

CONTRACT FOR SUPPLIER SERVICES

Section 1 - FORM OF CONTRACT

CONTRACT FOR : **Service Provider for implementing DFID Nepal Safer Schools Project**

PURCHASE ORDER NUMBER : **7861**

THIS CONTRACT is made

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

AND : **Crown Agents Ltd**, ("Supplier")
whose principal place of business is situated at **St Nicholas House, St Nicholas Road, Sutton SM1 1EL, United Kingdom**

(together "the Parties")

WHEREAS:

- A.** DFID requires the Supplier to provide the services as defined in Section 3 (the "Services") to government stakeholders charged with implementing school safety in Nepal. At a national-level this will include the Ministry of Education, and the Department of Education. District Education Offices, School Management Committees, and Resource Persons at a district level where the project is implemented will also benefit from the delivery of the project. (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	General Conditions
Section 3	Terms of Reference
Section 4	Special Conditions
Section 5	Schedule of Prices

- Crown Agents Ltd Technical Proposal dated 18 April 2017
- Crown Agents Ltd Commercial & Value for Money Proposal dated 18 April 2017
- Post Tender Clarification e-mail exchanges culminating in Email dated 16 November 2017 and 20 December 2017
- Crown Agents Ltd Revised Commercial Proposal (Email dated 20 December 2017)

This Contract constitutes the entire agreement between the Parties in respect of the Suppliers obligations and supersedes all previous communications between the Parties, other than as expressly provided for in Section 3 and/or Section 4.

2. Contract Signature

If this Form of Contract is not e-signed and dated on behalf of the Supplier, DFID will be entitled, at its sole discretion, to declare this Contract void.

No payment will be made to the Supplier until this Contract is e-signed by “the Parties” concerned to this Contract.

3. Commencement and Duration of the Services

The Supplier shall start the Services on 19 February 2018 (the "Start Date") and shall complete them by 18 February 2023 (the "End Date") unless this Contract is terminated earlier in accordance with its terms and conditions.

4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed £11,995,657.71 (UK Pound Eleven Million Nine Hundred Ninety Five Thousand Six Hundred Fifty Seven and Pence Seventy One only) exclusive of any government tax, if applicable (the "Financial Limit").

5. Time of the Essence

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

For and on behalf of
The Secretary of State for
International Development

Name:

Position:

Signature:

Date:

For and on behalf of
Crown Agents Ltd

Name:

Position:

Signature:

Date:

Standard Terms and Conditions – Service Contracts

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Introduction

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 The interpretation and construction of the Contract shall be subject to the following provisions:
- (a) clause headings shall not affect the interpretation of the Contract;
 - (b) a reference to any statute, enactment, order, regulation or similar instrument is a reference to it as in force from time to time taking account of any amendment or re-enactment;
 - (c) a reference to a statute or statutory provision shall include any subordinate legislation made under that statute or statutory provision;
 - (d) references to a “person” includes a natural person and a corporate or unincorporated body;
 - (e) words in the singular shall include the plural and vice versa;
 - (f) a reference to one gender shall include a reference to the other genders; and
 - (g) where the context allows, references to clauses are to clauses in this Contract and references to Sections are the sections of this Contract.
- 1.3 In entering into this Contract DFID is acting as part of the Crown.

2. ENTIRE AGREEMENT

- 2.1 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 2.1 shall not exclude liability in respect of any fraudulent misrepresentation.
- 2.2 If there is any conflict between the sections or other documents referred to in the Contract, the following order or precedence shall apply:
- Section 1 – Form of Agreement
Section 4 – Special Conditions
Section 2 – Standard Terms & Conditions
Section 3 – Terms of Reference
Section 5 – Schedule of Prices
- 2.3 Except as expressly provided in Clause 9 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.
- 2.4 Nothing in this Contract is intended to make nor shall it make DFID the employer of the Supplier or any of the Supplier’s Personnel.
- 2.5 All communications by the Supplier relating to the Contract must be addressed to the DFID Contract Officer whose name and address are given in Section 4.

3. APPLICABLE PROVISIONS AND FINANCIAL LIMIT

- 3.1 Unless different provisions are substituted in Section 4, Clauses 3, 14, 15, 16, 17, 18 and 19 inclusive shall apply in relation to price and payment.
- 3.2 The components which comprise the Financial Limit are set out in the Schedule of Prices, Section 5. No expenditure may be incurred in excess of the Financial Limit and no virements between components shown in the Schedule of Prices in Section 5 are permitted without the prior written authority of the Contract Officer.

Provision of services

4. OBLIGATIONS OF THE SUPPLIER

- 4.1 The Supplier shall perform all its obligations under this Contract (including the provision of the Services) with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts.
- 4.2 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 in respect of the Supplier under this Contract.

5. WARRANTIES

- 5.1 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Contract;
- (c) this Contract is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Contract;
- (e) 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;
- (f) 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;
- (g) 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);
- (h) 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 PQQ and ITT (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;
- (i) 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;
- (j) 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;
- (k) the Contract Inception Report is/will be a true and accurate reflection of the Costs and supplier profit margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
- (l) 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;
- (m) 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.

- 5.2 The representations and warranties set out in Clause 5.1 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.

- 5.3 The representations and warranties set out in this Clause 5 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.
- 5.4 If at any time a Party becomes aware that a representation or warranty given by it under Clause 5.1 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 5.5 the Supplier's system and assets used in the performance of the Services:
- (a) will be free of all encumbrances [any exceptions must be agreed in writing with DFID];
 - (b) will be Euro Compliant
- 5.6 The supplier shall at all times comply with Law and Regulations in carrying out its obligations under this Contract.
- 5.7 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.
- 5.8 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.
- 6. PERSONNEL**
- 6.1 All members of the Supplier's Personnel shall be appropriately qualified, regulatory approved, experienced and in a suitable physical condition so as to ensure that the Supplier complies with all the Supplier's obligations under this Contract.
- 6.2 No changes or substitutions may be made to members of the Supplier's Personnel identified as key personnel in Section 4 of this Contract without DFID's prior written consent.
- 6.3 If DFID considers any member of the Supplier's Personnel unsuitable, the Supplier shall substitute such member as quickly as reasonably possible with a replacement acceptable to DFID without direct or indirect charge to DFID and the supplier hereby agrees to full indemnify and hold DFID harmless against any claims of any kind that may arise with regard to the substitution of such Supplier Personnel considered to be unsuitable by DFID.
- 6.4 The Supplier shall comply with the Staff Vetting Procedures in respect of all Supplier's Personnel employed or engaged in the provision of the Services. The Supplier confirms that all Supplier's Personnel employed or engaged by the Supplier at the agreed start date of this Contract were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures, as provided within DFID's Security Policy.
- 7. DUTY OF CARE**
- 7.1 The Supplier owes a duty of care to the Supplier's 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's Personnel carry out the Services.
- 7.2 The Supplier warrants that it has and will throughout the duration of the Contract:
- (a) carry out the appropriate risk assessment with regard to its delivery of the Services;
 - (b) provide the Supplier's Personnel with adequate information, instruction, training and supervision;
 - (c) have appropriate emergency procedures in place to enable their provision of the Services so as to prevent damage to the Supplier's Personnel's health, safety, security of life and property and general wellbeing.
- 7.3 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 7. 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's Personnel in relation to the provision of the Services.
- 7.4 The Supplier acknowledges that the DFID accepts no responsibility for the health, safety, security of life and property and general wellbeing of the Supplier's Personnel with regard to the Supplier's Personnel carrying out the Services under this Contract.
- 7.5 The Supplier shall indemnify and keep indemnified DFID in respect of:

- (a) any loss, damage or claim, howsoever arising out of, or relating to any act, omission or negligence by the Supplier, the Supplier's Personnel in connection with the performance of the Contract;
 - (b) any claim, howsoever arising, by the Supplier's Personnel or any person employed or otherwise engaged by the Supplier, in connection with the performance of the Contract.
- 7.6 The Supplier will ensure that such insurance arrangements as are made to cover the Supplier's 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 7, are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.
- 7.7 The costs of any insurance specifically taken out by the Supplier to support the performance of this Contract in relation to the Suppliers 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.
- 7.8 Where DFID is providing any specific security arrangements for Suppliers in relation to the Contract, these will be as detailed in the Terms of Reference.
- 7.9 The Supplier shall provide training on a continuing basis for all Supplier Personnel, in compliance with the Security Policy and the security plan.

8. SUB-CONTRACTORS

- 8.1 The Supplier shall not sub-contract any of its obligations under this Contract without the prior written consent of DFID.
- 8.2 If, having obtained DFID's consent, the Supplier sub-contracts any of its obligations, the sub-contract shall:
- (a) provide that payments due to the Sub-contractor shall be made not more than 30 days after submission to the Supplier of a valid invoice; and
 - (b) include rights for the Supplier and obligations on the Sub-contractor to ensure that DFID's rights to require replacement of personnel (as set out in Clause 6.3 (Personnel)) and DFID's rights and the Supplier's obligations (as detailed within this Contract) can be enforced against the Sub-contractor.
- 8.3 The Sub-contract shall also include a provision enabling DFID to have the ability to directly enforce the benefit of the sub-Contract under the Contracts (Rights of Third Parties) Act 1999, obligations in respect of security and secrecy, intellectual property and audit rights for the benefit of DFID corresponding to those placed on the Supplier, but with such variations as DFID reasonably considers necessary. The Supplier shall not include in any Sub-contract any provision the effect of which would be to limit the ability of the Sub-contractor to contract directly with DFID or a replacement provider of Services.

9. PROCUREMENT OF EQUIPMENT

- 9.1 Subject to Clause 9.4 all Equipment to be procured pursuant to this Contract and paid for by DFID shall be procured by a DFID registered procurement agent, acting as agent of DFID ("the Procurement Agent") or as agreed by DFID.
- 9.2 For the purpose of the appointment of a Procurement Agent and for this purpose only, the Supplier shall act as an agent of DFID.
- 9.3 The Supplier shall provide the Procurement Agent with sufficient details for the satisfactory procurement and delivery of Equipment and shall manage the Procurement Agent on DFID's behalf.
- 9.4 Where the total value of the Equipment is less than 50% of the Financial Limit or the current EU Threshold (£106,047), whichever is less the Supplier may, subject to DFID's prior written consent, procure such Equipment.
- 9.5 All procurement of Equipment shall:
- (a) be undertaken in accordance with DFID's "[corporate social and environmental responsibility information note](#)" or such other procedures as may be agreed in writing by DFID;
 - (b) achieve "Value for Money" and be conducted in a fully transparent manner;
 - (c) be on the basis that the ownership in Equipment shall vest in DFID, and shall be so marked.

- 9.6 "Value for Money" shall mean procuring at the optimum combination of whole-life cost and quality to meet requirements.

10. USE OF AND RESPONSIBILITY FOR EQUIPMENT

- 10.1 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 unless DFID gives prior written consent.
- 10.2 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.
- 10.3 Subject to Clause 10.4 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 or damage to Equipment.
- 10.4 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.
- 10.5 The Supplier shall obtain DFID's instructions on the disposal of Equipment and comply with such instructions.

11. MONITORING OF CONTRACT PERFORMANCE

- 11.1 Prior to the Commencement Date DFID shall agree in consultation with the Supplier the arrangements for the purpose of monitoring by the Supplier of the performance of its obligations under this Contract.
- 11.2 These arrangements, as identified within Section 3 will include without limitation:
- (a) regular meetings;
 - (b) the regular delivery of written management reports;
 - (c) monthly report on Key Performance Indicators.

12. PROGRESS & FINANCIAL REPORTS

- 12.1 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.

13. RE-TENDERING AND HANDOVER

- 13.1 Within 21 days of being so requested by DFID's Representative the Supplier shall provide:
- (a) and thereafter keep updated and accessible to DFID, in a fully indexed and catalogued format, all the information reasonably necessary to enable DFID to issue tender documents for the future provision of the Services and for a third party to prepare an informed, non-qualified offer for those Services and not be disadvantaged in any procurement process compared to the Supplier (if the Supplier is invited to participate);
 - (b) a draft exit plan to be agreed with DFID that shall set out each Parties obligations in detail in order to ensure a smooth and efficient transfer of the Services to DFID for a Successor Supplier. The Parties shall review and update the exit plan annually and as soon as reasonably practicable in the event of a material change in any aspect of the Services which could reasonably be expected to impact upon the exit plan in order to ensure that the exit plan remains relevant.

Payment

14. FEES

- 14.1 Any fees payable by DFID for the Services under this Contract are deemed to cover the cost of salary, overseas inducements, leave allowances, bonuses, profit, taxes, insurances, superannuation, non-working days and all other costs including, but not limited to, clothing, passports, visas and vaccinations, overheads and expenses of whatsoever nature that may be incurred by the Supplier in the delivery of the Services except where otherwise specifically provided for in this Contract.

15. EXPENSES

- 15.1 Travel and living expenses will be paid at a rate consistent with the Schedule of Prices at Section 5. All journeys by rail or air will be made by a class of travel that is no more than "standard economy".
- 15.2 The budgets identified in Section 5 (Schedule of Prices) represent the maximum payment to the Supplier under this Contract. DFID reserves the right to ask for proof of purchase and refuse payment where this cannot be reasonably provided.
- 16. MILESTONE PAYMENTS**
- 16.1 Where the Parties have agreed in the Schedule of Prices that the Services will be provided on a fixed price basis, then the fixed price shall be paid according to the schedule of prices as detailed in the Schedule of Prices which may relate to the achievement of specific predefined milestones, dates or acceptance and shall be inclusive of all Supplier costs.
- 17. SATISFACTORY PERFORMANCE**
- 17.1 Payments pursuant to clause 16.1 are subject to the satisfaction of the Project Officer in relation to the performance by the Supplier of its obligations under the Contract and to verification by the Project Officer that all prior payments made to the Supplier under this Contract were properly due.
- 17.2 If for any reason DFID is dissatisfied with the performance of this Contract, an appropriate sum may be withheld from any payment otherwise due to the Supplier. In such event DFID shall identify the particular element(s) of the Services with which it is dissatisfied together with the reasons for such dissatisfaction, and payment by DFID shall be made to the Supplier of the amount outstanding will be made upon remedy of any unsatisfactory work or resolution of outstanding queries.
- 17.3 Should DFID determine after paying for a particular part of the Services that this has not been completed satisfactorily, DFID may recover, or withhold from further payments, an amount not exceeding that previously charged for that part of the Service until the unsatisfactory part of the Service is remedied to its satisfaction.
- 18. RECOVERY OF SUMS DUE TO DFID**
- 18.1 Wherever any sum of money is payable to DFID by the Supplier as a sum specifically ascertained under or in respect of the Contract (including any Key Performance Indicator related or other rebate or any sum which the Supplier is liable to pay to DFID in respect of any breach of this Contract), DFID may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Supplier under this Contract or under any other contract with DFID or with any other department, office or agency of the Crown.
- 18.2 DFID shall give at least 21 days' notice to the Supplier of its intention to make a deduction under Clause 18.1, giving particulars of the sum to be recovered and the contract under which the payment arises from which the deduction is to be made.
- 18.3 Any overpayment by DFID to the Supplier, whether of the Contract Price or of Value Added Tax, shall be a sum of money recoverable from the Supplier.
- 18.4 The rights of the Parties in respect of set-off are fully set out in this Clause 18 and no other right relating to set-off shall be implied as a term of the Contract.
- 19. PAYMENTS & INVOICING INSTRUCTIONS**
- 19.1 Subject to DFID being satisfied that the Supplier is or has been carrying out their duties, obligations and responsibilities under this Contract, sums duly approved by DFID shall be paid within 30 days of receipt of a valid invoice.
- 19.2 Payment shall be made in sterling in the UK. Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in the London Financial Times "Guide to World Currencies" 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.
- 19.3 Unless otherwise expressly provided in Section 4 (Special Conditions) or Section 5 (Schedule of Prices), invoices should be submitted monthly in arrears to the Accounts Payable Section, DFID Financial Management Group, Abercrombie House, Eaglesham Road, East Kilbride, Glasgow, G75 8EA, and in accordance with this clause 19.
- 19.4 DFID shall unless otherwise expressly provided in Section 4 (Special Conditions) make payments due by direct credit through the UK Bank Clearing Systems (BACS). All invoices must contain details of the bank account to which payments are to be made.

- 19.5 The Supplier shall submit an original invoice to DFID as indicated in Section 5: Schedule of Prices, in respect of the Services provided by the Supplier. Each invoice shall contain all appropriate references, a detailed breakdown of the Services and the appropriate Prices or Rates and shall be supported by any other documentation required DFID's Representative to substantiate the invoice.
- 19.6 All invoices should correspond with the budget lines identified in the Schedule of Prices in Section 5 of this Contract.
- 19.7 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.
- 19.8 The final invoice presented by the Supplier in connection with this Contract should be endorsed "Final Invoice".
- 19.9 Any invoice not presented in accordance with this clause 19 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 an 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.
- 20. UNITED KINGDOM INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**
- 20.1 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:
- (a) 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;
 - (b) 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.

Protection of Information

21. INTELLECTUAL PROPERTY RIGHTS

- 21.1 All intellectual property rights in all material (including but not limited to reports, data, designs whether or not electronically stored) produced by the Supplier or the Supplier's Personnel pursuant to the performance of the Services ("the Material") shall be the property of the Supplier.
- 21.2 The Supplier hereby grants to DFID a perpetual, world-wide, non-exclusive, irrevocable, royalty-free licence to use all the Material.
- 21.3 For the purpose of Clause 21.2, "use" shall mean, without limitation, the reproduction, publication and sub-licence of all the Material and the intellectual property rights therein, including the reproduction and sale of the Material and products incorporating the same for use by any person or for sale or other dealing anywhere in the world.

22. SECURITY REQUIREMENTS

- 22.1 The Supplier shall comply, and shall procure the compliance of the Suppliers Personnel, with the Security Policy and the security plan and the Supplier shall ensure that the security plan produced by the Supplier fully complies with the Security Policy.
- 22.2 DFID's security policy can be accessed on the DFID 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. The Supplier shall ensure that they keep up to date with the latest version of the Security Policy on this website.
- 22.3 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 change request. 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 Contract Officer.
- 22.4 Until and/or unless a change to the Charges is agreed by DFID pursuant to clause 22.3 the Supplier shall continue to perform the Services in accordance with its obligations and for the Charges applicable prior to any change request.

23. MALICIOUS SOFTWARE

- 23.1 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.
- 23.2 Notwithstanding clause 23.1 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.
- 23.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 23.2 shall be borne by the Parties as follows:
- (a) 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
 - (b) By DFID if the Malicious Software originates from the DFID Software or the DFID Data (whilst DFID Data was under the control of DFID).

24. TRANSPARENCY

- 24.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (Clause 28), 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.
- 24.2 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.
- 24.3 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.
- 24.4 The Supplier shall assist and cooperate with DFID to enable DFID to publish this Contract.
- 24.5 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.
- 24.6 The Supplier shall:
- (a) 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 supply chain, in the delivery of development cooperation and humanitarian aid
 - (b) provide all necessary assistance as reasonably requested by DFID to enable DFID to respond to the IATI requirements.

25. CONFIDENTIALITY

- 25.1 Except to the extent set out in this Clause 25 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly;
 - (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 25.2 Clause 25.1 shall not apply to the extent that:
- (a) 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 28(Freedom of Information);
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

- (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract;
 - (e) it is independently developed without access to the other party's Confidential Information.
- 25.3 The Supplier may only disclose DFID's Confidential Information to the Supplier's Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier's Personnel are aware of and shall comply with these obligations as to confidentiality.
- 25.4 The Supplier shall not, and shall procure that the Supplier's Personnel do not, use any of DFID's Confidential Information received otherwise than for the purposes of this Contract.
- 25.5 At the written request of DFID, the Supplier shall procure that those members of the Supplier's Personnel referred to in Clause 25.3, respectively sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 25.6 Nothing in this Contract shall prevent DFID from disclosing the Supplier's Confidential Information:
- (a) on a confidential basis to any Central Government Body for any proper purpose of DFID or of the relevant Central Government Body;
 - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (c) to the extent that DFID (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 25.6 (a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
 - (e) 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 31 (Access and Audit), its rights to appoint a Remedial Adviser pursuant to Clause 45 (Dispute Resolution) and Exit Management rights;
 - (f) 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, 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 25.
 - (g) for the purpose of the examination and certification of DFID's accounts.
- 25.7 DFID shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause 25.6 is made aware of DFID's obligations of confidentiality.
- 25.8 Nothing in this clause 25 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.
- 26. OFFICIAL SECRETS ACT**
- 26.1 The Supplier shall ensure that all members of the Supplier's Personnel are aware that the Official Secrets Acts 1911 to 1989 applies to them respectively.
- 27. DISCLOSURE OF INFORMATION**
- 27.1 The Supplier and the Suppliers Personnel, servants, agents or Sub-contractors, or any person acting on their behalfs shall not, without the prior written consent of DFID, disclose to any third party any confidential information obtained during or arising from this Contract (other than in the proper performance of this Contract or as may be required by a court of competent jurisdiction). In addition, no publicity is to be given to this Contract without the prior written consent of DFID.

28. FREEDOM OF INFORMATION

- 28.1 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.
- 28.2 The Supplier shall and shall ensure that its Sub-contractors shall:
- (a) transfer to DFID all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - (b) provide DFID with a copy of all Information in its possession, or power in the form that DFID requires within five Working Days (or such other period as DFID may specify) of DFID's request;
 - (c) 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.
- 28.3 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.
- 28.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by DFID.
- 28.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 28) DFID may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
- (a) in certain circumstances without consulting the Supplier;
 - (b) following consultation with the Supplier and having taken their views into account;
 - (c) provided always that where Clause 28.5 (a) 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.
- 28.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with clauses 28.7 and 28.8 and shall permit DFID to inspect such records as requested by DFID from time to time.
- 28.7 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:
- (a) in accordance with the requirements of the Public Records Office and in accordance with the exercise of the degree of care that would be expected from a leading company within the relevant industry or business sector;
 - (b) in chronological order;
 - (c) in a form that is capable of audit;
 - (d) at its own expense.
- 28.8 Wherever practical, original Information shall be retained and maintained in hard copy form.

29. DFID DATA

- 29.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to DFID Data.
- 29.2 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.
- 29.3 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.

- 29.4 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.
- 29.5 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.
- 29.6 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.
- 29.7 If DFID Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, DFID may:
- (a) 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
 - (b) 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.
- 29.8 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.
- 29.9 Where required in accordance with the Terms of Reference (Section 3) and tender documentation, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Terms of Reference (Section 3) and tender documentation.

30. PROTECTION OF PERSONAL DATA

- 30.1 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.
- 30.2 The Supplier shall:
- (a) 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);
 - (b) 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;
 - (c) 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;
 - (d) take reasonable steps to ensure the reliability of any Supplier's Personnel who have access to the Personal Data;
 - (e) obtain prior written consent from DFID in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;
 - (f) ensure that all Supplier's 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 30;
 - (g) ensure that none of Supplier's Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by DFID;
 - (h) notify DFID (within two Working Days) if it receives:

- (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to DFID's obligations under the Data Protection Legislation;
- (i) provide DFID with full cooperation and assistance in relation to any complaint or request made, including by:
- (i) providing DFID with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with DFID's instructions;
 - (iii) providing DFID with any Personal Data it holds in relation to a Data Subject (within the timescales required by DFID);
 - (iv) providing DFID with any information requested by DFID;
- (j) permit DFID or its representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 31 (Access 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;
- (k) provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by DFID);
- (l) not Process Personal Data outside the United Kingdom without the prior written consent of DFID and, where DFID consents to a transfer, to comply with:
- (i) the obligations of a Data Controller under the Eight Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred;
 - (ii) any reasonable instructions notified to it by DFID.
- 30.3 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.
- 31. ACCESS AND AUDIT**
- 31.1 The Supplier and any Sub-contractor shall keep secure and maintain until six years after the final payment of all sums due to the Supplier under the Contract, or such other period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by DFID and all payments made by DFID.
- 31.2 The Supplier and/or Sub-contractor shall grant to DFID, or its authorised agents, such access to those records as they may reasonably require in order to check the Supplier's compliance with the Contract and monies utilised, throughout the whole supply chain.
- 31.3 For the purposes of the examination and certification of DFID's accounts, or any examination under section 6(1) of the National Audit Act 1983 or annual re-enactment thereof as to the economy, efficiency and effectiveness with which DFID has used its resources, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral or written explanations as he may reasonably require for those purposes. The Supplier shall give all reasonable assistance to the Comptroller and Auditor General for those purposes.
- 31.4 Clause 31.3 applies only in respect of documents relating to the Contract and only for the purpose of the auditing of DFID. It does not constitute an agreement under section 6(3)(d) of the National Audit Act 1983 such as to make the Supplier the subject of auditing under that Act.
- 31.5 In addition to where an audit is imposed on DFID by a Regulatory Body (in which case DFID may carry out the audit required without prejudice to its other rights) DFID may conduct an audit:
- a) to review the integrity, confidentiality and security of DFID Data;
 - b) to review the Supplier's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with generally and in accordance with the Contract and any other legislation applicable to the Services.

- 31.6 Subject to DFID's obligations of confidentiality under this Contract, the Supplier shall on demand provide DFID (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- a) all information requested by DFID within the permitted scope of the audit;
 - b) reasonable access to any Sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - c) reasonable access to Sub-Contractors throughout the supply chain;
 - d) access to the Supplier's system;
 - e) access to the Supplier's Personnel.
- 31.7 Where it is found by DFID that any overpayment has been made to the Supplier the Supplier shall reimburse DFID such amount within 28 days of the date of DFID's written demand.

Compliance with Legal Obligations

32. PREVENTION OF FRAUD AND BRIBERY

- 32.1 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:
- (a) 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
 - (b) 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.
- 32.2 The Supplier, their servants, agents or sub-contractors, or any person acting on their behalf shall not during the term of this Contract:
- (a) commit a Prohibited Act; and/or
 - (b) 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.
- 32.3 The Supplier shall during the term of this Contract:
- (a) establish, maintain and enforce, and require that its Sub-contractors 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;
 - (b) keep appropriate records of its compliance with its obligations under Clause 32.3(a) and make such records available to DFID on request.
- 32.4 The Supplier shall immediately notify DFID in writing if it becomes aware of any breach of Clause 32.1 and/or 32.2, or has reason to believe that it has or any Supplier's Personnel, servants, agents or sub-contractors, or any person acting on their behalf have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) 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
 - (c) 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.
- 32.5 The Supplier warrants and represents to DFID that to the best of its knowledge, that neither the Supplier, Supplier's Personnel, servants, agents or sub-contractors, or any person acting on their behalf:
- (a) has given, offered or agreed to give or accepted, any gift or consideration of any kind as an inducement or reward for doing or forbearing 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
 - (b) 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's 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.

32.6 Neither the Supplier, Supplier's Personnel, servants, agents or sub-contractors, nor 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.

32.7 Where the Supplier or any of its employees, servants, agents or sub-contractors, or any person acting on their behalf, does any of the acts mentioned in Clause 32.2 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:

- (a) 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;
- (b) to recover from the Supplier the amount or value of any such gift, consideration or commission;
- (c) to recover from the Supplier any other loss sustained as a result of any breach of this Clause 32, whether or not the Contract is terminated.

32.8 DFID and the Supplier will immediately and without undue delay inform each other of any event that interferes or threatens to materially interfere with the successful implementation of the project, 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 have 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.

32.9 When exercising its rights or remedies under this Clause DFID shall:-

- (a) act proportionately in the light of the gravity and circumstances of the particular breach; and
- (b) give all due consideration, where appropriate, to the use of remedies other than termination of the Contract.

33. ANTI-TERRORISM REGULATIONS

33.1 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.

33.2 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's 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.

33.3 The Supplier shall immediately notify DFID in writing if it becomes aware of any breach of Clause 33.1 and/or 33.2, or has reason to believe that it has or any Supplier's Personnel, servants, agents or sub-contractors, or any person acting on their behalfs have:

- (a) been subject to an investigation or prosecution which relates to an alleged infringement of these Clauses 33.1 and/or 33.2;
- (b) 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.

33.4 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 Clauses 33.1 or 33.2 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:

- (a) 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;
- (b) to recover from the Supplier any other loss sustained as a result of any breach of this Clause 33, whether or not the Contract has been terminated.

34. DISCRIMINATION

- 34.1 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.
- 34.2 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.
- 34.3 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.
- 34.4 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's 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.

35. TAX COMPLIANCE

- 35.1 Particularly relating to occasions of Disclosure of Tax Avoidance Schemes (DOTAS) in line with General Anti-Abuse Rule (GAAR), the Supplier represents and warrants that as at the Commencement Date, it has notified DFID in writing of any Occasions of Tax Non-Compliance or any litigation that is involved in that is connection with any Occasions of Tax Non-Compliance.
- 35.2 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- (a) notify DFID in writing of such fact within 5 Working Days of its occurrence;
 - (b) promptly provide to DFID:
 - (i) 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
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as DFID may reasonably require.

Liabilities

36. LIMIT OF LIABILITY

- 36.1 Except as stated in Clause 36.2, where there has been misconduct, gross negligence, dishonesty or fraud by the Supplier or the Supplier's Personnel the Supplier's liability under this Contract shall be limited to the amount of the Financial Limit.
- 36.2 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
 - (b) fraud or fraudulent misrepresentation by it or its employees;
 - (c) 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
 - (d) any liability to the extent it cannot be limited or excluded by Law.
- 36.3 Subject always to Clauses 36.2; in no event shall either Party be liable to the other for any:
- a) loss of profits, business, revenue or goodwill; and/or
 - b) indirect 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.

36.4 The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.

37. INDEMNITY

37.1 Subject to Clauses 36.1 to 36.4 (inclusive), the Supplier shall indemnify DFID in respect of any loss, damage or claim howsoever arising out of or in consequence of negligent acts or omissions by the Supplier or the Supplier's Personnel or any claims made against DFID by third parties in respect thereof and in relation to this Contract.

37.2 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.

38. INSURANCE

38.1 The Supplier shall effect and maintain, and shall procure that their Sub-contractors effect and maintain, with a reputable insurance company a policy or policies of insurance providing a level of cover not less than the Financial Limit in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's and/or their Sub-contractors performance of their obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

38.2 Without limitation to Clause 38.6 the Supplier shall effect and maintain and shall procure that all agents, professional consultants and Sub-contractors effect and maintain, employer's liability insurance in respect of the Supplier's Personnel in accordance with any legal requirement from time to time in force. The Supplier shall also effect and maintain, and shall ensure that all agents, professional consultants and Sub-contractors involved in the supply of the Services effect and maintain, appropriate professional indemnity insurance cover during the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

38.3 The Supplier shall give DFID, immediately on request, copies of all insurance policies referred to in this Clause 38 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

38.4 With regard to any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982, the Supplier shall maintain professional indemnity insurance cover of an amount not less than the Financial Limit.

Control of Contract

39. VARIATIONS

39.1 No variation to the terms or scope of this Contract shall be effective without the Contract Officer's prior written consent and recorded in writing in a formal Contract Amendment Letter (Appendix A). DFID shall have no liability in respect of work performed outside the Services set out in Section 3 (Terms of Reference).

39.2 The Supplier may request a Variation provided that:

- (a) the Supplier shall notify DFID's Representative in writing of any additional or changed requirement which it considers should give rise to a Variation;
- (b) any proposed Variation shall be fully supported by a formal, technical and commercial justification.

39.3 DFID shall, having the sole and absolute right to do so, either approve or reject any Variation proposed by the Supplier.

40. ASSIGNMENT AND NOVATION

40.1 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 the prior written consent of DFID.

40.2 Subject to Clause 40.1, the Supplier may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Price 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 40.2 shall be subject to:

- (a) deduction of any sums in respect of which DFID exercises its right of recovery under Clause 18 (Recovery of Sums Due);
- (b) all related rights of DFID under the Contract in relation to the recovery of sums due but unpaid; and
- (c) DFID receiving notification under both clauses 40.3 and 40.4.

40.3 In the event that the Supplier assigns the right to receive the Contract Price under clause 40.2, the Supplier shall notify DFID in writing of the assignment and the date upon which the assignment becomes effective.

40.4 The Supplier shall notify DFID of the assignee's contact information and bank account details to which DFID shall make payment.

41. WAIVER

41.1 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.

Default and Termination

42. FORCE MAJEURE

42.1 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.

42.2 Where the performance by the Supplier of their obligations under this Contract is delayed, hindered or prevented by a Force Majeure Event, the Supplier shall promptly notify DFID in writing, specifying the nature of the Force Majeure Event and stating the anticipated delay in the performance of this Contract.

42.3 From the date of receipt of notice given in accordance with Clause 42.2, DFID may, at its sole discretion, either suspend this Contract for up to a period of 6 months ("the Suspension Period") or terminate this Contract forthwith.

42.4 In the event that DFID does not terminate the Contract pursuant to Clause 42.3, as soon as practicable after the Affected Party issues to the other a notice of a Force Majeure Event, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

42.5 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.

42.6 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.

43. SUSPENSION OR TERMINATION WITHOUT DEFAULT OF THE SUPPLIER

43.1 DFID may, at its sole discretion, suspend or terminate this Contract or any part of the Services, at any time by so notifying the Supplier and giving the reason(s) for such suspension or termination.

43.2 Where this Contract has been suspended or terminated pursuant to Clause 43.1, the Supplier shall:

- (a) 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; and
- (b) provide to DFID, not more than 60 days after DFID notifies the Supplier of the suspension or termination of this

Contract an account in writing, stating;

- (i) any costs, if any, due before the date of suspension or termination;
- (ii) costs to be expended after the date of suspension or termination which the Supplier necessarily incurred in the proper performance of this Contract and which it cannot reasonably be expected to avoid or recover.

43.3 Subject to DFID's approval DFID shall pay such amount stated pursuant to Clause 43.2 to the Supplier within 30 days after receipt from the Supplier of an Invoice in respect of the amount due.

44. SUSPENSION OR TERMINATION WITH DEFAULT OF THE SUPPLIER

44.1 DFID may notify the Supplier of the suspension or termination of this Contract where the Services or any part of them are not provided to the satisfaction of DFID, giving the reasons for such dissatisfaction and, in the case of suspension, the action required by the Supplier to remedy that dissatisfaction and the time within which it must be completed.

44.2 Where this Contract is suspended under Clause 44.1 and the Supplier subsequently fails to remedy the dissatisfaction DFID may terminate this Contract forthwith.

44.3 DFID may, without prejudice to its other rights, including but not limited to the right to claim for costs and losses incurred, terminate this Contract forthwith where:

- (a) the Supplier or any member of the Supplier's Personnel, either directly or through their servants or agents or sub-contractors breaches any of their obligations under this Contract; or
- (b) the Supplier, Supplier's 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 32 or 33 of this Contract; or
- (c) the Supplier is an individual or a partnership and at any time:
 - (i) becomes bankrupt; or
 - (ii) is the subject of a receiving order or administration order; or
 - (iii) makes any composition or arrangement with or for the benefit of the Supplier's creditors; or
 - (iv) makes any conveyance or assignment for the benefit of the Supplier's creditors; or
 - (v) the warranty given by the supplier pursuant to Clause 35 (Tax Compliance) is materially untrue; or
 - (vi) the Supplier commits a material breach of its obligation to notify DFID of any Occasion of Tax Non Compliance as required by Clause 35 (Tax Compliance); or
 - (vii) the supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of DFID, are acceptable.
- (d) the Supplier is a company and:
 - (i) an order is made or a resolution is passed for the winding up of the Supplier; or
 - (ii) a receiver or administrator is appointed in respect of the whole or any part of the undertaking of the Supplier.
- (e) the Supplier is a partnership or a company and there is a Change in Control. "Change in Control" means that the person(s) (including corporate bodies) directly or indirectly in Control of the Supplier at the time this Contract is entered into cease to be in Control. "Control" means the power of a person to secure that the affairs of the Supplier are conducted in accordance with the wishes of that person.

44.4 Where this Contract is terminated in accordance with this Clause 44, 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 but shall not be entitled to any further payment in relation to this Contract.

- 44.5 Where this Contract is terminated pursuant to Clause 44.3(b) the Supplier shall pay DFID within 10 days of notification by DFID, such amount as DFID shall have determined as the amount of any loss to DFID resulting from such termination together with the amount or value of any gift, consideration, commission, corruption or fraud concerned.

Dispute Resolution

45. DISPUTE RESOLUTION

- 45.1 The Parties will attempt in good faith to negotiate a settlement to any claim or 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.

Law

46. LAW AND JURISDICTION

- 46.1 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.

Compliance with Environmental Requirements

47. ENVIRONMENTAL REQUIREMENTS

- 47.1 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.
- 47.2 The UK Government is committed to promoting a low carbon, high growth, global economy. 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.
- 47.3 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 47.1 and 47.2 as a result of its own operations or those of Sub-contractors working on its behalf.
- 47.4 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.
- 47.5 Nothing in Clauses 47.1 to 47.3 shall relieve the obligations of the Supplier to comply with its statutory duties and Good Industry Practice.

Conflict of Interest

48. CONFLICT OF INTEREST

- 48.1 Neither the Supplier nor any of the Supplier's 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.
- 48.2 The Supplier and the Supplier's Personnel shall notify DFID immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.
- 48.3 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.
- 48.4 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.
- 48.5 Pursuant to Clause 48.4, 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 and Deliverables completed pursuant to it (to include all working papers, draft reports in both tangible and intangible form) are not shared or made available to other employees, suppliers or agents of the Supplier and that such matters are not discussed by the relevant staff with other employees, suppliers or agents of the Supplier.
- 48.6 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.

Retention of Rights

49. CONSEQUENCES OF EXPIRY OR TERMINATION

- 49.1 Clauses 8,9,21,22,23,24,25,26,27,28,29,30,31,36,37,45 and 46 of this Section 2 and any relevant clauses listed under Section 4 (Special Conditions) shall survive the termination or expiry of this Contract.

SCHEDULE 1

Definitions

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

“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;

“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;

“Charges” the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 5 (Schedule of Prices);

“Commencement Date” means the date identified in Section 1 Form of Agreement.

“Commercially Sensitive Information” the information listed in Section 4 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 Inception Report” the initial financial model in a form agreed by the Supplier and DFID in writing on or before the Commencement Date ;

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

“Contract Price” means the price, exclusive of any applicable Value Added Tax, payable by DFID to the Supplier, as set out in Section 3 (Schedule of Prices) for the performance of the Services and its obligations under this Contract but before taking into account the effect of any adjustment of price in accordance with Section 5 (Schedule of Prices).

“Contracting Authority” any Contracting Authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations other than DFID;

“Crown Body” any department, office or agency of the Crown;

“Data Controller” shall have the same meanings as set out in the Data Protection Act 1998;

“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;

“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” any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:

- (a) in the case of DFID, of its employees, servants, agents; or
- (b) in the case of the Supplier, of its Subcontractors or any Supplier Personnel, in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other;

“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 Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

“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.

“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;

"Financial Limit" means the amount specified in Section 1 and is the maximum amount payable by DFID 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;

"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.

"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);

"Intellectual Property Rights" or "IPRs"

(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;

"Key Performance Indicators" 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;

“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;

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:

(i) 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;

(ii) 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.

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

“Performance Indicators” the Key Performance Indicators and the Subsidiary Performance Indicators;

“Personal Data” 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;

“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;

"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.

"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 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;

"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;

"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.

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

"Sub-contract" any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

"Sub-contractor" means any third party employed by the Supplier in the provision of Services;

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

"Supplier" means the person(s), partnership(s) or company (ies) with whom this Contract is placed.

"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's Personnel" means any person 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” Supplier Software (including open source software) that:

- (a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
- (b) has a Non-trivial Customer Base;

“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);

“Term” the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Contract;

“Third Party IPRs” Third Party IPRs that:

- (a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
- (b) has a Non-trivial Customer Base;

“Unincorporated Consortium” means groups of economic operators, including temporary associations, may participate in procurement procedures and shall not be required by contracting authorities to have a specific legal form in order to submit a tender or request to participate ([The Public Contracts Regulations 2015](#) – *Economic Operators 19.3*).

"Variation" means a properly executed variation to the Contract in compliance with Condition 38.

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

Appendix A. Contract Amendment Letter

Department for International Development
Abercrombie House
Eaglesham Road
EAST KILBRIDE
Glasgow
G75 8EA

Telephone: East Kilbride 01355 84 4000
Directline: 01355 84 [

File Ref: [

Date: []
Contract Amendment No: [

CONTRACT FOR: [

CONTRACT NUMBER: [

With reference to the contractual letter dated [] (as most recently amended by the letter dated []) whereby your firm [(in association with []) was engaged to [] and with reference to your letter[s of [] and subsequent discussion, I confirm that the UK Government wishes to make the following [further amendment[s to the letter of [:

[

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 amendment[s set out herein.

4. Please note the provision in the contractual letter that the financial limit of the UK Government's liability to the Supplier under this engagement shall not exceed the sum specified unless the amount of any such excess has been agreed by the Department for International Development in writing before the Supplier takes any action which might result in the financial limit being exceeded.

For and on behalf of the
Secretary of State
for International Development

Name: []

Position:

Signature:

Date: []

For and on behalf of

Name: [

Signature:

Date:

Section 3

SECTION 3

TERMS OF REFERENCE

On 10th March 2017 the Government of Nepal published in the Nepal Gazette a new structure for local government comprising 744 gaupalika, nagarpalika, sub-metropolitan and metropolitan cities. This marks a transition away from districts as a formal unit of local government. Over the life of the Nepal Safer Schools Project this transition will have an impact.

Introduction

1. The Department for International Development (DFID) leads the UK's work to end extreme poverty, deliver the Global Goals, and tackle global challenges in line with the government's **UK Aid Strategy**. Our aid budget is spent on tackling the great global challenges – from the root causes of mass migration and disease, to the threat of terrorism and global climate change – all of which also directly threaten British interests. We are ending the need for aid by building peaceful and stable societies, creating jobs and strong economies, fighting corruption, unlocking the potential of girls and women, tackling climate change and helping to save lives when humanitarian emergencies hit.
2. This Terms of Reference is for a supplier to implement DFID's Nepal Safer Schools Project (NSSP) as part of a wider programme on Disaster Resilience in Nepal. The programme is expected to run for 5 years, including a 4-month inception period in year 1, starting in early February 2018.
3. The NSSP will have three main results areas in line with the Comprehensive School Safety Framework¹:
 - Output 1: Safer learning facilities, particularly through seismically-resilient retrofitting and rebuilding;
 - Output 2: School-level disaster management and resilient education; and
 - Output 3: National-level technical assistance on safer learning facilities.
4. The NSSP will be aligned with and contribute to the Government of Nepal's School Sector Development Plan (2016-2023) which includes a focus on School Safety and Disaster Risk Reduction, with priorities and targets for upgrading physical infrastructure to be more resilient as well as strengthening disaster risk management in schools and ensuring disaster resilience informs curriculum and teacher training and resources.
5. This project will focus on up to four districts in the Far and Mid-West, as well as at a national-level. In the Government of Nepal's terminology this project will be off-treasury, on-budget². This means that funding for NSSP will not flow through the national treasury, but that budget expenditure under project will be reporting in the Government's Red Book. A Steering Committee composed of officials from the Government of Nepal and DFID, will be established to oversee and strategically guide the NSSP.
6. The total budget available for the NSSP is between £10 to £12m. The agreed methodology to define how the outputs set out in this Terms of Reference will be delivered within the overall budget ceiling.

¹ GADRRES, (2014), <http://gadrres.net/resources/comprehensive-school-safety-framework>

² Development Cooperation Report.

DFID Disaster Resilience Programme

7. DFID is scaling up its efforts to build resilience to natural disasters and climate change in Nepal.
8. Nepal is subject to a wide range of disaster risks and impacts, including both earthquakes and climate related hazards such as floods, droughts and landslides. Disasters cost the government about six percent of its annual development expenditure per year¹. Recent estimates indicate that the negative impact of weather variability is equivalent to around 2% of current GDP per year rising to 5% or more in extreme monsoon flood years². These impacts are expected to increase significantly due to climate change.
9. To address these challenges DFID Nepal is taking forward two major new programmes, 'Climate Smart Development for Nepal' and 'Strengthening Disaster Resilience in Nepal'.
10. The **'Strengthening Disaster Resilience in Nepal' programme**, of which the NSSP is part of, aims to build more disaster resilience in Nepal by:
 - Strengthening urban resilience through improved building and planning in disaster prone cities;
 - Supporting schools to be more disaster resilient through safer learning spaces, stronger disaster preparedness and more resilient education (NSSP focus);
 - Strengthening system preparedness to respond to humanitarian emergencies;
 - Providing emergency response support to disasters;
 - Enabling strategic support and capacity building to the Government of Nepal on national policy and institutions; and
 - Monitoring, evaluation and learning across the programme.
11. Different components are being implemented through different partnerships and mechanism. DFID will support facilitation and coordination across partners and components, but prospective suppliers will be expected to be responsive and open to engaging with other parts of the programme.

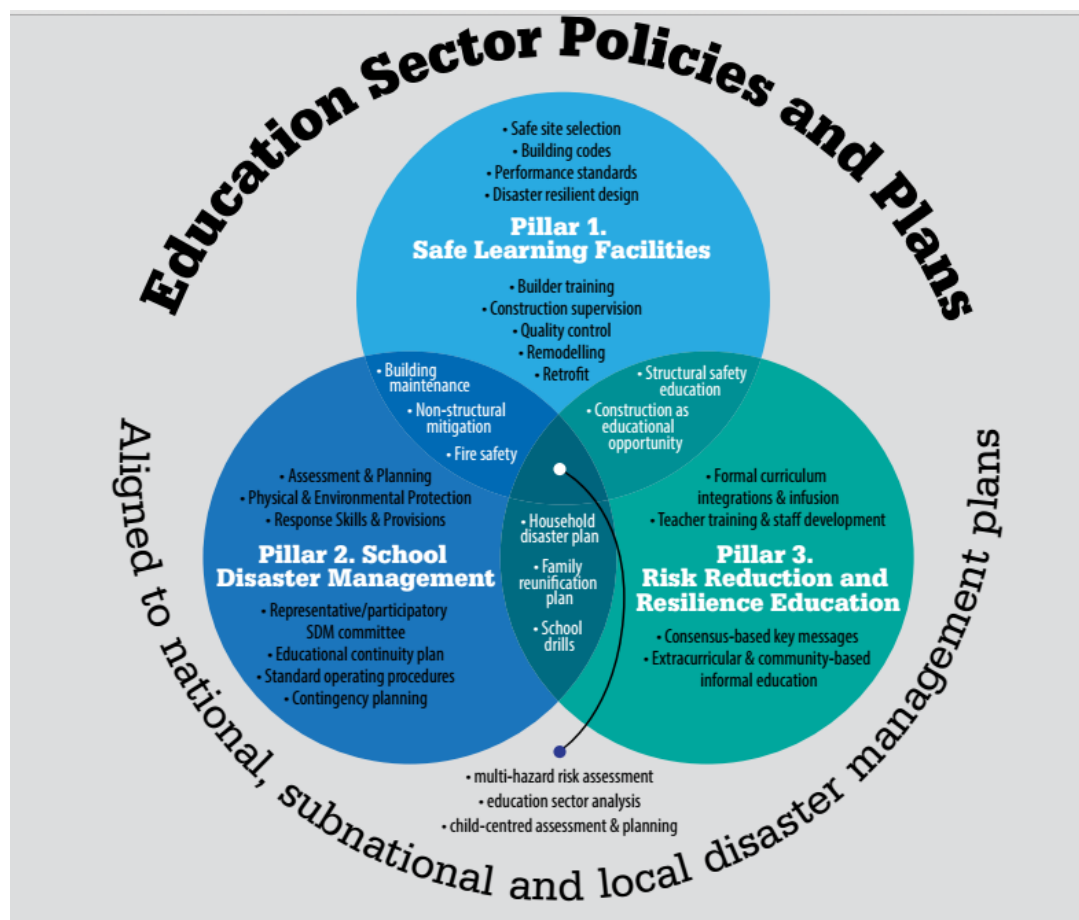
Background School Safety in Nepal

12. Over 4 million children in Nepal are taught in schools which use unsafe buildings that are not compliant with Nepal's building code standards. These schools are at risk of collapse in earthquakes, with many also vulnerable to other hazards (e.g. landslides and floods). A school vulnerability assessment completed in 2011 estimated that more than 61,000 schools – over half of all schools in Nepal – required retrofitting or reconstruction³. Whilst there have been a number of initiatives ongoing in Nepal to improve school safety, the 2015 earthquake demonstrated the vulnerability of school buildings, with nearly 7,000 schools significantly or completely damaged.
13. During the earthquake, seismically-resilient schools performed significantly better than those without strengthening or incremental improvement. Where school buildings were undamaged, they performed vital functions in the immediate aftermath of the earthquake, acting as centres for disaster coordination, and safe shelters for the community. There is also some evidence that safer schools programmes beyond

³ Vishokarma et al; Implementing School Retrofitting Program In Nepal: Experiences and Lessons Learnt: http://www.iitk.ac.in/nicee/wcee/article/WCEE2012_4080.pdf

physical infrastructure have also supported wider awareness raising on earthquake risk, and community and family preparedness³.

14. The Government of Nepal is committed to making schools safer under the leadership of the Ministry of Education and with implementation by the Department of Education. In 2010 the Ministry of Education, under the framework of the Nepal Risk Reduction Consortium, established flagship 1 on School Safety. This builds on pioneering school safety work led by organisations such as the National Society of Earthquake Technology (NSET). Flagship 1 brought together development partners working in the sector, and aimed to ensure that over 900 school buildings in some 643 schools in the Kathmandu Valley were safe from natural disasters, and also provide support to 100 schools in the East of Nepal that were affected by the September 2011 earthquake. The work completed under the flagship helped demonstrate what school safety work in Nepal looked like and helped provide momentum for achieving disaster resilience in schools through Nepal.
15. In July 2014, the Ministry of Education launched the Visionary Strategy for Increasing Resilience for Schools in Nepal, which built on the Asia Development Bank supported Strategy and Master Plan. The Visionary Strategy and Master Plan, aimed to take stock on project lessons; map out the challenges and strategy for scaling up on school safety; and developing a detail plan and prioritisation for implementation.
16. Since the May 2015 earthquake and the subsequent Government of Nepal Post-Disaster Needs Assessment and Post-Disaster Recovery Framework significant attention has been focused on the rebuilding of schools in the most earthquake affected areas, and consequently there has been less focus on the national strategy. It is important, however, that the Visionary Strategy does not deprioritise wider disaster resilience efforts in the education sector, despite the pressing need for post-earthquake reconstruction.
17. The Ministry of Education in the new School Sector Development Plan (SSDP) (2016-2023) has prioritised School Safety and Disaster Risk Reduction. There is an opportunity to ensure that this works beyond only earthquake reconstruction, starting to implement the national-wide vision. The SSDP reemphasises the need for a comprehensive three pillar approach to school safety (safe learning facilities, school disaster management and resilient education), and formalises objectives and targets for implementation in both earthquake and non-earthquake affected areas.
18. At a more operational level the Ministry and Department of Education have developed a number of national-level policies, plans and guidelines in the area of disaster resilience. For example, based on learning from the 2015 earthquake the Education Cluster under the leadership of the Department of Education has finalised a national education contingency plan, and there is work in a number of districts to replicate this at a local level. There has also been a focus on mainstreaming disaster resilience in to School Improvement Plan guidance and the professional training and development of Head Teachers and focal teachers.



Recipient and Beneficiaries

19. The primary recipient of NSSP will be government stakeholders charged with implementing school safety in Nepal. At a national-level this will include the Ministry of Education, and the Department of Education. District Education Offices, School Management Committees, and Resource Persons at a district-level where the project is implemented will also benefit from the delivery of the project.
20. The ultimate beneficiaries of this support will be school children, teachers and their wider communities, who will benefit directly from safer learning facilities, disaster management in and preparedness in their schools, as well as disaster resilience in their education. The NSSP should also pay particular attention to socially excluded and highly vulnerable groups, ensuring through the project “no one is left behind”.

Objective

21. The Supplier will establish a Project Implementation Unit to deliver the entirety of the NSSP. The objective of the NSSP is to support the implementation of the Government of Nepal’s Visionary for Increasing Resilience in Schools in Nepal. It will achieve this in two broad ways:
 - Support the implementation of the Comprehensive School Safety framework (Safer Learning Facilities, Disaster Management and Resilient Education) in four districts in the Far- and Mid-West; and
 - Support national-level capacity in the Department of Education to further develop policy and guidance to deliver safer schools.

22. As an overarching principle, the NSSP should take a community-led approach, with communities alongside local officials accompanying the project through its different stages of planning, construction and monitoring. The objective of this is to achieve beyond physical infrastructure improvements in school safety, but to strengthen the resilience of communities more broadly.

Scope of the work

23. NSSP will comprise a small core team led by a team leader, based in Kathmandu. This core team will establish a central Project Implementation Unit (PIU) which will be responsible for the delivery of NSSP. As required, the PIU will be able to draw on a wider pool of experts within the organisation/consortium or sub-contract to other organisations. Some level of sub-contracting is anticipated for district level implementation, but subject to an agreed appropriate approach.

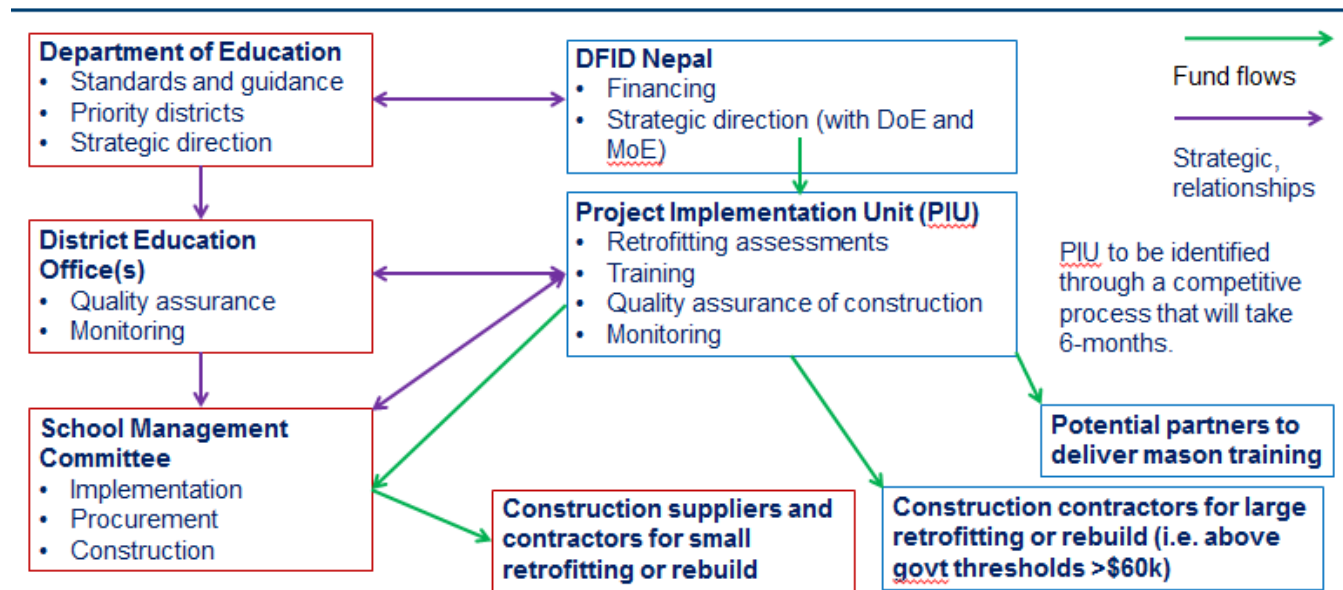
Output 1: Safer learning facilities, particularly through seismically-resilient retrofitting and rebuilding

24. The aim of this output will be on supporting safer learning facilities (government and community schools) in up to four districts across the Far- and Mid-West. The focus on this output will be on ensuring earthquake resilient structures through physical school assessments, and seismic retrofitting and rebuilding (depending on the requirement). It will be important to focus on key buildings such as classrooms, but also consider WASH facilities which are important in terms of the enabling physical environment for learning, but can also play an important role in emergencies when schools buildings can be used initially as community shelter.
25. Assessments should also be multi-hazard and make recommendations on structural mitigation for wider risks to learning facilities (e.g. flooding, landslides). The extent to which other risks should be factored into risk assessments and mitigation plans will depend to some extent on the selected focus districts and corresponding hazard profile (e.g. Terai, hills or mountains). It will also be important for assessments to consider user needs, particular those of socially excluded groups.
26. The output is expected to be implemented by the NSSP PIU in collaboration with the following partners (see figure 1):
- Department of Education: who leads on standards and guidance for school assessments and retrofitting/rebuilding
 - District Education Offices (DEO) in the four districts: who lead on quality assurance and monitoring of school construction at a local level
 - School Management Committees (SMC): who lead on the school (re)construction of basic schools buildings⁴
 - Private contractors or other partners: who are capable of undertaking more complex school (re)construction work.
 - Expert engineer consultancies: who are able to undertake retrofitting design work.
27. The NSSP will aim to primarily work with SMC on the retrofitting and/or reconstruction of schools buildings and other structural mitigation, ideally with project funds flowing to Committees to lead on local-level procurement and project management⁵. We see value in this given the potential wider community benefits of this work if awareness and capacity on safer construction is raised at the local level.

⁴ The Department of Education estimate as many as 90% of buildings will fall within this category.

⁵ ADB is currently supporting the Department of Education with guidance on SMC led school construction. This will be important to engage with.

28. Recognising that this is complex work and it would be very unlikely for all of the required skills to exist in the community, the Supplier will build in a complementary capacity building/ training element to the project. This should be informed by a local level capacity assessment. These activities will likely include (but not limited to):
- Local level mason training, for both new and existing masons;
 - Orientation for the SMC on retrofitting and rebuilding; and
 - Training for DEO engineers.
29. The methodology should include of women, and potentially other socially excluded groups, in the local level trainings.
30. Supplier should consider options including availability of local construction material appropriate for retrofitting and rebuilding. This will also require a thorough market assessment early on in the project, with mitigating actions and strategies planned for if there are likely to be supply constraints.
31. It will also be important to build-in technical support and back-stopping at the local level from the PIU for SMCs. It may even be required for the PIU to have a physical presence in the districts. It will also be important for the PIU to both conduct its own monitoring and quality assurance of school buildings, but also to support and enable the DEO to do this too, as ultimately all government school buildings after construction works will come under their jurisdiction.
32. For more complex and higher-value school retrofitting and rebuilding, as per the normal practice of the Department of Education, private contractors or other partners will be sought to implement directly. Depending on the configuration of the NSSP, this could be directly led by the PIU or through sub-contracting.
33. Supplier should reflect on their potential delivery model for schools retrofitted/rebuild through SMCs, as well as for more complex/high-value projects where direct implementation or sub-contracting may be the model. Sub-contracts under the programme should adopt International Federation of Consult Engineers rules and templates where appropriate.
34. In terms of budget, this is expected to be the main output area (approximately 70-80%). The cost of retrofitting and rebuilding school buildings varies with a number of cost drivers (e.g. remoteness, complexity of building, building typology). It is estimated that the NSSP will be able to support the retrofitting/rebuilding of in the range of 250-500 government or community schools/buildings (equivalent to 2,500 classrooms). The supplier will be required in the inception phase to firm up targets and milestones. The supplier will also need to monitor value for money metrics throughout the project, unit costs and cost drivers for block retrofitting/rebuild will be an important unit cost to monitor.



Output 2: School-level disaster management and resilient education and awareness

35. There has been extensive work done in Nepal on school-level disaster management and resilient education, particularly by the DIPECHO Child-Centred Disaster Risk Reduction Consortium. It will be important for NSSP to learn from previous experience and align with current Government of Nepal policy and guidance. For example, there is work ongoing currently as part of the Ministry of Education's School Improvement Plan to mainstream disaster management and preparedness into this key document, and also the harmonisation of a training package for teachers on disaster resilience within the curriculum.

36. Activities under this output could thus include (but not limited to):

School Disaster Management

- Non-structural and wider site vulnerability and capacity assessments and mitigating actions (e.g. securing book shelves, stabilising boundary walls, covering electrical wiring, ramps to enable evacuation etc);
- School-wide contingency planning;
- Establishing disaster resilience sensitive School Improvement Plans, and linking this to the operational calendar of the school;
- Awareness raising of hazards and responses (e.g. go-bags, household preparedness plans);
- Engagement in early warning systems;
- Simulations and drills both school-wide and community-linked for multiple hazards;
- Linking to communities and households for awareness raising and outreach activities (e.g. preparation of household contingency plans, linking to Local Disaster Risk Management Committees and wider emergency responders);
- Pre-positioning emergency items and building capacity on first aid and search and rescue.

Resilience Education

- Teacher involvement in the integration of disaster resilience topics into formal curriculum and extra-curricular activities at a local level.
 - Support the application of learning materials for students and teachers that are relevant to disaster and climate resilience.
 - Teacher training and wider staff development on disaster resilience.
37. The NSSP will need to engage in policy discussions linked to the SSDP on the minimum package for schools on comprehensive school safety and disaster risk reduction, and look to align and support where possible. In the delivery of these activities it will also be important for the NSSP to consider issues of social exclusion, and ensure that the project reaches those most vulnerable within schools and broader communities.
38. At a national-level in relation to these activities, NSSP will need to engage with not just the Ministry of Education and Department of Education (particularly the DRR Section), but also the National Centre for Education Development and the Curriculum Development Centre. At a sub-national level engagement with District Education Offices, as well as Education Training Centres and Resource Centres will be important.
39. Approximately 15% of the overall budget is expected to be allocated for this output. This will be split across disaster management and resilient education objectives

Output 3: National-level technical assistance for safer learning facilities and Disaster Risk Reduction

40. This output will provide national-level support to the Department of Education through targeted technical assistance. This technical assistance will aim to:
- create a strong link between the Ministry and Department of Education and the NSSP, ensuring that progress and results from the project are linked into Government of Nepal plans; and
 - Support the development and implementation of guidance and policy by the Ministry and Department of Education.
41. Development partners are currently discussing with the Ministry of Education a common technical assistance framework, this includes activities within the School Safety and DRR sector. Any DFID supported TA should fit within this framework and compliment the support of others.
42. Up to 5% of the overall budget is expected to be allocated for this output.

Programme implementation and timing

43. The programme is expected to run for 5 years, including a 4-month inception period in year 1, starting in early February 2018. Any extension, for a period of up to 2 additional years, will be subject to project need, review recommendations, value for money, acceptable supplier performance to date and budget availability. If circumstances require further extension beyond the original contract duration, DFID will consider doing so by means of the negotiated procedure where necessary conditions can be met. A number of phases and activities are envisaged.

Inception phase

44. The inception phase will be key to establishing the NSSP. A number of activities are envisaged, in collaboration with the Department for Education and DFID. These are set out below, although suppliers are encouraged to develop these as they see appropriate.

All outputs

Activity 1: Project and team set up.

45. Mobilisation of the central team based in Kathmandu. Establish strong core programme management, financial management and technical functions. At the start of the project it will be unlikely that the four focus districts will be known, but by the end of the inception period this will have been agreed with the Ministry of Education and Department of Education, and the implementation approach and partnerships at a district-level should be finalised.

Activity 2: Select districts and sites.

46. Identification of the four focus districts for outputs 1 and 2. This should be in consultation with the Ministry of Education and the Department of Education based on a mapping of needs and gaps in current support.
47. Within the four focus districts, using data from the Department of Education's Education Management Information System a further desk based shortlisting of sites. The criteria/methodology for shortlisting will need to be agreed with the Ministry and Department of Education. It is expected to include not only technical safety criteria, but also socio-economic information in terms of levels of school attendance, equity etc. Additional data may be brought together from other sources or collected, but an extensive data collection exercise is not anticipated at this stage.

Output 2: School-level disaster management and resilient education

Activity 3: Review of best practice and guidance on school-level disaster management and development of implementation approach.

48. There are a number of development partners who with the Ministry and Department of Education are active in developing and implementing school-level disaster management and resilient education. It will be important for the NSSP to reflect on this body of policy and practice, and develop a consistent approach for the project. Plans for the implementation of this output should be detailed in the inception report. The Ministry of Education plans to restart SSDP Technical Working groups including one on School Safety and DRR. This will be an important platform to start engaging in.

Output 3: national-level technical assistance

Activity 4: Identify national-level technical assistance

49. Identification of national-level technical assistance to the Department of Education on Disaster Risk Reduction and Safer Learning Facilities. This TA should both support the link between the Department of Education and the NSSP, as well as support wider national policy and implementation of the safer schools Visionary Strategy. This will need to be agreed with the Department of Education, but there is thought to be a particular gap in ensuring that guidance and learning which form part of the school sector reconstruction is linked to the wider national strategy.
50. Under the SSDP development partners are currently mapping planned technical assistance initiatives and developing a framework of TA to the Ministry and Department of Education, including on DRR and Safer Schools. DFID support should be part of the TA framework and compliment the activities of others.

End of inception phase

51. At the end of the inception phase, the NSSP supplier is expected to deliver the following products which will capture progress in the inception phase, and more detailed plans for implementation:
- **Inception report**, summarising progress during the inception phase and plans for the implementation phase, including an overarching project theory of change, and the methodology and approach for local capacity building and market assessments (Safer Schools output area).
 - **Update workplan**, detailing plans against each output, in each project location.
 - **Update risk matrix**, and methodology for monitoring and reflecting on risk over the life of the programme.
 - **Updated results framework** (e.g. logical framework), with clear output targets, milestones and KPIs,
 - **Updated value for money framework** which details how economy (i.e. key unit costs), efficiency, and effectiveness will be tracked and analysed across project locations.
 - **Monitoring and quality assurance plan**, detailed plan on how the programme will monitor and ensure the quality of retrofitting/rebuilding at a district level.
 - **Update budget** and output/milestone payments based on the workplan.
52. The end of the inception phase will be marked by a NSSP Steering Committee meeting. The purpose and role of the Steering Committee is detailed below, but in essence the Committee will review the progress during the inception phase and provide strategic guidance for the implementation phase.

Implementation phase

53. A number of activities are envisaged for the implementation phase of the NSSP, in collaboration with the Department for Education and DFID. These are set out below, although suppliers are encouraged to develop these as they see appropriate.

Output 1: safer learning facilities

Activity 5: Assessment, design and capacity building for safer learning facilities

54. Selected schools will need to be physically assessed using a multi-hazard approach, but with a focus on seismic risk. Depending on this assessment, designs for retrofitting will need to be draw-up (relying on existing guidelines) or in the case of rebuilding existing standard designs used. For retrofitting designs, expertise will need to be brought in. The Department of Education will be key in ensuring that standard designs and guidelines are adhered to.
55. At this stage it will be important for local and district-level capacity assessment, orientation and construction capacity building to take place before work commences. The type of activities are described in paragraph 27 and will depend on the existing local level capacity, and construction approach.
56. The Supplier should also conduct market assessments in the project locations, which investigate the availability of key retrofitting and rebuilding construction materials. Should any material look likely to be in short supply, the supplier should develop a mitigation strategy.

Activity 6: Procurement for safer learning facilities

57. The requirements to undertake the retrofitting and rebuilding activities will be materials and labour. Depending on the nature of the construction this could be procured either locally (or possibly nationally/regionally), by the SMC, PIU or sub-contracted construction organisation depending on the model retrofitting/rebuild.

Activity 7: Retrofit or rebuilding and supervision safer learning facilities

58. This activity will include the retrofitting of existing buildings to improve their seismic resilience and resilience to other identified significant hazards, and also rebuilding or new building where this has been identified as the appropriate action for the site. Depending on the complexity of the building this will be undertaken by the SMC, PIU or sub-contracted construction partner.
59. In parallel to this, supervision will be undertaken to assure safe and adequate quality of construction completed in a timely manner. This will be led by the PIU, in coordination with DEO.

Output 2: School-level disaster management and resilient education

Activity 8: disaster management and resilient education

60. The selected schools in the districts will also receive disaster management support. This will ideally happen alongside the building works, so as maximum awareness raising benefits. The content of this will depend on the capacity and plans already in place at a local level. It will be key to make connections between school-based activities and wider community-based disaster risk management activities. For example, facilitating connections between disaster management committees at different levels and schools will be important.

Output 3: national-level technical assistance

Activity 9: delivery of technical assistance

61. The detail of the national-level technical assistance will be determined during the inception phase. There will be specific and clear deliverables, based on demand from the Department of Education and a mapping of how others are supporting in this area.

Delivery and Partnerships

62. The Supplier will bring together a team of experts, or a consortium of organisations, with relevant experience, expertise and understanding to deliver the full range of outcomes of the Programme.

Skill and expertise required

63. The NSSP will be led by a core team who will work on this programme. The core team will be led by a team leader, who will be based in Kathmandu. It is likely that for the district-level implementation sub-contracting will be required.
64. DFID's preference of delivery model is for a small core team of full-time personnel with an appropriate balance of international and national expertise. This will be discussed and agreed during the implementation phase subject to the methodology.

65. The team leader having demonstrable skills and experience managing programmes of a similar size and complexity. We expect the team leader to demonstrate expertise in leadership and programme management, as well as in the construction sector in developing country contexts. Familiarity with disaster resilience and school safety is highly desirable.
66. The core team include individuals with the following skills and knowledge:
- i. Strong construction and engineering technical skills, with particular experience on seismic resilient construction and retrofitting techniques.
 - ii. Knowledge of Government of Nepal building codes, retrofitting guidance and standard school designs, as well as common building typologies and construction practices in Nepal.
 - iii. Strong experience of working in the school sector and with communities on disaster preparedness and management, and a good understanding of how disaster resilience is part of the curriculum and teacher/school management training.
 - iv. Strong programme and financial management skills, with experience of working across a number of locations with different activities.
 - v. Knowledge and understanding of the economic, political and social context of Nepal, particularly governance at a local level. Expertise in gender and social exclusion with reference to Nepal is also important. Nepali language skills within the team will be essential.
 - vi. Experience in capacity building / provision of technical assistance in developing countries. Experience working with Governments and developing strong positive working relationships, particularly on issues related to disaster resilience and school safety
 - vii. The ability to procure, coordinate and quality assure specific technical expertise of any sub-contracted partners.
67. The supplier may need to identify sub-contracted partners for delivery of the NSSP at a district level. This will be further agreed during implementation in relation to the information and analysis of potential market together with potential risks or issues identified.
68. DFID strongly encourages international or regional suppliers to partner with Nepal based organisations.
69. Team leader, core team and wider organisational network will enable meet the programme requirements.

Financial and Programme Management

Payment mechanisms and financial management

70. DFID encourages payment-by-results approaches where appropriate. The inception outputs and payment milestones have been agreed between DFID and the Supplier.
71. Supplier will work in compliance with jointly agreed contract management KPIs with DFID. These will be further developed and refined as part of the inception phase.
72. During the inception phase DFID, in coordination with the Department for Education, will also work closely with the successful supplier to agree the outputs to be delivered during the main phase and payment milestones against them. It is expected that these will be aligned with the SSDP and results framework which is currently being finalized. Supplier will provide advance funding from their own resources which will be reimbursed by DFID in accordance with agreed milestone payments. The supplier will be responsible for monitoring and forecasting all spending and be fully accountable to DFID for all expenditure.
73. A client bank to be opened and used for NSSP fund disbursements. The name and purpose of the account must be communicated to the banking provider and the DFID funds must be segregated from other funds and cannot be considered as resources at the disposal of the supplier organisation. It is expected that the NSSP will conduct and make available to DFID a statutory external audit of the NSSP bank account for each of the financial years in which funds are paid.
74. In the Government of Nepal's terminology this project will be off-treasury, on-budget⁶. This means that funding for NSSP will not flow through the national treasury, but that budget expenditure under project will be reporting in the Government's Red Book. It will be important for the supplier to be able to report financial progress into this mechanism.

Coordination with DFID and other partners

75. The NSSP supplier will also be expected to coordinate and engage with other development partners working in the school safety sector. This would include, but is not limited to, joining SSDP technical working groups and development partner meetings, and other coordination meetings.
76. The central point of contact during programme implementation will be the Senior Responsible Owner (SRO) for the 'DFID Nepal Disaster Resilience' programme. Financial and progress reports should be submitted to the Disaster Resilience Programme Manager in DFID Nepal.

⁶ Government of Nepal Development Cooperation Report.

Reporting Requirements

77. During programme implementation the NSSP supplier will produce monthly, quarterly and annual progress reports to the DFID SRO.
78. The NSSP supplier will be directly accountable to the DFID Resilience Programme SRO and will meet (at minimum) on a quarterly basis for a progress updates, and will present at 6-monthly NSSP Steering Committees attended by the Ministry of Education, Department of Education, other interested Ministries and Departments, and DFID.
79. The key formal reports will be as follows, although these may be amended by mutual agreement between DFID and the supplier:
- Short monthly Progress Reports to the DFID SRO.
 - Quarterly Progress Reports in a succinct format that links directly to the results framework, and a formal update meeting with the DFID SRO.
 - Six-monthly work plans and budgets to be delivered one month before the start of the next six monthly programme cycle to allow adequate time for consultation with and feedback from DFID and key stakeholders.
 - Annual Report on total progress, achievements and lessons learned from feedback mechanisms.

Value for money

80. Value for Money (VFM) in DFID is about maximising the impact of every pound spent to improve poor peoples' lives. This means more than just the benefits of our work outweighing the costs. It means that in everything we do we try to maximise impact given the financial, political and human resources we have available. At the programme level, this requires us to think about whether we are getting the most value out of our activities with the best use of resources. This influences how we procure our inputs (economy), how we use inputs to deliver activities (efficiency) and, most importantly, what overall value we are generating for the intended beneficiaries and at what cost (cost effectiveness). We should continuously challenge ourselves to see if we can do the same for less, if we can deliver activities in more efficient ways that drive better value and if these are the best activities to achieve the right benefits, for the right people in the right ways.
81. Therefore, the Supplier will seek to assess how VFM will be evidenced and analysed during programme implementation, with particular reference to key indicators for VfM analysis over the life of the programme, the programme results and potential measurement/monitoring approaches.

Assets

82. The NSSP supplier should develop an assets register (value over £500) which will be submitted to DFID for review on a 6 monthly basis. DFID may also periodically do spot checks on assets within the register.

Contract Performance

83. The supplier will be part of DFID's performance management system. This will be undertaken during the DFID's Annual Review and commercial performance reviews. The supplier will be expected to provide inputs into these reviews. There will be annual contract performance reviews and one at the end of the inception period. The

implementation plan will be required to be approved by DFID following the inception period before proceeding to full scale implementation.

84. DFID reserves the right to request changes to the contract, including services, the ToRs and the contract cost to reflect lessons learned, or change in circumstances, policies or objectives relating to or affecting the programme. DFID will also have the right to terminate the contract at any point where it has strong justification that the programme is not delivering the intended results and/ or does not offer value for money to DFID.
85. The performance of the Suppliers will be jointly assessed by DFID through specifically/ mutually agreed Key Performance Indicators (KPIs). If need be, at any point in time, a change in activities or outputs is indicated (additional, change in scope or scale or agreement to stop work on a deliverable), the DFID Nepal will agree with the Suppliers revision and if and where relevant will revise the contract in accordance with the current provisions of the EU Directives relating to additional works.
86. Due to the long duration of the programme, the contract will have adequate provision for variation to adapt to changes that occur during the life of the programme. To support this, there will be one break point at the end of the inception period, and then performance reviews annually of the supplier during DFID annual review processes. These reviews will assess whether or not the programme has delivered the desired results and continues to offer a good value for money for DFID.
87. DFID reserves the right to amend (scale down), re-tender/cancel the contract if the Supplier's performance during the inception phase or during the first 18 months of implementation does not explicitly and satisfactorily meet the conditions and performance milestones set forth in the contract. DFID also reserves the right to amend for scale up within the scope of work and due to the need to adapt to context.
88. The Lead Supplier will be responsible for managing and tackling poor performance of consortium partners.
89. All expenditure will be against pre-agreed fee rates and project costs.
90. Personnel: The Supplier(s) will strive for continuity of its core personnel over the life of the programme. Any changes that need to be made to the core team during implementation shall be agreed with DFID in advance.
91. Payment plan and approach should adopt payment by results that incentivise the achievement of results and value for money. This payment plan, linked to Key Performance Indicators (KPIs) will be agreed for both the inception and implementation period. Payment of invoices against deliverables will be subject to the satisfaction and approval of DFID.
92. DFID will institute regular structured key supplier/partner contract performance management system to monitor contract progress linked to delivery of results and client relations. This is detailed in the paragraphs 77 to 79 in the Reporting Requirements section above. Partners will be expected to comply with this process.

Constraints and Dependencies

Risk Management

93. The supplier will need to put together a robust approach to risk management. This will need to be revisited at the end of the NSSP inception phase, and reflected on and updated regularly throughout the projects implementation.
94. Nepal is a complex country to work in, so prospective suppliers should reflect on all dimensions of risk associated with the project. DFID would encourage particular attention to how suppliers will ensure sufficient capacity and quality of construction at a local level for school retrofitting/rebuilding.
95. Also it will be important for suppliers to consider how they will adapt and respond to changes in context and potential disturbances to the project (e.g. 2015/16 fuel shortages). With the passing of the constitution in Nepal in 2015 there is potentially significant local government restructuring and elections due in 2017. Depending on the Government of Nepal's progress on local level restructuring over the life of the programme districts could be disbanded, and provinces and local bodies established. This will have implications for the work of the NSSP so it will be important for suppliers to reflect on this potential uncertainty.

Monitoring and Evaluation

96. The supplier must put in place their own robust monitoring and quality assurance mechanisms. It will be important that at a district-level that this includes the engineers from the District Education Office in relation to retrofitting and re-building. A monitoring and quality assurance plan will be agreed with DFID at the end of the inception phase. We would welcome suppliers considering innovative ways of programming monitoring, particularly drawing on ICT approaches (e.g. GIS coding and mapping). The NSSP will also be required to put in place a framework for monitoring value for money within the project. This will include key costs and cost drivers (economy), as well as measures of efficiency and effectiveness.
97. In parallel, DFID is commissioning a supplier to provide Monitoring, Evaluation and Learning support to the whole DFID Nepal resilience portfolio (see document specified under Key Readings). In relation to monitoring, this supplier will not conduct any independent monitoring, but will synthesise monitoring data across the portfolio and work to strengthen monitoring information.
98. Through this MEL function DFID also plans to commission an independent evaluation of the NSSP. This will be conducted by an independent evaluation organisation yet to be identified. The evaluation will likely run alongside the project's implementation, with a focus on learning and understanding the impact of the project. The NSSP will work along-side the evaluation team to define evaluation questions and approach. The NSSP will be fully engage and participate in the evaluation, making documents available and facilitating contacts.
99. DFID Nepal is also in the process of scoping a cross-office third party monitoring mechanism. Although still to be determined, it is thought that this would focus on small-scale infrastructure and will play a role in conducting quality spot-checks on projects such as the NSSP. The NSSP supplier will be expected to cooperate with this cross-office monitoring programme.

Duty of Care

100. DFID Nepal will not take responsibility of personal security of suppliers. They have to be responsible by themselves. DFID Nepal has a Risk Management Office (RMO) available to provide security briefing and information to the supplier as per their request.
101. Regarding information security, suppliers are responsible for not sharing sensitive information with any parties other than DFID.
102. The supplier is responsible for the safety and well-being of their personnel and third parties affected by their activities under this contract, including appropriate security arrangements. They will also be responsible for the provision of suitable security arrangements for their domestic and business property.
103. DFID will share available information with the supplier on security status and developments in country where appropriate. A security briefing by DFID Nepal is available to all supplier personnel on request. All such personnel must register with their respective Embassies to ensure that they are included in emergency procedures.
104. This programme will require the supplier to operate in a seismically active zone which is at high risk of earthquakes. Following the earthquakes in April and May 2015 a number of aftershocks have been felt and continue to occur. Earthquakes are impossible to predict and can result in major devastation and loss of life. There are several websites focusing on earthquakes, including <http://geology.about.com/library/bl/maps/blworldindex.htm> the supplier(s) should be comfortable working in such an environment and should be capable of deploying to any areas required within the region in order to deliver the contract (subject to travel clearance being granted).
105. Supplier must be aware of being fully responsible for Duty of Care in line with the details provided above. Supplier confirms that:
- they fully accept responsibility for Security and Duty of Care;
 - they understand the potential risks and have the knowledge and experience to develop an effective risk plan; and
 - they have the capability to manage their Duty of Care responsibilities throughout the life of the contract.
106. The subjective assessment of Duty of Care is placed at Annex 1 to this Terms of Reference. Please note that this risk assessment will be re-examined at the point of transition between the design phase and the implementation phase. If at any stage there are concerns that the Supplier cannot manage Duty of Care then they may be precluded from operating in that region. The ability of the Supplier to manage Duty of Care shall remain a pre-condition of the contract.

UK Aid Branding and Transparency

107. Transparency, value for money, and results are top priorities for the UK Government. DFID has a duty to show UK taxpayers where their money is being spent, its impact, and the results achieved. DFID has guidance on the use of its logos, which will be shared with the Supplier(s) as necessary.
108. DFID has transformed its approach to transparency, reshaping our own working practices and pressuring others across the world to do the same. DFID requires suppliers receiving and managing funds, to release open data on how this money is spent, in a common, standard, re-usable format and to require this level of information

from immediate sub-contractors, sub-agencies and partners. It is a contractual requirement for all Suppliers to comply with this, and to ensure they have the appropriate tools to enable routine financial reporting, publishing of accurate data and providing evidence of this DFID – further IATI information is available from: <http://www.aidtransparency.net>.

Digital Spending Policy

109. Any expenditure on digital services will fall under DFID's Digital Spending Policy. Expenditure on such item(s) will need to be approved by the DFID SRO through DFID's internal systems.
110. Digital in DFID is defined as *any external-facing service provided through the internet or mobile to citizens, businesses, civil society or non-government organisations*. It can range from **text messaging** to enable mobile cash transfers, satellite **mapping** to identify the spread of deforestation or disease, **databases** of beneficiaries and their feedback, **knowledge** portals to share programme research, web **applications** and **mobile** applications (apps)⁷. It does not apply to internal-facing digital tools between DFID and the supplier or within the supplier organisations/consortium.

Conflict of Interest

111. DFID will keep updated on the DFID supplier portal information around Conflict of Interest for those suppliers wishing to tender for multiple competitions as part of the DFID Nepal's new Disaster Resilience and Climate Smart Development Programmes.
112. The primary area where a potential Conflict of Interest has been identified is between suppliers implementing activities across the Disaster Resilience and Climate Smart Development programmes and the MEL Unit. For suppliers tender for the NSSP, they will not be able to also tender for the MEL Unit as we consider there to be a Conflict of Interest which will undermine the independence of the evaluation work planned under the MEL Unit.

Key readings:

DFID documents:

- DFID Nepal Disaster Resilience Business Case
- DFID Nepal Disaster Resilience Logframe
- DFID summary of learnings from School Safety programmes and initiatives
- DFID Terms of Reference for disaster resilience Monitoring, Evaluation and Learning Unit.
- Technical Advice to DFID Nepal on Safer Schools Delivery for the Disaster Resilience Programme (2016, Crown Agents) <https://drive.google.com/open?id=0B3LAaNJi6Y26Wno2MVRsQVZRVGs>
- Technical Advice to DFID Nepal on Safer Schools Delivery for the Disaster Resilience Programme: Fiduciary Risk Assessment (2016: Crown Agents) <https://drive.google.com/open?id=0B3LAaNJi6Y26MjNKek9kZDRvdk0>
- Government of Nepal, MOFALD, Directives to Govern and Operate Local Level 2073, (unofficial translation).

⁷ DFID Digital Smart Guide (2015)

SUMMARY RISK ASSESSMENT MATRIX DFID Nepal

DFID Overall Project/ Intervention Summary Risk Assessment Matrix

Project / intervention Title: **DFID Nepal**

Location: **NEPAL**

Date of assessment: **October 2017**

Assessing official: OSM, RMO

Note that this risk assessment will be re-examined at the point of transition between the design phase and the implementation phase

Theme	DFID Nepal Risk score	
	Kathmandu and Pokhara	All other parts of Nepal
OVERALL RATING ⁴	2 – Low Risk	2 – Low Risk
FCO travel advice	1	1
Host nation travel advice	n/a	n/a
Transportation	3	3
Security	2	2-3
Civil Unrest	2	3
Violence/crime	2	2
Terrorism	2	2
War	1	1
Hurricane	1	1
Earthquake	4	4
Flood	2	3
Landslide	1	4
Medical Services	2	3 ^b
Nature of project	2	

1 Very Low Risk	2 Low Risk	3 Medium Risk	4 High Risk	5 Very High Risk
Low		Medium	High Risk	