



SUBCONTRACT AGREEMENT

between

CHEMONICS INTERNATIONAL INC

and

SECOND PARTY

SECTION 1: BACKGROUND, CONTRACT DATA, BASIS OF AGREEMENT AND SIGNATURES

Chemonics has entered or expects to enter into a contract (the Prime Contract, as defined in clause 1.1 of Section 2) under which Chemonics agrees to supply certain services to the Authority (as defined in clause 1.1 of Section 2).

The Subcontractor is to supply all of the services specified in the Subcontract Scope of Work (as defined in clause 1.1) on a “back-to-back” basis with Chemonics, and in accordance with the provisions set out in this agreement.

CONTRACT DATA

Date and Reference of Subcontractor Proposal/Bid/Tender	
Total value of Subcontract Agreement	
Parties - Chemonics	
Chemonics	Chemonics International Inc.
Chemonics country of incorporation and registration	U.S. (Delaware)
Company number	3002657
Chemonics address	1275 New Jersey Avenue SE, Suite 200, Washington, DC 20003 U.S.
Chemonics Representative	
Chemonics Representative phone number	
Chemonics Representative email address	
Parties - Subcontractor	
Subcontractor	
Subcontractor country of incorporation and registration	
Subcontractor address	
Subcontractor Representative	
Subcontract Representative phone number	
Subcontractor Representative email address	
Subcontractor Key Personnel	
Authority	The UK's Foreign, Commonwealth and Development Office (FCDO)
Project Name	
Authority Project Number	
Framework	
Subcontract Number	
Effective Date	The date on which the agreement is signed by both parties. If the Parties sign on different dates, the date of the later signature shall apply.
Start Date	

Completion Date	
Chemonics contact details for the Subcontractor or Subcontractor Personnel to notify any potential conflict of interest, safeguarding, anti-bribery and corruption or any other compliance concerns	Email: businessconduct@chemonics.com Online: www.chemonics.com/reporting Phone/Skype: 888.955.6881 WhatsApp: 202.355.8974

NOW IT IS HEREBY AGREED AS FOLLOWS

- 1 In this agreement words and expressions shall have the same meanings as are respectively assigned to them in the conditions in Section 2 of this agreement.
- 2 The following shall be deemed to form and be read and construed as part of this agreement:
 - Section 1: Background, Contract Data, Basis of Agreement and Signatures
 - Section 2: Conditions
 - 0 - Schedule 1 - Subcontract **Scope of Work**
 - 0 - Schedule 2 - **Fees, Expenses** and Invoicing
 - 0 - Schedule **3 – Particulars**
 - 0 - Schedule 4 - Alterations to **Prime Contract**
 - 0 - Schedule 5 - **Mandatory Policies**
 - Schedule 6 – TUPE
 - Schedule 7 – Standard Contractual Clauses (Data Transfers)
 - Appendix 1 - Prime Contract
- 3 In consideration of the payments to be made by Chemonics to the Subcontractor, in accordance with this agreement, the Subcontractor agrees to perform the Services (as defined in clause 1.1 of Section 2) in conformity with the provisions of this agreement.
- 4 Chemonics hereby agrees to pay the Subcontractor, in consideration of the performance of the Services, such amounts as become payable under the provisions of this agreement at the times and in the manner prescribed by this agreement.

Signed by **NAME OF AUTHORISED
SIGNATORY** for and on behalf of
CHEMONICS INTERNATIONAL INC

.....
Title of Authorised Signatory **Date**

Signed by **NAME OF DIRECTOR** for
and on behalf of **NAME OF
SUBCONTRACTOR**

.....
Director **Date**

SECTION 2: CONDITIONS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Applicable Law: any law, statute, regulation, by-law or subordinate legislation and codes in force from time to time in any jurisdiction that the Services are provided and/or to which Chemonics and/or the Subcontractor and/or the Authority are subject.

Authority: the authority referred to in the Contract Data and such other persons including public authorities, entitled under the Prime Contract to use the services and/or goods to be delivered by Chemonics under the Prime Contract.

Contract Data: the information set out in Section 1 of this agreement under the heading “Contract Data.”

Chemonics: Chemonics International Inc. whose details are set out in the Contract Data.

Chemonics Personnel: any person engaged by Chemonics as an officer, employee, agent, contractor or subcontractor.

Chemonics Representative: the person duly authorised by Chemonics to act on its behalf for the purposes of this agreement and identified as such in the Contract Data subject to change in accordance with clause 7.

Completion Date: the date specified in the Contract Data as the “Completion Date”.

Deliverables: all documents, products and materials developed by the Subcontractor, its employees, consultants, agents, subcontractors and suppliers as part of or in relation to the Subcontract Scope of Work in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, software, data, specifications and reports (including drafts).

Effective Date: the date specified in the Contract Data as the “Effective Date”.

Prime Contract: the [“Call Down Contract” **OR the agreement**] entered into or expected to be entered into between Chemonics and the Authority for the Prime Contract Project, the relevant sections of which are attached at Appendix 1.

Prime Contract Project: the project that Chemonics is engaged to deliver pursuant to the provisions of the Prime Contract and described in the Contract Data.

Mandatory Policies: the mandatory policies and procedures referred to in 0 as amended from time to time.

Relevant Requirements: all Applicable Laws relating to bribery, corruption, tax evasion and fraud, including the Bribery Act 2010 and any guidance issued by the UK’s Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010 and the United States’ Foreign Corrupt Practices Act of 1977, as amended.

Services: the services set out in the Subcontract Scope of Work and such other services as the parties may agree in writing from time to time that the Subcontractor shall provide.

Standard Contractual Clauses: the standard contractual clauses for the transfer of personal data as set out in Schedule 7.

Start Date: the date specified in the Contract Data as the “Start Date”.

Subcontract Scope of Work: the specification set out in 0.

Subcontractor: the subcontractor whose details are set out in the Contract Data.

Subcontractor Key Personnel: the individuals (if any) identified as key personnel in the Contract Data.

Subcontractor Personnel: any person engaged by the Subcontractor as an officer, employee, agent, contractor or subcontractor.

Subcontractor Representative: the person duly authorised by the Subcontractor to act on its behalf for the purposes of this agreement and identified as such in the Contract Data subject to change in accordance with clause 7.

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

Working Hours: the period from 9.00 am to 6.00 pm UK time on any Working Day.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 Except as provided expressly in this clause 1 and 0 of this agreement, terms as defined in the Prime Contract shall have the same meaning when used in this agreement.
- 1.4 Except as provided expressly in this agreement, the rules of interpretation in the Prime Contract shall apply to this agreement.
- 1.5 <Instruction: If this is issued under a Framework Call Down Agreement keep the first option and delete the second. If this is issued under a standalone contract delete the first option and keep the second> For the purposes of this agreement, and unless the context otherwise requires, references in the Prime Contract to the "Call Down Contract" shall be to the Prime Contract as incorporated into this agreement, with the alterations made for the purposes of this agreement. [OR For the purposes of this agreement, and unless the context otherwise requires, references in the Prime Contract to "this Agreement" or to "this Contract" shall be to the Prime Contract as incorporated into this agreement, with the alterations made for the purposes of this agreement.]
- 1.6 In this agreement any reference to a "clause", "Section" or "Schedule" is, unless the context otherwise requires, a reference to a clause, Section or Schedule in this agreement, excluding a clause, section or schedule in the Prime Contract.
- 1.7 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's successors and permitted assigns.
- 1.8 The Schedules and Appendices form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules and the Appendices.
- 1.9 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.10 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.11 A reference to any party shall include that party's successors and permitted assigns.

- 1.12 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.13 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.14 A reference to **writing** or **written** includes email.
- 1.15 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.16 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.
- 1.17 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.18 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMMENCEMENT AND DURATION

- 2.1 Subject to clause 2.2 below, this agreement shall have legal effect from the Effective Date.
- 2.2 If the Prime Contract has not been signed by the Effective Date this agreement shall have legal effect from the date on which the Subcontractor receives written notice from Chemonics that the Prime Contract has become legally effective. Whether or not Chemonics decides to enter into the Prime Contract with the Authority shall be entirely at the option of Chemonics.
- 2.3 Subject to the whole of this agreement becoming legally effective, the Subcontractor shall begin delivering the Services and any goods required pursuant to the Subcontract Scope of Work on the Start Date and shall complete delivery of such Services and any such goods on or before the Completion Date.
- 2.4 This agreement shall continue in force until Chemonics notifies the Subcontractor that the Subcontractor has discharged all its obligations under it unless:
- (a) the Prime Contract is terminated for any reason, in which case this agreement shall terminate immediately and automatically, without further action being necessary by the parties, and subject to all the rights of the parties accrued up to the date of termination;
 - (b) the Authority requests that the Subcontractor is replaced or removed from the Prime Contract Project and Chemonics notifies the Subcontractor of the Authority's request in which case this agreement shall terminate **<Instruction:**

Use the first option and delete the second option when you initially send the agreement to the Subcontractor – if the Subcontractor objects, replace with the second option> [immediately and automatically upon the Subcontractor's receipt of such notice] **OR** [14 days after the Subcontractor's receipt of such notice or, if earlier, upon the date required by the Authority], without further action being necessary by the parties and subject to all the rights of the parties accrued up to the date of termination; or

- (c) this agreement is terminated by one of the parties under clause 10 or under any other provision of this agreement.

3. BACK-TO-BACK AGREEMENT AND SUBCONTRACTOR OBLIGATIONS

- 3.1 As soon as this clause becomes effective under clause 2 above, the Subcontractor shall be bound to Chemonics in respect of the Subcontract Scope of Work as Chemonics shall be bound to the Authority under the Prime Contract except as further provided in this agreement.
- 3.2 Except as expressly provided otherwise in this agreement, the Prime Contract shall be used to determine the respective rights and duties including representations and warranties of Chemonics and the Subcontractor under this agreement except that:
 - (a) wherever in the Prime Contract there is a reference to the Authority or a term referring to the Authority, for the purposes of this agreement a reference to Chemonics or a term referring to Chemonics shall be substituted;
 - (b) wherever in the Prime Contract there is a reference to Chemonics or a term referring to Chemonics, for the purposes of this agreement a reference to the Subcontractor or a term referring to the Subcontractor shall be substituted; and
 - (c) the Prime Contract shall be interpreted subject to the further alterations made for the purposes of this agreement as set out in 0.
- 3.3 Unless expressly required by the terms of this agreement or authorised by Chemonics in writing, the Subcontractor shall not do anything or omit to do anything that:
 - (a) causes, constitutes or contributes to a breach by Chemonics of any of Chemonics' obligations arising out of or in connection with the Prime Contract; or
 - (b) causes, constitutes or contributes to Chemonics incurring any liability to any person including the Authority and any of Chemonics's employees, officers, consultants, agents, contractors or other subcontractors.
- 3.4 The Subcontractor shall comply with such instructions that are issued by Chemonics from time to time that are reasonably necessary to ensure that Chemonics complies with its obligations under the Prime Contract and to avoid the Authority terminating the Prime Contract.
- 3.5 Without prejudice to clause 3.6, Chemonics shall not be responsible to the Subcontractor for any failure to perform its obligations under this agreement where there is a corresponding failure by the Authority to perform its obligations under the Prime Contract.
- 3.6 Chemonics shall use its reasonable endeavours to enforce its rights and the Authority's obligations under the Prime Contract.

- 3.7 Chemonics' obligation under clause 3.6 does not require Chemonics to bear any cost or expense or take any legal action or appeal.

4. INDEMNITY FROM SUBCONTRACTOR AND DISPUTES

- 4.1 The Subcontractor shall indemnify Chemonics and the Chemonics Personnel against all liabilities, costs, expenses, damages and losses (including any liquidated damages, direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Chemonics or any of the Chemonics Personnel as a result of or in connection with:

- (a) any claim brought against Chemonics or any of the Chemonics Personnel for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services or any goods supplied by the Subcontractor under this agreement, including the Deliverables, to the extent that the claim is attributable to the acts or omissions of the Subcontractor, including the Subcontractor's Personnel;
- (b) the Subcontractor's breach or negligent performance or non-performance of this agreement; and
- (c) any claim made against Chemonics by a third party, including the Authority, arising out of, or in connection with, the supply of the Services or any goods supplied by the Subcontractor under this agreement, including the Deliverables, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Subcontractor.

- 4.2 If Chemonics is negligent or at fault, the Subcontractor's liability under clause 4.1 shall be reduced to the extent that Chemonics's negligence or fault contributed to the claims or losses referred to in clause 4.1.

- 4.3 The Subcontractor shall cooperate with Chemonics in dealing with any disputes that arise between Chemonics and the Authority arising out of the Subcontract Scope of Work and shall pay in full for any litigation, arbitration, mediation, adjudication, expert determination or other dispute settlement procedure in which Chemonics might be involved as a result of entering into this agreement and the Prime Contract.

- 4.4 The Subcontractor must make prompt payment of any sums due under this clause 4.

<Instructions: clauses 4.5, 4.6 and 4.7 are optional and provide for Chemonics indemnification of the subcontractor. Generally, you should issue the draft contract with these clauses deleted and only include them if the subcontractor is insistent and after checking with the UK Division Commercial team first>

- 4.5 Chemonics shall indemnify the Subcontractor and the Subcontractor Personnel against all liabilities, costs, expenses, damages and losses (including any liquidated damages, direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Subcontractor or any of the Subcontractor Personnel as a result of or in connection with:

- (a) any claim brought against the Subcontractor or any of the Subcontractor Personnel for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of any goods supplied by Chemonics to the Subcontractor under this agreement to the extent that the claim is attributable to the acts or omissions of Chemonics, including the Chemonics Personnel; and
- (b) Chemonics' breach or negligent performance or non-performance of this agreement.

4.6 If the Subcontractor is negligent or at fault, Chemonics' liability under clause 4.5 shall be reduced to the extent that the Subcontractor's negligence or fault contributed to the claims or losses referred to in clause 4.5.

4.7 Chemonics must make prompt payment of any sums due under this clause 4.

5. FEES, CHARGES AND EXPENSES

5.1 Chemonics shall pay to the Subcontractor as full consideration for the performance by the Subcontractor of its duties under this agreement the amounts set out and at the times specified in 0.

5.2 Where the Subcontractor's fees are calculated on a time and materials basis:

- (a) the Subcontractor shall not be entitled to charge for any days worked beyond the limits set out in 0 unless it has Chemonics' prior written consent to do so; and
- (b) the Subcontractor shall ensure that every individual whom it engages on the Services completes timesheets to record time spent on the Services, and the Subcontractor shall indicate the time spent per individual in its invoices.

5.3 The amounts set out in schedule 2 are inclusive of all taxes (including value added or similar sales taxes), levies and duties and cover the charge for the Services (and any goods) and all of the Subcontractor's costs and expenses save as expressly agreed in writing between Chemonics and the Subcontractor. <if it is a UK Subcontractor and VAT is not included in the price proposal, adjust language in the parenthesis to say "excluding".>

5.4 The Subcontractor shall invoice Chemonics for its fees and allowable expenses at the times and in the manner specified or as referred to in 0.

5.5 Chemonics shall pay each invoice submitted to it by the Subcontractor within the timescales and subject to any conditions stated in 0.

5.6 Chemonics is not responsible for the payment of any bank charges applied by the Subcontractor's bank for any reason including in connection with the receipt of payments made to the Subcontractor.

5.7 Chemonics may at any time and at its option set off any liability of the Subcontractor to Chemonics (including any amounts due under clause 4 above) against any liability of Chemonics to the Subcontractor. If the liabilities to be set off are expressed in different currencies, Chemonics may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Chemonics of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

6. COMPLIANCE WITH LAWS AND POLICIES

6.1 Each party shall at its own expense comply with all laws and regulations relating to its activities under this agreement, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals. For the avoidance of doubt, nothing in this clause shall prevent the Subcontractor from claiming expenses that are permitted in accordance with Schedule 2.

- 6.2 The Subcontractor shall comply with the Mandatory Policies as Chemonics or the Authority may update them from time to time.

7. PROJECT MANAGEMENT AND SECURITY

- 7.1 The Subcontractor Representative shall co-operate with the Chemonics Representative and shall attend meetings scheduled by the Chemonics Representative at reasonable intervals to advise and assist Chemonics on all matters relating to this agreement.
- 7.2 The Subcontractor agrees that, unless requested by Chemonics, it shall not replace the Subcontractor Key Personnel or the Subcontractor Representative unless:
- (a) the individual to be replaced is prevented by ill-health from carrying out their duties in connection with the agreement for a significant period;
 - (b) the individual resigns from their engagement with the Subcontractor; or
 - (c) the Subcontractor makes a reasonable written request to Chemonics to replace the individual because they have performed unsatisfactorily or have caused a breach of any of the Subcontractor's obligations under this agreement.
- 7.3 Subject to clause 7.2 the Subcontractor may only replace the Subcontractor Key Personnel or the Subcontractor Representative with an individual approved in writing by Chemonics.
- 7.4 If the Authority or Chemonics believes that any of the Subcontractor's Personnel are unsuitable to undertake any of the work as envisaged under this agreement:
- (a) Chemonics and/or the Authority may refuse admission to the relevant person(s) to the Sites; and/or
 - (b) the Subcontractor shall, at Chemonics' and/or the Authority's written request, end the involvement of the relevant person(s) in the provision of the Services; and/or
 - (c) the Subcontractor shall, at Chemonics' written request, replace the relevant person(s) without direct or indirect charge to Chemonics or the Authority and the Subcontractor shall fully indemnify and hold Chemonics, the Chemonics Personnel and the Authority harmless against any claims of any kind that may arise with regard to the replacement of such Subcontractor Personnel.
- 7.5 Chemonics may replace the Chemonics Representative at any time.
- 7.6 The Subcontractor shall and shall ensure that all the Subcontractor Personnel shall:
- (a) obey all lawful instructions and reasonable directions of the Authority or Chemonics (including, if so required by the Authority, the ICT Policy) and provide the Services to the reasonable satisfaction of the Authority and Chemonics;
 - (b) comply with all reasonable requirements of the Authority or Chemonics concerning conduct at Sites including any security requirements;
 - (c) comply with any of the Authority's policies and Chemonics policies provided to the Subcontractor or the Subcontractor Personnel from time to time; and
 - (d) subject to Schedule 2 of Section 2 of the Prime Contract (Staff Transfer) retain overall control of the Subcontractor Personnel at all times so that the

Subcontractor Personnel shall not be deemed to be employees, agents or contractors of the Authority or Chemonics and shall not be entitled to any benefits from Chemonics, for example, stock purchase or stock option plans.

- 7.7 The Subcontractor shall immediately notify Chemonics of any instructions that it or any of the Subcontractor Personnel receive from the Authority.
- 7.8 The Subcontractor shall ensure that when supplying any Services, the security arrangements that it has in place for the Subcontractor Personnel are of the highest standards, taking into account the particular risks and challenges of the environment in which they are operating and include an emergency response system and evacuation plan. The foregoing provisions in this clause are without prejudice to the Subcontractor's duty of care obligations arising out of or in connection with the provisions of the Prime Contract which apply to the Subcontractor on a back-to-back basis under clause 3.
- 7.9 The Subcontractor shall ensure that the Subcontractor Personnel:
- (a) follow the Subcontractor's security procedures in connection with the Services;
 - (b) have the necessary qualifications, experience and physical and mental capability to fulfil their duties and the tasks allocated to them in the environments in which they will operate in connection with the Services; and
 - (c) are provided with suitable equipment by the Subcontractor to enable them to fulfil their duties and the tasks allocated to them in connection with the Services and to communicate with the Subcontractor.
- 7.10 The Subcontractor shall indemnify Chemonics against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Chemonics arising out of or in connection with:
- (a) the Subcontractor's breach of clause 7.8 and/or clause 7.9; and/or
 - (b) any claim, howsoever arising, by the Subcontractor's employees, consultants and/or representatives and any other person employed or otherwise engaged by the Subcontractor in connection with the performance of this agreement.
- 7.11 If Chemonics is negligent or at fault, the Subcontractor's liability under clause 7.10 shall be reduced to the extent that Chemonics's negligence or fault contributed to the claims or losses referred to in clause 7.10.
- 7.12 The Subcontractor will notify Chemonics immediately if it is in breach of or at risk of being in breach of clause 7.8 or clause 7.9.

8. EQUIPMENT OR FACILITIES

- 8.1 Chemonics will provide or procure the provision of the equipment and facilities specified in Schedule 3 to the Subcontractor.

- 8.2 The Subcontractor may only use the equipment and facilities specified in Schedule 3 for the sole purpose of delivering the Services and supplying any goods pursuant to this agreement. Personal use of equipment is prohibited.
- 8.3 Upon termination of this agreement for any reason the Subcontractor will return the equipment specified in Schedule 3 to Chemonics in good condition and shall stop using the facilities provided to it.
- 8.4 The Subcontractor will ensure that in connection with the supply of the Services neither it nor any of the Subcontractor Personnel will use or procure for use any goods, assets or services from any of the organisations referred to in Schedule 3.
- 8.5 The Subcontractor is authorised to procure and invoice Chemonics for any equipment and supplies detailed in the schedule of expenses in Schedule 2. For the purposes of this clause 8.5, "Equipment" is defined as assets and supplies that have a purchase price or development cost that exceeds £500 or equivalent in local currency. Any other equipment or supplies required by the Subcontractor to perform the Services shall be at the Subcontractor's expense. The Subcontractor shall ensure procurement of items be undertaken in accordance with the best practice principles of openness, fairness and transparency. The procurement process shall demonstrate that the Subcontractor has achieved "Value for Money" as defined by the Authority. Chemonics reserves the right to review the Subcontractor's procurement documentation to ensure it was carried out using strict due diligence processes that ensure the protection of the Authority's interests.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in this agreement shall limit or exclude either party's liability for:
- (i) death or personal injury caused by its negligence or that of its employees, agents or subcontractors (as applicable);
 - (ii) fraud or fraudulent misrepresentation by it or its employees;
 - (iii) 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
 - (iv) any liability to the extent it cannot be limited or excluded by law.
- 9.2 Subject to clause 9.1:
- (a) Chemonics shall not have any liability to the Subcontractor, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of revenue, loss of use, loss of goodwill, loss of data, loss due to interruption of business, or loss of anticipated savings, whether direct or indirect, and even if Chemonics has been advised of the possibility of such losses or damage, or for any indirect or consequential loss arising under or in connection with this agreement; and
 - (b) Chemonics's total liability to the Subcontractor, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the total undisputed and properly charged amounts arising out of work done by the Subcontractor, which amounts have been approved by the Authority and paid to Chemonics but which Chemonics has not paid to the Subcontractor.

- 9.3 Subject to clause 9.1 and clause 9.4, the provisions of clause 3.2 shall apply to determine the extent to which the Subcontractor's liability to Chemonics is excluded or limited under this agreement.
- 9.4 Nothing in this agreement shall limit or exclude the Subcontractor's liability arising out of or in connection with clause 4.1(a) and/or clause 11.

10. TERMINATION

- 10.1 Without prejudice to any rights that have accrued under this agreement or any of its other rights or remedies and without prejudice to Chemonics' rights to terminate or suspend this agreement by virtue of clause 3.2, either party may at any time terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - (d) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (e) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (f) the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the agreement has been placed in jeopardy.
- 10.2 Chemonics may terminate this agreement immediately by notice in writing to the Subcontractor if the Subcontractor is in breach of its obligations under clause 6 or under clauses 18 through to 21 inclusive or if any warranty or representation given by the Subcontractor under or in connection with this agreement is found to be untrue or misleading or if the Subcontractor fails to comply in the performance of this agreement with legal obligations in the fields of environmental, social or labour law.
- 10.3 Chemonics may also terminate this agreement without default at any time on 30 days' notice in writing to the Subcontractor. If Chemonics terminates this agreement without default, Chemonics will reimburse the Subcontractor's unavoidable costs properly and necessarily incurred in connection with the termination of this agreement.
- 10.4 On termination or expiry of this agreement:

- (a) the Subcontractor shall immediately deliver to Chemonics all Deliverables whether or not then complete and return to Chemonics any of Chemonics's and/or the Authority's property and equipment. If the Subcontractor fails to do so, then Chemonics may enter the Subcontractor's premises and take possession of them. Until they have been delivered or returned, the Subcontractor shall be solely responsible for the safe keeping of all Deliverables and Chemonics's and/or the Authority's property and equipment in its possession and will not use them for any purpose not connected with this agreement;
- (b) the Subcontractor shall immediately stop using any facilities provided to it by Chemonics or the Authority;
- (c) the Subcontractor shall, if so requested by Chemonics, provide all assistance reasonably required by Chemonics to facilitate the smooth transition of the Services to Chemonics or any replacement supplier appointed by Chemonics; and
- (d) any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement including clause 1, clause 3, clause 4, clauses 9 through to clause 17 inclusive, clauses 24 through to clause 30 inclusive, clauses 32 through to clause 38 inclusive, 0, 0, Schedule 6 and Appendix 1 shall remain in full force and effect.

10.5 If Chemonics terminates or suspends this agreement because the Authority has terminated or suspended the Prime Contract under provisions in the Prime Contract that provide for termination "without default of the Supplier" then the Subcontractor shall:

- (a) take such steps as directed by Chemonics to terminate the provision of the Services or any part of the Services in a cost-effective, timely and orderly manner; and
- (b) provide to Chemonics not more than 40 calendar days after Chemonics notifies the Subcontractor of the suspension or termination of this agreement 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 Subcontractor necessarily incurred in the proper performance of the agreement and which it cannot reasonably be expected to avoid or recover.

10.6 Subject to Chemonics's approval, Chemonics shall submit the account referred to in paragraph 10.5 (b) to the Authority together with an invoice for the costs stated in such account.

10.7 Chemonics shall transfer to the Subcontractor any payment that it receives from the Authority on account of the costs stated in the report referred to in paragraph 10.6.

10.8 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

11. DATA PROTECTION

- 11.1 The Subcontractor shall comply with Chemonics' EU data protection policy (<https://chemonics.com/chemonics-eu-data-protection-policy/>) and Applicable Laws when processing personal data relating to any individual in connection with this agreement.
- 11.2 The Subcontractor shall permit Chemonics, the Authority and their representatives to inspect and audit the Subcontractor's data processing activities and comply with all reasonable requests by Chemonics to enable Chemonics and the Authority to verify and/or procure that the Subcontractor is in full compliance with its obligations under this agreement.
- 11.3 Any transfer of personal data from the Subcontractor to Chemonics, that is subject to the EU's General Data Protection Regulation ((EU) 2016/679) and/or the UK's Data Protection Act 2018 shall be made under the Standard Contractual Clauses set out in Schedule 7.

12. CONFIDENTIALITY

- 12.1 The parties' confidentiality obligations shall be subject to the Authority's disclosure rights and Chemonics' obligations to disclose information pursuant to the Prime Contract.
- 12.2 The Subcontractor shall not make any press announcements or publicise this agreement or the Prime Contract or their contents in any way or use Chemonics' or the Authority's name or brand (including the "UK Aid Logo") in any promotion, marketing, communication or announcement of orders without the prior written consent of Chemonics.

13. FREEDOM OF INFORMATION

- 13.1 The Subcontractor shall:
- (a) transfer to Chemonics 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 Chemonics with a copy of all Information in its possession, or power in the form that Chemonics requires within five Working Days (or such other period as Chemonics may specify) of Chemonics's request; and
 - (c) provide such assistance as requested by Chemonics to enable the Authority 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.
- 13.2 The Subcontractor acknowledges that the Authority may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Subcontractor or the Services in certain circumstances without consulting the Subcontractor or following consultation with the Subcontractor having taken their views into account.
- 13.3 The Subcontractor shall ensure that all Information is retained for disclosure in accordance with paragraph 13.4 and 13.5 below and shall permit Chemonics and the

Authority to inspect such records as requested by Chemonics and/or the Authority from time to time.

13.4 The Subcontractor shall, during the Prime Contract and for a period of at least seven years following the expiry or termination of the Prime 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 organisation 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.

13.5 Wherever practical, original Information shall be retained and maintained in hard copy form.

14. ACCESS AND AUDIT

14.1 The Subcontractor shall keep secure and maintain until seven years after the final payment of all sums due to Chemonics under the Prime Contract, or such other period as may be agreed between the parties, full and accurate records of the Services, all expenditure reimbursed by Chemonics, all payments made by Chemonics and all payments made by the Subcontractor in connection with this agreement.

14.2 The Subcontractor shall grant to Chemonics or its authorised agents, or (if requested by Chemonics) the Authority or the Authority's authorised agents such access to those records as they may reasonably require in order to check the Subcontractor's compliance with this agreement and monies utilised and spent, throughout the whole supply chain.

15. TUPE

The provisions of Schedule 6 shall apply to this agreement.

16. TRANSFER OF GOODS

In respect of any goods that are transferred to Chemonics or to the Authority under this agreement, the Subcontractor warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Chemonics or to the Authority, it will have full and unrestricted rights to transfer all such items to Chemonics or to the Authority, as the case may be.

17. AUTHORITY STEP-IN RIGHTS

Upon Chemonics notifying the Subcontractor that the Authority is exercising "step-in rights" the Authority shall have the right to benefit from Chemonics' rights and enforce the Subcontractor's obligations under this agreement as if reference in this agreement to Chemonics was reference to the Authority.

18. ANTI-BRIBERY AND CORRUPTION

- 18.1 The Subcontractor shall and shall procure that persons associated with it in connection with this agreement shall:
- (a) comply with the Relevant Requirements;
 - (b) not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements;
 - (c) comply with Chemonics' Standards of Business Conduct policy referred to in Schedule 5 as Chemonics may update it from time to time (**Relevant Policy**).
 - (d) not do, or omit to do, any act that will cause or lead Chemonics to be in breach of any of the Relevant Requirements or the Relevant Policy;
 - (e) promptly report to Chemonics any request or demand for any undue financial or other advantage of any kind received by the Subcontractor in connection with the performance of this agreement;
 - (f) 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;
 - (g) if requested, provide Chemonics with any reasonable assistance to enable Chemonics to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements or the Relevant Policy;
 - (h) immediately upon Chemonics's written request, from time to time, certify to Chemonics in writing signed by an officer of the Subcontractor compliance with this clause 18 by the Subcontractor and all persons associated with it in connection with this agreement. The Subcontractor shall provide such supporting evidence of compliance as Chemonics may reasonably request.
- 18.2 The Subcontractor shall ensure that any person associated with the Subcontractor who is performing services or providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Subcontractor in this clause 18 (**Relevant Terms**). The Subcontractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Chemonics for any breach by such persons of any of the Relevant Terms.
- 18.3 The Subcontractor shall indemnify Chemonics and the Chemonics Personnel against any losses, liabilities, damages, costs (including legal fees) and expenses incurred by, or awarded against, Chemonics or any of the Chemonics Personnel as a result of any breach of this clause 18 by the Subcontractor.
- 18.4 The Subcontractor warrants and represents that:
- (a) its responses to Chemonics's anti-bribery and anti-corruption due diligence questionnaire are complete and accurate;
 - (b) neither the Subcontractor nor any of its officers, employees or other persons associated with it:
 - (i) has been convicted of any offence involving bribery or corruption, fraud or dishonesty;
 - (ii) having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or

- (iii) has been or is listed by the Office of Foreign Assets Control of the United States Treasury Department or by the UK government or by any other government agency or multi-lateral donor as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts;
 - (c) none of the officers or employees of the Subcontractor or any person associated with it who is performing services or providing goods in connection with this agreement is a foreign public official; and
 - (d) no foreign public official owns a direct or indirect interest in the Subcontractor or any person associated with it or any other person for whom the Subcontractor is responsible under clause 18.4(c) and no public official has any legal or beneficial interest in any payments made by Chemonics under this agreement.
- 18.5 The Subcontractor shall promptly notify Chemonics if, at any time during the term of this agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 18.4 at the relevant time.
- 18.6 Breach of this clause 18 shall be deemed a material breach under clause 10.1.
- 18.7 If Chemonics terminates this agreement for breach of this clause 18, the Subcontractor shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.
- 18.8 For the purpose of this clause 18 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act, and section 8 of that Act respectively.
- 18.9 For the purposes of this clause 18 “Prohibited Act” means:
- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority 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 agreement;
 - (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 the Authority; or
 - (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

19. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES

- 19.1 In performing its obligations under the agreement, the Subcontractor shall and shall procure that the Subcontractor Personnel shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015; and
 - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.
- 19.2 The Subcontractor represents, warrants and undertakes that neither the Subcontractor nor any of the Subcontractor's Personnel:
- (a) has been convicted of any offence involving slavery and human trafficking; and
 - (b) having made reasonable enquiries, so far as it is aware has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 19.3 The Subcontractor shall implement due diligence procedures for the Subcontractor Personnel and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 19.4 The Subcontractor shall:
- (a) maintain a complete set of records to trace the supply chain of all goods and services provided to Chemonics in connection with this agreement; and
 - (b) permit Chemonics and its third party representatives, on reasonable notice during Business Hours, but without notice in case of any reasonably suspected breach of this clause 19.4, to have access to and take copies of the Subcontractor's records and any other information and to meet with the Subcontractor's Personnel to audit the Subcontractor's compliance with its obligations under this clause.
- 19.5 The Subcontractor shall notify Chemonics as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.

20. SAFEGUARDING

Provisions in the Prime Contract related to safeguarding including the prevention and reporting of actual, attempted or threatened sexual exploitation, sexual abuse or sexual harassment shall apply to the Subcontractor pursuant to clause 3.2. The Subcontractor shall provide such information and certification concerning safeguarding as and when requested by Chemonics.

21. SANCTIONS

- 21.1 The Subcontractor represents and warrants that neither it nor any of the Subcontractor Personnel will breach nor will any of them place Chemonics or the Authority in breach of any Applicable Laws relating to anti-money laundering or sanctions legislation.

- 21.2 The Subcontractor shall not acquire for its use in the performance of this agreement any equipment, supplies or services if any proclamation, U.S. Executive Order, U.S. statute, or OFAC's (U.S. of Foreign Assets Control) implementing regulations (31 Code of Regulations Chapter V), UN, EU or UK sanctions would prohibit such a transaction. This includes most transactions involving Cuba, Iran, Syria, and North Korea, and transacting, engaging, supporting or financing entities and individuals on OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>.
- 21.3 Chemonics may terminate this agreement immediately on notice to the Subcontractor if:
- (a) the Subcontractor is named on any list of suspected terrorists or blocked individuals included in the US Government's OFAC List of Specially Designated Nationals and Blocked Persons or included in the UK Government's sanctions lists; and/or
 - (b) the Authority determines that the Subcontractor is ineligible to receive UK funding pursuant to U.K. laws and regulations.
- 21.4 Notwithstanding any other provision of this agreement, upon termination of this agreement under this clause 21 or as a result of the Subcontractor's breach of this clause 21, the Subcontractor shall have no right to receive any further payments from Chemonics.

22. COMPLIANCE WITH EXPORT LAWS

- 22.1 The Subcontractor is responsible for obtaining any export licenses or other permits required for carrying out its obligations under this agreement and shall adhere to all customs formalities for the export of relevant goods and services. The Subcontractor shall provide Chemonics with such reports, authorisations, or other documentation related to export compliance as requested by Chemonics. The Subcontractor agrees to indemnify, hold harmless and defend Chemonics for any losses, liabilities and claims, including as penalties or fines as a result of any regulatory action taken against Chemonics as a result of the Subcontractor's non-compliance with this clause.
- 22.2 The Subcontractor shall not export, directly or indirectly, any technical data acquired from Chemonics, the Authority or any third party under this agreement (or any products, including software, incorporating any such data) in breach of any Applicable Laws or regulations (**Export Control Laws**), including United States Export Control Laws, to any country for which the United States or any other government or state agency at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

23. INSURANCE

0 sets out the Subcontractor's insurance obligations.

24. INADEQUACY OF DAMAGES

Without prejudice to any other rights or remedies that Chemonics may have, the Subcontractor acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Subcontractor. Accordingly, Chemonics shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

25. FURTHER ASSURANCE

The Subcontractor shall, promptly at Chemonics's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Chemonics may from time to time require for the purpose of securing for Chemonics the full benefit of this agreement.

26. ASSIGNMENT AND OTHER DEALINGS

26.1 Chemonics may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement.

26.2 The Subcontractor shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of Chemonics.

27. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

28. SEVERABILITY

28.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

28.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

29. ENTIRE AGREEMENT

29.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

29.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

30. NOTICES

30.1 A notice given to a party under this agreement:

- (a) shall be in writing and in English;
- (b) shall be signed by or on behalf of the party giving it;
- (c) shall be sent to the party for the attention of the person at the address specified in the Contract Data (or to such other person or to such other address as that party may notify to the other, in accordance with the provisions of this clause 30); and
- (d) shall be:
 - (i) delivered personally; or
 - (ii) sent by commercial courier; or
 - (iii) sent by email.

30.2 A notice is deemed to be received:

- (i) if delivered personally, at the time of delivery; or
- (ii) if sent by commercial courier, on the date and at the time of signature of the courier's delivery receipt; or
- (iii) if sent by email at the time of transmission.

30.3 For the purposes of this clause 30:

- (a) all times are to be read as local time in the place of deemed receipt; and
- (b) if deemed receipt under this clause is not within Business Hours, the notice is deemed to have been received at the opening of business on the next Working Day in the place of receipt.

30.4 To prove service by email the sender of the email must receive written confirmation from the recipient that the recipient has received the email.

30.5 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

31. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

32. THIRD PARTY RIGHTS

32.1 Save as expressly provided for in this agreement, no one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

32.2 The Authority shall have the ability to directly enforce the benefit of this agreement (as if Chemonics's rights or benefits were the Authority's rights or benefits) under the Contracts (Rights of Third Parties) Act 1999 including the ability to directly enforce the Subcontractor's obligations in respect of security and secrecy, intellectual property and audit rights with such variations as the Authority reasonably considers necessary.

- 32.3 Nothing in this agreement limits the Subcontractor's ability to contract directly with the Authority or any entity that replaces Chemonics on the Project.

33. NO PARTNERSHIP OR AGENCY

- 33.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 33.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

34. CONFLICT

If there is any conflict between them, the order of precedence below shall be the order in which the following Sections, Schedules and Appendices are listed: Schedule 4, Schedule 3, Schedule 1, Schedule 2, Schedule 6, Schedule 7, Section 2, Section 1, Appendix 1, Schedule 5.

35. BREXIT

- 35.1 If a Trigger Event occurs which has or is likely to have an adverse impact on Chemonics, Chemonics may:
- (a) notify the Subcontractor that it requires the Subcontractor to negotiate in good faith an amendment to this agreement to alleviate the Trigger Event; and
 - (b) if no such amendment is made to this agreement within 7 calendar days, terminate this agreement immediately on notice to the Subcontractor.
- 35.2 For the purposes of clause 35.1 a Trigger Event means any of the following events occurring at any time after the UK ceases to be a member of the European Union:
- (a) a change in any legal provision that a party must comply with or a new requirement to comply with any existing legal provision or any existing legal provision ceasing to apply to a party;
 - (b) in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports;
 - (c) in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by Chemonics to perform this agreement;
 - (d) a change of more than 10% to the rate of sterling against any currency in which Chemonics is working in connection with this agreement (for example the currency in which the Subcontractor's fees or expenses are payable if other than sterling) or in connection with any project on which the Subcontractor is engaged (for example the currency in which Chemonics receives payment or pays suppliers if other than sterling). The rate of exchange for these purposes shall be the daily spot exchange rate published by the Bank of England; or
 - (e) a change to the business or economic environment in which Chemonics operates which is not caused by any of the events referred to in clauses 35.2(a) to clause 35.2(d) above.

36. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

37. DISPUTE RESOLUTION

- 37.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**), then the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice senior members of staff of the parties shall attempt in good faith to resolve the Dispute;
 - (b) if the senior members of staff of the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 30 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. Unless otherwise agreed between the parties, the mediation will start not later than 45 days after the date of the ADR notice. The mediation will take place in London, UK and the language of the mediation shall be English.
- 37.2 No party may commence any court or arbitration proceedings under clause 38 (Jurisdiction) in relation to the whole or part of the Dispute until 60 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 37.3 If the Dispute is not resolved within 90 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 90 day period, or the mediation terminates before the expiry of that 90 day period, the Dispute shall be finally resolved in accordance with clause 38 (Jurisdiction).

38. JURISDICTION

- 38.1 Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales. Notwithstanding the foregoing, at the sole option of Chemonics, any controversy or claim arising out of or in connection with this contract, or the breach thereof, shall be settled by arbitration administered by such arbitral institution as selected by Chemonics under its designated set of rules, and judgment on the award(s) rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of the arbitration shall be London.
- 38.2 If a court action has been initiated by the Subcontractor at the time that Chemonics chooses to submit the matter to arbitration, then it is agreed that such court action is to be discontinued, unless the arbitrator finds that Chemonics has waived such right by substantially participating in the court action without having raised its right under this clause.

OR REPLACE 38.1 AND 38.2 WITH:

Any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be one.

The seat, or legal place, of arbitration shall be Washington D.C.

The language to be used in the arbitral proceedings shall be English.

The governing law of the contract shall be the substantive law of England & Wales.

This agreement has been entered into on the date last signed by the parties.

Schedule 1 - Subcontract Scope of Work

INSTRUCTIONS :

The terms of reference describe the work that the Subcontractor is required to undertake under the subcontract. It describes the expectations from Chemonics. Having a detailed scope of work is crucial so both parties have a clear understanding of what services and deliverables the Subcontractor must provide and what “successful performance” looks like. A major issue that can arise with the scope of work is when the parties cannot agree if certain activity is within the scope of what was originally stipulated. This section needs to be clear enough for the parties to be able to understand when a Subcontractor will need a costed variation (modification) or when Chemonics may need to terminate the agreement because the Subcontractor is not performing – we would need to be able to point to the Schedule 1 wording to demonstrate that the Subcontractor was not doing the work as required. **DELETE THESE INSTRUCTIONS AND ALL OTHER INSTRUCTIONS IN RED.**

1. BACKGROUND

Specify here the project/programme background information from the prime contract scope of work – this should be high level/brief and give an overall context to the programme (keep in mind that a copy of the prime contract excluding commercial and technical proposal, will be attached as an Appendix to this document and will include the full prime scope of work).

2. SCOPE OF WORK

In this section describe the services and the deliverables the Subcontractor will provide. This should at least mirror what is contained in the Subcontractor's proposal and, if necessary go into further detail so that there will be no debate later on about what services and deliverables the Subcontractor should be providing and when those services and deliverables should be delivered. To facilitate clarity around this you may want to say not just what the Subcontractor will be doing but what the Subcontractor will not be doing. The services and deliverables described should also align with the relevant parts of the services and deliverables that Chemonics is required to supply under the prime contract.

This section should also specify where the services are to be performed.

Describe any third parties (beneficiaries, stakeholders and other actors) who will also be involved and what their involvement will be and how the Subcontractor will be interacting with them.

Include a list of deliverables and/or a list of milestones – with due dates

<Definition of deliverables and due dates should be clear. Ensure sub-contractor delivery dates tie in with the Prime Contract delivery dates allowing suitable time for Chemonics review of Sub-contractor inputs/materials and, where applicable, incorporation of the sub-contractors inputs into Chemonics deliverables>

Include the following requirements and add expectations/definitions if they are applicable to this subcontract (if there are requirements in these areas in the Prime Contract, they must be defined here in terms of the supporting requirement you need from this Subcontractor in order to comply with the Prime Contract):

Review Requirements – peer review of Deliverables

Reporting Requirements

Performance Monitoring Requirements

MEL Requirements

3. SUBCONTRACTOR'S RESPONSIBILITIES

This section should complement paragraph 2 Scope of Work above, not duplicate. Specify here detailed responsibilities of the subcontractor per negotiations. Include and tailor the text below accordingly if logistic support is anticipated. For example:

- The Subcontractor shall be responsible for all administrative support and logistics required to fulfil the requirements of this Subcontract in accordance with the terms and conditions herein.
- The Subcontractor shall be responsible for providing medical travel insurance for all staff traveling to the place of assignment.

4. CHEMONICS RESPONSIBILITIES

Specify here responsibilities of Chemonics per negotiations, such as field office logistics, etc. Some questions that may help the drafter address this section and the section above are: Who is providing office space? Who is providing logistics when traveling internationally or locally? Chemonics preference is that travel subsistence costs of subcontractor staff are paid by the Subcontractor, but sometimes this is not possible. If so, explain here any travel related requirements the subcontractor must adhere to.

Other examples are:

- If the Subcontractor must coordinate with other consortium Subcontractors or needs input from counterparts to do the work, this section must explain Chemonics' role in coordinating this.
- If this subcontract will require short term support, explain that Chemonics will draft the SOW and request the labour to be provided.
- If the subcontractor will require purchases of equipment that will be done by Chemonics directly, this also needs to be explained here. Same as if Chemonics needs to supply the Subcontractor with access to property or equipment that is owned by Chemonics or third parties.
- Note: If Chemonics is providing/assisting with any logistical/security arrangements this should be explained here, together with any limitations – when explaining any such arrangements take care to use phrases like “assist with” and “arrange on behalf of the Subcontractor”, rather than phrases like “Chemonics will be responsible for”.

Any equipment or services being provided by or procured by Chemonics for use by the Subcontractor is listed in Schedule 3 Particulars.

Schedule 2 - Fees, Expenses and Invoicing

<General instructions for this section>

<The information populated in this section needs to contain the full price and payment schedule for the Subcontractor Services. This information needs to be specific and complete. It should include all rates and quantities as agreed with the subcontractor and per the Prime Contract, and full breakdown of Open Book Costing pricing structure if this solicitation arose from an open book costing Invitation To Tender – the subcontractor should have provided such a breakdown at bid stage.>

<Note any special payment terms in the payment clauses below and ensure the schedule of payments fits back-to-back within the schedule of payments to Chemonics in the Prime Contract.>

<If Chemonics is tied to “Payment By Results” (**PbR**) for any deliverable that this subcontractor is providing, it is important to analyse if the same PbR condition must be included here to back to back Chemonics risk in the Prime Contract. The same applies to any Key Performance Indicators (KPIs) which might affect payment. See the PbR section below and adapt for any agreed PbR or KPIs agreed with the subcontractor>

<all stated figures in this section must include any VAT or Tax due where applicable. Note on UK VAT usually doesn't apply where the Prime Contract states the services are to be delivered outside the UK. If the services are to be delivered to the UK, eg to and for the benefit of the FCDO in London then VAT may apply and must be included as a separate entry in the schedule of fees and expenses.>

<Chemonics standard fees and rates clauses added here for amendment & inclusion as applicable>

<NB the alternative wording for paragraph 1 which can be used if you are offering the subcontractor a fixed price contract must be handled very carefully. It is very unlikely that the Prime Contract will be a fixed price contract. Even if the Prime Contract is called a fixed price contract it is likely that the Authority nevertheless wants to receive time sheets for work done so it is very possible that even though the Prime Contract is called a fixed price contract in practice, because of the way the contract operates, it is a time and materials contract. You should therefore contact Chemonics' commercial department if the Prime Contract is expressed to be a fixed price contract or if you want to offer the subcontractor a fixed price contract while at the same time you expect the Authority to pay for the work that the subcontractor carries out>

1. SUBCONTRACT TYPE

- 1.1 This is a time and materials contract capped at the financial limit specified in Section 1 and limited to the level of effort and rates specified in this Schedule.
- 1.2 The Subcontractor will supply the Services based on (1) fees (time-based) for labour days at specified Gross Daily Rates (“**GDRs**”) and (2) expenses for actual non-labour costs incurred.
- 1.3 For the consideration set forth below, the Subcontractor shall deliver the Services at the level of effort in the schedule of fees and the schedule of expenses set out in this Schedule 2. If additional work or expense is required to complete the Services to the satisfaction and sign-off by Chemonics and the Authority, the Subcontractor shall provide such additional work or expense at its own cost.
- 1.4 <Delete this if the Subcontractor's services are not tied to PbR> A Payment by Results model shall apply to this Subcontract as set out below.

OR

1. SUBCONTRACT TYPE

- 1.1 This is a fixed price contract. As consideration for the Subcontractor delivering all the products and/or services referred to in Schedule 1, in accordance with this agreement, Chemonics shall pay the Subcontractor a total amount of [amount] payable at the times and in the instalments specified in paragraph 2.4 subject to alteration in accordance with the provisions of this agreement.

2. CHARGES

2.1 FINANCIAL LIMIT

- 2.1.1 The financial limit or ceiling price for the performance of the Services must not exceed the **Total value of Subcontract Agreement** specified in the Contract Data in Section 1.
- 2.1.2 Within the limit referred to specified in paragraph 2.1.1 above, ceilings for fees and expenses shall apply as follows:
- £<enter amount> is allocated for fees and;
£<enter amount> is allocated for expenses.
- 2.1.3 The Subcontractor shall closely monitor the limits set out in 2.1.2 above and in the schedule of fees and the schedule of expenses below.
- 2.1.4 Amounts allocated for fees cannot be applied towards expenses and vice-versa without Chemonics giving its prior written consent.
- 2.1.5 If the Subcontractor wants the parties to apply amounts allocated for fees towards expenses or vice-versa it must give Chemonics at least 60 days written notice of its wish to do so.

2.2 FEES

<INSTRUCTIONS: Check the Prime Contract, the commercial tender and/or the subcontractor budget notes to make sure that the items in the bullets below are correct and should be captured in the GDRs. Note that under some subcontracts, the GDRs may also include certain allowances (such as rental subsidy, education allowances for dependents, etc.), equipment, etc. Ensure that the list below is complete to avoid double billing under the expenses line.>

<If the agreement is a true fixed price contract then delete all of the wording in paragraph 2.2 and replace with "Not applicable" but do not do this without written approval from Chemonics' commercial department>.

2.2.1 Gross Daily Rates

Fees for the Subcontractor's staff or consultants delivering the Services will be calculated in accordance with the GDRs set out in the schedule below. These GDRs shall remain in effect for the duration of this agreement. Each GDR below includes the following:

- Cost of salary remuneration and all benefits including superannuation (pension) and payroll taxes of the professional providing the services;
- Indirect costs (commonly referred to as "overhead" or "non-project attributable costs"); and
- Profit, if any.

- 2.2.2 Chemonics will not be responsible for any labour-related costs except as expressly set out in this Schedule.

<INSERT SCHEDULE OF AGREED GDR FEES>
<from rates agreed in Prime Contract. Example below>

Name	Team	Job Family	Location	Level	Job Title	Alt Title	Term	Country of Operation	Staff Cost (salary and all benefits and taxes)	Overhead	Profit	Total Gross Daily Rate (GDR) Invoiced
John Smith	Core	Technical Advisor	International	Advanced	Technical Advisor	PEA	Short	Mozambique	470	95	35	600

2.2.3 Job family, Level, Term and Locations Definitions for Staff

Definitions for “Job Family”, “Level”, “Location” or “Term” shall be in accordance with the Prime Contract. Staff must qualify according to the correct definitions to attract the agreed GDR. If any staff member does not meet the requirements of the job family, level or location definitions for the rate specified in the GDR schedule above a lower GDR rate may apply according to any ceilings that may be specified in Prime Contract. In such event Chemonics will advise the Subcontractor of the amended rate that shall apply. If an individual is substituted, and the substitute falls under different job family, level or location definitions, Chemonics reserves the right to amend the GDR of the substitute to comply with the Prime Contract, where applicable.

2.2.4 Ceiling Rates and Discounted Ceiling Rates

Notwithstanding the GDRs and schedule of fees specified in this Schedule, the fees payable for any individual are subject to any maximum rates (or ceiling rates) and volume discounts (according the total number of days worked by an individual on the Project) that may be specified in the Prime Contract. For example, if an individual's GDR is £600 and under the Prime Contract that individual is slated to work for 100 days then if that individual only works for 50 days the individual's GDR may be adjusted downwards if, as a result of that change in working days, a different discount rate is applicable under the Prime Contract. If this downward adjustment is applied retrospectively by the Authority then the Subcontractor shall reimburse Chemonics the difference between the amounts paid under the original GDR of £600 and the amounts due under the adjusted rate resulting from the change. Chemonics may, at its option, offset any amounts due to it from the Subcontractor from future payments owed by Chemonics to the Subcontractor.

2.3 EXPENSES

- 2.3.1 The Subcontractor may only claim expenses that are permitted to be claimed under the Authority's “Programme Expenditure: Eligible Cost Guidance” and which are approved by Chemonics and where applicable the Authority. Chemonics will not pay for any expenses not specified in the schedule of expenses below.

2.3.2 Schedule of Expenses

The Subcontractor shall be entitled to invoice its actual expenses incurred, for which receipts must be retained and presented, within the expense types, maximum quantities and rates specified in the schedule below. Expenses not specified below may not be invoiced to Chemonics.

<INSTRUCTIONS: Insert schedule of expenses below to fit the level of detail that best suits project needs and matching the expenses specified in the Prime Contract proformas. It is probably best to extract the expenses lines from the bid proforma that are relevant to this sub-contractor, but may be broken down to an additional level of detail if this helpful in managing the sub-contractor.>

<INSERT SCHEDULE OF EXPENSES>

- 2.3.3 Unless authorised in writing by Chemonics in advance or included in the schedule of expenses, non-expendable equipment (i.e., capital expenditures) and/or resources, supplies, or commodities shall not be procured and billed by the Subcontractor under this agreement.
- 2.3.4 Notwithstanding any rates specified in the schedule of expenses above, under no circumstances will Chemonics pay rates of subsistence that exceed any subsistence ceilings that are specified in the Prime Contract or, if not so specified in the Prime Contract, as specified in Her Majesty's Revenue and Customs worldwide subsistence rates available on the UK Government's website.
- 2.3.5 All international travel under this Subcontract requires the prior written approval of Chemonics. International Travel must be within the limits and quantities referred to in this paragraph 2.3. The Subcontractor shall retain for audit purposes a copy of each travel approval.
- 2.3.6 Chemonics will not reimburse travel by rail or air booked in a class higher than "standard economy" unless higher travel classes are representative of improved value for money or are required to adhere to specific legislation, for example the Equality Act 2010. Exceptions to "standard economy" require prior written approval from Chemonics. First class travel will not be permitted under any circumstances.
- 2.3.7 Alcohol and tobacco are not permitted subsistence items.

2.4 PAYMENT SCHEDULE

- 2.4.1 Subject to paragraph 2.4.2, payments to the Subcontractor under this agreement shall be made according to the payment schedule below.
- 2.4.2 The values of each payment will be adjusted according to the actual time and expenses used to complete the corresponding deliverable/milestone, subject to remaining within the Financial Limit above and within the fees schedule set out in paragraph 2.2 and the expenses schedule set out in paragraph 2.3 above.

<insert payment schedule – if this is milestone/deliverable based ensure this is on a back to back basis with the sub-contract, clearly identifying milestones and KPIs >

- 2.4.3 All payments will be subject to any Payment by Results criteria specified in paragraph 2.5 below.

2.5 PAYMENT BY RESULTS

<Delete this clause if PbR is NOT applicable to this sub-contract – however where the Subcontractor's services impact the ability for Chemonics to get paid under PbR we should leave this clause in place since any PbR dependency represents a payment risk> <Add to / Edit this clause as applicable so it reflects the PbR agreed in the Prime Contract to the extent that the PbR elements are affected by or dependent on the Subcontractors work – the PbR is normally specific to each project so must be clearly reflected here so it is clear which PbR elements will apply to any payments made> <UK commercial division must review any changes/additions to this clause before release>

- 2.5.1 This agreement is a Payment by Results contract with most payments being made for progress against logframe outputs or outcomes relevant to the Services through proposed milestones and/or KPIs. Milestones and KPIs are either set out in paragraph 2.4 above or will be agreed by Chemonics and the Subcontractor.
- 2.5.2 The Subcontractor will not unreasonably withhold, delay or condition its consent to the inclusion of additional milestones and/or KPIs where such inclusion is requested by Chemonics and/or the Authority.
- 2.5.3 Any payments to be made to the Subcontractor are subject to the Authority's approval of the relevant milestones and KPIs for which the Subcontractor has submitted a corresponding payment request.

3. INVOICING

- 3.1 Chemonics shall pay the Subcontractor any undisputed sums which are due from Chemonics to the Subcontractor within thirty (30) calendar days from the receipt of a valid invoice.
- 3.2 Any invoices submitted by a Subcontractor shall be considered and verified by Chemonics in a timely fashion and undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed.
- 3.3 The Authority has the right to publish Chemonics's compliance with its obligation to pay undisputed invoices to the Subcontractor within the specified payment period.
- 3.4 If the Authority refuses to pay Chemonics an amount equal to the Subcontractor's fees, costs and expenses properly and necessarily incurred in connection with the performance and termination of any Services then, to the extent that such refusal is due to Chemonics' breach of the Prime Contract, Chemonics will pay such fees, costs and expenses to the Subcontractor without prejudice to any other right or remedy available to the Subcontractor.
- 3.5 If the Authority refuses to pay Chemonics an amount equal to Chemonics' and any of the Chemonics Personnel's fees, costs and expenses properly and necessarily incurred in connection with the performance and termination of the Prime Contract and/or the performance and termination of any arrangements for the supply of goods and/or services in connection with the Prime Contract then, to the extent that such refusal is due to the Subcontractor's breach of this agreement (howsoever caused), the Subcontractor will pay Chemonics such fees, costs and expenses without prejudice to any other right or remedy available to Chemonics.
- 3.6 For the purposes of this Schedule 2, "undisputed sums" means such sums:
- (a) that have been properly invoiced by the Subcontractor;
 - (b) that are not disputed by Chemonics; and
 - (c) for which Chemonics has received corresponding payment from the Authority within twenty (20) calendar days of Chemonics's receipt of the Subcontractor's relevant invoice.
- 3.7 Sums which have been properly invoiced by the Subcontractor and which are not disputed by Chemonics but which do not fall under the definition of "undisputed sums" as set out in paragraph 3.6 shall be paid by Chemonics to the Subcontractor within thirty (30) calendar days following Chemonics's receipt of the relevant corresponding payment from the Authority.

- 3.8 The provisions of the Prime Contract will further determine the treatment of fees and expenses, including any “commercial caveats” applied to such fees and expenses.
- 3.9 If, as a result of any action or omission on the part of the Subcontractor or any of the Subcontractor’s Personnel, the Authority rejects an invoice or part of any invoice submitted by Chemonics then, without prejudice to Chemonics’ other rights or remedies, the Subcontractor shall take such action as reasonably required by Chemonics to remedy the position.
- 3.10 If the Subcontractor fails to take such action as is reasonably required by Chemonics pursuant to paragraph 3.9, Chemonics may take such action as it deems necessary to remedy the position including engaging another supplier to complete any work that the Authority considers to be incomplete. The Subcontractor shall be liable to Chemonics for any costs that Chemonics incurs, including the cost of any time taken up by Chemonics staff, remedying the position.
- 3.11 If the Authority requires any payment that it has made to Chemonics to be refunded having determined after paying for a particular part of the Services, that the relevant part has not been provided in accordance with this agreement or that the payment was an overpayment and such payment comprises amounts that Chemonics has paid to the Subcontractor, the Subcontractor shall immediately, upon Chemonics’ written request, reimburse such amounts to Chemonics. For the avoidance of doubt, the obligations in this paragraph shall survive termination of the agreement.
- 3.12 **[If this is a local subcontract, adjust the invoice requirements as appropriate.]** *Valid Invoice.* Each invoice shall be submitted in accordance with the payment schedule set out in this Schedule and shall be broken down by the relevant line items and in such form and in sufficient detail as may be required by Chemonics and/or the Authority. **<Instruction: if this a genuine fixed price contract, which does not require incurred cost details, delete the next sentence>** Such invoices shall itemise actual costs incurred during the billing period and shall include Gross Daily Rates and expenses. Copies of the Subcontractor’s invoice backup documentation shall be attached to invoices.
- 3.13 *Invoice Information.* To be considered a valid invoice, each invoice shall be sent to the relevant Chemonics paying office and include the following information:
(a) Subcontract Number,
(b) unique invoice number,
(c) the Subcontractor’s name or trading name and address,
(d) Subcontractor’s VAT registration number (if applicable),
(e) invoice date (in the event an invoice requires edits or corrections, the Subcontractor shall update the date of invoice to coincide with the date the invoice is resubmitted),
(f) tax date for UK subcontracts only (the date of supply which is also known as tax point – if different from the invoice date),
(g) Chemonics’ name and address as included in the cover-page,
(h) Description, price, and quantity of Services delivered, including milestones or KPIs completed;
(i) A breakdown for the billing period of each individual’s gross daily rate, and days provided/performed;
(j) A breakdown for the billing period of the expenses incurred and paid;
(k) A statement of cumulative amounts invoiced to-date and amounts remaining to be invoiced;
(l) Payment account corresponding to the authorised account stated in paragraph 3.14 of this Schedule; and
(m) Subcontractor point of contact.
- 3.14 *Payment Account Information.* Chemonics shall remit payment corresponding to approved invoices submitted in accordance with this Schedule to the Subcontractor to the following authorised account:

- (a) Account name: {INSERT Account name provided by the Subcontractor}
- (b) Bank name: {INSERT Subcontractor's bank name}
- (c) Bank address or branch location: {INSERT Subcontractor's bank address or branch location}
- (d) Account number: {INSERT Subcontractor's bank account SWIFT and IBAN reference as applicable}.

3.15 *Backup documentation.* The original invoice shall be in the format approved by Chemonics, and sent in a hard-copy format with copies of the following backup documentation attached:

- Copies of time records for all staff being billed in the period covered by the invoice.
- All other direct reimbursable costs (expenses) including travel, transportation, subsistence, communications, reproduction (must be supported by itemised bills, invoices, or receipts) as specified in the schedule of expenses set out above.
- Any other supporting information or evidence as reasonably requested by Chemonics from time to time.

3.16 Chemonics will make suitable reductions for any disallowance or indebtedness by the Subcontractor by applying the proceeds of the invoice first to such deductions and next to any balance of the invoices remaining under this agreement.

3.17 The Subcontractor agrees that all approvals that are required by the provisions of this agreement shall be preserved and made available as part of the Subcontractor's records which are required to be preserved and made available pursuant to the Prime Contract.

3.18 *Paying Office.* Claims for payment under this agreement shall be submitted to Chemonics' <insert title, name>, or their successor or designee at the following address:

<Choose the address that will actually emit payment to the subcontractor and delete the others. Fix the formatting if needed>

Chemonics International Inc. 1717 H Street, N.W. Washington, D.C. 20006 United States or electronically at <email invoice recipient>	Chemonics International Inc. C/O Chemonics UK 1 Benjamin Street Farringdon, London EC1M 5QL UK United Kingdom or electronically at <email invoice recipient>	Or Name and Address of the Field Office or electronically at <email invoice recipient>
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3.19 *Procedure for disputed invoices.* If Chemonics receives an invoice it deems not valid it shall return it to the Subcontractor with instructions for appropriate action, correction and re-issue. Queries from the Subcontractor regarding the validity of invoices shall be addressed first to the Paying Office and shall be resolved through the normal course of business correspondence without undue delay. Disputed invoices not resolved in the normal course of business may be escalated to the **Project Team Leader/PMU Director**. If a resolution is not reached it may be further escalated to the Senior Vice President - UK Division Jeffrey Wuorinen or their designee. Any unresolved dispute over invoice validity shall be resolved based on the procedures under the "Disputes Resolution" clause in Section 2.

Schedule 3 – Particulars

Clause 7.9 Hostile Environment Training: <Insert Needed / Not needed>

Clause 8.1 Equipment and facilities: <Insert details or add Not needed>

Clause 8.4 Equipment and facilities: Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company.

Clause 23 Insurance:

[Not required]

OR

[The provisions of clause 3.2 shall apply to determine the Subcontractor's insurance obligations.]

[The Subcontractor must effect and maintain the insurance required for a minimum of six (6) years following the expiration or earlier termination of the Prime Contract.]

[The limits of the insurance cover that the Subcontractor shall effect and maintain shall be the same limits that Chemonics is obliged to effect and maintain as set out in the Prime Contract.]

[Upon written notice from Chemonics to the Subcontractor, the Subcontractor shall give Chemonics such information as Chemonics reasonably requires to enable Chemonics to establish that the Subcontractor is complying with its insurance obligations under this agreement.]

OR

During this agreement and for a period of one year afterwards the Subcontractor shall maintain in force the following insurance policies with reputable insurance companies:

- (a) public liability insurance with a limit of at least £[AMOUNT] a claim;
- (b) professional indemnity insurance with a limit of at least £[AMOUNT] for claims arising from a single event or series of related events in a single calendar year; and
- (c) employer's liability insurance with a limit of at least £[AMOUNT] for claims arising from a single event or series of related events in a single calendar year.

<consider if any other insurance needed, for instance travel, medical, evacuation insurance, vehicles insurances, locally required insurances, etc >

On taking out and on renewing each policy, the Subcontractor shall promptly send a copy of the receipt for the premium to Chemonics. On Chemonics' written request, the Subcontractor shall provide Chemonics with copies of the insurance policy certificates and details of the cover provided.

The Subcontractor shall ensure that any subcontractors also maintain adequate insurance having regard to their obligations under this agreement.

The Subcontractor shall notify Chemonics if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

The Subcontractor's liabilities under this agreement shall not be deemed to be released or limited by the Subcontractor taking out the insurance policies referred to in this Schedule.

Schedule 4 - Alterations to Prime Contract

EITHER

Not applicable.

OR

The alterations are indicated in the [following **OR** attached] version of the Prime Contract, which has been marked up to show deletions, additions and amendments made for the purposes of this agreement.

OR

The alterations to the Prime Contract for the purpose of this agreement are as follows:

a)	Clause [NUMBER] deleted:	The entire text of Clause [NUMBER] is deleted and replaced with the words "Not used".
b)	Clause [NUMBER] added:	This clause is inserted: [NEW CLAUSE].
c)	Clause [NUMBER] amended:	This clause is amended to read as follows: [AMENDED CLAUSE IN FULL].

Schedule 5 - Mandatory Policies

Chemonics' Standards of Business Conduct which can be downloaded here:

<https://www.chemonics.com/our-approach/standards-business-conduct>

<insert here any additional mandatory policies. Make sure not to duplicate if policies are already included in the Subcontract.>

Schedule 6 - TUPE

1. In this Schedule the following definitions apply:

New Supplier: the Authority and/or another party chosen by Chemonics and/or the Authority to take over the provision of all or part of the Services.

2. If TUPE applies, or is alleged to apply, to transfer the employment of any person employed by the Subcontractor (or by any subcontractor of the Subcontractor) to Chemonics or any New Supplier then, in addition to Chemonics' or any New Supplier's rights or entitlements arising from the Prime Contract under clause 3 of this agreement, and notwithstanding (and in priority to) any provision to the contrary in the Prime Contract as implemented in this agreement by virtue of clause 3 of this agreement, if Chemonics or such New Supplier shall serve a notice terminating the employment of such person within six months after the date of such transfer or alleged transfer, the Subcontractor shall indemnify Chemonics and the New Supplier in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which Chemonics or the New Supplier is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

3. Without exclusion of clause 3.2 of this agreement (which may also apply in parallel to this paragraph 3) where:

- (a) (as determined by Chemonics in its sole and absolute discretion and notified by Chemonics to the Subcontractor) there will, may, might or could be a Relevant Transfer (as defined in the Prime Contract); directly between the Authority on the one part and the Subcontractor on the other part (or vice versa), and/or

- (b) clause 9.1.2 of the Prime Contract applies,

then wherever in clauses 6, 9, 16 or 46.3 of the Prime Contract and/or Schedule 2 of the Prime Contract, or in Schedule 1 of the Prime Contract to the extent (only) that a defined term in that Schedule 1 is used in those clauses 6, 9, 16 or 46.3 and/or Schedule 2 of the Prime Contract,

- (i) there is a reference to Chemonics or a term referring to Chemonics, **and**
- (ii) such reference to Chemonics or term referring to Chemonics confers an obligation (but not a right) on Chemonics,

a reference to the Subcontractor or a term referring to the Subcontractor shall be substituted for the reference to Chemonics or term referring to Chemonics, **but** any reference to the Authority or to any third party to the Prime Contract (other than the Subcontractor) or a term referring to the Authority or to any to third party to the Prime Contract (other than the Subcontractor) shall remain as a reference to the Authority or relevant third party, or as a term referring to the Authority or relevant third party¹.

4. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this Schedule to the extent necessary to ensure that any New Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the New Supplier by the Subcontractor in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

¹ Explanatory Note: Paragraph 3 of Schedule 6 is designed to confer obligations on the Subcontractor that the Authority can enforce against the Subcontractor in case TUPE applies to transfer the Subcontractor's employees to the Authority. These obligations mirror Chemonics' obligations to the Authority under the Prime Contract.

5. Notwithstanding paragraph 4, it is expressly agreed that the parties may by agreement rescind or vary this Schedule or any term of this Schedule without the consent of any other person who has the right to enforce the terms of this Schedule or the term in question notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

Schedule 7 - Standard Contractual Clauses (Data Transfers)

<You must use these clauses in their entirety and without edit anytime you are transferring data from a UK or EU based entity. The contents cannot be edited (unless where noted) in order to remain valid.>



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Directorate C: Fundamental rights and Union citizenship
Unit C.3: Data protection

Commission Decision C(2004)5721

SET II

Standard contractual clauses for the transfer of personal data from the Community to third countries (controller to controller transfers)

Data transfer agreement

between

..... (name) <Enter name and address of the EU based entity>

..... (address and country of establishment)

hereinafter "data exporter"

and

Chemonics International, Inc.

1717 H Street NW

Washington, DC 20006

USA

hereinafter "data importer"

each a "party"; together "the parties".

Definitions

For the purposes of the clauses:

- a) "personal data", "special categories of data/sensitive data", "process/processing", "controller", "processor", "data subject" and "supervisory authority/authority" shall have the same meaning as in Directive 95/46/EC of 24 October 1995 (whereby "the authority" shall mean the competent data protection authority in the territory in which the data exporter is established);
- b) "the data exporter" shall mean the controller who transfers the personal data;
- c) "the data importer" shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country's system ensuring adequate protection;
- d) "clauses" shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

I. Obligations of the data exporter

The data exporter warrants and undertakes that:

- a) The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.
- b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.
- c) It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.
- d) It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.
- e) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

II. Obligations of the data importer

The data importer warrants and undertakes that:

- a) It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.

- c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.
- d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.
- e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause I(e).
- f) At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).
- g) Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.
- h) It will process the personal data, at its option, in accordance with:
 - i. the data protection laws of the country in which the data exporter is established, or
 - ii. the relevant provisions² of any Commission decision pursuant to Article 25(6) of Directive 95/46/EC, where the data importer complies with the relevant provisions of such an authorisation or decision and is based in a country to which such an authorisation or decision pertains, but is not covered by such authorisation or decision for the purposes of the transfer(s) of the personal data³, or
 - iii. the data processing principles set forth in Annex A.

Data importer to indicate which option it selects: Annex A

Initials of data importer:

.....
;

<Anyone can initial here to confirm we are using "Annex A">

- i) It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and
 - i. the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or
 - ii. the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or

² "Relevant provisions" means those provisions of any authorisation or decision except for the enforcement provisions of any authorisation or decision (which shall be governed by these clauses).

³ However, the provisions of Annex A.5 concerning rights of access, rectification, deletion and objection must be applied when this option is chosen and take precedence over any comparable provisions of the Commission Decision selected.

- iii. data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
- iv. with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer

III. Liability and third party rights

- a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.
- b) The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses I(b), I(d), I(e), II(a), II(c), II(d), II(e), II(h), II(i), III(a), V, VI(d) and VII against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter's country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).

IV. Law applicable to the clauses

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under clause II(h), which shall apply only if so selected by the data importer under that clause.

V. Resolution of disputes with data subjects or the authority

- a) In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- c) Each party shall abide by a decision of a competent court of the data exporter's country of establishment or of the authority which is final and against which no further appeal is possible.

VI. Termination

- a) In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the contract is terminated.
- b) In the event that:
 - i. the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);
 - ii. compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;

- iii. the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
- iv. a final decision against which no further appeal is possible of a competent court of the data exporter's country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or
- v. a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs

then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.

- c) Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.
- d) The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause VI(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.

VII. Variation of these clauses

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

VIII. Description of the Transfer

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause I(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

Dated:

FOR DATA IMPORTER

FOR DATA EXPORTER

<Needs to be signed by the same person who signs the contract>

.....

ANNEX A

DATA PROCESSING PRINCIPLES

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.
2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
3. Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
5. Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.
6. Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.
7. Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to "opt-out" from having his data used for such purposes.
8. Automated decisions: For purposes hereof "automated decision" shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:
 - a)
 - i. such decisions are made by the data importer in entering into or performing a contract with the data subject, and
 - ii. the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties.
 - or
 - b) where otherwise provided by the law of the data exporter.

ANNEX B

DESCRIPTION OF THE TRANSFER

(To be completed by the parties)

Data subjects

The personal data transferred concern the following categories of data subjects:
Employees, consultants, contractors, applicants, customers, **exporter name** staff, etc

<Categories of data subjects refers to the types of people whose information are being transferred. These are examples. Please fill in the relevant data subjects for your specific case.>

Purposes of the transfer(s)

The transfer is made for the following purposes:
Invoicing, hiring personnel, approval of candidates, fulfill requirements of [contract, task order, agreement, etc], approval of financial rates, etc.

<These are examples. Please fill in the relevant purposes of transfer for your specific case>

Categories of data

The personal data transferred concern the following categories of data:
Contact information (e.g. name, address, phone number, email address, etc.); Demographic information (e.g. age, nationality, gender, language proficiency, etc.); Background information (e.g. educational history, employment history; Work information (e.g. job function, salary history, timesheets)

<These are examples. Please fill in the relevant categories of data for your specific case>

Recipients

The personal data transferred may be disclosed only to the following recipients or categories of recipients:
Chemonics staff, USAID, FCDO, etc.

<These should be the main recipients, however, be aware if you are also sharing information with other subcontractors or third parties. These are examples. Please fill in the relevant categories of data for your specific case>

Sensitive data (if appropriate)

The personal data transferred concern the following categories of sensitive data:
None.

<Sensitive data is personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade-union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation. These should rarely be collected>

Additional useful information (storage limits and other relevant information)

None.

<The data exporter may ask for the personal data being transferred to be stored for a limited time or for the information to be erased after the initial purpose has been served. While we can add these specific instructions here, the instructions need to be caveated with the fact that we may need to hold some personal information for audit, accounting, or personnel files that are required by our contract(s) or US laws. The time frame and reasons are generally outlined in Chemonics Records Policy>

Contact points for data protection enquiries

Data importer:

GDPR@Chemonics.com

Data exporter:

Appendix 1 – Prime Contract

<INSTRUCTIONS – Attach a copy of the Prime Contract here – confidential or commercially sensitive information, such as the schedules containing Chemonics commercial proposal and/or Chemonics technical, must be deleted/removed from the version attached here. The Prime Contract will normally be large and therefore attached/sent as a separate PDF file in which case simply state Attached as separate PDF file: FILENAME>