating costs, necessary insurances, and foreign exchange rate variations unless otherwise specified.
- 5.10 Bidders should note that they should effect and maintain, for the duration of this Contract, all insurance appropriate to the scope of the Consultancy Services and, if requested, shall provide the Secretariat with evidence of any policy.
- 5.11 Bidders must complete and submit all information required in Section Three – Requirements for Financial Proposals of this RFT.
- 5.12 All prices quoted in the Financial proposal must be in Fijian dollars.
- 5.13 Financial scores will be determined using the following formula:
- $$PS = \frac{\text{Bid Price of Lowest Priced Technically Suitable Bid}}{\text{Tenderer's Bid Price}} \times 20\%$$
- 5.14 The Secretariat intends that the Consultant engaged to deliver services required under this RFT is paid on an outputs basis, in arrears, and only on the submission of milestones deemed technically suitable by the Secretariat.
- 5.15 Acceptance of these milestones by the Secretariat will only be considered valid where such acceptance has been provided to the Consultant in writing.

6. SELECTION CRITERIA

- 6.1 The selection criteria and associated weightings for this tender are as follows:

(A) Management and Administrative Arrangements 10%

Bidders to clearly demonstrate their ability to provide appropriate administrative and financial management of the project to successfully delivery the services specified in Section Three of the RFT.

(B) Technical Sector Specific Knowledge 30%

Bidders to clearly demonstrate their knowledge of the Petroleum sector in the Pacific including the challenges faced by Governments in the region in procuring, managing and distributing petroleum products.

(C) Methodology and Approach 35%

Bidders to clearly present the proposed methodology and approach they will use to successfully deliver the services and associated milestones specified in Section Three of this RFT. As part of this response, Bidders should also provide details on the relevant experience and qualifications of additional proposed team members or sub-contracted technical resources that will be used to successfully deliver services. Where a team is nominated, Bidders should note that the team's composition remains at the discretion of the Bidder, of interest however will be balance, integration, structure and inputs provided by such additional team members, resources or sub-contractors combining all necessary and appropriate expertise within a clear management framework.

(D) Specified Personnel – Team Leader 15%

Bidders to nominate a suitability qualified and experienced Team Leader. Bidders will be required to demonstrate why the nominated Team Leader is considered suitable to undertake this position. The Team Leader will be considered key personnel and required to ensure all administrative and financial management responsibilities are met to successfully deliver services and associated milestones specified in Section Three of this RFT. Bidders should note that they are also required to provide the curriculum vitae of the nominated Team Leader as Annex B to their technical proposal.

(E) Relevant Organisational Experience 10%

Bidders to demonstrate relevant organisational experience in establishing or advising in the establishment of procurement systems and processes as they relate to key commodities and in particular petroleum services and activities. Supporting Project Experience Sheets should be provided in Annex C to the Bidder's technical proposal. No more than five projects (one page per project) should be nominated and they should be presented in the format prescribed in Section One – clause 1.10 (c) of this RFT.

7. BIDDER ENQUIRES

7.1 Any enquiries that Bidders may have must be directed to the nominated contact person specified in Section One – clause 1.7 of this RFT.

7.2 All such enquires must be submitted in writing via email to the email address nominated in Section One – clause 1.3

7.3 If a Bidder:

- (a) finds any discrepancy, error or omission in any part of this RFT; or
- (b) wishes to make an enquiry or seek clarification on any part of this RFT,

the Bidder must do so in writing with such requests sent to the Contact Person nominated in Section One – clause 1.7 and no later than 7 business days prior to the closing time for tender submission nominated Section One – Clause 1.2

7.4 The Secretariat will respond to any such enquiry in reasonable time and no later than 5 business days prior to the closing time for tender submission nominated in Section One – clause 1.2

7.5 The Secretariat reserves the right to issue or publish any enquiries or queries submitted by a Bidder and its associated response provided by the Secretariat to all Bidders.

8. LATE TENDERS

8.1 A tender submitted after the closing time specified in Section One – Clause 1.2 will be deemed a late tender.

8.2 If a Tender is deemed late, the Bidder may be required to provide an explanation in an appropriate form to the Contact Person specified in Section One – clause 1.7 of this RFT. This information may be considered by the technical assessment panel.

8.3 The Secretariat will reserve the right to determine whether such tenders will be considered for assessment at its sole discretion.

8.4 Bidders whose tenders have been deemed late and where such a tender is rejected by the Secretariat will be notified in writing by the Contact Person listed in Section One – Clause 1.7

9. NON-CONFORMING TENDERS

9.1 Tenders will be regarded as non-conforming by the Secretariat if they fail to conform with one or more of the requirements of the RFT.

9.2 The Secretariat reserves the right to seek clarification of non-conforming Tenders from Bidders in accordance with Clause 8 of this Section.

9.3 The Secretariat may, at its absolute discretion, assess or reject any non-conforming Tenders.

9.4 The Secretariat will not enter into any correspondence about a decision to assess or reject a non-conforming Tender.

10. CLARIFICATION OF TENDERS

- 10.1 The Secretariat reserves the right to seek clarification of any Tender. If requested by the Secretariat, Bidders must:
- (a) respond to any request for clarification within the time period specified by the Secretariat;
 - (b) ensure that additional information provided answers the Secretariat's queries and is fully consistent with the Tender submitted by the Bidder in question; and
 - (c) not seek to change any aspect of their Tender by providing additional information to the Secretariat.
- 10.2 Bidder's clarifications are provided under the terms of the RFT.
- 10.3 Failure to supply clarification to the satisfaction of the Secretariat may render the Tender liable to rejection.

11. AMENDMENT OF THE RFT

- 11.1 The Secretariat may amend the RFT at any time by issuing an Addendum. All conditions of this RFT will apply to any such Addenda issued.
- 11.2 Any addenda to the RFT will be posted on the Forum Secretariat's website.
- 11.3 Bidders will be solely responsible for accessing and familiarising themselves with the details presented in any addenda issued.

12. ASSESSMENT OF TECHNICAL PROPOSALS

- 12.1 Tenders will be assessed with a view to achieving a value-for-money outcome.
- 12.2 Bidders should note that value for money determinations are made on a whole-of-life basis and that the Secretariat is not bound or required to accept the lowest priced tender or any other tender.
- 12.3 Technical proposals will be assessed using a Technical Assessment Panel (a 'TAP'). The TAP will be convened by the Secretariat. Membership of the TAP will be determined by the Secretariat at its sole discretion.
- 12.4 For the purposes of this RFT, the same TAP will be used to assess all tenders submitted.
- 12.5 To support assessment of tenders, Bidders or their specified personnel may be interviewed by the TAP as part of the assessment of tenders. In such instances, Bidders will be given advance notice in writing. Where face-to-face interviews

are not possible, telephone interviews may be considered. The information offered will form part of the information assessed by the TAP.

- 12.6 TAP members are required to treat their participation in the assessment process in a commercial-in-confidence manner. TAP members are not permitted to discuss any matters relating to the assessment of tenders with any party. Bidders are strictly prohibited for making contact with TAP members during the assessment process outside of any request made pursuant to clause 12.5 above. Where such contact is made, it will be deemed a breach of confidentiality and may result in the Secretariat rejecting the Bidder's tender.
- 12.7 The Secretariat reserves the right to take into account in the assessment of tenders the past performance of the Bidder or any specified personnel contained in the tender.
- 12.8 In making its assessment, the TAP or the Secretariat may have regard to other factors relevant to the suitability, capacity, claims or qualifications of a Bidder including but not limited to:
 - (a) the capacity of an organisation to deliver the services being tendered for; or
 - (b) past or current performance information obtained from any source which is relevant to the assessment of tenders in response to this RFT. Such information may be the result of inquiries made by the Secretariat and draw on independent referee checks.
- 12.9 Where such enquiries have produced unfavourable information, Bidders will be offered an opportunity to respond. This response may be considered by the TAP as part of their deliberations.
- 12.10 Information gathered pursuant to clauses 12.5, 12.6, 12.7 and 12.8 listed above have not been allocated any specific weightings. TAP members may however adjust their technical scores after considering such information.

13. CURRICULUM VITAE OF SPECIFIED PERSONNEL

- 13.1 The curriculum vitae for specified personnel must include the following information:
 - (a) name and contact details (this can be an email address or phone number);
 - (b) nationality and if relevant permanent resident status;
 - (c) professional qualifications, including institution and date of award; and
 - (d) details of recent relevant professional experience, including the duration and extent of inputs and any key outputs delivered.

- 13.2 CVs must be no longer than the page limit detailed in Section One – clause 1.10 (b), must be signed and dated by the proposed team member, and must include the following certification:

“I, *[insert name]*, declare that:

the information provided in this CV is accurate and hereby authorise the Secretariat to make whatsoever inquiries it may consider reasonable and necessary to undertake in the course of the Tender assessment in relation to the information I have provided in this CV or any other matter which may relate to my suitability for the position for which I have been nominated.

I am available to participate in the Project in the role in which I have been nominated in the Tender for the period or periods indicated in the Tender.

I have not been convicted of an offence of, or relating to, bribery of a public official, nor am I subject to any proceedings which could lead to such a conviction.

14. REFEREES FOR SPECIFIED PERSONNEL AND THE ORGANISATION

- 14.1 Bidders must ensure that nominated referees for specified personnel and their own organisations do not have an actual or potential conflict of interest when acting as a referee. In particular, Bidders must ensure that Specified Personnel, or other team members nominated to provide services as part of the tender, do not use referees who form part of the nominated tender team or are employees of the Bidder’s organisation.
- 14.2 Bidders must further ensure that nominated referees for specified personnel and/or their organisation:
- (a) are available to be contacted after the Closing Time specified in Section One – clause 1.2; and
 - (b) are able to provide verbal and/or written comments in English.
- 14.3 The Secretariat reserves the right to investigate with nominated referees and/or other persons as the Secretariat chooses on the accuracy of the information presented and quality of work performed by specified personnel, other and additional team members and/or the Bidder’s organisation.

15. JOINT VENTURES AND CONSORTIUMS

- 15.1 The Secretariat intends to contract with a single legal entity.
- 15.2 In the case of a joint venture or consortium that does not constitute a single legal entity, such a joint venture or consortium is required to nominate a lead consultant. The Secretariat will only enter in a contract with the lead consultant. The lead consultant will be considered responsible for ensuring the quality of performance of any venture or consortium party.

- 15.3 Tenders by a joint venture or consortium must be submitted on the basis that details on the activities to be performed and responsibility assumed by each party of the joint venture or consortium are clearly specified in the Bidder's technical proposal.
- 15.4 The Secretariat may require parent company guarantees from parent companies of parties to a joint venture or consortium.

16. SUB-CONTRACTORS AND ASSOCIATES

- 16.1 Tenders involving two or more parties who have not formed a single legal entity will only be accepted if the Tender is submitted on the basis that one party, the Bidder, is intended to act as the lead consultant and any other party becomes a sub-contractor known as an 'Associate.'
- 16.2 Tenders involving Associates will be assessed on the basis of that arrangement. Such Tenders must include:
- (a) details on the activities to be performed and responsibilities assumed by each party. Where Associates are involved such responsibilities must be described in the body of the text of the technical proposal; and
 - (b) assurance to the Secretariat from an authorised representative of the Associate of their corporate commitment to and involvement in the Project in the form of a single page Letter of Association in a separate annex to the technical proposal.

Details of Associate responsibilities, if any, will be included in the Contract.

- 16.3 In addition to Associates, Bidders are required to include detailed information on other work to be sub-contracted (excluding Specified Personnel) and proposed sub-contractors, where these are reasonably known at the time of the Tender and have expressed their willingness to be involved in the Project. These details must also be included in a separate annex to technical proposal.
- 16.4 Letters in which organisation's express their willingness to be involved with the Bidder in the Project as a sub-contractor must be limited to a single page per organisation and include details on the broad skills or areas in which the organisation may add value.

17. OWNERSHIP OF THE RFT AND TENDERS

- 17.1 All Tenders become the property of the Secretariat on lodgement.
- 17.2 Such intellectual property rights as may exist in the information contained in each Tender will remain the property of the Bidder.
- 17.3 The Bidder authorises the Secretariat to copy, adapt, amend, disclose, including to Secretariat contractors and advisers, or do anything else necessary, at the Secretariat's sole discretion, to all materials including that which contains intellectual property rights of the Bidder or other parties contained in the Tender.
- 17.4 Copyright in the RFT is reserved by the Secretariat.

18. CONFLICT OF INTEREST

18.1 Bidders must:

- (a) identify any actual or potential conflicts of interest; and
- (b) the procedures they intend to implement for dealing with any actual or potential conflicts of interest,

which may arise in connection with the submission of their Tender or the conduct of the Services described in this RFT. Tenders should include details of any known circumstances that may give rise to either an actual or potential conflict of interest in relation to the tender or the Project.

18.2 If any actual or potential conflicts of interest arise for a Bidder before entering into a Contract for the Services, the Secretariat may:

- (a) enter into discussions to seek to resolve such conflicts of interest; or
- (b) disregard the Tender submitted by such a Bidder; or
- (c) take any other action that the Secretariat considers appropriate.

19. CONDUCT

19.1 Each Bidder warrants that it has not engaged in collusive or anti-competitive practices with any other Bidder in the preparation of its Tender.

19.2 If a Bidder is found to have made false or misleading claims or statements, or receives improper assistance or improperly obtains confidential information, the Secretariat reserves the right to reject at any time, any Tender lodged by or on behalf of that Bidder.

20. INELIGIBILITY TO TENDER

20.1 Bidders warrant that they, their specified personnel, their sub-contractors or any associate:

- (a) are financially solvent and able to conduct business operations in a professional and successful manner;
- (b) are not involved in any court proceedings which may effect their ability to conduct business or deliver the services outlined in this RFT;
- (c) do not appear on the World Bank's list of 'Listing of Ineligible Firms' or 'Listings of Firms Letters of Reprimand' posted at www.worldbank.org (the "World Bank List"); or
- (d) have not been barred from tendering or conducting business in any Forum Member Country.

21. SECRETARIAT RIGHTS

21.1 The Secretariat reserves the right to:

- (a) seek Tenders from any organisation;
- (b) accept or reject any Tender;
- (c) terminate, extend or vary its procurement process for the Service required by this RFT;
- (d) request clarification in relation to a Tender;
- (e) seek information or negotiate with any organisation that has not been invited to submit a Tender;
- (f) terminate negotiations with the preferred Bidder and commence negotiations with any other Bidder;
- (g) evaluate Tenders as the Secretariat sees appropriate; and
- (h) negotiate with any one or more Bidders.

22. BIDDER'S ACKNOWLEDGEMENT

22.1 A Tender is submitted on the following basis:

- (a) no legal obligation or agreement whatsoever is intended to be or is created between the Secretariat and any Bidder by virtue of the tender process (including but not limited to statements contained in this RFT) unless and until contract negotiations are completed and a formal written agreement acceptable to the Secretariat is entered into and executed by authorised officers of the Secretariat and the successful Bidder;
- (b) the Bidder acknowledges and agrees that the Secretariat, its employees, agents and advisers are not, and will not be responsible, or liable for the accuracy or completeness of any information contained in this RFT; and
- (c) the Bidder is responsible for all costs of and incidental to the preparation and delivery of the Tender, including obtaining this RFT, or any subsequent stage of the procurement process, including answering any queries and providing any further information sought by the Secretariat.

23. ALTERNATIVE TENDERS

23.1 The Secretariat reserves the right to accept and consider alternative Tenders providing they:

- (a) are submitted with a conforming Tender;

- (b) clearly identify the differences and improvements offered in the alternative Tender;
 - (c) are fully costed; and
 - (d) are clearly marked with the name of the Project and the words “Alternative Tender”.
- 23.2 Alternative Tenders will be considered only after completion of the technical assessment of conforming Tenders.
- 23.3 Only the alternative Tender of the preferred Bidder (following TAP assessment of conforming Tenders) will be assessed.
- 23.4 Alternative Tenders will be technically assessed against the selection criteria contained in this RFT.

24. DEBRIEFING OF BIDDERS

- 24.1 If requested, the Secretariat will provide Bidders with a written debriefing on the results of the assessment of their Tender, including reasons why the tender was not successful.
- 24.2 The Secretariat will not enter into discussion or communications on the content of the tender debrief once it has been completed.

25. ADDITIONAL REQUIREMENTS

- 25.1 Bidders should be aware that current employees of the Secretariat cannot be included in Tenders for Secretariat projects. Former Secretariat employees may be included in Tenders if doing so does not represent a breach of confidentiality or a conflict of interest.
- 25.2 Bidders must keep any discussions or contact with the Secretariat in connection with the Tender, the RFT and any contract negotiations confidential. Any unauthorised approach by a Bidder to a Secretariat officer or discussion of matters pertaining to the procurement process will be considered a breach of confidentiality and may result in the rejection of the tender.

26. CONTRACT NEGOTIATIONS

- 26.1 It is the Secretariat’s intention to contract on the basis of the Contract Conditions contained in Section Four of this RFT. Following the selection of a preferred Bidder the Secretariat may enter into negotiations with the preferred Bidder in respect of the Scope of Services and the Basis of Payments of the contract. Such negotiations will be strictly limited to matters of detail rather than substance.
- 26.2 If the Scope of Services is reduced as a result of constraints imposed on the Secretariat before or after the Closing Time specified in Section One – clause 1.2, the Secretariat and the preferred Bidder must negotiate, in good faith, a proportionate reduction, if necessary, to the fixed price quote.

- 26.3 Enhancements to the Scope of Services included in the Tender in accordance with the selection criteria should be costed into the fixed price quote for the purposes of the like-for-like price assessment. Where the Secretariat has instructed that the like-for-like price assessment is to be based on indicative values, the Bidder must clearly specify all cost implications of enhancements proposed in the Bidder's technical proposal.

27. CONTRACT PREPARATION

- 27.1 The preferred Bidder may be required to convert the Technical Proposal submitted in its Tender into appropriate schedules for the Contract based on the Contract Conditions. The Bidder must take into account the outcome of any negotiations and give effect to amendments agreed in writing with the Secretariat.

28. APPLICABLE LAW

- 28.1 The laws of Fiji apply to the RFT and the RFT process.

ATTACHMENT A TO SECTION TWO – BIDDER’S DECLARATION

I, *[name, address and position of the person making the declaration]*, do solemnly and sincerely declare that:

1. DEFINITIONS

1.1 In this declaration:

‘**Secretariat**’ means the Pacific Islands Forum Secretariat;

‘**Services**’ means Services to be performed by the Consultant for Phase One – Pacific Petroleum Project.

‘**Bidder**’ means the entity having submitted the tender inclusive of technical and financial proposals as well as any associated annexes, attachments or other information; and

‘**Tender Price**’ means the total amount excluding Reimbursable Expenses indicated by a Bidder in their Financial proposal as being the lowest amount for which that Bidder is prepared to undertake the Services.

2. BASIS OF DECLARATION

2.1 I hold the position of *[managing director or other title]* of the Bidder and am duly authorised by the Bidder to make this declaration.

2.2 I make this declaration on behalf of the Bidder and on behalf of myself.

3. THE OFFER

3.1 The Bidder tenders to perform the Services for the Tender Price set out in the Tender, which is submitted as a separate file in Portable Document File (PDF) format.

3.2 The Bidder undertakes, if this Tender is accepted and a Contract acceptable to The Secretariat is executed by both parties, to commence the provision of the Services and to perform them in accordance with the Contract.

3.3 The Tender is accurate in every respect. In particular, I warrant that the information and certification included in each CV submitted in the Tender is accurate, that the proposed team members have been approached and confirmed their availability and that The Secretariat has the authority to make the inquiries referred according to the CV certification.

3.4 I acknowledge that if the Bidder is found to have made false or misleading material claims or statements in the Tender or in this declaration, or to have used confidential information, or received improper assistance, The Secretariat will reject at any time any Tender lodged by or on behalf of the Bidder.

3.5 I acknowledge and agree to the matters specified in Clauses 21 (The Secretariat’s Rights) and 22 (Bidder’s Acknowledgement) of Section Two of the RFT.

- 3.6 I agree:
- (a) that the Bidder will be bound by this Tender for the Tender Validity Period of 180 calendar days after the Closing Time; and
 - (b) that this Tender may be accepted by the Secretariat at any time before the expiration of that period or any additional period to which we may agree.
- 3.7 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.
- 3.8 I understand that the Secretariat is not bound to accept the lowest priced or any Tender.
- 3.9 I warrant that in preparing the Tender for the Services, the Bidder did not act in any way which did or could have had the effect of reducing the competitiveness of the tender process for the Services. In particular I warrant that the Bidder did not engage in:
- (a) any discussion or correspondence with other Bidders concerning the amount of the Tender;
 - (b) any collusive tendering or other anti-competitive practices with any of the other Bidders or any other person; or
 - (c) any conduct or have any arrangement or arrive at any understanding with any of the other Bidders.
- 3.10 I warrant that the Bidder, and any subcontractor of the Bidder are not:
- (a) listed on a World Bank List as referred to in Clause 20 (Ineligibility to Tender) of Section Two of this RFT;
 - (b) listed on any similar list maintained by any donor of development funding (Relevant List), or a Forum Member Country or;
 - (c) subject to any proceedings which could lead to listing on a World Bank List or listing on a Relevant List.
- 3.11 Neither the Bidder nor any of its employees, agents or contractors have been convicted of an offence of, or relating to bribery of a public official, nor are they subject to any proceedings which could lead to such a conviction.
- 3.12 No employees of the Bidder, or its agents or contractors, who have been nominated in Project positions that involve working with children, have been convicted of a criminal offence relating to child abuse, nor are they subject to any proceedings which could lead to such a conviction.
- 3.13 Neither the Bidder nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.
- 3.14 Neither the Bidder nor any of its employees, agents or contractors had knowledge of the technical proposal or the Tender Price for the Services of any other Bidder prior to the Bidder submitting its Tender for the Services.
- 3.15 Neither the Bidder nor any of its employees, agents or contractors disclosed the technical proposal or the Tender Price for the Services submitted by the Bidder to any

other Bidder who submitted a tender for the Services or to any other person or organisation prior to the Closing Time.

- 3.16 Neither the Bidder nor any of its employees, agents or contractors provided information to any other Bidder, person or organisation, to assist another Bidder for the Services to prepare a tender known in the building and construction industry as a 'cover bid,' whereby the Bidder was of the opinion or belief that another Bidder did not intend to genuinely compete for the Contract.
- 3.17 The Bidder is genuinely competing for the Contract and its Tender is not a 'cover bid.'
- 3.18 Prior to the Bidder submitting its Tender for the Services neither the Bidder nor any of its employees, agents or contractors entered into any Contract, agreement, arrangement or understanding that the successful Bidder for the Services would pay any money, or would provide any other benefit or other financial advantage, to or for the benefit of any other Bidder who unsuccessfully tendered for the Tender.
- 3.19 I acknowledge that each party constituting the Bidder is bound jointly and severally by this Tender.

4. ADDENDA TO TENDER DOCUMENTS

I acknowledge receipt of the following Addenda, the terms of which are incorporated in the Tender:

Number _____ Dated _____ Number _____ Dated _____

Number _____ Dated _____ Number _____ Dated _____

5. ADDRESS OF BIDDER

Address or Registered Office of Bidder

Address for service of notices (NOT PO. BOX)

Telephone Number: Fax Number:

SIGNED for and on behalf of *insert*
Bidder details by:

insert name and title

Signature

Witnessed by:

insert name and title

Signature

SECTION THREE – SCOPE OF SERVICES

PHASE ONE – PACIFIC PETROLEUM PROJECT

Bidders should note that Section Three should be read in conjunction with the selection criteria presented in Section One – clause 6.1 of this RFT, that the Scope of Services will form Schedule One of the contract and that it may be amended to incorporate portions of the preferred Bidder's Technical proposal.

1.0 BACKGROUND:

- 1.1 Energy continues to feature as one of region's key priorities. Cross cutting in the truest sense, failure to address the vulnerability resulting from poorly secured energy supply, ill conceived commercial arrangements, or inefficient supply chain management do nothing but continue to place pressure on scarce national resources and in particular national budgets.
- 1.2 In an effort to mitigate these pressures, Forum Leaders and Forum Energy Ministers have committed their governments to the implementation of a bulk procurement of petroleum initiative as a matter of utmost priority, which if implemented successfully, offers a short to medium term mechanism that will relieve pressure on national governments with immediate effect.
- 1.3 The last eight months has seen considerable progress in the implementation of this initiative. Most notable, has been broad agreement on the model through which it will be implemented. Greatly helped by the New Zealand funded Auckland 2008 October meeting of national petroleum authorities, CROP, sectors experts and industry, agreement was reached on a MOU outlining the central tenets of this model and the relationship of signatories to one another under the auspices of the *Pacific Petroleum Project*.
- 1.4 This success was followed by support at the October 2008 Forum Economic Ministers' Meeting which saw three members, the Cook Islands, Nauru and Tuvalu sign the MOU. The MOU has since been signed by Niue with a number of other Forum members indicating that they will maintain their commitments made through both their Leaders and Energy Ministers and sign the MOU over the next few months.
- 1.5 Procurement by its nature requires significant front end investment ensuring subsequent implementation can be achieved successfully within an appropriate timeframe, on budget and within an agreed scope. This can only be done once the appropriate technical, legal and administrative details are identified, articulated and addressed in a manner that will both serve the interests of signatories and create a package of requirements that industry feels is worth tendering for. In its simplest form, the contract.
- 1.6 To facilitate such preparatory works, a Project Implementation Unit (PIU) will be established under Phase One of the Project which will continue until which time all key deliverables outlined in clause 3 of this Section are successfully completed

but not longer than the first quarter of 2010 at which point full implementation of the Project is required.

- 1.7 The PIU will be selected using a competitive tender process. The Forum Secretariat will contract manage the process and support the PIU's work by facilitating access to current and prospective Signatories and other interested members with a view to developing a contractual model for commercial tender.

2.0 PROJECT OBJECTIVE:

- 2.1 The objective of the Project is to develop a commercial contract for services that will allow Signatories to the *Memorandum of Understanding on the Pacific Petroleum Project* (the 'MOU' – provided at Section Five of this RFT) to procure desired petroleum products collectively (or via sub-groupings) following a competitive tender process.

3.0 KEY MILESTONES:

- 3.1 The Consultant will be required to successfully provide the following key milestones:
- (a) **An assessment of national standards and requirements.** As a minimum, this assessment should provide recommendations and advice for Forum members on options for standardising and harmonising petroleum products and management standards as well as a common statement of requirement articulating the needs of current and prospective signatories of the MOU;
 - (b) **A procurement strategy** detailing the tendering model to be used to procure collective services, project specifications and key milestones inclusive of actions to be undertaken by current and prospective signatories in preparation for the tendering of a collective commercial contract;
 - (c) **A risk assessment** presenting options and recommendations for consideration by current and prospective Signatories with a view to developing common positions prior to contract preparation on issues including, but not limited to, mechanisms to protect and off-set such parties against price volatilities, currency fluctuations, commercial and sovereign risks, environmental risks and broader management and supply chain considerations;
 - (d) **A draft commercial contract** for goods and services for consideration by current and prospective Signatories;
 - (e) **A final commercial contract** for goods and services for consideration by current and prospective Signatories which incorporates comments and suggestions made by current and prospective signatories where such

comments and suggestions are mutually and generally agreeable among current and prospective Signatories; and

- (f) **All associated tendering documentation** and services necessary for the successful tendering of a commercial contract for goods and services required.

4.0 SERVICES REQUIRED:

4.1 The Consultant will be required to provide as a minimum the following services:

- (a) Technical and petroleum sector specific analysis;
- (b) Procurement, commercial and legal services;
- (c) Project design capabilities;
- (d) Relationship management and government and industry liaison;
- (e) Tender management and contract negotiation capabilities;
- (f) Administrative and financial management services; and
- (g) Any other services as deemed necessary to support the successful provision of key deliverables specified in clause 3 above and to ensure the successful achievement of the Project's stated objective.

5.0 MANAGEMENT AND REPORTING ARRANGEMENTS:

5.1 The Consultant will report to the Forum Secretariat on all matters as they relate to the delivery of services as required under this RFT.

5.2 All Key Deliverables required under clause 3 above, will be submitted to the Forum Secretariat in a timely manner and in accordance with the provisions of the contract. The Forum Secretariat will be responsible for managing the disbursement of such Key Deliverables as necessary to Forum members and in particular, to current and prospective Signatories of the MOU.

5.3 All and any contractual matters that may arise in the course of providing services must be presented in writing to the Forum Secretariat in the first instance.

6.0 TIMING AND DURATION:

6.1 The commencement of the Project is scheduled for August 2009.

6.2 Bidders should note that they will be required to ensure the tendering of a commercial contract with a view to full implementation no later than the first quarter of 2010.

SECTION THREE – REQUIREMENTS FOR FINANCIAL PROPOSALS

PHASE ONE – PACIFIC PETROLEUM PROJECT

Bidder's are required to complete the tables present below as part of their financial proposals.

Bidders should note that Section Three should be read in conjunction with the selection criteria presented in Section One – clause 6.1 and Section Three – Scope of Services of this RFT and that the details presented in their Financial proposals will form the basis of Schedule Two of the Contract (Basis of Payment).

TABLE ONE

Ref #	Name of Key Deliverable	Price*
1	Assessment of national standards and requirements	<i>To be inserted by Bidder</i>
2	Procurement strategy	<i>To be inserted by Bidder</i>
3	Risk assessment	<i>To be inserted by Bidder</i>
4	Draft commercial contract for goods and services	<i>To be inserted by Bidder</i>
5	Final commercial contract for goods and services	<i>To be inserted by Bidder</i>
6	Associated tendering documentation	<i>To be inserted by Bidder</i>
Sub-Total:		<i>To be inserted by Bidder</i>

** Bidders should note that the Secretariat reserves the right to negotiate the distribution of price across key deliverables.*

TABLE TWO

Bidder's Management Fee**	<i>To be inserted by Bidder</i>
Sub-Total:	<i>To be inserted by Bidder</i>

*** Bidders should note that any proposed travel costs with the exception of travel insurance will be treated on a reimbursable basis and should not be represented in costs presented in either table one or table two above. Airfares will be reimbursed at economy rates using the cheapest most direct airfares available on the day of purchase.*

BIDDERS FINAL PRICE (This price will be used for the like-for-like price assessment)	<i>To be inserted by Bidder</i> <i>(= sub-total table one + sub-total table two)</i>
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Costing Assumptions:

The Secretariat will assume that the Bidder has included as a minimum the following items in the quotes presented above in tables one and two:

- (a) all administrative and financial management fees;
- (b) any associate procurement fees;
- (c) all and any direct or indirect office operating costs to support the delivery of services required under this RFT;
- (d) all necessary insurance costs inclusive of professional indemnity, travel and medical that would be used in the course of delivering services under this RFT; and
- (e) accommodation of possible exchange rate fluctuations.

SECTION FOUR – STANDARD CONTRACT CONDITIONS

CONSULTANCY AGREEMENT

BETWEEN

PACIFIC ISLANDS FORUM SECRETARIAT

AND

[name of Consultant]

in relation to Consultancy Services on

[Project Name]

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SCHEDULE 1 - Scope of Services

SCHEDULE 2 (Basis of Payment)

THIS CONSULTANCY AGREEMENT is made

BETWEEN

- (1) **The Pacific Islands Forum Secretariat**, an organisation established by treaty under the *Agreement Establishing the Pacific Islands Forum Secretariat* at Tarawa, Kiribati on 30 October 2000, and implemented in Fiji by the *Diplomatic Privileges and Immunities Act 1971*, with its headquarters at Ratu Sukuna Rd, Suva, Fiji Islands;
(the "**Secretariat**")

AND

- (2) [insert full **name and address** of consultant] (the "**Consultant**").

THE PARTIES AGREE AND DECLARE AS FOLLOWS:

1. Interpretation

1.1 In this Agreement:

- (a) “**Confidential Information**” means all technical, commercial and personal information relating to the Consultancy Services that comes to the knowledge of the Consultant during the course of the Consultancy Services, and which has been specifically designated by the Parties as confidential information or might reasonably be regarded by the Parties as confidential information, but does not include any information that is or may subsequently come into the public domain, other than in breach of this Contract;
- (b) “**Consultant**” shall, where the context so admits, include the employees and authorised sub-contractors, associates and agents of the Consultant;
- (c) “**Consultancy Services**” means the project and the services described in Schedule 1;
- (d) “**Consultant Material**” means any pre-existing material provided by the Consultant for the purposes of carrying out this Contract, including but not limited to documents, equipment, information and data stored by any means, but excluding Contract Material;
- (e) “**Contract**” means this agreement including Schedules 1 and 2 and any Annexes thereto;
- (f) “**Contract Material**” means all material brought or required to be brought into existence by the Consultant as part of, or for the purpose of performing the Consultancy Services including, but not limited to documents, presentations, equipment, information and data stored by any means. Contract Material does not include Secretariat Material or Consultant Material;
- (g) “**Intellectual Property**” means any copyright, registered or pending patent or patentable invention, registered and unregistered trade mark, confidential information, trade secret, know-how, registered or registrable design, rights in relation to any of the foregoing and rights in all other intellectual property;
- (h) “**Milestone**” means a stage at which a specified part of the Consultancy Services will be completed, as specified in item 3 of Schedule 1;
- (i) “**Milestone Date**” means the due date for the completion of a Milestone, as specified in Schedule 1;
- (j) “**Milestone Payment**” means that part of the fees referred to in **clause 5.1** payable upon completion of a Milestone, as specified in Schedule 2;
- (k) “**Project Manager**” means the person who shall be responsible for supervision of this Contract on behalf of the Secretariat and who has authority to receive any written notification under this Contract;

- (l) “*Secretariat*” includes the successors or assigns of the Secretariat and includes the principal officer for the time being and the principal officer’s duly authorised agent as the case may be;
 - (m) “*Secretariat Material*” means any material provided by the Secretariat to the Consultant for the purposes of this Contract including, but not limited to, documents, equipment, information and data stored by any means;
 - (n) “*Specified Personnel*” means the individuals specified in Schedule 1 as personnel required to undertake the Consultancy Services or part of the work constituting the Consultancy Services.
- 1.2 Words in the singular number include the plural and words in the plural number include the singular.
- 1.3 Clause headings in this Contract are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer.

2. Gender Policy

- 2.1 The Secretariat has a Gender Policy and a Gender Inclusive Language Guide which will be provided to the Consultant on request.
- 2.2 The Consultant shall ensure that all Contract Material adopts gender inclusive language.
- 2.3 Wherever possible, all Contract Material should consider the perspectives of both men and women. Where data on people is collected, data shall be disaggregated by gender.

3. Provision of Consultancy Services

- 3.1 The Consultant shall perform the Consultancy Services (including the preparation of Contract Material) in accordance with Schedule 1, with appropriate skill and diligence, and at a high standard.
- 3.2 The Consultant must, and undertakes that it can and shall, perform the Consultancy Services:
- (a) in accordance with this Contract;
 - (b) without bringing the Secretariat into disrepute;
 - (c) without accepting instructions from any person except where authorised in writing by the Secretariat;
 - (d) so as to achieve the Milestones by the applicable Milestone Dates and otherwise in accordance with such deadlines as may from time to time be agreed between the Secretariat and the Consultant;
 - (e) diligently, competently and in accordance with the highest professional and ethical principles and standards;
 - (f) in accordance with such reasonable directions as may from time to time be issued by the Secretariat; and
 - (g) in accordance with any applicable laws.

4. Status of Consultant

- 4.1 The Consultant shall be considered as having the legal status of an independent consultant.
- 4.2 The Consultant shall not represent itself, and shall ensure that its employees do not represent themselves, as being employees, partners or agents (except as specifically required to perform the Consultancy Services) of the Secretariat.
- 4.3 The Consultant shall not by virtue of this Contract be, or for any purpose be deemed to be, an employee, partner or agent (except as specifically required to perform the Consultancy Services) of the Secretariat.
- 4.4 The Consultant shall not use the name, official seal or logo of the Secretariat, nor purport in any way to represent the Secretariat, its Secretary General or its staff.

5. Fees, Allowances and Assistance

- 5.1 The Secretariat shall pay to the Consultant the fees and allowances, meet the costs and provide assistance as specified in Schedule 2.
- 5.2 The Secretariat shall not be responsible for any losses the Consultant may incur as a result of any exchange rate movements.
- 5.3 The Secretariat shall be entitled, without derogating from any other right it may have, to defer or decline payment of a Milestone Payment unless and until the Consultant has completed to the satisfaction of the Secretariat the Milestone to which that Milestone Payment relates, where such a payment structure has been adopted.
- 5.4 In the event that the Secretariat requires the Consultant to travel in order to adequately perform the Consultancy Services, the Secretariat shall be responsible for the Consultant's return economy air fares via the cheapest, most direct route as approved by the Secretariat, and for per diems at the Secretariat's standard rates. Incidental expenses, necessarily incurred in the performance of the Consultancy Services, but not exceeding FJD1000, will be reimbursed on an actual and reasonable basis to the Consultant upon presentation of an invoice and claim form with receipts attached for all expenses greater than FJD30.

6. Taxation, Rates, Levies and Charges

- 6.1 The Secretariat may deduct from payments owed to the Consultant any taxes payable by the Consultant under Fiji tax laws for which the Secretariat may be liable under Fiji tax laws, unless a Certificate of Exemption is provided.
- 6.2 The Consultant shall at all times be responsible for all superannuation and any other taxes, rates, levies, contributions or other payments required by law to be paid by the Consultant to or in respect of any employees or agents of the Consultant, and shall make all such Payments when required to do so by any applicable law.

7. Entire Agreement and Variation

7.1 This Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Contract.

7.2 No agreement or understanding varying or extending this Contract, including in particular the scope of the Consultancy Services in Schedule 1, shall be legally binding upon either party unless in writing and signed by both parties.

8. Sub-contracting

8.1 The Consultant shall not, except as set out in Schedule 1 or otherwise, without the prior written approval of the Secretariat, subcontract the performance of any part of the Consultancy Services. In giving written approval, the Secretariat may impose such terms and conditions as it thinks fit.

8.2 The Consultant shall be fully responsible for the performance of the Consultancy Services notwithstanding that the Consultant has subcontracted the performance of any part of the Consultancy Services.

9. Specified Personnel

9.1 The Consultant shall ensure that the Specified Personnel undertake work in respect of the Consultancy Services in accordance with the terms of this Contract.

9.2 Where Specified Personnel are unable to undertake work in respect of the Consultancy Services, the Consultant shall notify the Secretariat immediately. The Consultant shall, if so requested by the Secretariat, provide replacement personnel acceptable to the Secretariat at no additional charge and at the earliest opportunity.

9.3 The Secretariat may, at its absolute discretion, give notice requiring the Consultant to remove personnel (including Specified Personnel) from work in respect of the Consultancy Services. The Consultant shall promptly arrange for the removal of such personnel from work in respect of the Consultancy Services and their replacement with personnel acceptable to the Secretariat.

9.4 If the Consultant is unable to provide acceptable replacement personnel, the Secretariat may terminate this Contract in accordance with clause 19.1(b).

10. Project Manager

10.1 The Consultant shall liaise with and report to the Project Manager as reasonably required by the Project Manager during the period of this Contract.

10.2 The Consultant may nominate from time to time a person who has authority to receive and sign notices and written communications for the Consultant under this Contract and accept any request or direction in relation to the Consultancy Services.

11. Intellectual Property

11.1 Intellectual Property in all Contract Material developed or produced under this Contract shall vest in the Secretariat.

- 11.2 The Consultant warrants that all Contract Material will be original and will not infringe the Intellectual Property of third parties and will not be defamatory or breach any confidentiality undertaking.
- 11.3 In relation to Contract Material in which the Consultant has a moral right, the Consultant consents to the Secretariat doing or omitting to do, anything that, but for this consent, would constitute an infringement of those moral rights including, reproducing, publishing, performing, communicating, exhibiting, adapting, altering or using the material with or without attribution of authorship and whether or not such acts may be prejudicial to the author's honour or reputation.

12. Secretariat Material

- 12.1 Secretariat Material and any Intellectual Property in relation to Secretariat Material shall remain the property of the Secretariat and, on the expiration or earlier termination of this Contract, the Consultant shall return all Secretariat Material to the Secretariat.
- 12.2 The Consultant must use its best endeavours to ensure all Secretariat Material in the custody of the Consultant for purposes connected with this Contract will be protected at all times from unauthorised access or use by a third party, or misuse, damage or destruction by any person.

13. Confidential Information

- 13.1 The Consultant must treat all Confidential Information, whether in recorded form or communicated or disclosed visually or orally, as proprietary and confidential and must not directly or indirectly disclose, or allow to be disclosed, such Confidential Information.
- 13.2 The Consultant must not use Confidential Information other than in connection with, and as permitted by, this Contract.
- 13.3 The Consultant must take all reasonable precautions to prevent any unauthorised disclosure of Confidential Information, including the following precautions:
- i. the Consultant must at all times store Confidential Information safely and securely;
 - ii. the Consultant must immediately notify the Secretariat in writing of any actual, threatened or suspected unauthorised disclosure of Confidential Information; and
 - iii. the Consultant must take all reasonable measures to minimise any unauthorised dissemination of any Confidential Information which is in any way related to or resulting from an act or failure to act by the Consultant.

14. Liability and Indemnity

- 14.1 The Consultant shall perform the Consultancy Services entirely at its own risk and the Secretariat shall not be liable for any loss, cost, damage, expense or other liability incurred or suffered by the Consultant in performing the Consultancy Services except as set out in this Contract.

14.2 The Consultant indemnifies and must keep indemnified the Secretariat against:

- (a) all liabilities, costs, damages and expenses relating to any legal claim against the Secretariat arising from the provision of the Consultancy Services as a consequence of any act or omission (whether negligent or otherwise) of the Consultant or of any agent, employee, contractor, associate or officer of the Consultant except where those liabilities, losses, costs, damages and expenses are a consequence of any deliberately wrongful act or omission of the Secretariat, in which case the Secretariat will be liable for and indemnify the Consultant against that proportion of those liabilities, losses, costs, damages and expenses which is a consequence of that deliberately wrongful act or negligent act of the Secretariat; and
- (b) subject to paragraph (a), all legal costs (on a full indemnity basis) and other costs incurred in defending any action or claim brought against the Secretariat arising from the provision of the Consultancy Services brought against the Secretariat as a consequence of any act or omission (whether negligent or otherwise) of the Consultant, or of any agent, employee, contractor, associate or officer of the Consultant.

15. Insurance and Visas

15.1 The Consultant shall effect and maintain, for the duration of this Contract, all insurance appropriate to the scope of the Consultancy Services and, if requested, shall provide the Secretariat with evidence of any policy.

15.2 Notwithstanding clause 5.3, should the Secretariat require the Consultant to travel as part of the Consultancy Services, the Consultant shall be responsible for obtaining all necessary visas and permits. On request of the Consultant, the Secretariat shall provide supporting documentation to verify the Consultant's travel plans.

16. Conflict of Interest

16.1 The Consultant warrants that, to the best of its knowledge and belief having undertaken all appropriate enquiries, at the date of signing this Contract, no situation which the Secretariat may reasonably consider to be a conflict of interest exists or is likely to arise in the performance of its obligations under this Contract. If, during the term of this Contract, such a situation arises, the Consultant undertakes to notify the Secretariat immediately in writing of that conflict or risk.

17. Security and Access

17.1 The Consultant shall, when using the Secretariat's premises or facilities, comply with all reasonable directions and procedures relating to occupational health and safety and security in effect at those premises or in regard to those facilities, as notified by the Secretariat.

18. Termination and Reduction

18.1 The Secretariat may, by giving five (5) days' written notice, terminate this Contract, in whole or in part. If the Contract is so terminated, the Secretariat shall be liable only for:

- (a) payments under the payment provisions of this Contract for those Consultancy Services rendered before the effective date of termination; and
 - (b) subject to sub-clause 3 and 4, any reasonable costs incurred by the Consultant and directly attributable to the termination or partial termination of this Contract.
- 18.2 Upon receipt of a notice of termination the Consultant shall:
- (a) stop work as specified in the notice;
 - (b) take all available steps to minimise loss resulting from that termination and to protect Secretariat Material and Contract Material; and
 - (c) continue work on any part of the Consultancy Services not affected by the notice.
- 18.3 In the event of partial termination, the Secretariat's liability to pay fees under Schedule 2 shall, in the absence of written agreement between the parties to the contrary, abate proportionately to the reduction in the Consultancy Services required to be performed.
- 18.4 The Secretariat shall not be liable to pay compensation or any other monies for any reason including, without limitation, breach of contract or negligence, in an amount which would, in addition to any amounts paid or due or becoming due to the Consultant under this Contract, together exceed the fees set out in Schedule 2. The Consultant shall not in any circumstances be entitled to compensation for loss of prospective profits.
- 18.5 The Consultant may, by giving five (5) days' written notice, terminate this Contract. If so terminated, the Secretariat will not be liable for any further payment of the Consultancy Services already provided. Any payments made to the Consultant for Consultancy Services already performed under this Contract must be reimbursed to the Secretariat, unless otherwise agreed by the Secretariat.

19. Termination for Default

- 19.1 If the Consultant:
- (a) goes into liquidation or a receiver or receiver and manager is appointed or, in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors; or
 - (b) fails, within five (5) days after receipt of written notice, to remedy any default in performance of the following obligations, namely:
 - (i) to commence or to proceed at the rate of progress strictly in accordance with this Contract, or
 - (ii) to perform or observe the terms and conditions of this Contract,the Secretariat may, by written notice, immediately terminate this Contract.

20. Delay

- 20.1 For delays exceeding five (5) working days after a Milestone Date, the Secretariat will impose damages of 1% per day of the value of the Consultancy Services may be imposed. The total damages shall however not exceed 25% of the Contract value. The Consultant acknowledges that such damages are a reasonable pre-estimate of damages that would be suffered by the Secretariat in the event of a delay.
- 20.2 The Secretariat shall not be entitled to exercise its rights and remedies upon the delay of performance of the Consultancy Services if that delay:

- (a) is caused by an act or event that is beyond the reasonable control of the Consultant;
- (b) was not reasonably foreseeable at the time this Contract was entered into; and
- (c) is communicated to the Secretariat in writing as soon as the Consultant becomes aware of the delay, explaining the delay and estimating the effect of the delay on the performance of the Consultancy Services.

In such cases the Secretariat shall grant an extension of time without the Consultant incurring damages and will inform the Consultant in writing of the revised Milestone Dates.

21. Waiver

- 21.1 A waiver by the Secretariat in respect of any breach of a condition or provision of this Contract shall not be deemed to be a waiver in respect of any other or of any subsequent breach.
- 21.2 Nothing in or relating to this Contract shall be deemed to be a waiver of any of the privileges and immunities of the Secretariat.

22. Applicable Law

- 22.1 This Contract shall be governed by and construed in accordance with the laws of Fiji and the parties submit to the jurisdiction of the courts of Fiji.
- 22.2 The Consultant shall ensure that the work done under this Contract complies with the laws of the country or countries in which the Consultancy Services, or any part thereof, are to be carried out.

23. Notices

- 23.1 Any notice to be given or served pursuant to this Contract shall be in writing and addressed as the case may be, as follows:
 - (a) if given by the Consultant, addressed and forwarded to the Project Manager of the Secretariat; or
 - (b) if given by the Secretariat, signed by the Secretary General or their duly appointed agent, and forwarded to the Consultant at the address indicated at the commencement of this Contract or as otherwise notified by the Consultant.
- 23.2 Any such notice shall be delivered by hand or sent by registered post, facsimile or email, to the address of the party to which it is sent.
- 23.3 A notice shall be deemed to be given:
 - (a) where delivered by hand, on the day of delivery;
 - (b) where sent by registered post, 3 business days after the day of posting; and
 - (c) where sent by facsimile or email, on the day of dispatch, provided that a clear transmission report or read receipt of the relevant email is obtained.

24. Survival of Provisions

- 24.1 Clauses 11, 12, 13, 14 and 15 shall remain in force after the expiry or earlier termination of this Contract.

SCHEDULE 1 – SCOPE OF SERVICES

The Scope of Services will form Schedule One of the contract. Bidders should note that it may be amended to incorporate portions of the preferred Bidder's Technical proposal.

SCHEDULE TWO – BASIS OF PAYMENT

Bidders should note that details presented in the Financial proposal will form the basis of Schedule Two of the Contract (Basis of Payment) with the successful Bidder.

SECTION FIVE
MEMORANDUM OF UNDERSTANDING ON THE PACIFIC PETROLEUM
PROJECT

**Memorandum of Understanding
on the Pacific Petroleum Project**

MEMORANDUM OF UNDERSTANDING ON THE PACIFIC PETROLEUM PROJECT

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**MEMORANDUM OF UNDERSTANDING
BETWEEN THE GOVERNMENTS OF FORUM ISLAND COUNTRIES
ON THE PACIFIC PETROLEUM PROJECT**

- i. **WHEREAS** the Leaders of the Pacific Islands Forum have agreed, through the Pacific Plan adopted at Port Moresby in October 2005, and in discussions since, to undertake a ***joint negotiation process for the bulk procurement of petroleum*** to address their shared and growing concerns about energy affordability and security;
- ii. **WHEREAS** the Signatories seek to implement ***good procurement principles*** that will provide guidance on ethical behaviour and good practice; procedural rules regarding separation of duties and authority levels; guidance on the preparation of clear and complete technical specifications suitable for the purpose of seeking competitive bids from suppliers; the management of conflict of interest, transparency and accountability;
- iii. **WHEREAS** the Signatories seek ***better information management***, allowing for improved price benchmarking of petroleum and petroleum products for the Pacific region, strengthened domestic energy pricing policies, reduced costs associated with gathering price and market information, and an opportunity for learning, through collaboration;
- iv. **WHEREAS** the Signatories seek to ***achieve greater leverage*** in the market by improved management of suppliers at a strategic level, and the strengthening of each nation's negotiating position in contracting with core energy suppliers;
- v. **WHEREAS** the Signatories seek to obtain ***better value for money*** for petroleum procurement by exploiting economies of scale that can be achieved through demand and supply aggregation, and enabling smaller organisations to benefit from the same advantageous deals by a contract arrangement that will allow multi-access;
- vi. **WHEREAS** the Signatories seek to ***lower transaction costs*** for petroleum procurement activities, to reduce procurement costs for buyers and bidding costs for suppliers, by pooling their skilled negotiators and contract managers;
- vii. **WHEREAS** the Signatories seek to better ***manage the market by demand aggregation*** to allow capacity and infrastructure constraints to be identified and managed across the region, to transfer more risk to suppliers and to simplify storage management and logistics of petroleum;
- viii. **AND WHEREAS** the Signatories seek to better ***manage the supply chain*** by placing the responsibility for managing the supply chain with a prime contractor where this results in better supply chain management, to lower the costs of transport and handling and thereby obtain better overall value for money;

NOW THEREFORE the undersigned Governments ("the Signatories") agree as follows:

1. Definitions

- 1.1 “Confidential Information” means all information belonging to or relating to a Signatory, received by another Signatory as a result of entering into or implementing this MOU, which is designated as confidential by the disclosing Signatory or is otherwise clearly confidential or sensitive in nature, and which is not already in the public domain. This may include but is not limited to information concerning business plans, supplies, services, intellectual property and market and financial data; in written, electronic, visual or oral form;
- 1.2 “Contract Proforma” means the form and content of a contract capturing jointly agreed terms and conditions, which is to form the basis for individual contracts between Signatories and petroleum suppliers;
- 1.3 “Intellectual Property Rights” means patents, copyright, registered and unregistered design rights, trade marks (whether registered or not), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights, and all rights to apply for, or register such rights;
- 1.4 “Petroleum” means petroleum products including those in refined form;
- 1.5 “Procurement Activities” means any activity which is governed by public procurement legislation or policy including, without limitation, determining the procurement strategy, entering into pre-tender dialogue, settling the requirements specification, issuing a procurement advertisement, issuing an invitation to tender or bid, setting and applying evaluation criteria, disqualifying bidders, short listing bidders, negotiating and agreeing any terms and conditions relating to a potential supply of works, services or goods;
- 1.6 “Project” means the Project described in paragraph 1;
- 1.7 “Project Committee” means the Project Committee established under paragraph 3.1;
- 1.8 “Project duration” means the time from the commencement of this MOU to the date of signature of supply contracts by all Signatories, or such other time as the Signatories agree to terminate the Project;
- 1.9 “Project Manager” means the Project Manager established under paragraph 4.1.

2. Nature of Collaboration – The Project

- 2.1 The Signatories agree to undertake joint activities for the bulk procurement of petroleum, which will be known as the Pacific Petroleum Project (hereinafter “the

Project”), through the establishment and operation of a regional negotiating machinery, which will be known as the “Project Committee”.

2.2 The purpose and aims of the Project are to:

- 2.2.1 capture the significant savings and benefits from more efficient import management by the aggregation of demand, and provide opportunities for strategic cost reductions at various stages of the procurement process such as coastal shipping, handling at ports and distribution;
- 2.2.2 provide a strategic focus to the procurement of core energy needs, including security of supplies, management of strategic petroleum storage, risk management, and increased private sector participation in the downstream petroleum distribution sector;
- 2.2.3 pool the resources of the Signatories to improve negotiation for petroleum supply contracts, leverage purchasing power, and minimise the transaction costs for procurement activities;
- 2.2.4 help achieve optimum resource allocation, avoid duplication of effort and ensure that procurement planning reflects energy security goals and priorities as set out in the Regional Pacific Islands Energy Policy and National Energy Policies; and
- 2.2.5 promote regional cohesion and encourage long-term thinking and commitment to strategic options for the on-going procurement of petroleum products and supplies.

2.3 The Project will culminate in the negotiation of common terms and conditions for the supply of petroleum to individual Governments or contracting authorities, who will enter separate contracts with a preferred supplier agreed by the Project Committee or relevant subcommittee, reflecting the common terms and conditions, while allowing for any differences required to comply with specific requirements prescribed by each Signatory’s domestic legislation.

3. The Project Committee

3.1 The Signatories agree to establish a Project Committee consisting of one representative of each Signatory.

3.2 Each Signatory will appoint one representative to the Project Committee for the duration of its participation in the Project. The membership of the Project Committee is as set out at Schedule One, which may be amended from time to time to reflect any alteration to the representatives nominated by the Signatories.

3.3 Any change of the nominated representative of a Signatory will be communicated in writing by that Signatory to the Project Manager, who will notify other Signatories and amend Schedule One accordingly.

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3.4 The Project Committee will be responsible for:

3.4.1 analysing supply and demand information both within a government organisation and across different organisations and taking decisions on optimum sub-groups of members ("clusters") that can seek aggregated deals;

3.4.2 the development of a regional procurement strategy including key milestones and a timeframe for achieving them, and detailing guidance on ethical behaviour and good practice; procedural rules regarding separation of duties and authority levels; the management of conflict of interest, transparency and accountability;

3.4.3 the preparation of clear and complete technical specifications suitable for the purpose of seeking competitive bids from suppliers; and the procedures regarding national strategic petroleum storage;

3.4.4 ensuring that procurement strategies and planning for petroleum products reflect the individual and collective goals and priorities of each Signatory;

3.4.5 agreeing on the procurement and supply chain activities to be adopted in respect of the Project and agreeing on the Contract Proforma;

3.4.6 appointment of the Project Manager, determining whether and how external advisers will be appointed, and determining procedures for monitoring performance of the Project Manager and any external advisers; and

3.4.7 performance of other functions specified in this MOU.

3.5 The Project Committee will meet regularly as required, either in person, or by means of video or telephone conferencing where feasible, but no less than once per quarter for the duration of the Project.

3.6 The Project Committee will determine its Rules of Procedure and Operation, with the assistance of the Project Manager, subject to the terms of this MOU.

3.7 The Project Committee will endeavour in good faith to make decisions by consensus, but in cases where consensus cannot be achieved, the Project Committee may put matters to vote.

3.8 Subject to paragraph 8 of this MOU, members of The Project Committee will exchange with each other freely all information and documentation which is necessary to progress and complete the Project, in any format reasonably practicable, in accordance with the terms and conditions specified in this MOU.

3.9 The Project Committee will be responsible for verifying the work in progress under the Project, and its members will use all reasonable endeavours to cooperate in good faith with each other and the Project Manager.

- 3.10 The Signatories recognise that decisions made by the Project Committee are not binding and remain subject to the approval of each participating Government. As such, individual members of the Project Committee will be responsible for keeping their respective appointing Signatories apprised of the progress of the Project, and for obtaining any consent, approval or authorisation necessary from their appointing Signatory for the progress and development of the Project.
- 3.11 The Project Committee may, following consideration of the options and determination of the optimum clusters for negotiating joint procurement, agree to divide into one or more subcommittees to undertake negotiations with suppliers, and may empower those subcommittees with exercising some or all of the functions of the Project Committee as set out in this paragraph in respect of that subcommittee.

4. The Project Manager

- 4.1 The Signatories agree that a Project Manager will be appointed by the Project Committee to manage the Project. Until such time as the Project Committee appoints a Project Manager, the Pacific Islands Forum Secretariat will undertake the functions of the Project Manager, including working with the Project Committee to determine arrangements for appointment of the substantive Project Manager.
- 4.2 The Project Manager will manage and direct the Project by assuming responsibility for liaison between any independent supplier and the Project Committee, and for the administration, progress and implementation of the Project.
- 4.3 The Project Manager's functions will be:
- 4.3.1 Providing a corporate focus to procurement, thereby assisting co-ordination of petroleum procurement activity and helping to achieve optimum resource allocation while avoiding duplication of effort;
 - 4.3.2 Preparing project specifications, strategy papers, tender documentation and managing the tender process on behalf of the Signatories;
 - 4.3.3 Defining the Signatories' rules of engagement and respective inputs at the various stages of the procurement process, drafting the procurement documents, clarifications, and participation in negotiation meetings;
 - 4.3.4 Managing the notice and appointment of preferred bidder to contract award, and drafting criteria in accordance with which the Project Committee will decide upon short-listed bidders and the preferred bidder;
 - 4.3.5 ensuring all contributions from the Signatories are proportionate, necessary and economically viable to ensure that unnecessary resources

or time is not spent on matters which would unreasonably delay the project, and that only sufficient and duly authorised personnel from each authority are involved in decision-making;

- 4.3.6 preparation of a budget for the Project, liaising with potential development partners to seek appropriate financial or other support for the Project, and managing any assistance obtained from development partners in consultation with the Project Committee;
- 4.3.7 supervision of progress relative to agreed time schedules set by the Project Committee; organising the collection and maintenance of documents, reports and cost statements relating to the Project, and submitting the same to the Project Committee;
- 4.3.8 convening meetings of the Project Committee, including the preparation and circulation of meeting agendas, minutes and outcomes, and other documents as required;
- 4.3.9 subject to paragraph 8, ensuring accessibility to any documents or other information required by the members of the Project Committee; and
- 4.3.10 keeping the Project Committee informed of progress of the Project, including through provision of regular reports to members.

5. Scope of Collaboration

- 5.1 The Signatories will use all reasonable endeavours diligently to carry out their responsibilities under this MOU, including the provision of such facilities, materials, information and personnel as may be reasonably required by the Project Committee.
- 5.2 Each Signatory will ensure that those acting on its behalf use reasonable skill and care in performing their roles and responsibilities pursuant to this MOU.
- 5.3 Each Signatory warrants to each of the other Signatories that it has obtained all requisite consents, approvals and authorisations to enter into this MOU, and to participate in the Project.
- 5.4 Each Signatory agrees that:
 - 5.4.1 for the duration of the Project, it will work exclusively and collectively with the other Signatories for the purposes of the Project, and that it will not seek to develop the Project individually to the detriment of other Signatories, or to work unilaterally with any third parties in connection with the Project or any similar project;
 - 5.4.2 in carrying out the Project, it will at all times comply with its own procurement legislation, being mindful of the need for compatibility with the legislation and policies of other Signatories; and

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- 5.4.3 in carrying out the Project, it will at all times comply with principles of good governance and sustainable development in an open, transparent and accountable manner.
- 5.5 Nothing in this MOU is intended to create a legal partnership or corporation between the Signatories or any of them or, unless specifically provided, to authorise any Signatory to act as agent for any other; and all representations, warranties, undertakings, agreements and obligations made, given or entered into by a Signatory in or pursuant to this MOU are made, given or entered into specifically in relation only to itself.
- 5.6 While the Signatories are acting jointly in their negotiations to procure relevant goods or services, any contract for supply will be entered into directly between the supplier and each individual Signatory.

6. Costs and Charges

- 6.1 Unless otherwise agreed, each Signatory will pay the costs and expenses of its own participation in the Project, including the provision of its representative on the Project Committee, and any national support personnel.
- 6.2 Costs and expenses relating to joint activities under the project (such as appointment and maintenance of the Project Manager, meeting and office costs) will be shared between the Signatories in a manner determined by the Project Committee and agreed in writing, subject to paragraph 6.3.
- 6.3 Any assistance from development partners obtained for the Project will be allocated as agreed between the respective development partner and the Project Committee.

7. Intellectual Property Rights

- 7.1 The Signatories agree that any Intellectual Property Rights in intellectual property created jointly between any of the Signatories in the course of the Project will be deemed to be jointly owned by those Signatories. Intellectual Property Rights in intellectual property created by an individual Signatory during the course of the Project will be owned by that Signatory.
- 7.2 The Signatories agree that each Signatory will have an irrevocable, royalty-free, non-exclusive and non-assignable licence to access and use, solely for the purposes of the Project, all intellectual property which is created during the course of the Project, such use being solely for the purposes of the Project and for as long as necessary for the successful performance of the Project.

- 7.3 The Signatories also agree to grant to each other an irrevocable, royalty-free, non-exclusive and non-assignable licence to access and use all of their pre-existing intellectual property relevant to the Project, to use solely for the purposes of the Project, and for as long as necessary for the performance of the Project.
- 7.4 This MOU will not affect Intellectual Property Rights existing prior to its commencement.

8. Confidentiality

- 8.1 Each Signatory undertakes to ensure it protects any and all Confidential Information it receives from other Signatories pursuant to this MOU. Each Signatory agrees not to use Confidential Information for any purpose other than the purpose for which it is expressly supplied under this MOU, agrees not to divulge Confidential Information to any of its employees, agents or subcontractors unnecessarily, and agrees to prevent disclosure to or access by any third party without the prior written consent of the disclosing Signatory, except as may be required by law or any legal or regulatory authority.
- 8.2 The Signatories' commitments in relation to confidentiality will survive the termination of this MOU, unless a particular item of Confidential Information enters the public domain other than through the receiving Signatory's own default.

9. Conflict of Interest

- 9.1 Each Signatory agrees to use its best endeavours to ensure that, at the date of signing this MOU, no conflict of interest exists or is likely to arise in the performance of its commitments under this MOU, and to ensure that a conflict of interest does not arise for the Project duration.
- 9.2 If a conflict of interest does exist or arise, the relevant Signatory must notify all other Signatories immediately, and seek permission from the other Signatories through the Project Committee to undertake relevant work despite that conflict of interest, which should not be unreasonably withheld. Should permission not be granted by the Project Committee, the Signatory holding the conflict of interest agrees to divest itself of that conflict immediately, or withdraw from this MOU.

10. Anti-Corruption

The Signatories warrant that they will not make or cause to be made, nor will they receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt act, either directly or indirectly, as an inducement or reward in relation to the implementation of this MOU.

The Signatories will ensure that all their officials and representatives comply with this provision throughout the duration of this MOU.

11. Dispute Resolution

- 11.1 The Signatories undertake to use all reasonable efforts to resolve any disputes which arise between them in connection with this MOU, through negotiation in good faith.
- 11.2 Where a dispute arises under this MOU, the disputing Signatory will communicate its concern in writing, through the Project Manager, to the other Signatories with whom it claims a dispute, within 30 days of the issue or incident giving rise to the dispute coming to the Signatory's attention. Following receipt of such notice, the Signatories involved will undertake reasonable endeavours to resolve the dispute, with assistance from the Project Manager if requested by all Signatories involved.
- 11.3 If the relevant Signatories are unable to resolve the dispute by negotiation in good faith within 90 days of receipt of notice of the dispute, they may agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation, or referral to the Project Committee.
- 11.4 The Project Manager will keep all Signatories informed about any dispute which arises, and about progress toward its resolution. In the event that the relevant Signatories are unable to resolve any dispute within a reasonable timeframe, the Project Committee may discuss the dispute and recommend a resolution to the Signatories concerned, or agree upon other appropriate action, including but not limited to expulsion of one or more Signatories in accordance with paragraph 12.5 below.

12. Signature, Duration, Termination, Withdrawal and Expulsion

- 12.1 This MOU commences on the date of its signature by two or more governments, and will continue in effect until such time as the Signatories agree in writing to its termination.
- 12.2 Subsequent to the commencement of this MOU, members of the Pacific Islands Forum may sign it at any time, and it will enter into effect for any such Signatory on the date of its signature. Countries and territories not members of the Pacific Islands Forum may also sign the MOU after its commencement, upon the agreement of the Signatories.

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- 12.3 Any Signatory may withdraw from this MOU at its discretion by giving six months' notice in writing to the other Signatories through the Project Manager. Notwithstanding withdrawal by any Signatory, this MOU will continue in effect while ever more than one Signatory remains.
- 12.4 In the event a Signatory withdraws from this MOU, it continues to bear sole and ongoing responsibility for resolving, managing or terminating any commercial, legal or other agreements that its has entered into to support its activities under this MOU.
- 12.5 The Signatories may agree, through agreement in writing between all but one of them, and upon the recommendation of the Project Committee, to expel any Signatory from this MOU, if the other Signatories have reasonable cause to believe that the Signatory concerned has acted in bad faith in breach of the principles or provisions of this MOU, or to frustrate the successful implementation of the Project.
- 12.6 The Signatories agree that any Signatory that withdraws or is expelled from this MOU will not use any knowledge or information gained from the Project for its own benefit, and will continue to observe the confidentiality commitments set out in paragraph 8.
- 12.7 Termination of this MOU for a Signatory, howsoever caused, will:
- 12.7.1 be without prejudice to any obligation or right of any Signatory accrued prior to such termination; and
 - 12.7.2 not affect any provision of this MOU which is expressly or by implication intended to continue in effect after such termination.

13. Force Majeure

Should any Signatory, for reasons outside its control, be unable to fulfil its commitments under this MOU, that Signatory will communicate the details of such situation to the other Signatories in writing without delay, through the Project Manager. The Project Manager will notify and consult the Project Committee on the matter, which may in its discretion, by unanimous decision and in consideration of all the circumstances, agree to any special measures or conditions required to account for the situation of that Signatory, including but not limited to suspension of the Signatory's commitments under the MOU, until such time as the Signatory is able to resume full participation in the Project.

14. Amendment

- 14.1 Amendments to this MOU may be made by agreement in writing between all Signatories.