

CONTRACT FOR SUPPLIER SERVICES

Section 1 - FORM OF CONTRACT

CONTRACT FOR : PO 8195
PURCHASE ORDER NUMBER : Design and Implementation of Accountability in Tanzania
(Act-2) Programme

THIS CONTRACT is made

BETWEEN : The Secretary of State for International Development at the Department for International Development, Abercrombie House, Eaglesham Road, East Kilbride, G75 8EA ("**DFID**");

AND : KPMG Advisory Limited ("**Supplier**") whose registered office is situate at 2nd floor, The Luminary, Haile Selassie Road, Masaki, PO Box 1160, Dar es Salaam, Tanzania
]],

(and DFID and the Supplier together shall be the "**Parties**").

WHEREAS:

- A. DFID requires the Supplier to provide the Services to the People and relevant organisations of Tanzania (the "Recipient"); and
- B. the Supplier has agreed to provide the Services on the terms and conditions set out in this Contract.

IT IS HEREBY AGREED as follows:

1. Documents

This Contract shall be comprised of the following documents:

Section 1	Form of Contract
Section 2	Standard Terms and Conditions
Section 3	Terms of Reference
Section 4	Special Conditions
Section 5	Schedule of Prices

2. Contract Signature

If the original Form of Contract is not returned to the DFID Contract Officer (as identified in Section 4) duly completed (including the applicable Purchase Order Number at the top of Section 1), and signed and dated on behalf of the Supplier within **15 working days** of the date of signature on behalf of DFID, DFID will be entitled, at its sole discretion, to declare this Contract void.

No payment will be made to the Supplier under this Contract until a copy of the Form of Contract, signed on behalf of the Supplier, is returned to the DFID Contract Officer.

3. Commencement Date and End Date of Initial Period

The Services shall commence on start 01st February 2018 and the end date of the Initial Period shall be 31st December 2022.

The implementation phase may be extended for a further 12 months, subject to DFID strategic requirements and supplier performance.

4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed £36, 023,603.49 exclusive of any government tax, if applicable. The value above includes a Fund element of £27,816,016.00 with monies to supplier of £8,207,587.49 (exclusive of government tax).

5. Programme Name

The Programme Name to which this Contract relates is Design and Implementation of Accountability in Tanzania (AcT-2) Programme.

6. Time of the Essence

Time shall be of the essence as regards the performance by the Supplier of its obligations under this Contract.

Signed by an authorised signatory
for and on behalf of
The Secretary of State for
International Development

Name:

Position:

Signature:

Date:

Signed by an authorised signatory
for and on behalf of the Supplier

Name:

Position:

Signature:

Date:

Section 2

STANDARD TERMS AND CONDITIONS

SECTION 2 - GENERAL CONDITIONS OF CONTRACT

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Preliminaries

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the meaning set out in the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Schedule 1 (Definitions) or the relevant Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 The interpretation and construction of the Contract shall be subject to the following provisions:
 - 1.3.1 clause headings shall not affect the interpretation or construction of the Contract;
 - 1.3.2 a reference to Law includes a reference to that Law as amended, consolidated or re-enacted from time to time;
 - 1.3.3 references to a **“person”** includes a natural person and a corporate or unincorporated body;
 - 1.3.4 words in the singular shall include the plural and vice versa;
 - 1.3.5 references to **“representations”** shall be construed as references to present facts, to **“warranties”** as references to present and future facts and to **“undertakings”** as references to obligations under this Contract;
 - 1.3.6 words **“including”, “other”, “in particular”, “for example”** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words **“without limitation”**;
 - 1.3.7 a reference to one gender shall include a reference to the other genders; and
 - 1.3.8 where the context allows, references to Clauses are to clauses in this Contract and references to Sections are the sections of this Contract.
- 1.4 Except as expressly provided elsewhere in this Contract, and subject to Clause 1.5, in the event of and only to the extent of any conflict between each Section of this Contract, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.4.1 Section 1 (Form of Contract);
 - 1.4.2 Section 4 (Special Conditions);
 - 1.4.3 Section 3 (Terms of Reference);
 - 1.4.4 Section 2 (Standard Terms and Conditions (except Schedule 4 (Tender)));
 - 1.4.5 Section 5 (Schedule of Prices); and
 - 1.4.6 Schedule 4 (Tender).
- 1.5 Where Schedule 4 (Tender) contain provisions which are more favourable to DFID in relation to (the rest of) this Contract, such provisions of the Tender shall prevail. DFID shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable in this context.

1.6 In entering into this Contract DFID is acting as part of the Crown.

2. REPRESENTATIONS AND WARRANTIES

2.1 The Supplier represents and warrants that:

- 2.1.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 2.1.2 it has full capacity and authority to enter into and to perform this Contract;
- 2.1.3 this Contract is executed by its duly authorised representative;
- 2.1.4 it has all necessary consents and regulatory approvals to enter into this Contract;
- 2.1.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- 2.1.6 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 2.1.7 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 2.1.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the standard selection questionnaire and invitation to tender (if applicable), its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to DFID in writing prior to the date of this Contract;
- 2.1.9 it has notified DFID in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- 2.1.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to DFID which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by DFID;
- 2.1.11 the Charges set out in Section 5 (Schedule of Prices) is/will be a true and accurate reflection of the costs and the Projected Profit Margin and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Charges;
- 2.1.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- 2.1.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue

- 2.2 The representations and warranties set out in Clause 2.1 shall be deemed to be repeated by the Supplier on the Commencement Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 2.3 The representations and warranties set out in this Clause 2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 2.4 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 2.1 has been breached, is untrue or is misleading, it shall immediately notify DFID of the relevant occurrence in sufficient detail to enable DFID to make an accurate assessment of the situation.
- 2.5 the Supplier System and assets used in the performance of the Services will be:
- 2.5.1 free of all encumbrances, any exceptions must be agreed in writing with DFID; and
- 2.5.2 Euro Compliant.
- 2.6 The Supplier shall at all times comply with Law in carrying out its obligations under this Contract.
- 2.7 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which DFID may have in respect of breach of that provision by the Supplier.
- 2.8 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise.
- 3. FINANCIAL LIMIT**
- 3.1 The components which comprise the Financial Limit are set out in Section 5 (Schedule of Prices). No expenditure may be incurred in excess of the Financial Limit and no variations between components shown in the Section 5 (Schedule of Prices) are permitted without the prior written authority of the DFID Contract Officer.

Term of Contract

4. CONTRACT TERM

- 4.1 The duration of this Contract shall be the Term.
- 4.2 Where DFID has specified an Extension Period in the Section 4 (Special Conditions), DFID may extend this Contract for the Extension Period.

Provision of Services

5. OBLIGATIONS OF THE SUPPLIER

- 5.1 The Supplier shall perform all its obligations under this Contract with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts and in accordance with DFID's Supply Partner Code of Conduct (Appendix B).
- 5.2 If the Supplier is a joint venture or an unincorporated consortium then each of the joint venture or consortium partners shall bear joint and several liability where liability may arise.
- 5.3 In performing its obligations under this Contract, neither the Supplier, nor any of its Affiliates, shall embarrass DFID or otherwise bring DFID into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in DFID, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract.
- 5.4 The Supplier shall ensure that the Services:

- 5.4.1 comply in all respects with the description of Services in Section 3 (Terms of Reference) or elsewhere in this Contract; and
 - 5.4.2 are supplied in accordance with the provisions of this Contract and the Tender.
- 5.5 The Supplier shall perform its obligations under this Contract in accordance with:
 - 5.5.1 all applicable Law;
 - 5.5.2 Good Industry Practice;
 - 5.5.3 any policies provided by DFID; and
 - 5.5.4 the Supplier's own established procedures and practices to the extent they do not conflict with the requirements of Clauses 5.5.1 to 5.5.3.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its Supplier Personnel also do, or refrain from doing, such act or thing.

Supplier Personnel and Supply Chain Matters

6. SUPPLIER PERSONNEL

- 6.1 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Clause 15 (Exit Management)) unless:
 - 6.1.1 requested to do so by DFID;
 - 6.1.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 6.1.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated by the employer for material breach of contract; or
 - 6.1.4 the Supplier obtains Approval (such Approval not to be unreasonably withheld or delayed).
- 6.2 The Supplier shall:
 - 6.2.1 provide a list of the names of all Supplier Personnel requiring admission to DFID Sites, specifying the capacity in which they require admission and giving such other particulars as DFID may reasonably require;
 - 6.2.2 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with Good Industry Practice and in compliance with the Staff Vetting Procedure;
 - (c) obey all lawful instructions and reasonable directions of DFID (including, if so required by DFID, the ICT Policy) and provide the Services to the reasonable satisfaction of DFID; and
 - (d) comply with:

all reasonable requirements of DFID concerning conduct at DFID Sites, including any security requirements; and

any DFID policies, provided to the Supplier or Supplier Personnel from time to time

- 6.2.3 subject to Schedule 2 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or Contractors of DFID;
 - 6.2.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
 - 6.2.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - 6.2.6 subject to Clause 6.1, replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
 - 6.2.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
 - 6.2.8 procure that the Supplier Personnel shall vacate DFID Sites immediately upon the Expiry Date.
- 6.3 If DFID reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- 6.3.1 refuse admission to the relevant person(s) to DFID Sites and/or
 - 6.3.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
 - 6.3.3 require the Supplier to replace the relevant person(s) without direct or indirect charge to DFID and the Supplier shall fully indemnify and hold DFID harmless against any claims of any kind that may arise with regard to the replacement of such Supplier Personnel.

7. SUB-CONTRACTORS AND EXCLUSIVITY

- 7.1 DFID has consented to the appointment of the Sub-Contractors set out in Section 4 (Special Conditions).
- 7.2 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
- 7.2.1 manage any Sub-Contracts in accordance with Good Industry Practice;
 - 7.2.2 comply with its obligations under this Contract in the provision of the Services; and
 - 7.2.3 assign, novate or otherwise transfer to DFID or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.
- 7.3 Prior to sub-contacting any of its obligations under this Contract, the Supplier shall notify DFID and provide DFID with:
- 7.3.1 the proposed Sub-Contractor's name, registered office and company registration number;
 - 7.3.2 the scope of any Services to be provided by the proposed Sub-Contractor; and
 - 7.3.3 where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of DFID that the proposed Sub-Contract has been agreed on "arm's-length" terms.

- 7.4 If requested by DFID within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 7.3, the Supplier shall also provide:
- 7.4.1 a copy of the proposed Sub-Contract; and
 - 7.4.2 any further information reasonably requested by DFID.
- 7.5 DFID may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 7.3 (or, if later, receipt of any further information requested pursuant to Clause 7.4), object to the appointment of the relevant Sub-Contractor if they consider that:
- 7.5.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests of DFID under this Contract;
 - 7.5.2 the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - 7.5.3 the proposed Sub-Contractor employs unfit persons,
- in which case, the Supplier shall not proceed with the proposed appointment.
- 7.6 If DFID has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
- 7.6.1 the Supplier's notice issued pursuant to Clause 7.3; or
 - 7.6.2 any further information requested by DFID pursuant to Clause 7.4,
- the Supplier may proceed with the proposed appointment.
- 7.7 The Supplier shall ensure that all Sub-Contracts contain provisions:
- 7.7.1 requiring the Sub-Contractor to comply with the DFID's Supply Partner Code of Conduct (Appendix B) at all times;
 - 7.7.2 requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
 - 7.7.3 requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
 - 7.7.4 conferring a right to DFID to publish the Supplier's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
 - 7.7.5 giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
 - 7.7.6 requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 7.7.

- 7.8 The Supplier shall:
- 7.8.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice;
 - 7.8.2 include within the Performance Monitoring Reports required under Clause 12.3 a summary of its compliance with this Clause 7.8.1, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading;
 - 7.8.3 not include in any Sub-Contract any provision the effect of which would be to limit or restrict the ability of the Sub-Contractor to contract directly with DFID, a Replacement Supplier, or with any other organisation and Sub-Contractors shall be free to assert their rights independently regarding contractual exclusivity.

8. STAFF TRANSFER

- 8.1 The Parties agree that:
- 8.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 2 (Staff Transfer) shall apply as follows:
 - (a) where the Relevant Transfer involves the transfer of Transferring DFID Employees, Part A of Schedule 2 (Staff Transfer) shall apply;
 - (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 2 (Staff Transfer) shall apply;
 - (c) where the Relevant Transfer involves the transfer of Transferring DFID Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 2 (Staff Transfer) shall apply; and
 - (d) Part C of Schedule 2 (Staff Transfer) shall not apply.
 - 8.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 2 (Staff Transfer) shall apply and Parts A and B of Schedule 2 (Staff Transfer) shall not apply; and
 - 8.1.3 Part D of Schedule 2 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;
- 8.2 The Supplier shall both during and after the Term indemnify DFID against all Employee Liabilities that may arise as a result of any claims brought against DFID by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

9. DUTY OF CARE

- 9.1 The Supplier owes a duty of care to the Supplier Personnel and is responsible for the health, safety, security of life and property and general wellbeing of such persons and their property and this includes where the Supplier Personnel carry out the Services.
- 9.2 The Supplier warrants that it has and will throughout the duration of the Contract:
- 9.2.1 carry out the appropriate risk assessment with regard to its delivery of the Services;
 - 9.2.2 provide the Supplier Personnel with adequate information, instruction, training and supervision;

- 9.2.3 have appropriate emergency procedures in place to enable their provision of the Services so as to prevent damage to the Supplier Personnel's health, safety, security of life and property and general wellbeing.
- 9.3 The provision of information of any kind whatsoever by DFID to the Supplier shall not in any respect relieve the Supplier from responsibility for its obligations under this Clause 9. The positive evaluation of the Supplier's proposal for the provision of the Services and the award of this Contract is not an endorsement by DFID of any arrangements which the Supplier has made for the health, safety, security of life and property and wellbeing of the Supplier Personnel in relation to the provision of the Services.
- 9.4 The Supplier acknowledges that the DFID accepts no responsibility for the health, safety, security of life and property and general wellbeing of the Supplier Personnel with regard to the Supplier Personnel carrying out the Services under this Contract.
- 9.5 The Supplier will ensure that such insurance arrangements as are made to cover the Supplier Personnel, or any person employed or otherwise engaged by the Supplier, and pursuant to the Suppliers duty of care as referred to in this Clause 9, are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.
- 9.6 The costs of any insurance specifically taken out by the Supplier to support the performance of this Contract in relation to the Supplier's duty of care may be included as part of the management costs of the project, and must be separately identified in all financial reporting relating to the project.
- 9.7 Where DFID is providing any specific security arrangements for the Supplier or Supplier Personnel in relation to the Contract, these will be as detailed in the Section 3 (Terms of Reference).
- 9.8 The Supplier shall provide training on a continuing basis for all Supplier Personnel, in compliance with the Security Policy and the security plan.
- 10. PROCUREMENT OF EQUIPMENT**
- 10.1 The Supplier shall ensure that procurement of goods and equipment shall:
- 10.1.1 be undertaken in accordance with best practice principles of openness fairness and transparency;
- 10.1.2 achieve "Value for Money" defined as the optimum combination of whole-life cost and quality to meet requirements in a fully transparent manner and the procurement may be subject to audit by DFID;
- 10.1.3 be carried out using strict due diligence processes that ensure the protection of DFID's interests and reputation, with particular emphasis on anti-terrorism, anti-corruption and fraud throughout the delivery chain; and
- 10.1.4 be on the basis that the ownership of Equipment shall vest in DFID, and shall be so marked.
- 11. USE OF AND RESPONSIBILITY FOR EQUIPMENT**
- 11.1 Equipment may only be used in providing the Services and shall be safely kept and maintained. Personal use of Equipment by the Supplier is not permitted without Approval.
- 11.2 The Supplier shall keep an up to date inventory of the Equipment its condition and location and make such inventory available to DFID immediately on request.
- 11.3 Subject to Clause 11.4 the Supplier shall be responsible for all loss or damage to Equipment other than that caused by fair wear and tear. The Supplier shall notify DFID immediately the Supplier becomes aware of any loss of or damage to Equipment
- 11.4 Except as required by law or circumstance, the Supplier shall not insure Equipment. DFID shall bear the risk in

respect of loss or damage provided such loss or damage was not due to the Supplier's negligence and provided the Supplier obtains and pays to DFID such proper compensation as may be due from any third party in respect of such loss or damage to the Equipment.

- 11.5 The Supplier shall obtain DFID's instructions on the disposal of Equipment and comply with such instructions.

Contract Governance

12. MONITORING OF CONTRACT PERFORMANCE

- 12.1 Unless Section 4 (Special Conditions) specifies that obligations relating to the monitoring of Contract performance shall be those set out in Section 3 (Terms of Reference), the remaining provisions of this Clause 12 shall apply.
- 12.2 Within twenty (20) Working Days of the Commencement Date the Supplier shall provide DFID with details of how the process in respect of the monitoring and reporting of the performance of the Supplier's obligations under this Contract will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 12.3 The Supplier shall provide DFID with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Clause 12.2 above which shall contain, as a minimum, the following information:
- 12.3.1 details of compliance with its obligations under Clause 7.8.2
 - 12.3.2 details of compliance with any additional obligations set out in Section 3 (Terms of Reference); and
 - 12.3.3 such other details as DFID may reasonably require from time to time.
- 12.4 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and DFID of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
- 12.4.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
 - 12.4.2 take place at such location and time (within normal business hours) as DFID shall reasonably require unless otherwise agreed in advance;
 - 12.4.3 be attended by the Supplier's Contract Officer and the DFID's Contract Officer; and
 - 12.4.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the DFID's Contract Officer and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Contract Officer and the DFID's Contract Officer at each meeting.
- 12.5 In order to assess the level of performance of the Supplier, DFID may undertake satisfaction surveys in respect of the Supplier's provision of the Services and DFID shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with this Contract.

13. PROGRESS & FINANCIAL REPORTS

- 13.1 Where progress and financial reports are to be submitted under the Contract, the Supplier shall render those reports at such time and in such form as may be specified by DFID or where not specified by DFID, as otherwise agreed between the Parties.

14. OPEN BOOK ACCOUNTING AND AUDIT

- 14.1 The Supplier shall keep and maintain for seven (7) years after the expiry of the Term (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it, any Sub-Contracts and the amounts paid by DFID.
- 14.2 If so stated in Section 3 (Terms of Reference), DFID shall be entitled to apply the principles of open book contract management set out in Procurement Policy Note 05/16 (<https://www.gov.uk/government/publications/procurement-policy-note-0516-open-book-contact-management>), or any other replacement guidance or policy issued from time to time to this Contract. DFID shall apply the appropriate tier level which, in DFID's reasonable opinion, is commensurate with the delivery model of the Services and the Supplier shall comply with the principles etc. (as more particular described in the OBMC guidance).
- 14.3 The Supplier shall:
- 14.3.1 keep the records and accounts referred to in Clause 14.1 in accordance with Good Industry Practice and Law; and
- 14.3.2 afford DFID and/or its Auditors access to the records and accounts referred to in Clause 14.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Term and the period specified in Clause 14.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Contract including in order to:
- (a) verify the accuracy of the Charges and any other amounts payable by DFID under this Contract (and proposed or actual variations to them in accordance with this Contract);
 - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
 - (c) verify the Open Book Data;
 - (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances DFID shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;
 - (g) obtain such information as is necessary to fulfil DFID's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
 - (i) carry out DFID's internal and statutory audits and to prepare, examine and/or certify DFID's annual and interim reports and accounts;
 - (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which DFID has used its resources;
 - (k) review any records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;

- (l) verify the accuracy and completeness of any information delivered or required by this Contract;
 - (m) review the Supplier's quality management systems (including any quality manuals and procedures);
 - (n) review the Supplier's compliance with any standards referred to in this Contract or applicable to the provision of the Services;
 - (o) inspect any of DFID's assets, including DFID's IPRs, equipment and facilities, for the purposes of ensuring that any of DFID's assets are secure and that any register of assets is up to date; and/or
 - (p) review the integrity, confidentiality and security of DFID Data.
- 14.4 DFID shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of DFID.
- 14.5 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
 - 14.5.1 all reasonable information requested by DFID within the scope of the audit;
 - 14.5.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 14.5.3 access to the Supplier Personnel.
- 14.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 14, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse DFID for the DFID's reasonable costs incurred in relation to the audit.
- 15. EXIT MANAGEMENT**
- 15.1 On reasonable notice at any point during the Term, the Supplier shall provide to DFID and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by DFID of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
 - 15.1.1 details of the Service(s);
 - 15.1.2 a copy of the Register, updated by the Supplier up to the date of delivery of such Registers;
 - 15.1.3 an inventory of DFID Data in the Supplier's possession or control;
 - 15.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 15.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 15.1.6 all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees' required to be provided by the Supplier under this Contract such information to include the Staffing Information as defined in Schedule 2 (Staff Transfer); and
 - 15.1.7 such other material and information as DFID shall reasonably require,(together, the "Exit Information").
- 15.2 The Supplier acknowledges that DFID may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom DFID is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that DFID may not disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).

- 15.3 if the Exit Information materially changes from the Exit Information previously provided and it could reasonably adversely affect:
- 15.3.1 the provision of the Services; and/or
 - 15.3.2 the delivery of the exit services/exit plan; and/or
 - 15.3.3 any re-tender exercise by DfID,
- then the Supplier shall notify DfID within a reasonable period of time and consult and shall consult with DFID regarding such proposed material changes and provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from DFID.
- 15.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- 15.4.1 prepare an informed offer for those Services; and
 - 15.4.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 15.5 The Supplier shall, within three (3) months after the Commencement Date, deliver to DFID an Exit Plan which:
- 15.5.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to DFID and/or its Replacement Supplier on the expiry or termination of this Contract;
 - 15.5.2 complies with the requirements set out in Clause 15.7 below;
 - 15.5.3 is otherwise reasonably satisfactory to DFID.
- 15.6 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 15.7 Unless otherwise specified by DFID, the Exit Plan shall set out, as a minimum:
- 15.7.1 how the Exit Information is obtained;
 - 15.7.2 the management structure to be employed during both transfer and cessation of the Services;
 - 15.7.3 the management structure to be employed whilst carrying out the activities to be performed by the Supplier as identified in the Exit Plan;
 - 15.7.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 15.7.5 how the Services will transfer to the Replacement Supplier and/or DFID, including details of the processes, documentation, data transfer, systems migration, security and the segregation of DFID's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - 15.7.6 details of contracts (if any) which will be available for transfer to DFID and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
 - 15.7.7 proposals for the training of key personnel of the Replacement Supplier in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;
 - 15.7.8 proposals for providing DFID or a Replacement Supplier copies of all documentation:

- (a) used in the provision of the Services and necessarily required for the continued use of the Replacement Services, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Services;
- 15.7.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
- 15.7.10 proposals for the identification and return of all Equipment in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
- 15.7.11 proposals for the disposal of any redundant Services and materials;
- 15.7.12 procedures to:
 - (a) deal with requests made by DFID and/or a Replacement Supplier for Staffing Information pursuant to Schedule 2 (Staff Transfer);
 - (b) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and
 - (c) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees;
- 15.7.13 how each of the issues set out in this Clause 15 will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or DFID with the aim of ensuring that there is no disruption to or degradation of the Services;
- 15.7.14 proposals for the supply of any other information or assistance reasonably required by DFID or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

PAYMENT AND TAXATION

16. Charges

- 16.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, DFID shall pay the undisputed Charges in accordance with the pricing and payment profile set out in Section 5 (Schedule of Prices) and the invoicing procedure set out in Clause 21.
- 16.2 If DFID fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

17. VAT

- 17.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by DFID following delivery of a Valid Invoice.
- 17.2 The Supplier shall indemnify DFID on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on DFID at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due shall be paid in cleared funds by the Supplier to DFID not less than five (5) Working Days before the date upon which the tax or other liability is payable by DFID.

18. RETENTION AND SET OFF

- 18.1 DFID may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and DFID.
- 18.2 If DFID wishes to exercise its right pursuant to Clause 18.1 it shall give at least 21 days' notice of its intention to do so, setting out the reasons for retaining or setting off the relevant Charges.
- 18.3 The Supplier shall make any payments due to DFID without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by DFID to the Supplier

19. SUPPLIER PROFIT

- 19.1 On completion of each Contract Year (or on a six-monthly basis if requested by DFID giving reasonable written notice), and for any Variation, the Supplier is required to send a written report (the "**Actual Profit Margin Report**") in a format determined by DFID from time to time setting out the Actual Profit Margin including any change to the Projected Profit Margin.
- 19.2 Where the Actual Profit Margin Report identifies that the Supplier has exceeded the Projected Profit Margin over the period set out in the Actual Profit Margin Report ("the **Exceeded Amount**"), the Parties shall agree within a reasonable period of time following receipt by DFID of the Actual Profit Margin Report how the Exceeded Amount should be apportioned. Where the Parties are unable to agree DFID shall be entitled to require the Supplier to do any of the following:
- 19.2.1 pay DFID an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount; or
- 19.2.2 redirect an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount back in to the programme being delivered as part of the Services; or
- 19.2.3 adjust the Charges.

20. SATISFACTORY PERFORMANCE

- 20.1 Payments made pursuant to Clause 16.1 are subject to the satisfactory performance by the Supplier of its obligations under the Contract as determined by the DFID Project Officer in addition to verification by the DFID Project Officer that all prior payments made to the Supplier under this Contract were properly due.
- 20.2 If for any reason the Services are not provided in accordance with this Contract, or DFID is dissatisfied with the performance of this Contract, DFID, without prejudice to any other rights or remedies howsoever arising, shall be entitled to withhold payment of the applicable Charges for the Services that were not so provided until such time as the applicable Services are provided in accordance with this Contract.
- 20.3 Should DFID determine after paying for a particular part of the Services that this has not been provided in accordance with this Contract, DFID may recover, or withhold from further payments, an amount not exceeding the applicable Charges paid for that part of the Service until the unsatisfactory part of the Services is remedied to DFID's satisfaction.

21. PAYMENTS & INVOICING INSTRUCTIONS

- 21.1 Subject to DFID being satisfied that the Supplier is or has been carrying out their duties, obligations and responsibilities under this Contract, the applicable Charges shall be paid within 30 days of receipt of an undisputed Valid Invoice and payment shall be made in sterling in the UK or any other currency in any other country as determined from DFID from time to time.

- 21.2 Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in OANDA (www.oanda.com) on the Friday immediately preceding the date on which the purchase was made or services acquired by the Supplier or, if this took place on a Friday, at the rate so stated on that day.
- 21.3 Unless otherwise expressly provided in Section 4 (Special Conditions) or Section 5 (Schedule of Prices), invoices should be submitted electronically monthly in arrears to the Accounts Payable Section, DFID Financial Management Group e-invoicing@dfid.gov.uk, and in accordance with this Clause 21.
- 21.4 DFID shall unless otherwise expressly provided in Section 4 (Special Conditions) make payments due by direct credit through the UK Bank Clearing Systems (BACS). For an invoice to be valid, it must contain:
- 21.4.1 details of the bank account to which payments are to be made (i.e. name and address of bank, sort code, account name and number).
 - 21.4.2 the date of the invoice;
 - 21.4.3 a unique invoice number;
 - 21.4.4 the period(s) to which the relevant charge(s) relate;
 - 21.4.5 the correct reference for this Agreement and the purchase order to which it relates;
 - 21.4.6 a contact name and telephone number of a responsible person in the supplier's finance department;
 - 21.4.7 a detailed breakdown of the Services and the appropriate Charges and supported by any other documentation required by DFID to substantiate the invoice.
- 21.5 All Valid Invoices should correspond with the budget lines identified in Section 5 (Schedule of Prices) of this Contract.
- 21.6 DFID may request proof of purchase in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.
- 21.7 Where an invoice is not a Valid Invoice it may be rejected by DFID and in any event shall be liable to query and delay in payment. DFID reserves the right to not pay any amount due in respect of any invoice received by DFID more than 90 days after the day of the Supplier becoming entitled to invoice for the payment to which it relates.

22. UNITED KINGDOM INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

- 22.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
- 22.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration;
 - 22.1.2 indemnify DFID against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

23. TAX COMPLIANCE

- 23.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 23.1.1 notify DFID in writing of such fact within 5 Working Days of its occurrence;
 - 23.1.2 promptly provide to DFID:

- (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as DFID may reasonably require.

Intellectual Property, Security and Information

24. INTELLECTUAL PROPERTY RIGHTS

24.1 Save as expressly granted elsewhere under this Contract:

24.1.1 DFID shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:

- (a) the Supplier Background IPR; and
- (b) the Third Party IPR.

24.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of DFID or its licensors, including the:

- (a) DFID Background IPR;
- (b) DFID Data;
- (c) Project Specific IPRs; and
- (d) Programme Name and any rights and interests in it at all times.

24.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 24.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

24.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

24.4 Any Project Specific IPRs created under this Contract shall be owned by DFID. DFID grants the Supplier a licence to use any DFID Background IPR and Project Specific IPRs for the purpose of fulfilling its obligations under this Contract during its Term.

24.5 Subject to Clause 24.7, to the extent that it is necessary to enable DFID to obtain the full benefits of ownership of the Project Specific IPRs, the Supplier hereby grants to DFID and shall procure that any relevant third party licensor shall grant to DFID a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR Items.

24.6 The Supplier shall promptly notify DFID if it is reasonably believes that it will be unable to grant or procure the grant of the licences set out in Clause 24.5 above and the Supplier shall provide full details of the adverse effect this may have on DFID's use of the Project Specific IPRs.

24.7 Where the Supplier is unable to comply with Clause 24.5, the Supplier shall refrain from embedding or integrating any Supplier Background IPRs and/or Third Party IPRs with the Project Specific IPRs in such a way that could affect DFID obtaining full benefit of the ownership of those Project Specific IPRs, except where DFID has provided express written Approval to do so.

24.8 The Supplier shall, during and after the Term, on written demand, indemnify DFID against all Losses incurred by, awarded against, or agreed to be paid by DFID (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

24.9 If an IPR Claim is made or anticipated, the Supplier must at its own expense and DFID's sole option, either:

24.9.1 procure for DFID the rights in Clause 24.5 without infringing the IPR of any third party; or

24.9.2 replace or modify the relevant item with non-infringing substitutes with no detriment to functionality of performance of the Services.

25. SECURITY REQUIREMENTS

25.1 The Supplier shall comply, and shall procure that the Supplier Personnel comply, with the Security Policy and any security plan requested by DFID, and the Supplier shall ensure that the security plan produced by the Supplier fully complies with the Security Policy.

25.2 The Supplier shall ensure that it keeps up to date with the latest version of the Security Policy.

25.3 If the Supplier believes that a change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a variation in accordance with Clause 37. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in discussion with the DFID Contract Officer.

25.4 Until and/or unless a change to the Charges is agreed by DFID pursuant to Clause 25.3 the Supplier shall continue to perform the Services in accordance with its obligations and for the Charges applicable prior to any change request.

26. MALICIOUS SOFTWARE

26.1 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

26.2 Notwithstanding Clause 26.1 if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of DFID Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

26.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 26.2 shall be borne by the Parties as follows:

26.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software or the DFID Data (whilst the DFID Data was under the control of the Supplier); and

26.3.2 by DFID if the Malicious Software originates from the DFID Software or the DFID Data (whilst DFID Data was under the control of DFID).

27. TRANSPARENCY

27.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of Clause 29 (Freedom of Information), the content of this Contract is not confidential information. DFID shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

27.2 Notwithstanding any other term of this Contract, the Supplier hereby gives their consent for DFID to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.

27.3 DFID may consult with the supplier to inform its decision regarding any exemptions with regard to FOIA but DFID shall have the final decision in its absolute discretion.

27.4 The Supplier shall assist and cooperate with DFID to enable DFID to publish this Contract.

- 27.5 The Supplier acknowledges that DFID endorses/supports the requirements of the IATI standard and shall assist and cooperate with DFID, to enable the Supplier to understand the different elements of IATI implementation and to comply with the different data, policy and technical considerations that need to be taken into account.
- 27.6 The Supplier shall:
- 27.6.1 publish information data to the IATI standard, that relates to a specific activity in a single, common, electronic format for the transparent, accurate, timely and comprehensive publishing of data, on all activities in the delivery chain, in the delivery of development cooperation and humanitarian aid; and
- 27.6.2 provide all necessary assistance as reasonably requested by DFID to enable DFID to respond to the IATI requirements.
- 27.7 The Supplier shall maintain an up-to-date and accurate record of named downstream delivery partners in receipt of DFID funds and/or DFID funded inventory or assets. This record should demonstrate how funds flow from initial source to end beneficiaries. This record should be made available to DFID upon written request and within the time set out in the request. This record should be updated by the Supplier;
- 27.7.1 as required in the terms of reference;
- 27.7.2 annually;
- 27.7.3 when there are material changes in the delivery chain; and
- 27.7.4 as part of the project completion process.
- 28. CONFIDENTIALITY**
- 28.1 Except to the extent set out in this Clause 28 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 28.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;
- 28.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 28.2 Clause 28.1 shall not apply to the extent that:
- 28.2.1 such disclosure is a requirement of Law applicable to the Party making the disclosure, including any requirements for disclosure under the FOIA, the Environmental Information Regulations and associated codes of practice pursuant to Clause 29 (Freedom of Information);
- 28.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 28.2.3 such information was obtained from a third party without obligation of confidentiality;
- 28.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- 28.2.5 it is independently developed without access to the other Party's Confidential Information.
- 28.3 The Supplier may only disclose DFID's Confidential Information to the Supplier Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier Personnel are aware of and shall comply with these obligations as to confidentiality.
- 28.4 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of DFID's Confidential Information received otherwise than for the purposes of this Contract.

- 28.5 At the written request of DFID, the Supplier shall procure that those members of the Supplier Personnel referred to in Clause 28.3, respectively sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 28.6 Nothing in this Contract shall prevent DFID from disclosing the Supplier's Confidential Information:
- 28.6.1 on a confidential basis to any Central Government Body for any proper purpose of DFID or of the relevant Central Government Body;
 - 28.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 28.6.3 to the extent that DFID (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 28.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 28.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
 - 28.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 14 (Open Book Accounting and Audit), its rights to appoint an advisor pursuant to Clause 45 (Dispute Resolution) and any rights set out in Clause 15 (Exit Management);
 - 28.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract; or
 - 28.6.7 for the purpose of the examination and certification of DFID's accounts,
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on DFID under this Clause 28.
- 28.7 Nothing in this Clause 28 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

29. FREEDOM OF INFORMATION

- 29.1 The Supplier acknowledges that DFID is subject to the requirements of the FOIA, the Environmental Information Regulations and associated codes of practice and shall assist and cooperate with DFID to enable DFID to comply with its Information disclosure obligations.
- 29.2 The Supplier shall and shall ensure that its Sub-Contractors shall:
- 29.2.1 transfer to DFID all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 29.2.2 provide DFID with a copy of all Information in its possession, or power in the form that DFID requires within five (5) Working Days (or such other period as DFID may specify) of DFID's request; and
 - 29.2.3 provide all necessary assistance as reasonably requested by DFID to enable DFID to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 29.3 DFID shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this

Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA, the Environmental Information Regulations and associated codes of practice.

- 29.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by DFID.
- 29.5 The Supplier acknowledges that DFID may, acting in accordance with any code of practice issued pursuant to Section 45 of FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
- 29.5.1 in certain circumstances without consulting the Supplier;
 - 29.5.2 following consultation with the Supplier and having taken their views into account;
 - 29.5.3 provided always that where Clause 29.5.1 applies DFID shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 29.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clauses 29.7 and 29.8 and shall permit DFID to inspect such records as requested by DFID from time to time.
- 29.7 The Supplier shall, during this Contract and for a period of at least seven years following the expiry or termination of this Contract, retain and maintain all Information:
- 29.7.1 in accordance with Good Industry Practice and Law;
 - 29.7.2 in chronological order;
 - 29.7.3 in a form that is capable of audit;
 - 29.7.4 at its own expense.
- 29.8 Wherever practical, original Information shall be retained and maintained in hard copy form.

30. OFFICIAL SECRETS ACT

- 30.1 The Supplier shall, and shall ensure that the Supplier Personnel shall, comply with any relevant obligations arising under the Official Secrets Acts 1911 to 1989.

31. DFID DATA

- 31.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to DFID Data.
- 31.2 The Supplier shall not store, copy, disclose, or use DFID Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by DFID.
- 31.3 To the extent that DFID Data is held and/or processed by the Supplier, the Supplier shall supply that DFID Data to DFID as requested by DFID in the format(s) specified by DFID.
- 31.4 Upon receipt or creation by the Supplier of any DFID Data and during any collection, processing, storage and transmission by the Supplier of any DFID Data, the Supplier shall take responsibility for preserving the integrity of DFID Data and preventing the corruption or loss of DFID Data.
- 31.5 The Supplier shall perform secure back-ups of all DFID Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Security Policy. The Supplier shall ensure that such back-ups are available to DFID at all times upon request, with delivery times as specified by DFID.
- 31.6 The Supplier shall ensure that the system on which the Supplier holds any DFID Data, including back-up data, is a secure system that complies with the Security Policy.

- 31.7 If DFID Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, DFID may:
- 31.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of DFID Data to the extent and in accordance with the Business Continuity and Disaster Recovery Provisions specified in the Security Policy and the Supplier shall do so as soon as practicable but not later than three days following a written request from DFID; and/or
 - 31.7.2 itself restore or procure the restoration of DFID Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery provisions specified in the Security Policy.
- 31.8 If at any time the Supplier suspects or has reason to believe that DFID Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify DFID immediately and inform DFID of the remedial action the Supplier proposes to take.
- 31.9 The Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme.
- 32. PROTECTION OF PERSONAL DATA**
- 32.1 With respect to the Parties' rights and obligations under this Contract, the parties agree that DFID is the Data Controller and that the Supplier is the Data Processor.
- 32.2 The Supplier shall:
- 32.2.1 process the Personal Data only in accordance with instructions from DFID (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by DFID to the Supplier during the Term);
 - 32.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
 - 32.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 32.2.4 take reasonable steps to ensure the reliability of any Supplier Personnel who have access to the Personal Data;
 - 32.2.5 obtain Approval in order to transfer the Personal Data to any Sub-Contractors or Affiliates for the provision of the Services;
 - 32.2.6 ensure that all Supplier Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 32;
 - 32.2.7 ensure that none of Supplier Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by DFID;
 - 32.2.8 notify DFID (within two Working Days) if it receives:
 - (a) a request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to DFID's obligations under the Data Protection Legislation;

- 32.2.9 provide DFID with full cooperation and assistance in relation to any complaint or request made, including by:
- (a) providing DFID with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with DFID's instructions;
 - (c) providing DFID with any Personal Data it holds in relation to a Data Subject (within the timescales required by DFID);
 - (d) providing DFID with any information requested by DFID;
- 32.2.10 permit DFID or its representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 14 (Open Book Accounting and Audit) Supplier's data processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by DFID to enable DFID to verify and/or procure that the Supplier is in full compliance with its obligations under this Contract;
- 32.2.11 provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by DFID);
- 32.2.12 not Process Personal Data outside the United Kingdom without Approval and, where DFID Approves a transfer, to comply with:
- (a) the obligations of a Data Controller under the Eight Data Protection Principle set out in schedule 2 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred;
 - (b) any reasonable instructions notified to it by DFID.
- 32.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause DFID to breach any of its applicable obligations under the Data Protection Legislation.
- 33. BRANDING**
- 33.1 The Supplier shall collaborate with DFID and proactively look for ways to build support for development and raise awareness of DFID's funding. The Supplier shall explicitly acknowledge DFID's funding, in written and verbal communications about activities related to the funding, to the public or third parties, including in announcements, and through use, where appropriate, of DFID's "UK aid – from the British people" logo ('UK aid logo') in accordance with DFID standards for use of the UK aid logo, unless otherwise agreed in advance by DFID and in all cases subject to security and safety considerations of the Supplier.
- 33.2 The Supplier shall provide a visibility statement of how and when they will acknowledge funding from DFID and where they will use the UK aid logo. The Supplier shall include reference to this in its progress reports and annual reviews.
- 33.3 Suppliers may use the UK aid logo in conjunction with other donor logos, and where the number of donors to a programme or project is such as to make co-branding impractical, acknowledgement of funding from DFID shall be equal to that of other co-donors making contributions of equivalent amounts to the programme or project.

Liabilities

34. LIMIT OF LIABILITY

34.1 Neither Party limits its liability for:

34.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);

34.1.2 fraud or fraudulent misrepresentation by it or its employees;

34.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

34.1.4 any liability to the extent it cannot be limited or excluded by Law.

34.2 Subject to Clause 34.1, the Supplier's total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) incurred by DFID under or in connection with the Contract as a result of Defaults by the Supplier shall not exceed the Financial Limit unless a different amount has been stated in Section 4 (Special Conditions) in which case that amount shall apply.

34.3 Subject to Clause 34.1, DFID's total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) shall not exceed one hundred thousand pounds (£100,000).

34.4 Subject to Clause 34.1 neither Party be liable to the other for any:

34.4.1 loss of profits, turnover, savings business opportunities, revenue or damage to goodwill (in each case whether direct or indirect); and/or

34.4.2 indirect, special or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the Party has been advised of the possibility of such losses occurring.

34.5 Subject to Clause 34.2, and notwithstanding Clause 34.4, the Supplier acknowledges that DFID may, amongst other things, recover from the Supplier the following losses incurred by DFID to the extent that they arise as a result of a Default by the Supplier:

34.5.1 any additional operational and/or administrative costs and expenses incurred by DFID, including costs relating to time spent by or on behalf of DFID in dealing with the consequences of the Default;

34.5.2 any wasted expenditure or charges;

34.5.3 the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Contract;

34.5.4 any compensation or interest paid to a third party by DFID; and

34.5.5 any fine, penalty or costs incurred by DFID pursuant to Law.

35. INDEMNITY

35.1 Subject to Clauses 34.1 to 34.5 (inclusive), the Supplier shall indemnify DFID in respect of any Losses howsoever arising out of or in consequence of negligent acts or omissions by the Supplier or the Supplier Personnel or any claims made against DFID by third parties in respect thereof and in relation to this Contract.

- 35.2 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of DFID or DFID's employees, or by breach by DFID of its obligations under the Contract.

36. INSURANCE

- 36.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Contract in accordance with Schedule 3 (Insurance Requirements).
- 36.2 The Supplier shall ensure that its Sub-Contractors shall effect and maintain insurances (where appropriate) in relation to the performance of their obligations under any Sub-Contracts appropriate to Services being provided.
- 36.3 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Contract.

Control of Contract

37. VARIATIONS

- 37.1 Either Party may request a variation to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 37.2 A Party may request a Variation at any time by sending the request in writing to the relevant Contract Officer. The request shall contain sufficient information setting out:
- 37.2.1 the extent of the proposed Variation and any additional cost that may be incurred; and
 - 37.2.2 a formal, technical and commercial justification.
- 37.3 In the event that the Parties are unable to agree a change to the Contract that may be included in a request of a Variation or response to as a consequence thereof DFID may:
- 37.3.1 agree to continue to perform its obligations under this Contract without the Variation; or
 - 37.3.2 terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the provision of the Services in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 37.4 If the Parties agree the Variation, the Variation shall be effected upon both Parties signing the Contract Amendment Letter (Appendix A) and the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Contract.

38. ASSIGNMENT AND NOVATION

- 38.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without Approval.
- 38.2 Subject to Clause 38.1, the Supplier may assign to a third party ("the Assignee") the right to receive payment of the Charges or any part thereof due to the Supplier under this Contract (including any interest to which DFID is liable under the Late Payments of Commercial Debts (Interest) Act 1998). Any assignment under this Clause 38.2 shall be subject to:
- 38.2.1 deduction of any sums in respect of which DFID exercises its right of recovery under Clause 18 (Retention and Set Off);

- 38.2.2 all related rights of DFID under the Contract in relation to the recovery of sums due but unpaid; and
- 38.2.3 DFID receiving notification under both Clauses 38.3 and 38.4.
- 38.3 In the event that the Supplier assigns the right to receive the Charges under Clause 38.2, the Supplier shall notify DFID in writing of the assignment and the date upon which the assignment becomes effective.
- 38.4 The Supplier shall notify DFID of the assignee's contact information and bank account details to which DFID shall make payment.

Default and Termination

39. DFID REMEDIES FOR DEFAULT

39.1 Remedies

39.1.1 Without prejudice to any other right or remedy of DFID howsoever arising if the Supplier commits any Default of this Contract then DFID may (whether or not any part of the Services have been provided) do any of the following:

- (a) at DFID's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the DFID 's instructions;
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Contract;
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):

- (i) instruct the Supplier to comply with the Rectification Plan Process;

suspend this Contract (whereupon the relevant provisions of Clause 43 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;

without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 43 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services.

39.1.2 Where DFID exercises any of its step-in rights under Clauses 39.1.1 (c) 0 or 39.1.1 (c) 0, DFID shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by DFID (including any reasonable administration costs) in respect of the supply of any part of the Services by DFID or a third party and provided that DFID uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

39.2 Rectification Plan Process

39.2.1 Where DFID has instructed the Supplier to comply with the Rectification Plan Process pursuant to 39.1.1 (c) (i):

- (a) the Supplier shall submit a draft Rectification Plan to DFID for it to review as soon as possible and in any event within 10 (ten) Working Days (or such other period as may be agreed between the Parties) from the date of DFID's instructions. The Supplier shall submit a draft Rectification

Plan even if the Supplier disputes that it is responsible for the Default giving rise to the DFID's request for a draft Rectification Plan.

(b) the draft Rectification Plan shall set out:

(i) full details of the Default that has occurred, including a root cause analysis;

the actual or anticipated effect of the Default; and

the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

39.2.2 The Supplier shall promptly provide to the DFID any further documentation that the DFID requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Dispute Resolution Procedure.

39.2.3 DFID may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

(a) is insufficiently detailed to be capable of proper evaluation;

(b) will take too long to complete;

(c) will not prevent reoccurrence of the Default; and/or

(d) will rectify the Default but in a manner which is unacceptable to DFID.

39.2.4 DFID shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If DFID rejects the draft Rectification Plan, DFID shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to DFID for review within five (5) Working Days (or such other period as agreed between the Parties) of the DFID's notice rejecting the first draft.

39.2.5 If DFID consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

40. FORCE MAJEURE

40.1 Subject to the remainder of this Clause 40, a Party may claim relief under this Clause 40 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

40.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

40.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 40 to the extent that consequences of the relevant Force Majeure Event:

40.3.1 are capable of being mitigated by any of the provision of any Services but the Supplier has failed to do so; and/or

- 40.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.
- 40.4 Subject to DFID's right to terminate set out in Clause 40.5, the Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 40.5 Where DFID receives a Force Majeure Notice, from the date of receipt of the Force Majeure Notice, DFID may, at its sole discretion, either suspend this Contract for a period of up to six (6) months ("the Suspension Period") or terminate this Contract forthwith.
- 40.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 40.7 Relief from liability for the Affected Party under this Clause 40 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 40.6.
- 40.8 If by the end of the Suspension Period the Parties have not agreed a further period of suspension or re-instatement of the Contract, this Contract shall terminate automatically.
- 41. TERMINATION WITHOUT DEFAULT OF THE SUPPLIER**
- 41.1 DFID may, at its sole discretion, terminate this Contract, at any time by issuing a Termination Notice to the Supplier giving at least thirty (30) Working Days written notice (unless stated differently in Section 4 (Special Conditions)).
- 42. TERMINATION WITH DEFAULT OF THE SUPPLIER**
- 42.1 DFID may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:
- 42.1.1 any representation or warranty given by the Supplier pursuant to Clause 2 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of DFID are acceptable;
- 42.1.2 DFID expressly reserves the right to terminate this Contract for material Default;
- 42.1.3 the Supplier commits any material Default of the Contract which is not, in the reasonable opinion of DFID, capable of remedy; and/or
- 42.1.4 the Supplier commits a Default, including a material Default, which in the opinion of DFID is remediable but has not remedied such Default to the satisfaction of DFID in accordance with the Rectification Plan Process.
- 42.2 For the purpose of Clause 42.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.
- 42.3 DFID may, without prejudice to its other rights, including but not limited to the right to claim for Losses incurred, issue a Termination Notice where:
- 42.3.1 the Supplier or any Supplier Personnel, either directly or through their servants or agents or Sub-Contractors breaches any of their obligations under this Contract; or
- 42.3.2 the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf has committed an offence under the Bribery Act 2010 or the Terrorism Act 2000 in breach of Clauses 35 or 36 of this Contract; or

42.3.3 DFID has the right to terminate under Clause 37.3.2; or

42.3.4 the Supplier is an individual or a partnership and at any time:

- (a) becomes bankrupt; or
- (b) is the subject of a receiving order or administration order; or
- (c) makes any composition or arrangement with or for the benefit of the Supplier's creditors; or
- (d) makes any conveyance or assignment for the benefit of the Supplier's creditors; or
- (e) the warranty given by the supplier pursuant to Clause 23 (Tax Compliance) is materially untrue; or
- (f) the Supplier commits a material breach of its obligation to notify DFID of any Occasion of Tax Non Compliance as required by Clause 23 (Tax Compliance); or
- (g) the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of DFID, are acceptable; or

42.3.5 the Supplier is a company and:

- (a) an order is made or a resolution is passed for the winding up of the Supplier; or
- (b) a receiver or administrator is appointed in respect of the whole or any part of the undertaking of the Supplier; or

42.3.6 the Supplier is a partnership or a company and there is a Change of Control.

42.3.7 there is an occurrence of any of the statutory provisos contained in Regulation 73(1)(a)-(c) of the Regulations.

42.4 Where this Contract is terminated in accordance with this Clause 42, the Supplier shall without prejudice to DFID's other remedies, take any steps necessary to terminate the provision of the Services in a timely and orderly manner and in compliance with Clause 15 (Exit Management) but shall not be entitled to any further payment in relation to this Contract.

43. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

43.1 Where DFID has the right to terminate this Contract, DFID shall be entitled to terminate or suspend all or part of this Contract provided always that, if DFID elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in DFID's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.

43.2 Any suspension of this Contract under Clause 43.1 shall be for such period as DFID may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to DFID.

43.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the procedure set out in Clause 37 (Variation), including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Charges, provided that the Supplier shall not be entitled to:

43.3.1 an increase in the Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of DFID's termination rights under Clause 42 (Termination With Default of the Supplier) except Clause 41 (Termination Without Default of the Supplier); and

43.3.2 reject the Variation.

44. CONSEQUENCES OF EXPIRY OR TERMINATION

44.1 Where this Contract has been terminated pursuant to Clause 41 (Termination Without Default of the Supplier), the Supplier shall:

44.1.1 take such steps as are necessary to terminate the provision of the Services or any part of the Services (including suspending or terminating any Sub-Contracts) in a cost-effective, timely and orderly manner;

44.1.2 act in accordance with Clause 15 (Exit Management); and

44.1.3 provide to DFID, not more than 60 days after DFID notifies the Supplier of the termination of this Contract an account in writing with detailed supporting evidence, stating:

- (a) any costs, if any, due before the date of termination, which cannot be avoided by the Supplier using reasonable endeavours; and
- (b) costs to be expended after the date of termination which the Supplier necessarily incurred in the proper performance of this Contract and which the Supplier cannot reasonably avoid or recover using reasonable endeavours;

and, subject to Approval, DFID shall pay such amount stated pursuant to Clause 44.1.3 to the Supplier within 30 days of receipt from the Supplier of a Valid Invoice in respect of the amount due.

44.2 Where this Contract is terminated under Clause 42 (Termination with Default of the Supplier) and DFID makes other arrangements for the provision of Services DFID may recover from the Supplier pursuant to Clause 18 (Retention and Set Off) or otherwise, the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by DFID throughout the remainder of the Term provided that DFID shall take all reasonable steps to mitigate such additional expenditure.

44.3 Where this Contract is terminated for any reason, save as expressly provided in this Contract:

44.3.1 termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and

44.3.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of DFID or the Supplier under Clauses 14, 15, 16, 17, 18, 20, 21, 24, 27, 29, 30, 31, 32, 34, 35, 44, 45, 49 and 54, and the provisions of Schedule 2 (Staff Transfer) of this Section 2 and any relevant clauses listed under Section 4 (Special Conditions), and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

MISCELLANEOUS AND GOVERNING LAW

45. DISPUTE RESOLUTION PROCEDURE

45.1 The Parties will attempt in good faith to negotiate a settlement to any Dispute between them arising out of or in connection with this Contract. If the matter is not resolved by negotiation within 45 days of when either Party first made contact in respect of the same, the Parties will refer the Dispute to mediation in accordance with CEDR (Centre for Effective Dispute Resolution in London, UK) procedures. If the parties fail to agree terms of settlement within 90 days of the initiation of the procedure the Dispute may be referred to an arbitrator as agreed between the parties or failing such agreement as may be nominated by the President of the Law Society of

England and Wales upon application of any Party. The initiation of the procedure is defined as the written request to CEDR by any Party for mediation provided that such request is copied to the other Party.

45.2 The decision of the arbitrator shall be final and binding on both Parties.

45.3 The seat and place of arbitration shall be London.

46. PREVENTION OF FRAUD AND BRIBERY

46.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, any person acting on their behalf, have at any time prior to the Commencement Date:

46.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

46.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

46.2 The Supplier, Supplier Personnel, or any person acting on their behalf shall not during the Term:

46.2.1 commit a Prohibited Act; and/or

46.2.2 do or suffer anything to be done which would cause DFID or any of DFID's employees, consultants, suppliers, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

46.3 The Supplier shall during the Term:

46.3.1 establish, maintain and enforce, and require that its Supplier Personnel establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

46.3.2 keep appropriate records of its compliance with its obligations under Clause 46.3.1 and make such records available to DFID on request.

46.4 The Supplier shall immediately notify DFID in writing if it becomes aware of any breach of Clause 46.1 and/or Clause 46.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:

46.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

46.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

46.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

46.5 The Supplier warrants and represents to DFID that to the best of its knowledge, that neither the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf:

46.5.1 has given, offered or agreed to give or accepted, any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or forborne to do any act in relation to the obtaining or execution of any contract or for showing or forbearing to show favour or disfavour to any person or entity in relation to any contract; or

46.5.2 has entered into any contract in connection with which commission has been paid or agreed to be paid by or to the Supplier or Supplier Personnel or on their behalf or to their knowledge unless, before such contract was made, particulars of any such commission and of the terms of any agreement for the payment of such commission were disclosed in writing to DFID, whose written consent was subsequently given to such payment.

- 46.6 Neither the Supplier or the Supplier Personnel or any person acting on their behalf shall accept for their own benefit or pass on for the benefit of partner government, recipient or end user, any trade commission, discount, voucher scheme, re-sale or similar payment or benefit in connection with this Contract.
- 46.7 Where the Supplier or Supplier Personnel, or any person acting on their behalf, does any of the acts mentioned in Clause 46.5 or commits any offence under the Bribery Act 2010, with or without the knowledge of the Supplier, in relation to this Contract or any other contract with the Crown, DFID shall be entitled:
- 46.7.1 to terminate the Contract with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any Losses resulting from the termination;
- 46.7.2 to recover from the Supplier the amount or value of any such gift, consideration or commission;
- 46.7.3 to recover from the Supplier any other Losses sustained as a result of any breach of this Clause 46, whether or not the Contract is terminated.
- 46.8 DFID, the Supplier and the Supplier Personnel shall immediately and without undue delay inform each other of any event that interferes or threatens to materially interfere with the successful delivery of the Services, whether financed in full or in part by DFID, including credible suspicion of/or actual fraud, bribery, corruption or any other financial irregularity or impropriety.

DFID has an expert fraud investigation unit, that should be contacted in the first instance at fraud@dfid.gov.uk or +44 (0)1355 843351. All suspicions will be treated with the utmost confidentiality.

47. ANTI-TERRORISM REGULATIONS

- 47.1 In accordance to the Terrorism Act 2000 and all subsequent regulations pursuant to this Act, the Supplier will assure itself to the best of its knowledge that UK funding, including financial assets or economic resources is not made available, either directly or indirectly to, or for the benefit of persons, groups or entities listed in accordance with European Council Regulation EC/2580/2001 (as amended) and/or the Terrorism (United Nations Measures) Orders 2009 of the United Kingdom, or contravene the provisions of those and any subsequent applicable terrorism legislation.
- 47.2 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf, have at any time prior to the Commencement Date and/or during the term of this Contract appeared on the Home Office Proscribed Terrorist Organisations List.
- 47.3 The Supplier shall immediately notify DFID in writing if it becomes aware of any breach of Clause 47.1 and/or Clause 47.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:
- 47.3.1 been subject to an investigation or prosecution which relates to an alleged infringement of Clause 47.1 and/or Clause 47.2;
- 47.3.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts.
- 47.4 Where the Supplier or any of his employees, servants, agents or Sub-Contractors, or any person acting on their behalf, breaches any of the acts mentioned in Clause 47.1 and/or Clause 47.2 commits any offence under the Terrorism Act 2000, with or without the knowledge of the Supplier, in relation to this Contract or any other contract with the Crown, DFID shall be entitled:
- 47.4.1 to terminate the Contract with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any loss resulting from the termination;
- 47.4.2 to recover from the Supplier any other loss sustained as a result of any breach of this Clause 47, whether or not the Contract has been terminated.

48. DISCRIMINATION

- 48.1 The Supplier shall not unlawfully discriminate either directly or indirectly against protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010, the International Development (Gender Equality) Act 2014 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 48.2 The Supplier shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission. The Supplier shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all suppliers, employees or agents of the Supplier and all suppliers and Sub-Contractors employed in the execution of this Contract.
- 48.3 The Supplier will comply with any request by DFID to assist DFID in meeting its obligations under the Equality Act 2010 and to allow DFID to assess the Supplier's compliance with its obligations under the Equality Act 2010.
- 48.4 Where any investigation is concluded or proceedings are brought under the Equality Act 2010 which arise directly or indirectly out of any act or omission of the Supplier, its agents or Sub-Contractors, or Supplier Personnel, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier will indemnify DFID with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment DFID may have been ordered or required to pay to a third party.

49. LAW AND JURISDICTION

- 49.1 This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

50. ENVIRONMENTAL REQUIREMENTS

- 50.1 The Supplier shall provide the Services and any goods & equipment required under the Contract in accordance with applicable national and international laws, including those of the country or countries in which the Services or goods & equipment are to be provided, and DFID's environmental operations policy, which is to conserve energy, water and other resources, reduce waste, phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 50.2 The Supplier shall work with DFID and the populations that are potentially affected by its operations under the Contract regarding any environmental issues that could affect the sustainable development provisions of the International Development Act (2002), comply with special conditions as stipulated in the Terms of Reference and carry out any reasonable additional request to ensure the protection of the environment, society and the economy throughout the contract period.
- 50.3 The Supplier shall ensure it has the requisite expertise and controls to identify and mitigate all factors that may affect compliance with the conditions outlined in Clauses 50.1 and 50.2 as a result of its own operations or those of Sub-Contractors working on its behalf.
- 50.4 The Supplier shall promptly notify DFID of any changes in potential material adverse effects from its operations under the Contract and of the occurrence of any incident or accident related to the Project that has or is likely to have a significant adverse effect on the environment.
- 50.5 Nothing in Clauses 50.1 to 50.3 shall relieve the obligations of the Supplier to comply with its statutory duties and Good Industry Practice.

51. CONFLICT OF INTEREST

- 51.1 Neither the Supplier nor any of the Supplier Personnel shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Contract.
- 51.2 The Supplier and the Supplier Personnel shall notify DFID immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.
- 51.3 The Supplier shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for DFID and that undertaken for other clients. The Supplier shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against DFID, including conflicts of interest which are likely to prejudice their independence and objectivity in performing the Contract, howsoever arising.
- 51.4 The Supplier shall notify DFID immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and shall advise DFID of how they intend to avoid such a conflict arising or remedy such situation. The Supplier shall subject to any obligations of confidentiality it may have to third parties provide all information and assistance reasonably necessary (at the Supplier's cost) that DFID may request of the Supplier in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with DFID with the aim of avoiding a conflict or remedy a conflict.
- 51.5 Pursuant to Clause 51.4, DFID shall have the right to require that the Supplier puts in place Ethical Walls and will ensure and satisfy DFID that all information relating to the Contract and to the Services (including all working papers, draft reports in both tangible and intangible form) are not shared or made available to person(s) other than Supplier Personnel and that such matters are not discussed by any person(s) other than Supplier Personnel.
- 51.6 In the event of a failure to maintain the Ethical Walls as described above arising during the course of this Contract, DFID reserves the right to immediately terminate the Contract on giving written notice to the Supplier.
- 52. WAIVER**
- 52.1 A waiver of any of the terms and/or conditions of this Contract shall be valid only where it is agreed expressly in writing and signed by the parties. No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 53. ENTIRE AGREEMENT**
- 53.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause 53.1 shall not exclude liability in respect of any fraudulent misrepresentation.
- 53.2 The Supplier is not the agent of DFID and has no authority to represent and shall not purport to represent or enter into any commitments on behalf of DFID in any respect.
- 53.3 Nothing in this Contract is intended to make nor shall it make DFID the employer of the Supplier or any of the Supplier Personnel.
- 53.4 All communications by the Supplier relating to the Contract must be addressed to the DFID Contract Officer whose name and address is given in Section 4 (Special Conditions).
- 54. THIRD PARTY RIGHTS**
- 54.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs and 1.4, 2.3 and 2.8 of Part D of Schedule 2 (Staff Transfer) (together the **"Third Party Provisions"**) confer benefits on persons named in such provisions other than the Parties (each such person a **"Third Party Beneficiary"**) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

- 54.2 Subject to Clause 54.1, a person who is not a Party to this Contract has no right under the CTRPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 54.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of DFID, which may, if given, be given on and subject to such terms as DFID may determine.
- 54.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 54.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

55. NOTICES

- 55.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of Clause 55, an e-mail is accepted as being "in writing".
- 55.2 Subject to Clause 55.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 55.3 and 55.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 55.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 55.2:
- 55.3.1 any Termination Notice (Clause 41 (Termination Without Default of the Supplier) and Clause 42 (Termination With Default of the Supplier)); and
- 55.3.2 any notice in respect of:
- (a) partial termination, suspension or partial suspension (Clause 43 (Partial Termination, Suspension and Partial Suspension)),
 - (b) waiver (Clause 52 (Waiver)); or
 - (c) Default.
- 55.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 55.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class

delivery (as set out in the table in Clause 55.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- 55.5 Clause 55 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 55.6 For the purposes of Clause 55, the address and email address of each Party shall be as specified in Section 1 Form of Contract).

SCHEDULE 1: DEFINITIONS

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below:

“Actual Profit Margin” means the actual profit achieved during the relevant period set out in Clause 19.1;

“Affected Party” the Party seeking to claim relief in respect of a Force Majeure Event;

“Affiliate” in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

“Approval” means the prior written consent of DFID and **“Approve”** and **“Approved”** shall be construed accordingly;

“Auditor” means:

- (a) DFID’s internal and external auditors;
- (b) DFID’s statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by DFID to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above.

“Central Government Body” a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

“Change of Control” means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

“Charges” means the charges raised under or in connection with this Contract from time to time, which shall be calculated in a manner that is consistent with Schedule 5 (Schedule of Prices) and the eligible cost guidance:

- (a) Include the following costs:
 - i) the cost to the Supplier, calculated per Man Day, of engaging the Supplier Personnel, including:
 - base salary paid to the Supplier Personnel;
 - employer’s national insurance contributions;
 - pension contributions;
 - car allowances;
 - any other contractual employment benefits;
 - staff training;
 - work place accommodation;
 - work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (ii) below); and
 - reasonable recruitment costs by agreement with DFID;

- ii) costs incurred in respect of any Supplier assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier assets by the Supplier to DFID or (to the extent that risk and title in any Supplier asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier assets;
 - iii) operational costs which are not included within (i) or (ii) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services; and
- (b) not include the following costs:
- i) overhead;
 - ii) financing or similar costs;
 - iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term whether in relation to Supplier assets or otherwise;
 - iv) taxation;
 - v) fines and penalties;
 - vi) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

"Commencement Date" means the date identified in Section 1 Form of Contract.

"Commercially Sensitive Information" the information listed in Section 4 (Special Conditions) comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business of which the Supplier has indicated to DFID that, if disclosed by DFID, would cause the Supplier significant commercial disadvantage of material financial loss.

"Confidential Information" means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of either party, including all intellectual property rights, together with all information derived from any of the above, and any other information clearly being designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

"Contract" means this agreement between DFID and the Supplier consisting of this Section 2 (Standard Terms and Generals) and any attached Schedules and Appendices

"Contract Amendment Letter" means the form set out in Appendix A.

"Contract Officer" means the person named in Section 4 who is responsible for all contractual aspects of the Contract.

"Control" means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;

"Data Controller" shall have the same meanings as set out in the Data Protection Act 1998.

"Data Processor" shall have the same meaning as set out in the Data Protection Act 1998.

"Data Protection Legislation" means the Data Protection Act 1998 and all other applicable laws and regulations relating to the processing of personal data and privacy, including without limitation, the guidance and codes of practice issued by the Information Commissioner;

"Data Subject" shall have the same meaning as set out in the Data Protection Act 1998.

"Default" means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of the Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to DFID;

"DFID Background IPR" means:

- a) IPRs owned by DFID before the Commencement Date, including IPRs contained in any of DFID's know-how, documentation, software, processes and procedures;
- b) IPRs created by DFID independently of this Contract; and/or
- c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;

“DFID Data” means (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of DFID; or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which DFID is the Data Controller.

“DFID System” DFID's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by DFID or the Supplier in connection with this Contract which is owned by DFID or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for DFID to receive the Services;

“Dispute” any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

“Dispute Resolution Procedure” means the dispute resolution procedure set out in Clause 45;

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

“Employee Liabilities” means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by DFID or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- f) claims whether in tort, contract or statute or otherwise;
- g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

“Employment Business” means an employment agency is an organization which matches employers to employees. In all developed countries there is a publicly funded employment agency and multiple private businesses which also act as employment agencies.

“Environmental Information Regulations” means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations;

“Ethical Walls” means a process for avoiding conflicts of interest by limiting disclosure of information to certain individuals within an organisation, thereby building a metaphorical wall between the holders of information and colleagues who represent interests or hold opinions which conflict.

“Euro Compliant” means that:

- (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect DFID's business;
- (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and
- (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):
 - (a) be able to perform all such functions in any number of currencies and/or in euros;
 - (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;
 - (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
 - (d) incorporate protocols for dealing with rounding and currency conversion;
 - (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
 - (f) permit the input of data in euro and display an outcome in euro where such data, supporting DFID's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK.

"Equipment" means any equipment, computer hardware or software, materials, goods and vehicles and associated services necessarily required for the implementation of the Services, which the Supplier cannot reasonably be expected to provide, which are financed or provided by DFID for use by the Supplier.

"Exit Management" services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to DFID and/or a Replacement Supplier.

"Exit Plan" the plan produced and updated by the Supplier during the Term in accordance with Terms of Reference and Clause 15;

"Expiry Date" means:

- (a) the end date of the Initial Period or, if exercised, the end date of any Extension Period; or
- (b) if this Contract is terminated before the date specified in (a) above, the earlier date of termination of this Contract;

"Extension Period" means such period or periods up to a maximum of the number of years in total as may be specified by DFID, pursuant to Clause 4.2 and in Section 4 (Special Conditions);

"Financial Limit" means the amount specified in Section 1 (Form of Contract) and is the maximum amount of Charges paid by DFID and which DFID has agreed are duly payable under this Contract for the receipt of the Services.

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation.

"Force Majeure Event" any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf or any other failure in the Supplier's or a Sub-Contractor's supply chain;

"Force Majeure Notice" a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

“Former Supplier” means a supplier supplying services to DFID before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such supplier (or any Sub-Contractor of any such Sub-Contractor);

“General Anti-Abuse Rule” means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

“Good Industry Practice” at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like DFID, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“HM Government Cyber Essentials Scheme” means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

“IATI” means the International Aid Transparency Initiative standard and is a technical publishing framework allowing data to be compared. It is designed to report forward-looking aggregate budget information for the reported organisations, and planned future budgets to recipient institutions or countries.

“ICT Environment” means the DFID System and the Supplier System;

“Information” has the meaning given under Section 84 of the Freedom of Information Act 2000; including all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

“Initial Period” means the initial term of this Contract from the Commencement Date to the end date of the initial term stated in Section 4 (Special Conditions);

“Intellectual Property Rights” or “IPRs” means

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

“IPR Claim” means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to DFID (including any claims arising from the publication of the Project Specific IPRs as open source) in the fulfilment of its obligations under this Contract

“Key Personnel” means the individuals (if any) identified as such in Section 4 (Special Conditions);

“Key Performance Indicators” or “KPIs” means a set of quantifiable measures that DFID and Supplier will use to measure the performance of the Services provided by the Supplier under the Contract (as defined in Section 3 Terms of Reference).

“Law” means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

“Licensed Software” all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to DFID for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;

“Losses” means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **“Loss”** shall be interpreted accordingly;

“Malicious Software” any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“Man Day” means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;

“Man Hours” means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices) but excluding lunch breaks;

“Milestone” an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;

“Milestone Payment” a payment identified in Section 5 to be made following the issue of a Milestone Achievement Certificate;

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - vii) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - viii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud evasion.

“Open Book Data” means complete and accurate financial and non-financial information which is sufficient to enable DFID to verify the Charges already paid or payable and Charges forecast to be paid during the Term, including details and all assumptions relating to:

- (a) the Supplier's Costs broken down against each Service and/or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all services;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - i) the unit costs and quantity of any consumables and bought-in goods and services;
 - ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; and
 - iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Projected Profit Margin;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;

- (e) the Supplier Profit achieved over the Term and on an annual basis;
- (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency;
- (h) the actual Costs profile under this Contract; and
- (i) anything not listed in a) to h) but relevant to supplier discharging responsibilities under the Contract;

“Overhead” means those amounts which are intended to recover a proportion of the Supplier’s or the Sub-Contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of Charges;

“Parties” and **“Party”** have the meanings respectively given in Section 1 of this Contract;

“Performance Indicators” means the Key Performance Indicators and the subsidiary Performance Indicators;

“Personal Data” means personal data (as defined in the Data Protection Act 1998) which is Processed by the Supplier or any Sub-Contractor on behalf of DFID or a Central Government Body pursuant to or in connection with this Contract;

“Process” has the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and “Processing” and “Processed” shall be interpreted accordingly;

“Programme Name” means the name given to the programme to which this Contract relates as identified in Section 1 (Form of Contract);

“Prohibited Act” has the meaning;

(a) to directly or indirectly offer, promise or give any person working for or engaged by DFID a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

(c) an offence:

(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

(ii) under legislation or common law concerning fraudulent acts; or

(iii) defrauding, attempting to defraud or conspiring to defraud DFID; or

(d) any activity, practice or conduct which would constitute one of the offences listed under

(e) above if such activity, practice or conduct had been carried out in the UK;

“Project” means a set of co-ordinated activities, with definite starting and finishing points, undertaken by an individual or team to meet specific objectives within defined time, cost and performance parameters

“Project Officer” means the person named in Section 4 who is responsible for issuing instructions and dealing with all correspondence in connection with the technical aspects of the Contract;

“Project Specific IPRs” means:

- a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- b) IPR in or arising as a result of the performance of the Supplier's obligations under this Contract and all updates and amendments to the same,

but shall not include the Supplier Background IPR;

"Projected Profit Margin" means the profit the Supplier expects to achieve over the Term as set out in Schedule 5 (Schedule of Costs);

"Register" means a register which sets out full details of:

- (a) any assets used by the Supplier in connection with the provision of the Services, including details of:
 - (i) make, model and asset number;
 - (ii) ownership and status as whether the assets are used exclusively for the provision of the Services;
 - (iii) condition and physical location; and
 - (iv) use (including technical specifications); and
- (b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

"Regulations" means the Public Contracts Regulations 2015 as amended or replaced from time to time;

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

"Relevant Requirements" all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

"Relevant Tax Authority" means HM Revenue & Customs, or, if applicable, a Tax Authority in the jurisdiction in which the Supplier is established.

"Relevant Transfer" means a transfer of employment to which the Employment Regulations applies;

"Relevant Transfer Date" means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

"Replacement Services" any services which are the same as or substantially similar to any of the Services and which DFID receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by DFID internally and/or by any third party;

"Replacement Sub-Contractor" means a Sub-Contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Sub-Contractor of any such Sub-Contractor);

"Replacement Supplier" any third party service provider of Replacement Services appointed by DFID from time to time;

"Request for Information" a request for information or an apparent request under the FOIA, the Environmental Information Regulations and associated codes of practice;

"Security Policy" means DFID's security policy, which can be accessed on DFID's website at <http://www.dfid.gov.uk/work-with-us/procurement/dfid-information-security-policy-for-contractorsconsultants/> or as notified to the Supplier from time to time;

"Service Transfer" means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;

"Service Transfer Date" means the date of a Service Transfer;

"Services" means the services set out in the Terms of Reference (Section 3).

"Sites" any premises (including DFID premises, the Supplier's premises or third party premises):

(a) from, to or at which:

(i) the Services are (or are to be) provided; or

(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or

(b) where:

(i) any part of the Supplier System is situated;

(ii) any physical interface with DFID System takes place;

"Software" Specially Written Software, Supplier Software and Third Party Software;

"Specially Written Software" means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications, configuration, customisation, or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract;

"Staffing Information" means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as DFID may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Staff Vetting Procedure" means DFID's procedures and departmental policies for the vetting of Personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989.

"Sub-Contract" means any contract or agreement (or proposed contract or agreement) to which a third party:

- a) provides the Services (or any part of them);
- b) provides facilities or goods and services necessary for the provision of the Services (or any part of them); and/or
- c) is responsible for the management, direction or control of the provision of the Services (or any part of them);

"Sub-Contractor" means any person other than the Supplier, who is a party to a Sub-Contract and the servants and agents of that person;

"Successor Body" means a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds DFID;

"Supplier" means the person(s), partnership(s) or company (ies) with whom this Contract is placed and as identified in Section 1 (Form of Contract);.

"Supplier Background IPRs" means;

- (a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or
- (b) Intellectual Property Rights created by the Supplier independently of this Agreement, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

"Supplier Personnel" means any person (including Key Personnel) instructed pursuant to this Contract to undertake any of the Supplier's obligations under this Contract, including the Supplier's employees, agents and Sub-Contractors.

"Supplier Software" means any software which is proprietary to the Supplier (or an Affiliate of the Supplier which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for DFID to receive the benefit of and/or make use of the Services;

"Supplier System" the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding DFID System);

"Tender" means the tender submitted by the Supplier to DFID a copy of which is annexed or referred to in Schedule 4 (Tender);

"Term" means the term of this Contract from the Commencement Date until the Expiry Date;

"Termination Notice" means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;

"Third Party IPRs" means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;

"Third Party Software" means any software which is proprietary to any third party (other than an Affiliate of the Supplier) or any open source which is or will be used by the Supplier for the purposes of providing the Services)

"Transferring DFID Employees" those employees of DFID to whom the Employment Regulations will apply on the Relevant Transfer Date;

"Transferring Former Supplier Employees" in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;

"Transferring Supplier Employees" means those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date;

"Valid Invoice" means an invoice issued by the Supplier to DFID and containing the information set out in Clause 21.4;

"Variation" means a properly executed variation to the Contract in compliance with Clause 37;

“Variation Procedure” means the procedure set out in Clause 37;

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

“Working Day” means any day other than a Saturday, Sunday or public holiday in England and Wales.

SCHEDULE 2: STAFF TRANSFER

1. DEFINITIONS

In this Schedule 2, the following definitions shall apply:

“Admission Agreement”	An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Supplier where it agrees to participate in the Schemes in respect of the Services;
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
“Fair Deal Employees”	those Transferring DFID Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule 2 applies, any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);
“Former Supplier”	a supplier supplying services to DFID before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such supplier (or any Sub-Contractor of any such Sub-Contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
“Notified Sub-Contractor”	a Sub-Contractor identified in the Annex to this Schedule 2 to whom Transferring DFID Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Replacement Sub-Contractor”	a Sub-Contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Sub-Contractor of any such Sub-Contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Schemes”	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 2 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a

	Replacement Sub-Contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
“Supplier's Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Supplier's Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
“Transferring DFID Employees”	those employees of DFID to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

Where a provision in this Schedule 2 imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to DFID, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

PART A

TRANSFERRING DFID EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

DFID and the Supplier agree that:

the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring DFID Employees; and

as a result of the operation of the Employment Regulations, the contracts of employment between DFID and the Transferring DFID Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-Contractor and each such Transferring DFID Employee .

DFID shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring DFID Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) DFID; and (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

2. DFID INDEMNITIES

Subject to Paragraph 2.2, DFID shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

any act or omission by DFID in respect of any Transferring DFID Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DFID Employee occurring before the Relevant Transfer Date;

the breach or non-observance by DFID before the Relevant Transfer Date of:

any collective agreement applicable to the Transferring DFID Employees; and/or

any custom or practice in respect of any Transferring DFID Employees which DFID is contractually bound to honour;

any claim by any trade union or other body or person representing the Transferring DFID Employees arising from or connected with any failure by DFID to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

in relation to any Transferring DFID Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

in relation to any employee who is not a Transferring DFID Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to

transfer his/her employment from DFID to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

a failure of DFID to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring DFID Employees arising before the Relevant Transfer Date;

any claim made by or in respect of any person employed or formerly employed by DFID other than a Transferring DFID Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and

any claim made by or in respect of a Transferring DFID Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DFID Employee relating to any act or omission of DFID in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

arising out of the resignation of any Transferring DFID Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or

arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.

If any person who is not identified by DFID as a Transferring DFID Employee claims, or it is determined in relation to any person who is not identified by DFID as a Transferring DFID Employee, that his/her contract of employment has been transferred from DFID to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to DFID; and

DFID may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such other reasonable steps as DFID considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by DFID, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

If by the end of the 15 Working Day period specified in Paragraph 2.3.2:

no such offer of employment has been made;

such offer has been made but not accepted; or

the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, DFID shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

The indemnity in Paragraph 2.6:

shall not apply to:

any claim for:

discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to DFID within 6 months of the Commencement Date.

If any such person as is referred to in Paragraph 2.3 is neither re-employed by DFID nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

Subject to Paragraph 3.2 the Supplier shall indemnify DFID against any Employee Liabilities arising from or as a result of:

any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring DFID Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DFID Employee whether occurring before, on or after the Relevant Transfer Date;

the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:

any collective agreement applicable to the Transferring DFID Employees; and/or

any custom or practice in respect of any Transferring DFID Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

- any claim by any trade union or other body or person representing any Transferring DFID Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- any proposal by the Supplier or a Sub-Contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring DFID Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring DFID Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring DFID Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with DFID in writing;
- any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - in relation to any Transferring DFID Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - in relation to any employee who is not a Transferring DFID Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from DFID to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring DFID Employees in respect of the period from (and including) the Relevant Transfer Date;
- any claim made by or in respect of a Transferring DFID Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DFID Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from DFID's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.

The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of DFID whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from DFID's failure to comply with its obligations under the Employment Regulations.

The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring DFID Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the

Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between DFID and the Supplier.

4. INFORMATION

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to DFID in writing such information as is necessary to enable DFID to carry out its duties under regulation 13 of the Employment Regulations. DFID shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by DFID relating to pensions in respect of any Transferring DFID Employee as set down in:

the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

the New Fair Deal.

Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 0 or 0 shall be agreed in accordance with the Variation Procedure.

6. PENSIONS

The Supplier shall, and/or shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART A: PENSIONS

1. PARTICIPATION

The Supplier undertakes to enter into the Admission Agreement.

The Supplier and DFID:

undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;

agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying DFID if the Supplier breaches any obligations it has under the Admission Agreement;

agree, notwithstanding Paragraph 0 of this Annex, the Supplier shall notify DFID in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and

agree that DFID may terminate this Contract in the event that the Supplier breaches the Admission Agreement:

and that breach is not capable of being remedied; or

where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from DFID giving particulars of the breach and requiring the Supplier to remedy it.

The Supplier shall bear its own costs and all costs that DFID reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

2. FUTURE SERVICE BENEFITS

The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.

The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to DFID, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by DFID in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.

The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

The Supplier shall indemnify and keep indemnified DFID on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Supplier and DFID respectively undertake to each other:

to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

The Supplier undertakes to DFID to indemnify and keep indemnified DFID on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

7. SUBSEQUENT TRANSFERS

The Supplier shall:

not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;

provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or DFID may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and

for the applicable period either:

after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or

after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or DFID, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of DFID (such approval not to be unreasonably

withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8. BULK TRANSFER

Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:

fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;

instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or DFID may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and

indemnify DFID on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

PART B

TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

DFID and the Supplier agree that:

the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.

Subject to Paragraph 6, DFID shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and DFID shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2. FORMER SUPPLIER INDEMNITIES

Subject to Paragraphs 2.2 and 6, DFID shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

any collective agreement applicable to the Transferring Former Supplier Employees; and/or

any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the

Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;

any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or

arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.

If any person who is not identified by DFID as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by DFID as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to DFID and, where required by DFID, to the Former Supplier; and

the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or DFID, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

If by the end of the 15 Working Day period specified in Paragraph 2.3.2:

no such offer of employment has been made;

such offer has been made but not accepted; or

the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, DFID shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

The indemnity in Paragraph 2.6:

shall not apply to:

any claim for:

discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to DFID and, if applicable, the Former Supplier, within 6 months of the Commencement Date.

If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

Subject to Paragraph 3.2, the Supplier shall indemnify DFID and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:

any collective agreement applicable to the Transferring Former Supplier Employee; and/or

any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

- any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with DFID and/or the Former Supplier in writing;
- any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.

The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions,

payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. INFORMATION

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to DFID and/or at DFID's direction, the Former Supplier, in writing such information as is necessary to enable DFID and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 6, DFID shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by DFID relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

the New Fair Deal.

Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

6. PROCUREMENT OBLIGATIONS

Notwithstanding any other provisions of this Part B, where in this Part B DFID accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that DFID's contract with the Former Supplier contains a contractual right in that regard which DFID may enforce, or otherwise so that it requires only that DFID must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7. PENSIONS

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART B: PENSIONS

1. PARTICIPATION

The Supplier undertakes to enter into the Admission Agreement.

The Supplier and DFID:

undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;

agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying DFID if the Supplier breaches any obligations it has under the Admission Agreement;

agree, notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify DFID in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and

agree that DFID may terminate this Contract for material default in the event that the Supplier breaches the Admission Agreement:

- (a) and that breach is not capable of being remedied; or
- (b) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from DFID giving particulars of the breach and requiring the Supplier to remedy it.

The Supplier shall bear its own costs and all costs that DFID reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

2. FUTURE SERVICE BENEFITS

If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to DFID, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by DFID in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.

The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

The Supplier shall indemnify and keep indemnified DFID on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Supplier and DFID respectively undertake to each other:

to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

The Supplier undertakes to DFID to indemnify and keep indemnified DFID on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

The Supplier shall comply with the requirements of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

7. SUBSEQUENT TRANSFERS

The Supplier shall:

not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;

provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or DFID may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and

for the applicable period either

after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or

after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or DFID, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of DFID (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8. BULK TRANSFER

- 8.1 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:
- 8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
 - 8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or DFID may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
 - 8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and
 - 8.1.4 indemnify DFID on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

DFID and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of DFID and/or any Former Supplier.

If any employee of DFID and/or a Former Supplier claims, or it is determined in relation to any employee of DFID and/or a Former Supplier, that his/her contract of employment has been transferred from DFID and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to DFID and, where required by DFID, give notice to the Former Supplier; and

DFID and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as DFID or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by DFID and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:

no such offer of employment has been made;

such offer has been made but not accepted; or

the situation has not otherwise been resolved,

the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, DFID shall:

indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of DFID referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

subject to paragraph 3, procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

If any such person as is described in Paragraph 1.2 is neither re-employed by DFID and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.

Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify DFID and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify DFID and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.

The indemnities in Paragraph 2.1:

shall not apply to:

any claim for:

discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and

shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to DFID and, if applicable, Former Supplier within 6 months of the Commencement Date.

3. PROCUREMENT OBLIGATIONS

Where in this Part C DFID accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that DFID's contract with the Former Supplier contains a contractual right in that regard which DFID may enforce, or otherwise so that it requires only that DFID must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D

EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

The Supplier agrees that within twenty (20) Working Days of the earliest of:

receipt of a notification from DFID of a Service Transfer or intended Service Transfer;

receipt of the giving of notice of early termination or any Partial Termination of this Contract;

the date which is twelve (12) months before the end of the Term; and

receipt of a written request of DFID at any time (provided that DFID shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by DFID.

At least thirty (30) Working Days prior to the Service Transfer Date, the Supplier shall provide to DFID or at the direction of DFID to any Replacement Supplier and/or any Replacement Sub-Contractor:

the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and

the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

DFID shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.

The Supplier warrants, for the benefit of DFID, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of DFID (not to be unreasonably withheld or delayed):

replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;

increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, DFID or, at the direction of DFID, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

During the Term, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to DFID any information DFID may reasonably require relating to the manner in which Services are organised, which shall include:

the numbers of employees engaged in providing the Services;

the percentage of time spent by each employee engaged in providing the Services;

the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule 2 or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule 2 (as appropriate); and

a description of the nature of the work undertaken by each employee by location.

The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to DFID, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to DFID or, at the direction of DFID, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

the most recent month's copy pay slip data;

details of cumulative pay for tax and pension purposes;

details of cumulative tax paid;

tax code;

details of any voluntary deductions from pay; and

bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

DFID and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of

termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. DFID and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.

Subject to Paragraph 2.4, where a Relevant Transfer occurs the Supplier shall indemnify DFID and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:

- any act or omission of the Supplier or any Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;

- the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:

 - any collective agreement applicable to the Transferring Supplier Employees; and/or

 - any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

- any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

- any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

 - in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

 - in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to DFID and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent

that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);

any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged DFID and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by DFID and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or

arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.

If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

DFID shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, DFID shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:

no such offer of employment has been made;

such offer has been made but not accepted; or

the situation has not otherwise been resolved

the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

The indemnity in Paragraph 2.8:

shall not apply to:

any claim for:

discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or

any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and

shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.

If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

the Supplier and/or any Sub-Contractor; and

the Replacement Supplier and/or the Replacement Sub-Contractor.

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to DFID and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable DFID, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. DFID shall procure that the Replacement Supplier and/or

Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

Subject to Paragraph 2.14, where a Relevant Transfer occurs DFID shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;

the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:

any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or

any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;

any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by

HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and

any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX TO SCHEDULE 2: LIST OF NOTIFIED SUB-CONTRACTORS

1. Global Climate Adaptation Partnership (GCAP); and
2. International Law and Policy Institute (ILPI)

SCHEDULE 3: INSURANCE REQUIREMENTS

1. OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to DFID under this Contract, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 2 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the “Insurances”). The Supplier shall ensure that each of the Insurances is effective no later than the Commencement Date.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent Contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which DFID shall be indemnified in respect of claims made against DFID in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

2. GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
 - take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent Contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. FAILURE TO INSURE

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, DFID may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and DFID shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4. EVIDENCE OF POLICIES

- 4.1 The Supplier shall upon the Commencement Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to DFID, that the Insurances are in force and effect and meet in full the requirements of this Framework Schedule 2. Receipt of such evidence by DFID shall not in itself constitute acceptance by DFID or relieve the Supplier of any of its liabilities and obligations under this Agreement.

5. AGGREGATE LIMIT OF INDEMNITY

- 5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

if a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to DFID:

details of the policy concerned; and

its proposed solution for maintaining the minimum limit of indemnity specified; and

if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Contract are paid by insurers, the Supplier shall:

ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract; or

if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to DFID full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

6. CANCELLATION

- 6.1 The Supplier shall notify DFID in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

7. INSURANCE CLAIMS

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that DFID receives a claim relating to or arising out of the Services or this Contract, the Supplier shall co-operate with DFID and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where DFID is the claimant party, the Supplier shall give DFID notice within twenty (20) Working Days after any insurance claim in excess of **£36,023,603.49** relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by DFID) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from DFID any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

ANNEX 1: REQUIRED INSURANCES

PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE

1.INSURED

- 1.1 The Supplier

2.INTEREST

- 2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

death or bodily injury to or sickness, illness or disease contracted by any person;

loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 2) and arising out of or in connection with the provision of the Services and in connection with this Contract.

3.LIMIT OF INDEMNITY

- 3.1 Not less than **£36,023,603.49** in respect of any one occurrence, the number of occurrences being unlimited, but [£sum to be determined by DFID] any one occurrence and in the aggregate per annum in respect of products and pollution liability.

4.TERRITORIAL LIMITS

NOT REQUESTED AS PART OF ORIGINAL TENDER

5.PERIOD OF INSURANCE

- 5.1 From the Commencement Date for the Term and renewable on an annual basis unless agreed otherwise by DFID in writing.

6.COVER FEATURES AND EXTENSIONS

- 6.1 Indemnity to principals clause.

7.PRINCIPAL EXCLUSIONS

- 7.1 War and related perils.
- 7.2 Nuclear and radioactive risks.
- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.
- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8. MAXIMUM DEDUCTIBLE THRESHOLD

- 8.1 Not to exceed [£ threshold to be agreed with Supplier] for each and every third party property damage claim (personal injury claims to be paid in full). – **NOT REQUESTED AS PART OF ORIGINAL TENDER**

PART B: PROFESSIONAL INDEMNITY INSURANCE

9. INSURED

9.1 The Supplier

10. INTEREST

10.1 To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the Period of Insurance by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

11. LIMIT OF INDEMNITY

11.1 Not less than £36,023,603.49 in respect of any one claim and in the aggregate per annum.

[Guidance Note: In determining the sum, the financial limits on liability as set out in Clause 34 (Limit of Liability) should be taken into account.]

12. TERRITORIAL LIMITS

12.1 **NOT REQUESTED AS PART OF ORIGINAL TENDER**

13. PERIOD OF INSURANCE

13.1 From the date of this Contract and renewable on an annual basis unless agreed otherwise by DFID in writing (a) throughout the Term or until earlier termination of this Contract and (b) for a period of 6 years thereafter.

14. COVER FEATURES AND EXTENSIONS

14.1 Retroactive cover to apply to any claims made policy wording in respect of this Contract or retroactive date to be no later than the Commencement Date.

15. PRINCIPAL EXCLUSIONS

15.1 War and related perils

15.2 Nuclear and radioactive risks

16. MAXIMUM DEDUCTIBLE THRESHOLD

8.1 Not to exceed [insert threshold set out in the Supplier's Tender] each and every claim. – **NOT REQUESTED AS PART OF ORIGINAL TENDER**

PART C: UNITED KINGDOM COMPULSORY INSURANCES

17. GENERAL

- 17.1 The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

SCHEDULE 4: TENDER

1. GENERAL

- 1.1 This Schedule 4 sets out a copy of the Supplier's Tender.
- 1.2 Subject to Clause 1.4, in addition to any other obligations on the Supplier under this Contract, the Supplier shall provide the Services in accordance with the Tender.

Appendix A. Contract Amendment Letter

Department for International Development

Abercrombie House
Eaglesham Road
EAST KILBRIDE
Glasgow
G75 8EA

01355 84 4000

Telephone: East Kilbride

Directline: 01355 84 [

File Ref: [

Date: [

Contract Amendment

No: [

CONTRACT FOR: [

CONTRACT NUMBER: [

With reference to the Contract dated [, both Parties have in principle agreed to the following variation[s to the Contract [:

[

2. [These/This amendment[s relate[s to [

3. Please confirm in writing by signing and returning one copy of this letter, within 15 working days of the date of signature on behalf of DFID that you accept the variation[s set out herein.

4. The Contract, including any previous variations, shall remain effective and unaltered except as amended by this letter.

5. Words and expressions in this letter shall have the meanings given to them in the Contract.

Signed by an authorised signatory for and on behalf of the
Secretary of State
for International Development

Name: [

Position:

Signature:

Date: [

Signed by an authorised signatory for and on behalf of the Supplier

Name: [

Signature:

Date:

APPENDIX B

DFID Supply Partner Code of Conduct

Principles

DFID aims to create an inclusive culture of best practice with the delivery partners with whom it engages and which receive UK taxpayers' funds. All supply partners should adhere to the overarching principles of the Supply Partner Code of Conduct (Code).

Overarching Principles for Supply Partners

- ✓ **Act responsibly and with integrity**
- ✓ **Demonstrate commitment to poverty reduction and DFID priorities¹**, including work in fragile and conflict affected states, recognition of human rights, focus on girls and women, youth engagement, climate change and wealth creation
- ✓ **Demonstrate commitment to wider HMG priorities²**
- ✓ **Seek to improve value for money**
- ✓ **Be transparent and accountable**

DFID Supply Partner responsibilities

Supply partners and their Sub-Contractors should ensure they have read and understood the Code and their required compliance level and seek clarification from DFID where necessary. In particular, it is important that the supply partners and their Sub-Contractors understand any risks and have systems in place to manage them. The 3 compliance levels are:

¹ <https://www.gov.uk/government/organisations/department-for-international-development/about#priorities>

² <https://www.gov.uk/government/organisations/hm-treasury/about#priorities>

Compliance Level 1 - Supply partners with an individual contract value of £1m or above, or two or more contracts with DFID with a combined value of £5m or above

Compliance Level 2 - Supply partners with an individual contract value below £1m, or two or more contracts with DFID with a value of less than £5m

Compliance Level 3 – Supply partners with an individual contract value, or component of a Contract, with a value below the EU Threshold. At this level supply partners are required to adhere to the overarching Code principles and recognise, mitigate and manage risks. These supply partners will not be monitored against the contractual KPIs.

Scope

This Code forms part of DFID's standard contractual terms and conditions and full compliance and annual verification via a signed declaration, to be found at Annex 1b, is mandatory for supply partners. DFID will monitor supply partners in five priority areas as set out below using a set of Key Performance Indicators (KPIs) referenced in Annex 1a and 1b.

1. Value for Money and Governance

Key Performance Indicators KPI 1 a - c

Value for Money is an essential requirement of all DFID commissioned work. All supply partners must seek to maximise development results, whilst driving cost efficiency, throughout the life of commissioned programmes. This includes budgeting and pricing realistically and appropriately to reflect delivery requirements and levels of risk over the life of the programme. It also includes managing uncertainty and change to protect value in the often challenging environments that we work in.

Supply partners must demonstrate that they are pursuing continuous improvement to reduce waste and improve efficiency in their internal operations and within the delivery chain. DFID expects supply partners to demonstrate openness and honesty and to be realistic about capacity and capability at all times, accepting accountability and responsibility for performance along the full delivery chain, in both every-day and exceptional circumstances.

Specific requirements include:

- ✓ Provision of relevant VfM and governance policies and a description of how these are put into practice to meet DFID requirements (e.g. codes on fraud and corruption, due diligence);
- ✓ A transparent, open book approach, which enables scrutiny of value for money choices, applies pricing structures that align payments to results and reflects an appropriate balance of performance risk;
- ✓ Processes for timely identification and resolution of issues and for sharing lessons learned.

2. Ethical Behaviour

Key Performance Indicators KPI 2 a- f

DFID supply partners and their Sub-Contractors act on behalf of government and interact with citizens, public sector/third sector organisations and the private sector. These interactions must therefore meet the highest standards of ethical and professional behaviour that upholds the reputation of government.

Arrangements and relationships entered into, whether with or on behalf of DFID, must be free from bias, conflict of interest or the undue influence of others. Particular care must be taken by staff who are directly involved in the management of a programme, procurement, contract or relationship with DFID, where key stages may be susceptible to undue influence. In addition, supply partners and their Sub-Contractors must not attempt to influence a DFID staff to manipulate programme monitoring and management to cover up poor performance.

Supply partners and their Sub-Contractors must declare to DFID any instances where it is intended that any direct or delivery chain staff members will work on DFID funded business where those staff members have any known conflict of interest or where those staff members have been employed by DFID or the Crown in the preceding two years. Supply partners and their Sub-Contractors must provide proof of compliance with the HMG approval requirements under the Business Appointment Rules.

Supply partners and their Sub-Contractors must have the following policies and procedures in place:

- ✓ Recruitment policy (which must address circumstances where there may be potential or actual conflict of interest)
- ✓ Ongoing conflict of interest, mitigation and management
- ✓ Refresher ethical training and staff updates (including awareness of modern day slavery and human rights abuses)
- ✓ A workforce whistleblowing policy
- ✓ Procedures setting out how, staff involved in DFID funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the Counter Fraud and Whistleblowing Unit (CFWU) at fraud@dfid.gov.uk or on +44(0)1355 843551

3. Transparency and Delivery Chain Management

Key Performance Indicators KPI 3 a – f

DFID requires full delivery chain transparency from all supply partners. All delivery chain partners must adhere to wider HMG policy initiatives including the support of micro, small and medium sized enterprises (MSMEs), prompt payment, adherence to human rights and modern slavery policies and support for economic growth in developing countries.

DFID's direct/prime supply partners (tier 1) must engage their delivery chain supply partners in a manner that is consistent with DFID's treatment of its prime supply partners. This includes, but is

not limited to: pricing; application of delivery chain risk management processes; and taking a zero tolerance approach to tax evasion, corruption, bribery and fraud in subsequent service delivery or in partnership agreements.

Specific requirements for prime supply partners include:

- ✓ Provide assurance to DFID that the policies and practices of their delivery chain supply partners and affiliates are aligned to this Code;
- ✓ Maintaining and sharing with DFID up-to-date and accurate records of all downstream partners in receipt of DFID funds and/or DFID funded inventory or assets. This should map how funds flow from them to end beneficiaries and identify risks and potential risks along the delivery chain;
- ✓ Ensuring delivery chain partner employees are aware of the DFID fraud mail box³ found on DFID's external website and of the circumstances in which this should be used;
- ✓ Publication of DFID funding data in accordance with the International Aid Transparency Initiative (IATI)⁴
- ✓ Supply partners shall adhere to HMG prompt payment policy not use restrictive exclusivity agreements with sub-partners.

4. Environmental issues

Key Performance Indicators KPI 4 a – b

DFID supply partners must be committed to high environmental standards, recognising that DFID's activities may change the way people use and rely on the environment, or may affect or be affected by environmental conditions. Supply partners must demonstrate they have taken sufficient steps to protect the local environment and community they work in, and to identify environmental risks that are imminent, significant or could cause harm or reputational damage to DFID.

Commitment to environmental sustainability may be demonstrated by:

- ✓ Formal environmental safeguard policies in place;
- ✓ Publication of environmental performance reports on a regular basis
- ✓ Membership or signature of relevant Codes, both directly and within the delivery chain such as conventions, standards or certification bodies (eg the Extractive Industries Transparency Initiative⁵).
- ✓

³ <https://www.gov.uk/government/organisations/department-for-international-development/about#reporting-fraud>

⁴ <http://www.aidtransparency.net/>

⁵ <https://eiti.org/>

5. Terrorism and Security

Key Performance Indicators KPI 5 a – d

DFID supply partners must implement due diligence processes to provide assurance that UK Government funding is not used in any way that contravenes the provisions of applicable terrorism legislation.

Specific requirements:

- ✓ DFID suppliers must safeguard the integrity and security of their IT and mobile communications systems in line with the HMG Cyber Essentials Scheme⁶. Award of the Cyber Essentials or Cyber Essential Plus badges would provide organisational evidence of meeting the UK Government-endorsed standard;
- ✓ All DFID supply partners who manage aid programmes with a digital element must adhere to the global Principles for Digital Development⁷, which sets out best practice in technology-enabled programmes
- ✓ Ensure that DFID funding is not linked to terrorist offences, terrorist activities or financing

6. Social Responsibility and Human Rights

Key Performance Indicators: KPI 6 a – d

Social responsibility and respect for human rights are central to DFID's expectations of its Supply Partners. We will ensure that robust procedures are adopted and maintained to eliminate the risk of poor human rights practices within the complex delivery chain environments funded by DFID. These include unethical and illegal employment practices, such as modern day slavery, forced and child labour and other forms of exploitative and unethical treatment of workers. DFID will expect a particular emphasis on management of these issues in high risk fragile and conflict affected states (FCAS), with a focus on ensuring remedy and redress if things go wrong.

Specific requirements:

- ✓ All Supply Partners must be fully signed up to the UN Global Compact⁸;
- ✓ Practices in line with the International Labour Organisation (ILO) 138⁹ and the Ethical Trading Initiative (ETI) Base Code¹⁰ are encouraged;
- ✓ Policies to embed good practice in line with the UN Global Compact Guiding Principles 1 & 2 on business and human rights, as detailed in Annex 2;
- ✓ A Statement of Compliance outlining how the organisation's business activities help to develop local markets and institutions and contribute to social and environmental

⁶ <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

⁷ <http://digitalprinciples.org/>

⁸ <https://www.unglobalcompact.org/what-is-gc/mission/principles>

⁹ http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138

¹⁰ <http://www.ethicaltrade.org/eti-base-code>

sustainability, whilst complying with international principles on labour and ethical employment, social inclusion and environmental protection.

- ✓ Overarching consideration given to building local capacity and promoting the involvement of people whose lives are affected by business decisions;

Annex 1a

Compliance KPIs and contractual checking mechanisms

Maintaining standards of assurance and driving sustainable improvements, in connection with the Code's principles through partner relationships is a key focus for DFID.

Supply partner and delivery chain compliance checking processes will take place in accordance with the agreed compliance levels and the specific contractual clauses down the delivery chain, DFID shall undertake compliance spot checks.

Where appropriate, a progress review plan setting out the Code of Conduct delivery methodology for the supply partner arrangements during the contract term may be jointly developed during Contract mobilisation.

Contract Checks and Compliance KPIs		KPI target	Specific Contractual link	Checking mechanism
i.	Declaration of acceptance of the DFID Supply Partner Code of Conduct	Annual declaration submitted by contracted supplier on behalf of delivery chain	Contract Terms and Conditions Clause 4.1 and Clause 8.3	Declaration of acceptance at the applicable level of compliance with each of the 5 sections received
	Declaration of sign up to the UN Global Compact	Annual declaration submitted by contracted supplier on behalf of delivery chain	Standard Selection Questionnaire	Declaration of applicable sign up received
1.	<u>VfM and Governance standards</u>			
a)	Economic and governance policies in practice	Annual updated documentation provided (copy of Policy with detailed annual financial breakdown relating to contract)	Terms and Conditions Clause 34	Annual contract review/programme management Audit checks
b)	VfM being maximised over the life of a contract			
	<ol style="list-style-type: none"> By confirmation of annual profit level fluctuations since tender submittal by timely identification and 	Updated documentation submitted once annually	Contract T&Cs Terms of Reference	Spot checks Annual contract review/programme management Spot checks

	resolution of issues			
	3. ensuring lessons learned are shared		Terms of Reference	Annual contract review/programme management Spot checks
c)	<u>Tax Declaration (HMRC format)</u> <ul style="list-style-type: none"> Tax the organisation paid on profits made in the last 3 years, and in which countries Compliance with relevant country level tax regulations fully understood and met 	Annually updated documentation submitted by contracted supplier and on on behalf of delivery chain partners	Terms and Conditions Clause 34 Terms of reference	Annual return Spot checks
2.	<u>Ethical Behaviour</u>			
a)	Recruitment policy (which must address circumstances where there may be potential or actual conflict of interest)	Updated policy documentation submitted once annually by contracted supplier and on behalf of delivery chain partners	Terms and Conditions Clauses 6, 35, 51	Annual return Spot checking
b)	Ongoing conflict of interest, mitigation and management	As 2a. above	Terms and conditions Clause 51	Annual return Spot checking
c)	Refresher ethical training and staff updates (including disclosure restrictions on DFID confidential information)	Copy of training logs provided Delivery in accordance with training programme in place	Terms and conditions Clause 6, 27, 28 & 29	Annual return Spot checking
d)	A workforce whistleblowing policy	Continuous workforce awareness maintained Policy in place	Terms and Conditions Clause 35	Annual return Spot checking

e)	1. Procedures setting out how, staff involved in DFID funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the Counter Fraud and Whistleblowing Unit (CFWU) at fraud@dfid.gov.uk or on +44(0)1355 843551	Continuous awareness maintained Procedure in place	Terms and Conditions Clause 35	Annual return Spot checking
	2. Employees working on DFID Contracts fully aware of the DFID external website fraud mailbox	Continuous awareness maintained	Terms and Conditions Clause 35	Annual return Spot checking
f)	Declarations of direct or delivery chain staff members proposed to work on DFID funded if employed by DFID or the Crown in the preceding two years. Supply partners and their Sub-Contractors must provide proof of compliance with the HMG approval requirements under the business appointment rules	Details submitted as applicable	Terms and Conditions Clause 51 HMG business appointment rules	Annual return Spot checking Contract management
3.	<u>Transparency and Delivery Chain Management</u>	Updated documentation submitted once annually	Contract Terms and Conditions Clause 26	Tender evaluation
a)	IATI compliance for supply partner and their delivery chain supply partners	Updated documentation submitted once annually	Contract Terms and Conditions Clause 26	Periodic spot checks
b)				
c)	Up to date and accurate records of all downstream supply partners	Updated documentation submitted in accordance with Clause 26.7	Contract Terms & conditions Clause 8 & 26 Tender submittal – delivery chain	Annual return spot checking Contract management
d)	Policies and practices for the management of delivery chain partners and affiliates aligned to the DFID Supply Partner Code of Conduct	Updated documentation submitted annually	Contract Terms & conditions Clause 8	Contract management processes Periodic spot checks
e)	Tax evasion, bribery, corruption and fraud -statements of assurance provided	Updated documentation submitted once annually	Contract Terms and Conditions 35	Periodic and annual return spot checks
f)	All delivery chain partner employees working on DFID Contracts fully aware of the DFID fraud mailbox	Updated documentation submitted once annually	Contract Terms & Conditions Clause 35	Periodic and annual return spot checks
	HMG prompt payment policy adhered	Updated	Contract Terms &	HMG spot checks

	to by all delivery chain partners	documentation submitted once annually	conditions 8	Annual return
4.	<u>Environmental Issues</u>			
a)	1.Steps in place to identify environmental risks (e.g. by maintaining a risk register) Ensuring legislative requirements are being met	Updated documentation submitted once annually	Contract ToRs	Contract management Periodic and annual return spot checks
b)	2. Formal context specific environmental safeguarding policies in place to ensure legislative requirements are being met			
	Published annual environmental performance reports	Updated documentation submitted once annually	Contracts ToRs	Periodic and annual return spot checks
5.	<u>Terrorism and Security</u>			
a)	Status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	Updated documentation submitted if changes identified since tender submittal	Standard Selection Questionnaire Section 2	Annual return Spot checks Annual contract review
b)				
	Certification at or above the level set out in the tender submittal	Updated documentation submitted if changes identified since tender submittal	Standard Selection Questionnaire	Annual return
c)				
	Data managed in accordance with DFID Security Policy and their systems in accordance with the HMG Cyber Essentials Scheme	Updated documentation submitted if changes identified since tender submittal	Contract T&Cs Clause 31	Spot checks
d)				
	Best practice global Principles for Digital Development in place	Updated documentation submitted if changes identified since tender submittal	Terms of reference (TORs)	Annual contract review

6.	<u>Social Responsibility and Human Rights</u>			
a)	Provision of a current internal document demonstrating good practice and assuring compliance with key legislation on international principles on labour and ethical employment	Confirmation of UN Global Compact Membership	Supplier Questionnaire 3.1b, 3.1c	Tender evaluation Annual return spot checking
b)	Membership of the International Labour Organisation (ILO) or Ethical Trading Initiative (ETI)	Membership number		Periodic spot checks
c)	Principles cascaded to employees and delivery chain partners via an internal policy or written outline of good practice service delivery approaches to UN Global Compact Principles 1 & 2	Updated documentation submitted once annually		Annual return spot checking
d)	Level of commitment in relation to the Contract evident in delivery practices in line with the workplace and community guidance provided in the DFID Supply Partner Code of Conduct	Updated documentation submitted once annually		Tender evaluation Periodic spot checks

Contractual Annual Compliance Declaration

Prior to contract award and thereafter on an annual basis, the supply partner is required to submit a compliance declaration in connection with the management of any DFID Contracts in place and on behalf of their delivery chain partners. Supply partners should be aware that spot check compliance monitoring will take place to verify responses.

Supply Partner Compliance Declaration

Key:

Contractual Requirement:

X denotes full compliance required

O denotes reduced compliance level, if clearly stipulated in contractual Terms of Reference

Compliance Level 1

Supply partners with an individual contract value of £1m or above, or two or more contracts with DFID with a combined value of £5m or above.

Compliance Level 2

Supply partners with an individual contract value below £1m, or two or more contracts with DFID with a value of less than £5m.

Compliance Level 3

Supply partners with an individual contract value or component of a Contract with a value below the EU Threshold. At this level supply partners are required to adhere to the overarching Code principles and recognise, mitigate and manage risks but will not be monitored against the contractual KPIs.

KPI Compliance Area		Supplier Compliance Level		Commentary	CEO Signatory	Signature & date of signing
		1	2			
1.	<u>VfM and Governance standards</u>					
a)	Evidence of how economic and governance policies work in practice	X	O			
b)	VfM maximisation over contract life					
	1. Annual confirmation of % profit on contract	X	X			
	2. timely identification and resolution of issues	X	X			
	3. ensuring lessons learned are shared	X	O			
c)	<u>Tax Declaration (HMRC format)</u>					
	Comply with all tax requirements	X	X			

2.	<u>Ethical Behaviour</u>					
a)	Adherence to set and agreed conflict of interest management procedures	X	X			
b)	Evidence of workforce ethical training updates taking place	X	X			
c)	Confirmation of direct and delivery chain partner compliance with the HMG approval requirements under the Business Appointment Rules.	X	X			
3.	<u>Transparency and Delivery Chain Management</u>					
a)	Supply partner and delivery chain partners IATI compliant	X	O			
b)	Provision of up to date and accurate records of all downstream supply partners provided within the required frequencies, including annual contractual spend on MSME's, women owned businesses and apprenticeships in place	X	O			
c)	Verification that policies and practices for the management of delivery chain supply partners and affiliates are aligned to the DFID Supply Partner Code of Conduct i.e. by demonstrating delivery chain governance arrangements in place	X	O			
d)	Assurance there has been no change to previous statements provided in relation to tax evasion, bribery, corruption and fraud	X	X			
e)	Confirmation that all delivery chain supply partners' employees working on DFID Contracts are fully aware of the DFID external website fraud mailbox	X	X			
f)	Confirmation of adherence to HMG prompt payment policy with all their delivery chain supply partners	X	O			
4.	<u>Environmental Issues</u>					
a)	Environmental risks identified (e.g. by maintaining a risk register) with formal context specific environmental safeguarding policies in place	X	O			
b)	Annual published environmental performance reports	X	O			
5.	<u>Terrorism and Security</u>					
a)	Status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	X	X			

b)	No engaged employees or delivery chain partner personnel appears on the Home Office Prescribed Terrorist Organisations List	X	X			
c)	Data is managed in accordance with DFID security policy and systems are in accordance with the HMG cyber essentials scheme	X	X			
d)	Adherence to the best practice global principles for digital development	X	O			
6.	<u>Social Responsibility and Human Rights</u>					
a)	Provision of a current internal document demonstrating good practice and assuring compliance with key legislation on international principles on labour and ethical employment(to include Modern Day Slavery Act 2015 compliance detail)	X	O			
b)	Current membership of UN Global Compact?	X	X			
	Current membership of international labour organisation (ILO) or ethical trading initiative (ETI)?	X	O			
c)	Has the supply partner provided an internal policy or written outline of good practice service delivery approaches to UN Global Compact Principles 1&2 demonstrating an appropriate level of commitment in relation to their Contract?	X	O			

Annex 2

UN Global Compact – Human Rights

Principle 1: businesses should support and respect the protection of internationally proclaimed Human Rights

Principle 2: businesses should ensure they are not complicit in Human Rights abuse

Organisations should do this by giving attention to vulnerable groups including women, children, people with disabilities, indigenous groups, migrant workers and older people.

Organisations should comply with all laws, honouring international standards and giving particular consideration to high risk areas with weak governance.

Examples of how suppliers and partners should do this are set out below:

In the workplace

- by providing safe and healthy working conditions
- by guaranteeing freedom of association
- by ensuring non-discrimination in personnel practices
- by ensuring that they do not use directly or indirectly forced labour or child labour
- by providing access to basic health, education and housing for the workers and their families, if these are not provided elsewhere
- by having an affirmative action programme to hire victims of domestic violence
- by making reasonable accommodations for all employees' religious observance and practices

In the community

- by preventing the forcible displacement of individuals, groups or communities
- by working to protect the economic livelihood of local communities
- by contributing to the public debate. Companies interact with all levels of government in the countries where they operate. They therefore have the right and responsibility to express their views on matters that affect their operations, employees, customers and the communities of which they are a part
- through differential pricing or small product packages create new markets that also enable the poor to gain access to goods and services that they otherwise could not afford
- by fostering opportunities for girls to be educated to empower them and also helps a company to have a broader and more skilled pool of workers in the future, and
- perhaps most importantly, a successful business which provides decent work, produces quality goods or services that improve lives, especially for the poor or other vulnerable groups, is an important contribution to sustainable development, including human rights
- If companies use security services to protect their operations, they must ensure that existing international guidelines and standards for the use of force are respected

Section 3

TERMS OF REFERENCE

Accountability in Tanzania (AcT-2) Programme

Terms of Reference (ToR) for

Design and Implementation Phase

1. Background

On 21st August 2015, KPMG was competitively selected as service provider for the “Business Case (BC), Design and Implementation” of the AcT-2 programme. The initial contract (PO 7114) was signed and agreed between DFID and KPMG on the 30th November 2015 and covered the development of the BC. The completed BC was submitted by KPMG and accepted by the DFID Governance Team in February 2016.

While waiting for final approval of the BC by the DFID Ministers, DFID and KPMG agreed the scope for the Design Phase and signed the first AcT-2 contract addendum to cover this phase. The Design Phase ToR in Addendum 1 specified the completion of the design documents below as well as work on managing the Fast-track Facility and accountability studies¹¹. To minimise potential delays between BC approval and design work, Addendum 1 enabled KPMG to commence preliminary design activities while waiting for final approval of the BC by the Ministers. The remaining design activities were to be completed following this approval.

This ToR provides the scope and deliverables for the finalization of the AcT2 design and implementation of the AcT-2 programme. AcT-2 programme builds on the platform of AcT-1 success but in very different political environment. AcT-2 pursues an ambitious design built around adaptive programme management and comprehensive processes for supporting innovation, capturing results and promoting learning. The programme will continue to provide grants, with tailored capacity development support, to a diversity of partner organisations working on a range of governance issues.

The programme will also have a priority focus on four cross-cutting thematic areas: gender and social inclusion, climate resilience and governance; media engagement and anti-corruption. The programme management will seek to more directly catalyse change by identifying governance issues and bringing together coalitions of actors to work on them.

¹¹ The Accountability Studies were: 1) An in-depth accountability review of the Cyber Crime act, Statistics Act, the Access to Information and Media Services Bills: Stakeholders perspectives on the law making process and implications for CSOs space in Tanzania ; 2) Civic Space in Zanzibar: Report to Inform AcT 2; 3) Study on Private Sector Involvement in Governance
4) Urban Governance in Dar es Salaam: the case of Msimbazi Valley

2. Timeframes and budget

The implementation phase for AcT-2 will run from 1st February 2018 until 31 Dec 2022. This ToR provides details on the implementation deliverables to be completed by the supplier up until 31 Dec 2022.

The implementation phase may be extended for a further 12 months, subject to DFID strategic requirements and supplier performance.

3. Main Objective

The main objective is to complete the programme design and ensure efficient and effective implementation of the AcT-2 programme in accordance with the AcT-2 Business Case.

The design and implementation of AcT-2 Design should promote the achievement of specific results at outcome and impact level. These are:

- Outcome: Increased accountability and responsiveness from the Government of Tanzania to its citizens; and, through this enable,
- Impact: Improved access to entitlements, public goods and services for all Tanzanian citizens

To maximize results, the supplier will ensure programme delivery is flexible, adaptive and politically-informed; that value for money is optimised for DFID and intended beneficiaries in Tanzania; and that the programme complies with all UK Government and DFID requirements as stipulated in the DFID Smart Rules and various policy documents.¹²

4. Recipient of Services:

The direct recipient of the services will be the UK Department for International Development (DFID) Tanzania

The “principle recipient” or ultimate beneficiaries of AcT-2 programme are the poor people, men and women, boys and girls in Tanzania.

The AcT-2 programme will support relevant organizations in Tanzania – civil society, NGOs, private sector, social enterprise or partnerships with identified capacity and potential to deliver the expected outcome of this project

¹² Important policy documents include: DFID Aid Strategy (2015); Sustainable Development Goals (SDGs); the DFID Leave No One Behind agenda; the UK’s (international development) Gender Equality Act (2014); UK Anti-Corruption Plan (2014); UK Anti-Corruption Strategy (due end 2016); DFID’s Anti-Corruption Strategy for Tanzania (2013 and future versions); DFID Tanzania’s Business Plan 2016-20; and UK Investment Climate Fund and other climate change policies.

5. Scope

The service provider will finalize and submit to DFID a full set of design documentation for AcT2 as earlier specified in the Design ToR (Addendum 1). Specifically, these will include the following design documentations:

	Design Documents
1	AcT2 Development Entrepreneurship: Grant Making & Partnership Approach
2	AcT2 Monitoring, Evaluation and Learning (MEL) Strategy
3	AcT2 Operational Procedures Manual
4	AcT2 Communications and Branding Strategy
5	AcT2 Value for Money Strategy
6	AcT2 Political Economy Analysis
7	AcT2 Thematic Strategy 1: Gender and Social Inclusion
8	AcT2 Thematic Strategy 2: Climate Resilience and Governance
9	AcT2 Thematic Strategy 3: Media Support and Engagement
10	AcT2 Thematic Strategy 4: Anti-corruption
11	Final AcT-2 Strategy and Plan

The core elements of the AcT2 implementation scope include:

a) Effective and Efficient AcT-2 Programme Management and Delivery: ensure timely and effective management and implementation of the AcT-2 programme:

- Appoint and provide dedicated personnel with the required competence and expertise to support the effective implementation of the AcT-2 programme as set out in AcT-2 BC and accompanying design documents
- Regularly liaise with DFID Tanzania to ensure the programme meet implementation and delivery quality standards
- Develop and maintain as assessment of the scope and opportunities for accountability interventions that supports the delivery of AcT-2 priorities
- Ensure compliance with national and international best practices in the delivery and implementation of the AcT-2 programme
- Ensure efficient delivery of all AcT-2 funding components: a) standard strategic grants agreements¹³; b) incubation grants and seed funding¹⁴; c) strategic opportunities facility; d) capacity building / TA facility (including for learning and research); d) core programme management; and e) results validation and evaluation;
- Promote and ensure the value for money of the overall AcT-2 intervention. Implement the value for money strategy in the AcT-2 design document and report progress against identified measures of performance. This includes conducting studies to evaluate the cost benefit and value for money of specific partner interventions/results.
- Effectively ensure four important cross-cutting themes are fully integrated: climate change resilience, gender and social inclusion, engaging with the media, and integrity and anticorruption.
- Ensure successful implementation of the Development Entrepreneurship model under AcT-2. Proactively pursue opportunities and provide concerted support to partners, and work closely with partners to develop ideas, incubate and prototype actions, and support scale-up

¹³ As outlined in the design documents, standard strategic grant agreements will be used to fund partners under two portfolios: a main portfolio, which is similar to that in AcT-1, and a secondary portfolio for more innovative interventions.

¹⁴ Incubation grants and seed funding will be used to support smaller interventions outside of a standard strategic grant agreement.

b) Grants Management

- Receive formal funding requests from organizations that meets AcT-2 eligibility criteria
- Review and assess all applications from organizations. Select organizations in accordance with AcT-2 procedures as agreed by DFID and consistent with AcT-2 BC and Design
- Use the partner selection process to clearly distinguish between partners who have the ideas and organizational potential to implement high risk/high return vs. those suited to lower risk, more standard interventions
- Carry out due diligence of grantees and sub-grantees to ensure shortlisted organizations meet minimum criteria for capacity to deliver in organizational and financial management. This should include background check on board members and shareholders as appropriate.
- Propose organizations to be funded under the AcT-2 programme and liaise with DFID Tanzania for approval
- Prepare and issue funding agreements for approved organizations
- Provide advance funding to approved organizations in way that maximise value for money
- Provide ongoing oversight of all grant partners, including 'sub-partners' (i.e. sub-grantees).

c) Effective Programme Risks Identification and Management

- Develop and implement an integrated approach to risk management for AcT-2 programme. This will include a coordinated process for identifying, assessing and managing risks across all AcT-2 business functions, including governance, programme management, financial management and grant management, capacity strengthening and learning
- Mitigate any fiduciary or reputational risks along the AcT-2 delivery chain.
- Develop AcT-2 delivery chain risks analysis incorporating all implementing partners, in a visual format and accompanied by sufficient analysis. Ensure these are regularly updated (quarterly or six monthly) and shared with DFID as appropriate.
- Ensure external audits are conducted on all grant partners (including sub-grantees) and implement measures to ensure grant funds are not channelled below the sub grantee level.
- In line with DFID risks management requirements, promptly inform DFID of any confirmed or suspected incident of fraud, bribery, corruption or any other kind of financial mismanagement among AcT-2 grantees and sub-grantees, liaising subsequently with DFID as to the way forward including recovery of misappropriated funds, if any.
- Commission an annual external audit of the AcT programme, with findings to be made available to DFID.
- Maintain a comprehensive risks assessment register as per DFID requirements, update this regularly and share with DFID as part of the reporting requirements
- Ensure all AcT-2 business is free from any form of conflict of interest.

d) Effective and Robust Programme Monitoring, Learning and Evaluation

- Ensure AcT-2 Theory of Change (ToC) is well developed, refined and regularly updated based on emerging understanding on how change happens in Tanzania
- Ensure programme flexibility and adaptation is sufficiently built in AcT-2 and there are sufficient balances between results sustainability and scale
- Update the political economy analysis on annual basis and ensure its focus reflects recent developments in Tanzania and or strategic issues, priorities or questions of relevance to the AcT-2 programme, partners, and DFID. Ensure PEA is properly used to inform AcT-2 annual planning and DFID annual reviews as well as specific interventions

- Ensure AcT-2 programme has a comprehensive results framework that demonstrate value for money and meet DFID requirements for periodic reviews including annual reviews, mid-term reviews and end-term evaluation
- Ensure that the AcT-2 results framework is based on the theory of change and meet the requirements of the Smart Rules, and do justice to the diverse work of partners
- Update the AcT-2 results framework on annual basis to reflect the evolution of the portfolio and adaptations made to the programme in response to learning and changes to the governance context in Tanzania
- Ensure all results are adequately captured in the database which was originally developed for AcT-1. The supplier will continue to develop the database to ensure it meets the needs of AcT-2 and serves as a valuable tool for collating and analysing results evidence not only for the benefit of the programme but for broader DFID work in this area.
- Promote learning within AcT-2, partners and DFID by providing time, resources and incentives as outlined in the AcT-2 design documents
- To support the learning strategy, the supplier will commission research to be undertaken by consultants under the capacity building and TA facility.
- Engage specific external resources for the validation of partner results. Seek DFID approvals on how external validation of partner's results will be implemented to ensure sufficient independence and value for money
- Ensure and facilitate external Mid-term and end-term programme review/evaluations.
- Ensure that beneficiary feedback is integrated at appropriate stages in the project design, mobilisation, delivery, monitoring, evaluation and annual review processes and takes account of the voices of both men and women

e) Provision of tailored capacity development support:

- Identify grantees' capacity development needs and provide the core support required, with additional more specialist support to be provided under the capacity development and TA facility.
- Ensure the effective management, delivery and monitoring of capacity development support to improve performance and increase value for money.

f) Effective Delivery of all the cross-cutting thematic areas:

- Provide appropriate resources and attention to the successful implementation of AcT-2's four thematic strategies in: gender and social inclusion, climate resilience and governance; media engagement and anti-corruption.
- Ensure mainstreaming of the thematic areas at programme and partner levels, including identification of theme-related results and relevant learning.
- Ensure measures are established in HMG/DFID policy documents, such as the Investment Climate Fund indicators and other indicators for gender and anti-corruption.

g) Communications and branding: Effective communications to diverse audiences and stakeholders is critical to the success of AcT-2. The supplier will implement the Communications Strategy to communicate about the programme to stakeholders in Tanzania, UK and the wider development community.

Through the strategy the supplier will promote understanding of the objectives of the AcT-2 programme and how interested organisations can participate; the outcomes and value-for-money of partner's work; and the learning and research supported by the programme. Most importantly the strategy will ensure that Tanzania beneficiaries are aware of UK's support to the programme. The strategy also provide regular stream of quality material prepared for use by DFID as a part of their broader communications needs (e.g. case studies on partner results)

A central tool of the communications strategy is the programme website which the supplier will update and maintain. Within the first quarter of the implementation phase, the supplier will develop

a brand for AcT-2 in close consultation with DFID and in accordance with the UK government policies.

6. Supplier planning, reporting and milestones

The planning and reporting responsibilities will follow the following requirements:

- Develop costed annual implementation plans with clearly identified milestones to be achieved by the end of each quarter. At the half-yearly point, there will be an opportunity to revise the agreed milestones for the remainder of the year in consultation with DFID.
- Progress in delivering these plans and achieving milestones shall be reported quarterly to DFID in an agreed format;
- Mandatory financial reports will include an annual forecast of expenditure (the budget) disaggregated monthly – for the financial year April to March. These should be updated on a monthly basis. A quarterly comparison of budget with expenditure will be required;
- Financial reports will present data by type of expenditure as well as by outputs;
- Quarterly progress reports will be prepared for discussion with DFID outlining the view from the supplier as to the progress towards delivering the work plan milestones. An update of the risk will also be provided;
- Six-monthly review of each supported grantee, including organisational, technical and financial assessment over the quality of delivery of their funded work.
- At the end of each year, a detailed annual report will be submitted; this will include the results of the performance reporting against the results framework indicators. A more detailed update of the risk analysis will be presented together with any recommendations to modify the risk mitigation strategy. Annual report format will largely follow the DFID programme annual review format as per the Smart Rule guidance; a detailed delivery chain risk map will be provided to DFID as part of the annual report;
- Findings of the annual external audit of the AcT-2 programme will be submitted to DFID

7. Programme Closure/Wind Up

Provide and deliver an exit strategy to ensure long term sustainability of services and facilitate a smooth closure of the programme. The AcT-2 exit strategy must be provided to DFID not less than 6 months before the end of the contract to enable DFID to have adequate opportunity to review and approve content.

Implement the exit strategy and ensure successful programme closure before the contract end date, including but not limited to: a) winding up grants agreements with partners in good time, b) ensuring all final results and financial reporting is received from partners, c) dealing with programme assets as per DFID Smart Rules, d) liaising with DFID on transferring project documentation (papers and electronic) to DFID

Develop a project completion report that sets out AcT-2 performance over the life of the programme. AcT-2 final report should be produced in good time to be utilized as input to DFID requirements for project completion review (PCR). It must assess extent to which AcT-2 has achieved its objectives, and an analysis of learning and recommendations for the future. A delivery chain risk map report should accompany the final project implementation report.

8. DFID Management and coordination

The Senior Responsible Owner (SRO) responsible for the successful implementation of the AcT-2 programme is Zabdiel Kimambo, Governance Advisor. He will be responsible for all technical aspects of this assignment. He will be assisted by the following DFID advisors: Climate Change Advisor, Anti-Corruption Advisor, VfM and Results Advisors. Governance Team Leader will provide overall quality assurance function. Ramadhani Msangi, will provide the required programme management leadership and support. DFIDT Commercial Advisor will also provide inputs as and when required.

The DFID Governance Team will convene regular coordination forums with representatives from DFID's major governance initiatives in Tanzania. These forums will be organised by the AcT-2 supplier who will perform a secretariat role. The forums will include such programmes as Institutions for Inclusive Development (I4ID) and Building Sustainable Anti-Corruption Action in Tanzania (BSAT) as well as others. The purpose will be to keep all initiatives informed of the latest developments in each other's programmes, identify specific initiatives where interests may converge, identify the comparative advantage of each programme to work on specific initiatives and make decisions on collaboration and/or responsibility in such cases. The forums will help to realise the value of each programme's flexible and adaptive management approaches, enable duplication or overlaps to be avoided and maximise complementarities.

DFID's Procurement and Commercial Department (PCD) will be responsible for negotiating and managing the contract with the Supplier under the relevant DFID contract arrangement. Supplier will liaise with PCD on all commercial matters.

DFID will not provide any direct administrative or logistical support to the programme management team.

9. Personnel Requirements

Supplier will provide personnel that meet DFID's technical and professional requirements as already proposed during the AcT-2 BC, Design and Implementation Tendering Submission.

The quality of personnel that were included in Suppliers' offer was a key element in the evaluation process and a source of competitive advantage compared to other bidders. Supplier is therefore required to commit resources to its offer. Any attempt to change key resources that are attached to the offer, post-award, will be regarded as a significant variation in terms of the tendered offer and may have commercial ramifications. In terms of staff retention, if the "Key personnel" are still within the employment of the supplier, they should not be replaced without DFID consent and approval.

10. Duty of Care

The supplier is responsible for the safety and well-being of their personnel and third parties affected by their activities under the contract, including appropriate security arrangements for their domestic and business property

DFID will share available information with the supplier on security status and developments in-country, including reference to the latest BHC travel advice available on the Foreign and Commonwealth Office website for Tanzania

The supplier is responsible for ensuring appropriate safety and security briefings for all of their personnel working under this contract and ensuring that their personnel register with their respective Embassies to ensure they are included in emergency procedures