



NOT PROTECTIVELY MARKED



BMB Mott MacDonald B.V.  
Amsterdamseweg 15,  
6814 CM Arnhem  
The Netherlands

Our ref: PO 7751

Email: [REDACTED]@dfid.gov.uk

Tel: 01355 [REDACTED]

Date: 28<sup>th</sup> June 2018

## [Formal Award of Contract - Covering Letter]

Dear [REDACTED],

**Contract Reference: PO 7751 – Fund Manager for the Supply Component of the Somali Health and Nutrition Programme**

**OJEU publication reference number: 2016/S 230-420091**

I refer to the contract advertised by the Department for International Development for the supply of “**Fund Manager for the Supply Component of the Somali Health and Nutrition Programme**” under the above OJEU reference number **2016/S 230-420091**.

The mandatory ‘standstill period’ has now expired and the Department for International Development acting for and on behalf of the Secretary of State for International Development, is now pleased to advise you that we will be making a formal award of contract for the above mentioned services to BMB Mott MacDonald B.V for the contract to supply Fund Manager for the Supply Component of the Somali Health and Nutrition Programme to those parties as described in the Terms of Reference and contract tender documents.

Please review the enclosed contract documents and confirm that you accept this contract award by signing and returning via our e-sign tool.

As per the DFID Supply Partner Code of Conduct, if this contract qualifies for internal compliance procedures, a member of the PCD Compliance Team will contact you to discuss your compliance requirements.

Yours sincerely

[REDACTED]  
Senior Procurement Manager  
Programme Sourcing - Procurement and Commercial Department

cc. [suppliercompliance@dfid.gov.uk](mailto:suppliercompliance@dfid.gov.uk)

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## CONTRACT FOR SUPPLIER SERVICES

### Section 1 - FORM OF CONTRACT

**CONTRACT FOR** : **Fund Manager for the Supply Component of the Somali Health and Nutrition Programme (SHINE)**  
**PURCHASE ORDER NUMBER :** **7751**

#### THIS CONTRACT is made

**BETWEEN** : The Secretary of State for International Development at the Department for International Development, ("**DFID**");

**AND** : BMB Mott MacDonald ("**Supplier**")  
[whose principal place of business, or, where the Supplier is a company, whose registered office is situate at B.V.Amsterdamseweg 15, 6814 CM Arnhem, The Netherlands]

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

#### WHEREAS:

- A.** DFID requires the Supplier to provide the Services to DFID and the Somali Health Authorities in Somalia and Somaliland (the "**Recipient**"); and
- B.** the Supplier has agreed to provide the Services on the terms and conditions set out in this Contract.

#### IT IS HEREBY AGREED as follows:

##### 1. Documents

This Contract shall be comprised of the following documents:

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

##### 2. Contract Signature

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

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

##### 3. Commencement Date and End Date of Initial Period

The Services shall commence on 1<sup>st</sup> July 2018 and the end date of the Initial Period shall be



31<sup>st</sup> March 2021 .

**4. Financial Limit**

Payments under this Contract shall not, in any circumstances, exceed £19,841,633 exclusive of any government tax, if applicable.

**5. Programme Name**

The Programme Name to which this Contract relates is Fund Manager for the Supply Component of the Somali Health and Nutrition Programme (SHINE).

**6. Time of the Essence**

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

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

Name:

Position:

Signature:

Date:

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

Name:

Position:

Signature:

Date:



Department for International Development (DFID)

## Standard Terms and Conditions – Service Contracts

## SECTION 2 - GENERAL CONDITIONS OF CONTRACT

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## Preliminaries

### 1. DEFINITIONS AND INTERPRETATION

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

### 2. REPRESENTATIONS AND WARRANTIES

- 2.1 The Supplier represents and warrants that:
- 2.1.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - 2.1.2 it has full capacity and authority to enter into and to perform this Contract;
  - 2.1.3 this Contract is executed by its duly authorised representative;

- 2.1.4 it has all necessary consents and regulatory approvals to enter into this Contract;
- 2.1.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- 2.1.6 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 2.1.7 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 2.1.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the standard selection questionnaire and invitation to tender (if applicable), its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to DFID in writing prior to the date of this Contract;
- 2.1.9 it has notified DFID in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- 2.1.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to DFID which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by DFID;
- 2.1.11 the Charges set out in Section 5 (Schedule of Prices) is/will be a true and accurate reflection of the costs and the Projected Profit Margin and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Charges;
- 2.1.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- 2.1.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue
- 2.2 The representations and warranties set out in Clause 2.1 shall be deemed to be repeated by the Supplier on the Commencement Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 2.3 The representations and warranties set out in this Clause 2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 2.4 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 2.1 has been breached, is untrue or is misleading, it shall immediately notify DFID of the relevant occurrence in sufficient detail to enable DFID to make an accurate assessment of the situation.
- 2.5 the Supplier System and assets used in the performance of the Services will be:
  - 2.5.1 free of all encumbrances, any exceptions must be agreed in writing with DFID; and
  - 2.5.2 Euro Compliant.
- 2.6 The Supplier shall at all times comply with Law in carrying out its obligations under this Contract.
- 2.7 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which DFID may have in respect of breach of that provision by the Supplier.
- 2.8 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.



### **3. FINANCIAL LIMIT**

- 3.1 The components which comprise the Financial Limit are set out in Section 5 (Schedule of Prices). No expenditure may be incurred in excess of the Financial Limit and no virements between components shown in the Section 5 (Schedule of Prices) are permitted without the prior written authority of the DFID Contract Officer.

## **Term of Contract**

### **4. CONTRACT TERM**

- 4.1 The duration of this Contract shall be the Term.
- 4.2 Where DFID has specified an Extension Period in the Section 4 (Special Conditions), DFID may extend this Contract for the Extension Period by providing written notice to the Supplier before the end of the Initial Period. The minimum period for the written notice shall be as specified in Section 4 (Special Conditions).

## **Provision of Services**

### **5. OBLIGATIONS OF THE SUPPLIER**

- 5.1 The Supplier shall perform all its obligations under this Contract with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts and in accordance with DFID's Supply Partner Code of Conduct (Appendix B).
- 5.2 If the Supplier is a joint venture or an unincorporated consortium then each of the joint venture or consortium partners shall bear joint and several liability where liability may arise.
- 5.3 In performing its obligations under this Contract, neither the Supplier, nor any of its Affiliates, shall embarrass DFID or otherwise bring DFID into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in DFID, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract.
- 5.4 The Supplier shall ensure that the Services:
- 5.4.1 comply in all respects with the description of Services in Section 3 (Terms of Reference) or elsewhere in this Contract; and
  - 5.4.2 are supplied in accordance with the provisions of this Contract and the Tender.
- 5.5 The Supplier shall perform its obligations under this Contract in accordance with:
- 5.5.1 all applicable Law;
  - 5.5.2 Good Industry Practice;
  - 5.5.3 any policies provided by DFID; and
  - 5.5.4 the Supplier's own established procedures and practices to the extent they do not conflict with the requirements of Clauses 5.5.1 to 5.5.3.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its Supplier Personnel also do, or refrain from doing, such act or thing.

## **Supplier Personnel and Supply Chain Matters**

### **6. SUPPLIER PERSONNEL**

- 6.1 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Clause 15 (Exit Management)) unless:
- 6.1.1 requested to do so by DFID;

- 6.1.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
- 6.1.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated by the employer for material breach of contract; or
- 6.1.4 the Supplier obtains Approval (such Approval not to be unreasonably withheld or delayed).

6.2 The Supplier shall:

- 6.2.1 provide a list of the names of all Supplier Personnel requiring admission to DFID Sites, specifying the capacity in which they require admission and giving such other particulars as DFID may reasonably require;
  - 6.2.2 ensure that all Supplier Personnel:
    - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
    - (b) are vetted in accordance with Good Industry Practice and in compliance with the Staff Vetting Procedure;
    - (c) obey all lawful instructions and reasonable directions of DFID (including, if so required by DFID, the ICT Policy) and provide the Services to the reasonable satisfaction of DFID; and
    - (d) comply with:
      - (i) all reasonable requirements of DFID concerning conduct at DFID Sites, including any security requirements; and
      - (ii) any DFID policies, provided to the Supplier or Supplier Personnel from time to time
  - 6.2.3 subject to Schedule 2 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or Contractors of DFID;
  - 6.2.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
  - 6.2.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
  - 6.2.6 subject to Clause 6.1, replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
  - 6.2.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
  - 6.2.8 procure that the Supplier Personnel shall vacate DFID Sites immediately upon the Expiry Date.
- 6.3 If DFID reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- 6.3.1 refuse admission to the relevant person(s) to DFID Sites and/or
  - 6.3.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
  - 6.3.3 require the Supplier to replace the relevant person(s) without direct or indirect charge to DFID and the Supplier shall fully indemnify and hold DFID harmless against any claims of any kind that may arise with regard to the replacement of such Supplier Personnel.

**7. SUB-CONTRACTORS AND EXCLUSIVITY**

- 7.1 DFID has consented to the appointment of the Sub-Contractors set out in Section 4 (Special Conditions).
- 7.2 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
  - 7.2.1 manage any Sub-Contracts in accordance with Good Industry Practice;
  - 7.2.2 comply with its obligations under this Contract in the provision of the Services; and

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

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

## **8. STAFF TRANSFER**

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

## **9. DUTY OF CARE**

- 9.1 The Supplier owes a duty of care to the Supplier Personnel and is responsible for the health, safety, security of life and property and general wellbeing of such persons and their property and this includes where the Supplier Personnel carry out the Services.
- 9.2 The Supplier warrants that it has and will throughout the duration of the Contract:
- 9.2.1 carry out the appropriate risk assessment with regard to its delivery of the Services;
  - 9.2.2 provide the Supplier Personnel with adequate information, instruction, training and supervision;
  - 9.2.3 have appropriate emergency procedures in place to enable their provision of the Services so as to prevent damage to the Supplier Personnel's health, safety, security of life and property and general wellbeing.
- 9.3 The provision of information of any kind whatsoever by DFID to the Supplier shall not in any respect relieve the Supplier from responsibility for its obligations under this Clause 9. The positive evaluation of the Supplier's proposal for the provision of the Services and the award of this Contract is not an endorsement by DFID of any arrangements which the Supplier has made for the health, safety, security of life and property and wellbeing of the Supplier Personnel in relation to the provision of the Services.
- 9.4 The Supplier acknowledges that the DFID accepts no responsibility for the health, safety, security of life and property and general wellbeing of the Supplier Personnel with regard to the Supplier Personnel carrying out the Services under this Contract.
- 9.5 The Supplier will ensure that such insurance arrangements as are made to cover the Supplier Personnel, or any person employed or otherwise engaged by the Supplier, and pursuant to the Suppliers duty of care as referred to in this Clause 9, are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.

- 9.6 The costs of any insurance specifically taken out by the Supplier to support the performance of this Contract in relation to the Supplier's duty of care may be included as part of the management costs of the project, and must be separately identified in all financial reporting relating to the project.
- 9.7 Where DFID is providing any specific security arrangements for the Supplier or Supplier Personnel in relation to the Contract, these will be as detailed in the Section 3 (Terms of Reference).
- 9.8 The Supplier shall provide training on a continuing basis for all Supplier Personnel, in compliance with the Security Policy and the security plan.
- 10. PROCUREMENT OF EQUIPMENT**
- 10.1 The Supplier shall ensure that procurement of goods and equipment shall:
- 10.1.1 be undertaken in accordance with best practice principles of openness fairness and transparency;
  - 10.1.2 achieve "Value for Money" defined as the optimum combination of whole-life cost and quality to meet requirements in a fully transparent manner and the procurement may be subject to audit by DFID;
  - 10.1.3 be carried out using strict due diligence processes that ensure the protection of DFID's interests and reputation, with particular emphasis on anti-terrorism, anti-corruption and fraud throughout the delivery chain; and
  - 10.1.4 be on the basis that the ownership of Equipment shall vest in DFID, and shall be so marked.
- 11. USE OF AND RESPONSIBILITY FOR EQUIPMENT**
- 11.1 Equipment may only be used in providing the Services and shall be safely kept and maintained. Personal use of Equipment by the Supplier is not permitted without Approval.
- 11.2 The Supplier shall keep an up to date inventory of the Equipment its condition and location and make such inventory available to DFID immediately on request.
- 11.3 Subject to Clause 11.4 the Supplier shall be responsible for all loss or damage to Equipment other than that caused by fair wear and tear. The Supplier shall notify DFID immediately the Supplier becomes aware of any loss of or damage to Equipment
- 11.4 Except as required by law or circumstance, the Supplier shall not insure Equipment. DFID shall bear the risk in respect of loss or damage provided such loss or damage was not due to the Supplier's negligence and provided the Supplier obtains and pays to DFID such proper compensation as may be due from any third party in respect of such loss or damage to the Equipment.
- 11.5 The Supplier shall obtain DFID's instructions on the disposal of Equipment and comply with such instructions.

## Contract Governance

- 12. MONITORING OF CONTRACT PERFORMANCE**
- 12.1 Unless Section 4 (Special Conditions) specifies that obligations relating to the monitoring of Contract performance shall be those set out in Section 3 (Terms of Reference), the remaining provisions of this Clause 12 shall apply.
- 12.2 Within twenty (20) Working Days of the Commencement Date the Supplier shall provide DFID with details of how the process in respect of the monitoring and reporting of the performance of the Supplier's obligations under this Contract will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 12.3 The Supplier shall provide DFID with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Clause 12.2 above which shall contain, as a minimum, the following information:
- 12.3.1 details of compliance with its obligations under Clause 7.8.2
  - 12.3.2 details of compliance with any additional obligations set out in Section 3 (Terms of Reference); and
  - 12.3.3 such other details as DFID may reasonably require from time to time.
- 12.4 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and DFID of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

- 12.4.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
  - 12.4.2 take place at such location and time (within normal business hours) as DFID shall reasonably require unless otherwise agreed in advance;
  - 12.4.3 be attended by the Supplier's Contract Officer and the DFID's Contract Officer; and
  - 12.4.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the DFID's Contract Officer and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Contract Officer and the DFID's Contract Officer at each meeting.
- 12.5 In order to assess the level of performance of the Supplier, DFID may undertake satisfaction surveys in respect of the Supplier's provision of the Services and DFID shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with this Contract.

### **13. PROGRESS & FINANCIAL REPORTS**

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

### **14. OPEN BOOK ACCOUNTING AND AUDIT**

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

- (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
  - (i) carry out DFID's internal and statutory audits and to prepare, examine and/or certify DFID's annual and interim reports and accounts;
  - (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which DFID has used its resources;
  - (k) review any records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
  - (l) verify the accuracy and completeness of any information delivered or required by this Contract;
  - (m) review the Supplier's quality management systems (including any quality manuals and procedures);
  - (n) review the Supplier's compliance with any standards referred to in this Contract or applicable to the provision of the Services;
  - (o) inspect any of DFID's assets, including DFID's IPRs, equipment and facilities, for the purposes of ensuring that any of DFID's assets are secure and that any register of assets is up to date; and/or
  - (p) review the integrity, confidentiality and security of DFID Data.
- 14.4 DFID shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of DFID.
- 14.5 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 14.5.1 all reasonable information requested by DFID within the scope of the audit;
  - 14.5.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
  - 14.5.3 access to the Supplier Personnel.
- 14.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 14, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse DFID for the DFID's reasonable costs incurred in relation to the audit.

## **15. EXIT MANAGEMENT**

- 15.1 On reasonable notice at any point during the Term, the Supplier shall provide to DFID and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by DFID of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- 15.1.1 details of the Service(s);
  - 15.1.2 a copy of the Register, updated by the Supplier up to the date of delivery of such Registers;
  - 15.1.3 an inventory of DFID Data in the Supplier's possession or control;
  - 15.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - 15.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
  - 15.1.6 all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees' required to be provided by the Supplier under this Contract such information to include the Staffing Information as defined in Schedule 2 (Staff Transfer); and
  - 15.1.7 such other material and information as DFID shall reasonably require,

(together, the “Exit Information”).

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



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

## **PAYMENT AND TAXATION**

### **16. Charges**

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

### **17. VAT**

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

### **18. RETENTION AND SET OFF**

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

### **19. SUPPLIER PROFIT**

- 19.1 On completion of each Contract Year (or on a six-monthly basis if requested by DFID giving reasonable written notice), and for any Variation, the Supplier is required to send a written report (the “**Actual Profit Margin Report**”) in a format determined by DFID from time to time setting out the Actual Profit Margin including any change to the Projected Profit Margin.
- 19.2 Where the Actual Profit Margin Report identifies that the Supplier has exceeded the Projected Profit Margin over the period set out in the Actual Profit Margin Report (“the **Exceeded Amount**”), the Parties shall agree within a reasonable period of time following receipt by DFID of the Actual Profit Margin Report how the Exceeded Amount should be apportioned. Where the Parties are unable to agree DFID shall be entitled to require the Supplier to do any of the following:

- 19.2.1 pay DFID an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount; or
- 19.2.2 redirect an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount back in to the programme being delivered as part of the Services; or
- 19.2.3 adjust the Charges.

## **20. SATISFACTORY PERFORMANCE**

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

## **21. PAYMENTS & INVOICING INSTRUCTIONS**

- 21.1 Subject to DFID being satisfied that the Supplier is or has been carrying out their duties, obligations and responsibilities under this Contract, the applicable Charges shall be paid within 30 days of receipt of an undisputed Valid Invoice and payment shall be made in sterling in the UK or any other currency in any other country as determined from DFID from time to time.
- 21.2 Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in OANDA ([www.oanda.com](http://www.oanda.com)) on the Friday immediately preceding the date on which the purchase was made or services acquired by the Supplier or, if this took place on a Friday, at the rate so stated on that day.
- 21.3 Unless otherwise expressly provided in Section 4 (Special Conditions) or Section 5 (Schedule of Prices), invoices should be submitted electronically monthly in arrears to the Accounts Payable Section, DFID Financial Management Group [e-invoicing@dfid.gov.uk](mailto:e-invoicing@dfid.gov.uk), and in accordance with this Clause 21.
- 21.4 DFID shall unless otherwise expressly provided in Section 4 (Special Conditions) make payments due by direct credit through the UK Bank Clearing Systems (BACS). For an invoice to be valid, it must contain:
- 21.4.1 details of the bank account to which payments are to be made (i.e. name and address of bank, sort code, account name and number).
- 21.4.2 the date of the invoice;
- 21.4.3 a unique invoice number;
- 21.4.4 the period(s) to which the relevant charge(s) relate;
- 21.4.5 the correct reference for this Agreement and the purchase order to which it relates;
- 21.4.6 a contact name and telephone number of a responsible person in the supplier’s finance department;

21.4.7 a detailed breakdown of the Services and the appropriate Charges and supported by any other documentation required by DFID to substantiate the invoice.

21.5 All Valid Invoices should correspond with the budget lines identified in Section 5 (Schedule of Prices) of this Contract.

21.6 DFID may request proof of purchase in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.

21.7 Where an invoice is not a Valid Invoice it may be rejected by DFID and in any event shall be liable to query and delay in payment. DFID reserves the right to not pay any amount due in respect of any invoice received by DFID more than 90 days after the day of the Supplier becoming entitled to invoice for the payment to which it relates.

## **22. UNITED KINGDOM INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**

22.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:

22.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration;

22.1.2 indemnify DFID against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

## **23. TAX COMPLIANCE**

23.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

23.1.1 notify DFID in writing of such fact within 5 Working Days of its occurrence;

23.1.2 promptly provide to DFID:

(a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non-Compliance as DFID may reasonably require.

## **Intellectual Property, Security and Information**

### **24. INTELLECTUAL PROPERTY RIGHTS**

24.1 Save as expressly granted elsewhere under this Contract:

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

(a) the Supplier Background IPR; and

(b) the Third Party IPR.

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

(a) DFID Background IPR;

(b) DFID Data;

(c) Project Specific IPRs; and

(d) Programme Name and any rights and interests in it at all times.

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

- 24.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 24.4 Any Project Specific IPRs created under this Contract shall be owned by DFID. DFID grants the Supplier a licence to use any DFID Background IPR and Project Specific IPRs for the purpose of fulfilling its obligations under this Contract during its Term.
- 24.5 Subject to Clause 24.7, to the extent that it is necessary to enable DFID to obtain the full benefits of ownership of the Project Specific IPRs, the Supplier hereby grants to DFID and shall procure that any relevant third party licensor shall grant to DFID a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR Items.
- 24.6 The Supplier shall promptly notify DFID if it is reasonably believes that it will be unable to grant or procure the grant of the licences set out in Clause 24.5 above and the Supplier shall provide full details of the adverse effect this may have on DFID's use of the Project Specific IPRs.
- 24.7 Where the Supplier is unable to comply with Clause 24.5, the Supplier shall refrain from embedding or integrating any Supplier Background IPRs and/or Third Party IPRs with the Project Specific IPRs in such a way that could affect DFID obtaining full benefit of the ownership of those Project Specific IPRs, except where DFID has provided express written Approval to do so.
- 24.8 The Supplier shall, during and after the Term, on written demand, indemnify DFID against all Losses incurred by, awarded against, or agreed to be paid by DFID (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 24.9 If an IPR Claim is made or anticipated, the Supplier must at its own expense and DFID's sole option, either:
- 24.9.1 procure for DFID the rights in Clause 24.5 without infringing the IPR of any third party; or
- 24.9.2 replace or modify the relevant item with non-infringing substitutes with no detriment to functionality or performance of the Services.

## **25. SECURITY REQUIREMENTS**

- 25.1 The Supplier shall comply, and shall procure that the Supplier Personnel comply, with the Security Policy and any security plan requested by DFID, and the Supplier shall ensure that the security plan produced by the Supplier fully complies with the Security Policy.
- 25.2 The Supplier shall ensure that it keeps up to date with the latest version of the Security Policy.
- 25.3 If the Supplier believes that a change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a variation in accordance with Clause 37. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in discussion with the DFID Contract Officer.
- 25.4 Until and/or unless a change to the Charges is agreed by DFID pursuant to Clause 25.3 the Supplier shall continue to perform the Services in accordance with its obligations and for the Charges applicable prior to any change request.

## **26. MALICIOUS SOFTWARE**

- 26.1 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 26.2 Notwithstanding Clause 26.1 if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of DFID Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 26.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 26.2 shall be borne by the Parties as follows:
- 26.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software or the DFID Data (whilst the DFID Data was under the control of the Supplier); and
- 26.3.2 by DFID if the Malicious Software originates from the DFID Software or the DFID Data (whilst DFID Data was under the control of DFID).

## **27. TRANSPARENCY**

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

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

## **29. FREEDOM OF INFORMATION**

- 29.1 The Supplier acknowledges that DFID is subject to the requirements of the FOIA, the Environmental Information Regulations and associated codes of practice and shall assist and cooperate with DFID to enable DFID to comply with its Information disclosure obligations.
- 29.2 The Supplier shall and shall ensure that its Sub-Contractors shall:
- 29.2.1 transfer to DFID all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - 29.2.2 provide DFID with a copy of all Information in its possession, or power in the form that DFID requires within five (5) Working Days (or such other period as DFID may specify) of DFID's request; and
  - 29.2.3 provide all necessary assistance as reasonably requested by DFID to enable DFID to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 29.3 DFID shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA, the Environmental Information Regulations and associated codes of practice.
- 29.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by DFID.
- 29.5 The Supplier acknowledges that DFID may, acting in accordance with any code of practice issued pursuant to Section 45 of FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:

- 29.5.1 in certain circumstances without consulting the Supplier;
  - 29.5.2 following consultation with the Supplier and having taken their views into account;
  - 29.5.3 provided always that where Clause 29.5.1 applies DFID shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 29.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clauses 29.7 and 29.8 and shall permit DFID to inspect such records as requested by DFID from time to time.
- 29.7 The Supplier shall, during this Contract and for a period of at least seven years following the expiry or termination of this Contract, retain and maintain all Information:
- 29.7.1 in accordance with Good Industry Practice and Law;
  - 29.7.2 in chronological order;
  - 29.7.3 in a form that is capable of audit;
  - 29.7.4 at its own expense.
- 29.8 Wherever practical, original Information shall be retained and maintained in hard copy form.
- 30. OFFICIAL SECRETS ACT**
- 30.1 The Supplier shall, and shall ensure that the Supplier Personnel shall, comply with any relevant obligations arising under the Official Secrets Acts 1911 to 1989.
- 31. DFID DATA**
- 31.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to DFID Data.
- 31.2 The Supplier shall not store, copy, disclose, or use DFID Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by DFID.
- 31.3 To the extent that DFID Data is held and/or processed by the Supplier, the Supplier shall supply that DFID Data to DFID as requested by DFID in the format(s) specified by DFID.
- 31.4 Upon receipt or creation by the Supplier of any DFID Data and during any collection, processing, storage and transmission by the Supplier of any DFID Data, the Supplier shall take responsibility for preserving the integrity of DFID Data and preventing the corruption or loss of DFID Data.
- 31.5 The Supplier shall perform secure back-ups of all DFID Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Security Policy. The Supplier shall ensure that such back-ups are available to DFID at all times upon request, with delivery times as specified by DFID.
- 31.6 The Supplier shall ensure that the system on which the Supplier holds any DFID Data, including back-up data, is a secure system that complies with the Security Policy.
- 31.7 If DFID Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, DFID may:
- 31.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of DFID Data to the extent and in accordance with the Business Continuity and Disaster Recovery Provisions specified in the Security Policy and the Supplier shall do so as soon as practicable but not later than three days following a written request from DFID; and/or
  - 31.7.2 itself restore or procure the restoration of DFID Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery provisions specified in the Security Policy.
- 31.8 If at any time the Supplier suspects or has reason to believe that DFID Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify DFID immediately and inform DFID of the remedial action the Supplier proposes to take.
- 31.9 The Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme.

## **32. PROTECTION OF PERSONAL DATA**

- 32.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, DFID is the Controller and the Supplier is the Processor unless otherwise specified in Appendix A of the Terms of Reference (at Section 3 of the contract). The only processing that the Processor is authorised to do is listed in Appendix A of the Terms of Reference by the Controller and may not be determined by the Processor.
- 32.2 The Processor shall notify the Controller immediately if it considers that any of Controller's instructions infringe the Data Protection Legislation.
- 32.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - b) an assessment of the necessity and proportionality of the processing operations in relation to the services.
  - c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 32.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- a) process that Personal Data only in accordance with the Appendix A referred to in para 32.1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
    - I. nature of the data to be protected;
    - II. harm that might result from a Data Loss Event;
    - III. state of technological development; and
    - IV. cost of implementing any measures;
  - c) ensure that :
    - I. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix A referred to in para 32.1);
    - II. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      - A. are aware of and comply with the Processor's duties under this clause;
      - B. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
      - D. have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - I. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
    - II. the Data Subject has enforceable rights and effective legal remedies;
    - III. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - IV. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
  - e) At the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 32.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:
- a) receives a Data Subject Access Request (or purported Data Subject Access Request);



- b) receives a request to rectify, block or erase any Personal Data;
  - c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;  
or
  - f) becomes aware of a Data Loss Event.
- 32.6 The Processor's obligation to notify under clause 32.5 shall include the provision of further information to the Controller in phases, as details become available.
- 32.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 32.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- a) the Controller with full details and copies of the complaint, communication or request;
  - b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - d) assistance as requested by the Controller following any Data Loss Event;
  - e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 32.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- a) the Controller determines that the processing is not occasional;
  - b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 32.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 32.10 Each party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 32.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- a) notify the Controller in writing of the intended Sub-processor and processing;
  - b) obtain the written consent of the Controller;
  - c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 32 such that they apply to the Sub-processor; and
  - d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 32.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 32.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 32.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 32.15 Where the Parties include two or more Joint Controllers as identified in Appendix A referred to in para 32.1 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Appendix A referred to in para 32.1 in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

### **33. BRANDING**

- 33.1 The Supplier shall collaborate with DFID and proactively look for ways to build support for development and raise awareness of DFID's funding. The Supplier shall explicitly acknowledge DFID's funding, in written and verbal communications about activities related to the funding, to the public or third parties, including in announcements, and through use, where appropriate, of DFID's "UK aid – from the British people" logo ('UK aid logo') in accordance with DFID standards for use of the UK aid logo, unless otherwise agreed in advance by DFID and in all cases subject to security and safety considerations of the Supplier.
- 33.2 The Supplier shall provide a visibility statement of how and when they will acknowledge funding from DFID and where they will use the UK aid logo. The Supplier shall include reference to this in its progress reports and annual reviews.

- 33.3 Suppliers may use the UK aid logo in conjunction with other donor logos, and where the number of donors to a programme or project is such as to make co-branding impractical, acknowledgement of funding from DFID shall be equal to that of other co-donors making contributions of equivalent amounts to the programme or project.

## **Liabilities**

### **34. LIMIT OF LIABILITY**

- 34.1 Neither Party limits its liability for:

- 34.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- 34.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 34.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 34.1.4 any liability to the extent it cannot be limited or excluded by Law.

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

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

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

- 34.4.1 loss of profits, turnover, savings business opportunities, revenue or damage to goodwill (in each case whether direct or indirect); and/or
- 34.4.2 indirect, special or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the Party has been advised of the possibility of such losses occurring.

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

- 34.5.1 any additional operational and/or administrative costs and expenses incurred by DFID, including costs relating to time spent by or on behalf of DFID in dealing with the consequences of the Default;
- 34.5.2 any wasted expenditure or charges;
- 34.5.3 the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Contract;
- 34.5.4 any compensation or interest paid to a third party by DFID; and
- 34.5.5 any fine, penalty or costs incurred by DFID pursuant to Law.

### **35. INDEMNITY**

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

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

### **36. INSURANCE**

- 36.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Contract in accordance with Schedule 3 (Insurance Requirements).

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

## Control of Contract

### 37. VARIATIONS

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

### 38. ASSIGNMENT AND NOVATION

- 38.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without Approval.
- 38.2 Subject to Clause 38.1, the Supplier may assign to a third party (“the Assignee”) the right to receive payment of the Charges or any part thereof due to the Supplier under this Contract (including any interest to which DFID is liable under the Late Payments of Commercial Debts (Interest) Act 1998). Any assignment under this Clause 38.2 shall be subject to:
- 38.2.1 deduction of any sums in respect of which DFID exercises its right of recovery under Clause 18 (Retention and Set Off);
- 38.2.2 all related rights of DFID under the Contract in relation to the recovery of sums due but unpaid; and
- 38.2.3 DFID receiving notification under both Clauses 38.3 and 38.4.
- 38.3 In the event that the Supplier assigns the right to receive the Charges under Clause 38.2, the Supplier shall notify DFID in writing of the assignment and the date upon which the assignment becomes effective.
- 38.4 The Supplier shall notify DFID of the assignee’s contact information and bank account details to which DFID shall make payment.

## Default and Termination

### 39. DFID REMEDIES FOR DEFAULT

#### 39.1 Remedies

- 39.1.1 Without prejudice to any other right or remedy of DFID howsoever arising if the Supplier commits any Default of this Contract then DFID may (whether or not any part of the Services have been provided) do any of the following:
- (a) at DFID's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the DFID 's instructions;
  - (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Contract;
  - (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
    - (i) instruct the Supplier to comply with the Rectification Plan Process;
    - (ii) suspend this Contract (whereupon the relevant provisions of Clause 43 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
    - (iii) without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 43 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services.
- 39.1.2 Where DFID exercises any of its step-in rights under Clauses 39.1.1 (c) (ii) or 39.1.1 (c) (iii), DFID shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by DFID (including any reasonable administration costs) in respect of the supply of any part of the Services by DFID or a third party and provided that DFID uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

## **39.2 Rectification Plan Process**

- 39.2.1 Where DFID has instructed the Supplier to comply with the Rectification Plan Process pursuant to 39.1.1 (c) (i):
- (a) the Supplier shall submit a draft Rectification Plan to DFID for it to review as soon as possible and in any event within 10 (ten) Working Days (or such other period as may be agreed between the Parties) from the date of DFID's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the DFID's request for a draft Rectification Plan.
  - (b) the draft Rectification Plan shall set out:
    - (i) full details of the Default that has occurred, including a root cause analysis;
    - (ii) the actual or anticipated effect of the Default; and
    - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- 39.2.2 The Supplier shall promptly provide to the DFID any further documentation that the DFID requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Dispute Resolution Procedure.
- 39.2.3 DFID may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
  - (b) will take too long to complete;
  - (c) will not prevent reoccurrence of the Default; and/or
  - (d) will rectify the Default but in a manner which is unacceptable to DFID.

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

#### **40. FORCE MAJEURE**

- 40.1 Subject to the remainder of this Clause 40, a Party may claim relief under this Clause 40 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 40.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 40.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 40 to the extent that consequences of the relevant Force Majeure Event:
- 40.3.1 are capable of being mitigated by any of the provision of any Services but the Supplier has failed to do so; and/or
  - 40.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.
- 40.4 Subject to DFID's right to terminate set out in Clause 40.5, the Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 40.5 Where DFID receives a Force Majeure Notice, from the date of receipt of the Force Majeure Notice, DFID may, at its sole discretion, either suspend this Contract for a period of up to six (6) months ("the Suspension Period") or terminate this Contract forthwith.
- 40.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 40.7 Relief from liability for the Affected Party under this Clause 40 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 40.6.
- 40.8 If by the end of the Suspension Period the Parties have not agreed a further period of suspension or re-instatement of the Contract, this Contract shall terminate automatically.

#### **41. TERMINATION WITHOUT DEFAULT OF THE SUPPLIER**

- 41.1 DFID may, at its sole discretion, terminate this Contract, at any time by issuing a Termination Notice to the Supplier giving at least thirty (30) Working Days written notice (unless stated differently in Section 4 (Special Conditions)).

#### **42. TERMINATION WITH DEFAULT OF THE SUPPLIER**

- 42.1 DFID may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:
- 42.1.1 any representation or warranty given by the Supplier pursuant to Clause 2 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of DFID are acceptable;
  - 42.1.2 DFID expressly reserves the right to terminate this Contract for material Default;

- 42.1.3 the Supplier commits any material Default of the Contract which is not, in the reasonable opinion of DFID, capable of remedy; and/or
- 42.1.4 the Supplier commits a Default, including a material Default, which in the opinion of DFID is remediable but has not remedied such Default to the satisfaction of DFID in accordance with the Rectification Plan Process.
- 42.2 For the purpose of Clause 42.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.
- 42.3 DFID may, without prejudice to its other rights, including but not limited to the right to claim for Losses incurred, issue a Termination Notice where:
  - 42.3.1 the Supplier or any Supplier Personnel, either directly or through their servants or agents or Sub-Contractors breaches any of their obligations under this Contract; or
  - 42.3.2 the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf has committed an offence under the Bribery Act 2010 or the Terrorism Act 2000 in breach of Clauses 35 or 36 of this Contract; or
  - 42.3.3 DFID has the right to terminate under Clause 37.3.2; or
  - 42.3.4 the Supplier is an individual or a partnership and at any time:
    - (a) becomes bankrupt; or
    - (b) is the subject of a receiving order or administration order; or
    - (c) makes any composition or arrangement with or for the benefit of the Supplier's creditors; or
    - (d) makes any conveyance or assignment for the benefit of the Supplier's creditors; or
    - (e) the warranty given by the supplier pursuant to Clause 23 (Tax Compliance) is materially untrue; or
    - (f) the Supplier commits a material breach of its obligation to notify DFID of any Occasion of Tax Non Compliance as required by Clause 23 (Tax Compliance); or
    - (g) the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of DFID, are acceptable; or
  - 42.3.5 the Supplier is a company and:
    - (a) an order is made or a resolution is passed for the winding up of the Supplier; or
    - (b) a receiver or administrator is appointed in respect of the whole or any part of the undertaking of the Supplier; or
  - 42.3.6 the Supplier is a partnership or a company and there is a Change of Control.
  - 42.3.7 there is an occurrence of any of the statutory provisos contained in Regulation 73(1)(a)-(c) of the Regulations.
- 42.4 Where this Contract is terminated in accordance with this Clause 42, the Supplier shall without prejudice to DFID's other remedies, take any steps necessary to terminate the provision of the Services in a timely and orderly manner and in compliance with Clause 15 (Exit Management) but shall not be entitled to any further payment in relation to this Contract.

#### **43. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION**

- 43.1 Where DFID has the right to terminate this Contract, DFID shall be entitled to terminate or suspend all or part of this Contract provided always that, if DFID elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in DFID's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.
- 43.2 Any suspension of this Contract under Clause 43.1 shall be for such period as DFID may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to DFID.

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

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

43.3.2 reject the Variation.

#### **44. CONSEQUENCES OF EXPIRY OR TERMINATION**

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

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

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

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

(a) any costs, if any, due before the date of termination, which cannot be avoided by the Supplier using reasonable endeavours; and

(b) costs to be expended after the date of termination which the Supplier necessarily incurred in the proper performance of this Contract and which the Supplier cannot reasonably avoid or recover using reasonable endeavours;

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

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

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

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

44.3.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of DFID or the Supplier under Clauses 14, 15, 16, 17, 18, 20, 21, 24, 27, 28, 29, 30, 31, 32, 34, 35, 44, 45, 49 and 54, and the provisions of Schedule 2 (Staff Transfer) of this Section 2 and any relevant clauses listed under Section 4 (Special Conditions), and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

## **MISCELLANEOUS AND GOVERNING LAW**

#### **45. DISPUTE RESOLUTION PROCEDURE**

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

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

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

45.3 The seat and place of arbitration shall be London.

**46. PREVENTION OF FRAUD AND BRIBERY**

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

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

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

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

46.2.1 commit a Prohibited Act; and/or

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

46.3 The Supplier shall during the Term:

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

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

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

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

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

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

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

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

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

46.6 Neither the Supplier or the Supplier Personnel or any person acting on their behalf shall accept for their own benefit or pass on for the benefit of partner government, recipient or end user, any trade commission, discount, voucher scheme, re-sale or similar payment or benefit in connection with this Contract.

46.7 Where the Supplier or Supplier Personnel, or any person acting on their behalf, does any of the acts mentioned in Clause 46.5 or commits any offence under the Bribery Act 2010, with or without the knowledge of the Supplier, in relation to this Contract or any other contract with the Crown, DFID shall be entitled:



- 46.7.1 to terminate the Contract with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any Losses resulting from the termination;
  - 46.7.2 to recover from the Supplier the amount or value of any such gift, consideration or commission;
  - 46.7.3 to recover from the Supplier any other Losses sustained as a result of any breach of this Clause 46, whether or not the Contract is terminated.
- 46.8 DFID, the Supplier and the Supplier Personnel shall immediately and without undue delay inform each other of any event that interferes or threatens to materially interfere with the successful delivery of the Services, whether financed in full or in part by DFID, including credible suspicion of/or actual fraud, bribery, corruption or any other financial irregularity or impropriety.
- DFID has an expert fraud investigation unit, that should be contacted in the first instance at [reportingconcerns@dfid.gov.uk](mailto:reportingconcerns@dfid.gov.uk) or +44 (0)1355 843747. All suspicions will be treated with the utmost confidentiality.

#### **47. ANTI-TERRORISM REGULATIONS**

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

#### **48. DISCRIMINATION**

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

(including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment DFID may have been ordered or required to pay to a third party.

#### **49. LAW AND JURISDICTION**

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

#### **50. ENVIRONMENTAL REQUIREMENTS**

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

#### **51. CONFLICT OF INTEREST**

- 51.1 Neither the Supplier nor any of the Supplier Personnel shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Contract.
- 51.2 The Supplier and the Supplier Personnel shall notify DFID immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.
- 51.3 The Supplier shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for DFID and that undertaken for other clients. The Supplier shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against DFID, including conflicts of interest which are likely to prejudice their independence and objectivity in performing the Contract, howsoever arising.
- 51.4 The Supplier shall notify DFID immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and shall advise DFID of how they intend to avoid such a conflict arising or remedy such situation. The Supplier shall subject to any obligations of confidentiality it may have to third parties provide all information and assistance reasonably necessary (at the Supplier's cost) that DFID may request of the Supplier in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with DFID with the aim of avoiding a conflict or remedy a conflict.
- 51.5 Pursuant to Clause 51.4, DFID shall have the right to require that the Supplier puts in place Ethical Walls and will ensure and satisfy DFID that all information relating to the Contract and to the Services (including all working papers, draft reports in both tangible and intangible form) are not shared or made available to person(s) other than Supplier Personnel and that such matters are not discussed by any person(s) other than Supplier Personnel.
- 51.6 In the event of a failure to maintain the Ethical Walls as described above arising during the course of this Contract, DFID reserves the right to immediately terminate the Contract on giving written notice to the Supplier.

#### **52. WAIVER**

- 52.1 A waiver of any of the terms and/or conditions of this Contract shall be valid only where it is agreed expressly in writing and signed by the parties. No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

### 53. ENTIRE AGREEMENT

- 53.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause 53.1 shall not exclude liability in respect of any fraudulent misrepresentation.
- 53.2 The Supplier is not the agent of DFID and has no authority to represent and shall not purport to represent or enter into any commitments on behalf of DFID in any respect.
- 53.3 Nothing in this Contract is intended to make nor shall it make DFID the employer of the Supplier or any of the Supplier Personnel.
- 53.4 All communications by the Supplier relating to the Contract must be addressed to the DFID Contract Officer whose name and address is given in Section 4 (Special Conditions).

### 54. THIRD PARTY RIGHTS

- 54.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 2 (Staff Transfer) (together the **"Third Party Provisions"**) confer benefits on persons named in such provisions other than the Parties (each such person a **"Third Party Beneficiary"**) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CTRPA.
- 54.2 Subject to Clause 54.1, a person who is not a Party to this Contract has no right under the CTRPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 54.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of DFID, which may, if given, be given on and subject to such terms as DFID may determine.
- 54.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 54.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

### 55. NOTICES

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

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

- 55.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 55.2:
- 55.3.1 any Termination Notice (Clause 41 (Termination Without Default of the Supplier) and Clause 42 (Termination With Default of the Supplier)); and
- 55.3.2 any notice in respect of:
- (a) partial termination, suspension or partial suspension (Clause 43 (Partial Termination, Suspension and Partial Suspension)),
  - (b) waiver (Clause 52 (Waiver)); or
  - (c) Default.
- 55.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 55.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 55.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 55.5 Clause 55 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 55.6 For the purposes of Clause 55, the address and email address of each Party shall be as specified in Section 1 Form of Contract).

## SCHEDULE 1: DEFINITIONS

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

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

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

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

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

**“Auditor”** means:

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

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

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

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

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

- (a) Include the following costs:
  - i) the cost to the Supplier, calculated per Man Day, of engaging the Supplier Personnel, including:
    - (A) base salary paid to the Supplier Personnel;
    - (B) employer’s national insurance contributions;
    - (C) pension contributions;
    - (D) car allowances;
    - (E) any other contractual employment benefits;
    - (F) staff training;
    - (G) work place accommodation;
    - (H) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (ii) below); and
    - (I) reasonable recruitment costs by agreement with DFID;
  - ii) costs incurred in respect of any Supplier assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier assets by the Supplier to DFID or (to the extent that risk and title in any Supplier asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier assets;

- iii) operational costs which are not included within (i) or (ii) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services; and

not include the following costs:

- i) overhead;
- ii) financing or similar costs;
- iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term whether in relation to Supplier assets or otherwise;
- iv) taxation;
- v) fines and penalties;
- vi) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

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

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

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

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

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

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

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

**"Data Controller , Data Processor , Data Subject , Personal Data , Personal Data Breach , Data Protection Officer"** take the meaning given in the GDPR.

**"Data Processor Personnel"**: means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

**"Data Protection Legislation"** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [ subject to Royal Assent ] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

**"Data Protection Impact Assessment"**: an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.

**"Data Loss Event"**: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**"Data Subject Access Request"**: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**"DPA 2018"** : Data Protection Act 2018

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

**"DFID Background IPR"** means:

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

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

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

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

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

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

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

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

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

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

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

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

**“Euro Compliant”** means that:

- (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect DFID's business;
- (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and
- (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):
  - (a) be able to perform all such functions in any number of currencies and/or in euros;
  - (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;

- (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
- (d) incorporate protocols for dealing with rounding and currency conversion;
- (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
- (f) permit the input of data in euro and display an outcome in euro where such data, supporting DFID's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK.

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

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

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

**"Expiry Date"** means:

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

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

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

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

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

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

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

**"GDPR"**: the General Data Protection Regulation (*Regulation (EU) 2016/679*)

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

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

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

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

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



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

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

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

**“Intellectual Property Rights” or “IPRs”** means

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

all other rights having equivalent or similar effect in any country or jurisdiction;

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

**“Joint Controllers”**: where two or more Controllers jointly determine the purposes and means of processing

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

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

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

**“LED”**: Law Enforcement Directive (*Directive (EU) 2016/680*)

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

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

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

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

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

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

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

**“Occasion of Tax Non-Compliance”** means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:

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

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

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

Overheads;

- (c) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
 

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

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

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

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

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

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

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

**“Prohibited Act”** has the meaning;

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

- (i) induce that person to perform improperly a relevant function or activity; or
- (ii) reward that person for improper performance of a relevant function or activity;

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

- (c) an offence:
  - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - (ii) under legislation or common law concerning fraudulent acts; or
  - (iii) defrauding, attempting to defraud or conspiring to defraud DFID; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under
- (e) above if such activity, practice or conduct had been carried out in the UK;

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

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

**“Project Specific IPRs”** means:

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

but shall not include the Supplier Background IPR;

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

**“Protective Measures”**: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**“Register”** means a register which sets out full details of:

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

**“Regulations”** means the Public Contracts Regulations 2015 as amended or replaced from time to time;

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

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

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

**“Relevant Transfer”** means a transfer of employment to which the Employment Regulations applies;

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

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

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

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

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

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

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

**“Service Transfer Date”** means the date of a Service Transfer;

**“Services”** means the services set out in the Terms of Reference (Section 3).

**“Sites”** any premises (including DFID premises, the Supplier’s premises or third party premises):

(a) from, to or at which:

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

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

(b) where:

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

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

**“Software”** Specially Written Software, Supplier Software and Third Party Software;

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

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

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

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

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

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

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

**"Sub-processor"**: any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement.

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

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

**"Supplier Background IPRs"** means;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Variation Procedure"** means the procedure set out in Clause 37;

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

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

## SCHEDULE 2: STAFF TRANSFER

### 1. DEFINITIONS

In this Schedule 2, the following definitions shall apply:

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

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

## 2. INTERPRETATION

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



## **PART A**

### **TRANSFERRING DFID EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **1. RELEVANT TRANSFERS**

##### **1.1 DFID and the Supplier agree that:**

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

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

#### **2. DFID INDEMNITIES**

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

- 2.1.1** any act or omission by DFID in respect of any Transferring DFID Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DFID Employee occurring before the Relevant Transfer Date;
- 2.1.2** the breach or non-observance by DFID before the Relevant Transfer Date of:
  - (a) any collective agreement applicable to the Transferring DFID Employees; and/or
  - (b) any custom or practice in respect of any Transferring DFID Employees which DFID is contractually bound to honour;
- 2.1.3** any claim by any trade union or other body or person representing the Transferring DFID Employees arising from or connected with any failure by DFID to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- 2.1.4** any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring DFID Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring DFID Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from DFID to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 2.1.5** a failure of DFID to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring DFID Employees arising before the Relevant Transfer Date;

- 2.1.6 any claim made by or in respect of any person employed or formerly employed by DFID other than a Transferring DFID Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.7 any claim made by or in respect of a Transferring DFID Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DFID Employee relating to any act or omission of DFID in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring DFID Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- 2.2.2 arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by DFID as a Transferring DFID Employee claims, or it is determined in relation to any person who is not identified by DFID as a Transferring DFID Employee, that his/her contract of employment has been transferred from DFID to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to DFID; and
- 2.3.2 DFID may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such other reasonable steps as DFID considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by DFID, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, DFID shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
  - in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
  - (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to DFID within 6 months of the Commencement Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by DFID nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

### 3. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2 the Supplier shall indemnify DFID against any Employee Liabilities arising from or as a result of:
- 3.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring DFID Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DFID Employee whether occurring before, on or after the Relevant Transfer Date;
  - 3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring DFID Employees; and/or
    - (b) any custom or practice in respect of any Transferring DFID Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
  - 3.1.3 any claim by any trade union or other body or person representing any Transferring DFID Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - 3.1.4 any proposal by the Supplier or a Sub-Contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring DFID Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring DFID Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
  - 3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring DFID Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with DFID in writing;
  - 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (a) in relation to any Transferring DFID Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
    - (b) in relation to any employee who is not a Transferring DFID Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from DFID to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
  - 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring DFID Employees in respect of the period from (and including) the Relevant Transfer Date;

- 3.1.8 any claim made by or in respect of a Transferring DFID Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring DFID Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from DFID's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of DFID whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from DFID's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring DFID Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between DFID and the Supplier.

#### **4. INFORMATION**

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

#### **5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by DFID relating to pensions in respect of any Transferring DFID Employee as set down in:
- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- 5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- 5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- 5.2.4 the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

#### **6. PENSIONS**

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

## ANNEX TO PART A: PENSIONS

### 1. PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and DFID:
  - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying DFID if the Supplier breaches any obligations it has under the Admission Agreement;
  - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify DFID in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
  - 1.2.4 agree that DFID may terminate this Contract in the event that the Supplier breaches the Admission Agreement:
    - (a) and that breach is not capable of being remedied; or
    - (b) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from DFID giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that DFID reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

### 2. FUTURE SERVICE BENEFITS

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to DFID, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by DFID in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### 3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified DFID on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

### 4. PROVISION OF INFORMATION

The Supplier and DFID respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

## **5. INDEMNITY**

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

## **6. EMPLOYER OBLIGATION**

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

## **7. SUBSEQUENT TRANSFERS**

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or DFID may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 7.3 for the applicable period either:
  - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
  - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract,  
ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or DFID, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of DFID (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **8. BULK TRANSFER**

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

## **PART B**

### **TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **1. RELEVANT TRANSFERS**

**1.1** DFID and the Supplier agree that:

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

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

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

#### **2. FORMER SUPPLIER INDEMNITIES**

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

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

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

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

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

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

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

- (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
  - 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 2.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by DFID as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by DFID as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to DFID and, where required by DFID, to the Former Supplier; and
  - 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or DFID, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
  - 2.5.1 no such offer of employment has been made;
  - 2.5.2 such offer has been made but not accepted; or
  - 2.5.3 the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, DFID shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.



2.7 The indemnity in Paragraph 2.6:

2.7.1 shall not apply to:

(a) any claim for:

- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

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

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

### 3. SUPPLIER INDEMNITIES AND OBLIGATIONS

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

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

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

- (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

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

3.1.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with DFID and/or the Former Supplier in writing;

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

- (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

#### **4. INFORMATION**

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

#### **5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by DFID relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
  - 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 5.1.4 the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

## **6. PROCUREMENT OBLIGATIONS**

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

## **7. PENSIONS**

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

## ANNEX TO PART B: PENSIONS

### 1. PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and DFID:
  - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying DFID if the Supplier breaches any obligations it has under the Admission Agreement;
  - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify DFID in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
  - 1.2.4 agree that DFID may terminate this Contract for material default in the event that the Supplier breaches the Admission Agreement:
    - (a) and that breach is not capable of being remedied; or
    - (b) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from DFID giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that DFID reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

### 2. FUTURE SERVICE BENEFITS

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to DFID, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by DFID in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### 3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified DFID on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

#### **4. PROVISION OF INFORMATION**

The Supplier and DFID respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

#### **5. INDEMNITY**

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

#### **6. EMPLOYER OBLIGATION**

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

#### **7. SUBSEQUENT TRANSFERS**

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
  - 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or DFID may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
  - 7.3 for the applicable period either
    - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
    - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract,
- ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or DFID, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of DFID (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

#### **8. BULK TRANSFER**

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

## **PART C**

### **NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **1. PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 DFID and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of DFID and/or any Former Supplier.
- 1.2 If any employee of DFID and/or a Former Supplier claims, or it is determined in relation to any employee of DFID and/or a Former Supplier, that his/her contract of employment has been transferred from DFID and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 1.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to DFID and, where required by DFID, give notice to the Former Supplier; and
  - 1.2.2 DFID and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as DFID or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by DFID and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
  - 1.4.1 no such offer of employment has been made;
  - 1.4.2 such offer has been made but not accepted; or
  - 1.4.3 the situation has not otherwise been resolved,the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

#### **2. INDEMNITIES**

- 2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, DFID shall:
  - 2.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of DFID referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
  - 2.1.2 subject to paragraph 3, procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re-employed by DFID and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall

indemnify DFID and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify DFID and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

(a) any claim for:

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

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

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

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

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

### 3. PROCUREMENT OBLIGATIONS

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

## PART D

### EMPLOYMENT EXIT PROVISIONS

#### 1. PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 1.1.1 receipt of a notification from DFID of a Service Transfer or intended Service Transfer;
  - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract;
  - 1.1.3 the date which is twelve (12) months before the end of the Term; and
  - 1.1.4 receipt of a written request of DFID at any time (provided that DFID shall only be entitled to make one such request in any six (6) month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by DFID.
- 1.2 At least thirty (30) Working Days prior to the Service Transfer Date, the Supplier shall provide to DFID or at the direction of DFID to any Replacement Supplier and/or any Replacement Sub-Contractor:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 DFID shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 1.4 The Supplier warrants, for the benefit of DFID, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of DFID (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
  - 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
  - 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
  - 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
  - 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
  - 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, DFID or, at the direction of DFID, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or



relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to DFID any information DFID may reasonably require relating to the manner in which Services are organised, which shall include:
  - 1.6.1 the numbers of employees engaged in providing the Services;
  - 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
  - 1.6.3 the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule 2 or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule 2 (as appropriate); and
  - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to DFID, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to DFID or, at the direction of DFID, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
  - 1.7.1 the most recent month's copy pay slip data;
  - 1.7.2 details of cumulative pay for tax and pension purposes;
  - 1.7.3 details of cumulative tax paid;
  - 1.7.4 tax code;
  - 1.7.5 details of any voluntary deductions from pay; and
  - 1.7.6 bank/building society account details for payroll purposes.

## **2. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 DFID and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. DFID and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 2.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs the Supplier shall indemnify DFID and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:

- 2.3.1 any act or omission of the Supplier or any Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
  - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (b) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to DFID and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged DFID and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by DFID and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
  - 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
  - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
  - 2.5.1 DFID shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
  - 2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-

Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

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

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

2.7.1 no such offer of employment has been made;

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved

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

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

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

(a) any claim for:

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

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

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

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

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

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

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

2.11.1 the Supplier and/or any Sub-Contractor; and

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

- 2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to DFID and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable DFID, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. DFID shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, where a Relevant Transfer occurs DFID shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
  - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
    - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
  - 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
  - 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
  - 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
  - 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
    - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
  - 2.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and

- 2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

## **ANNEX TO SCHEDULE 2: LIST OF NOTIFIED SUB-CONTRACTORS**

- **TROPICAL HEALTH AND EDUCATION TRUST**
- **CHARLIE GOLDSMITH ASSOCIATES (CGA)**
- **INTERNATIONAL PROCUREMENT AGENCY (IPA) BV**

## **SCHEDULE 3: INSURANCE REQUIREMENTS**

### **1.OBLIGATION TO MAINTAIN INSURANCES**

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

### **2.GENERAL OBLIGATIONS**

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

### **3.FAILURE TO INSURE**

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

### **4.EVIDENCE OF POLICIES**

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

### **5.AGGREGATE LIMIT OF INDEMNITY**

- 5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":
  - 5.1.1 if a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to DFID:
    - (a) details of the policy concerned; and

- (b) its proposed solution for maintaining the minimum limit of indemnity specified; and

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

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

## **6.CANCELLATION**

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

## **7.INSURANCE CLAIMS**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that DFID receives a claim relating to or arising out of the Services or this Contract, the Supplier shall co-operate with DFID and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where DFID is the claimant party, the Supplier shall give DFID notice within twenty (20) Working Days after any insurance claim in excess of **£100,000** relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by DFID) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from DFID any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.



## **ANNEX 1: REQUIRED INSURANCES**

### **PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE**

#### **1.INSURED**

- 1.1 The Supplier

#### **2.INTEREST**

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

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

2.1.2 loss of or damage to property;

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

#### **3.LIMIT OF INDEMNITY**

- 3.1 Not less than **£5,000,000.00** in respect of any one occurrence, the number of occurrences being unlimited.

#### **4.TERRITORIAL LIMITS**

4.1.1 N/A

#### **5.PERIOD OF INSURANCE**

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

#### **6.COVER FEATURES AND EXTENSIONS**

- 6.1 Indemnity to principals clause.

#### **7.PRINCIPAL EXCLUSIONS**

- 7.1 War and related perils.
- 7.2 Nuclear and radioactive risks.
- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.
- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

## **PART B: PROFESSIONAL INDEMNITY INSURANCE**

### **1.INSURED**

- 1.1 The Supplier

### **2.INTEREST**

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

### **3.LIMIT OF INDEMNITY**

- 3.1 Not less than **£10,000,000.00** in respect of any one claim and in the aggregate per annum.

### **4.TERRITORIAL LIMITS**

- 4.1 N/A

### **5.PERIOD OF INSURANCE**

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

### **6.COVER FEATURES AND EXTENSIONS**

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

### **7.PRINCIPAL EXCLUSIONS**

- 7.1 War and related perils
- 7.2 Nuclear and radioactive risks

## **PART C: UNITED KINGDOM COMPULSORY INSURANCES**

### **1.GENERAL**

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

## **SCHEDULE 4: TENDER**

### **1.GENERAL**

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



## Appendix A. Contract Amendment Letter

Department for International Development

Abercrombie House  
Eaglesham Road  
EAST KILBRIDE  
Glasgow  
G75 8EA

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

File Ref: [  
Date: [

Contract Amendment No: [

CONTRACT FOR: [

CONTRACT NUMBER: [

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

[

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

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

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

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

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

Name: [

Position:

Signature:

Date: [

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

Name: [

Signature:

Date:



## DFID Supply Partner Code of Conduct

### Principles

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

#### Overarching Principles for Supply Partners

- ✓ **Act responsibly and with integrity**
- ✓ **Demonstrate commitment to poverty reduction and DFID priorities<sup>1</sup>**, including work in fragile and conflict affected states, recognition of human rights, focus on girls and women, youth engagement, climate change and wealth creation
- ✓ **Demonstrate commitment to wider HMG priorities<sup>2</sup>**
- ✓ **Seek to improve value for money**
- ✓ **Be transparent and accountable**

### DFID Supply Partner responsibilities

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

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

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

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

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

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

## Scope

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

### 1. Value for Money and Governance Key Performance Indicators KPI 1 a - c

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

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

#### Specific requirements include:

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

### 2. Ethical Behaviour Key Performance Indicators KPI 2 a- f

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

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

Supply partners and their Sub-Contractors must declare to DFID any instances where it is intended that any direct or delivery chain staff members will work on DFID funded business where those staff members have any known conflict of interest or where those staff members have been employed by DFID or the Crown in the preceding two



years. Supply partners and their Sub-Contractors must provide proof of compliance with the HMG approval requirements under the Business Appointment Rules.

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

- ✓ Recruitment policy (which must address circumstances where there may be potential or actual conflict of interest)
- ✓ Ongoing conflict of interest, mitigation and management
- ✓ Refresher ethical training and staff updates (including awareness of modern day slavery and human rights abuses)
- ✓ A workforce whistleblowing policy
- ✓ Procedures setting out how, staff involved in DFID funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the Counter Fraud and Whistleblowing Unit (CFWU) at [fraud@dfid.gov.uk](mailto:fraud@dfid.gov.uk) or on +44(0)1355 843747

### **3. Transparency and Delivery Chain Management**

Key Performance Indicators KPI 3 a – f

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

DFID's direct/prime supply partners (tier 1) must engage their delivery chain supply partners in a manner that is consistent with DFID's treatment of its prime supply partners. This includes, but is not limited to: pricing; application of delivery chain risk management processes; and taking a zero tolerance approach to tax evasion, corruption, bribery and fraud in subsequent service delivery or in partnership agreements.

**Specific requirements for prime supply partners include:**

- ✓ Provide assurance to DFID that the policies and practices of their delivery chain supply partners and affiliates are aligned to this Code;
- ✓ Maintaining and sharing with DFID up-to-date and accurate records of all downstream partners in receipt of DFID funds and/or DFID funded inventory or assets. This should map how funds flow from them to end beneficiaries and identify risks and potential risks along the delivery chain;
- ✓ Ensuring delivery chain partner employees are aware of the DFID fraud mail box<sup>3</sup> found on DFID's external website and of the circumstances in which this should be used;
- ✓ Publication of DFID funding data in accordance with the International Aid Transparency Initiative (IATI)<sup>4</sup>
- ✓ Supply partners shall adhere to HMG prompt payment policy not use restrictive exclusivity agreements with sub-partners.

### **4. Environmental issues**

Key Performance Indicators KPI 4 a – b

DFID supply partners must be committed to high environmental standards, recognising that DFID's activities may change the way people use and rely on the environment, or may affect or be affected by environmental conditions. Supply partners must demonstrate they have taken sufficient steps to protect the local environment and

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

<sup>4</sup> <http://www.aidtransparency.net/>

community they work in, and to identify environmental risks that are imminent, significant or could cause harm or reputational damage to DFID.

**Commitment to environmental sustainability may be demonstrated by:**

- ✓ Formal environmental safeguard policies in place;
- ✓ Publication of environmental performance reports on a regular basis
- ✓ Membership or signature of relevant Codes, both directly and within the delivery chain such as conventions, standards or certification bodies (eg the Extractive Industries Transparency Initiative<sup>5</sup>).

## **5. Terrorism and Security**

Key Performance Indicators KPI 5 a – d

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

**Specific requirements:**

- ✓ DFID suppliers must safeguard the integrity and security of their IT and mobile communications systems in line with the HMG Cyber Essentials Scheme<sup>6</sup>. Award of the Cyber Essentials or Cyber Essential Plus badges would provide organisational evidence of meeting the UK Government-endorsed standard;
- ✓ All DFID supply partners who manage aid programmes with a digital element must adhere to the global Principles for Digital Development<sup>7</sup>, which sets out best practice in technology-enabled programmes
- ✓ Ensure that DFID funding is not linked to terrorist offences, terrorist activities or financing

## **6. Social Responsibility and Human Rights**

Key Performance Indicators: KPI 6 a – d

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

**Specific requirements:**

- ✓ All Supply Partners must be fully signed up to the UN Global Compact<sup>8</sup>;
- ✓ Practices in line with the International Labour Organisation (ILO) 138<sup>9</sup> and the Ethical Trading Initiative (ETI) Base Code<sup>10</sup> are encouraged;

<sup>5</sup> <https://eti.org/>

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

<sup>7</sup> <http://digitalprinciples.org/>

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

<sup>9</sup> [http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138)

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

- ✓ Policies to embed good practice in line with the UN Global Compact Guiding Principles 1 & 2 on business and human rights, as detailed in Annex 2;
- ✓ A Statement of Compliance outlining how the organisation's business activities help to develop local markets and institutions and contribute to social and environmental sustainability, whilst complying with international principles on labour and ethical employment, social inclusion and environmental protection.
- ✓ Overarching consideration given to building local capacity and promoting the involvement of people whose lives are affected by business decisions;

## Annex 1a

### Compliance KPIs and contractual checking mechanisms

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

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

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

Contract Checks and Compliance KPIs		KPI target	Specific Contractual link	Checking mechanism
i.	Declaration of acceptance of the DFID Supply Partner Code of Conduct	Annual declaration submitted by contracted supplier on behalf of delivery chain	Contract Terms and Conditions Clause 5.1 and Clause 7.7	Declaration of acceptance at the applicable level of compliance with each of the 5 sections received
	Declaration of sign up to the UN Global Compact	Annual declaration submitted by contracted supplier on behalf of delivery chain	Standard Selection Questionnaire (SQ)	Declaration of applicable sign up received
1.	<b><u>VfM and Governance standards</u></b>			
a)	Economic and governance policies in practice	Annual updated documentation provided (copy of Policy with detailed annual financial breakdown relating to contract )	Contract Terms and Conditions Clauses 12, 13 & 14	Annual contract review/programme management  Audit checks
b)	VfM being maximised over the life of a contract  1. By confirmation of annual profit level fluctuations since tender submittal	Updated documentation submitted once annually	Contract Terms & Conditions Clause 14 & 19	Spot checks  Annual contract review/programme

	2. by timely identification and resolution of issues		Terms of Reference (ToR)	management Spot checks
	3. ensuring lessons learned are shared		Terms of Reference (ToR)	Annual contract review/programme management Spot checks
c)	<u>Tax Declaration (HMRC format)</u>			
	<ul style="list-style-type: none"> <li>Tax the organisation paid on profits made in the last 3 years, and in which countries</li> <li>Compliance with relevant country level tax regulations fully understood and met</li> </ul>	Annually updated documentation submitted by contracted supplier and on behalf of delivery chain partners	Contract Terms and Conditions Clauses 14, 22 & 23  Terms of Reference (ToR)	Annual return  Spot checks
2.	<u>Ethical Behaviour</u>			
a)	Recruitment policy (which must address circumstances where there may be potential or actual conflict of interest)	Updated policy documentation submitted once annually by contracted supplier and on behalf of delivery chain partners	Contract Terms and Conditions Clauses 6, 48 & 51	Annual return Spot checking
b)	Ongoing conflict of interest, mitigation and management	As 2a. above	Contract Terms and Conditions Clause 51	Annual return Spot checking
c)	Refresher ethical training and staff updates ( including disclosure restrictions on DFID confidential information)	Copy of training logs provided Delivery in accordance with training programme in place	Contract Terms and Conditions Clauses 6, 28 48 & 51	Annual return Spot checking
d)	A workforce whistleblowing policy	Continuous workforce awareness maintained Policy in place	Contract Terms and Conditions Clause 46	Annual return Spot checking
e)	1. Procedures setting out how, staff involved in DFID funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the Counter Fraud and Whistleblowing Unit (CFWU) at fraud@dfid.gov.uk or on +44(0)1355 843747	Continuous awareness maintained  Procedure in place	Contract Terms and Conditions Clause 46	Annual return Spot checking
	2. Employees working on DFID Contracts fully aware of the DFID external website fraud mailbox	Continuous awareness maintained	Contract Terms and Conditions Clause 46	Annual return Spot checking

f)	Declarations of direct or delivery chain staff members proposed to work on DFID funded if employed by DFID or the Crown in the preceding two years.  Supply partners and their Sub-Contractors must provide proof of compliance with the HMG approval requirements under the <a href="#">business appointment rules</a>	Details submitted as applicable	Contract Terms and Conditions Clause 51  HMG <a href="#">business appointment rules</a>	Annual return Spot checking  Contract management
3.	<b><u>Transparency and Delivery Chain Management</u></b>	Updated documentation submitted once annually	Contract Terms and Conditions Clause 27	Tender evaluation  Periodic spot checks
a)	IATI compliance for supply partner and their delivery chain supply partners	Updated documentation submitted once annually	Contract Terms & Conditions Clauses 8 & 27 Tender submittal – delivery chain	Annual return spot checking Contract management
b)	Up to date and accurate records of all downstream supply partners	Updated documentation submitted	Contract Terms & conditions Clause 7	Contract management processes Periodic spot checks
c)	Policies and practices for the management of delivery chain partners and affiliates aligned to the DFID Supply Partner Code of Conduct	Updated documentation submitted annually	Contract Terms and Conditions 22, 23 & 46	Periodic and annual return spot checks
d)	Tax evasion, bribery, corruption and fraud - statements of assurance provided	Updated documentation submitted once annually	Contract Terms & Conditions Clause 46	Periodic and annual return spot checks
e)	All delivery chain partner employees working on DFID Contracts fully aware of the DFID fraud mailbox	Updated documentation submitted once annually	Contract Terms & conditions 7	HMG spot checks  Annual return
f)	HMG prompt payment policy adhered to by all delivery chain partners	Updated documentation submitted once annually		
4.	<b><u>Environmental Issues</u></b>	Updated documentation submitted once annually	Contract ToR, and Contract Terms and Conditions Clause 50	Contract management  Periodic and annual return spot checks
a)	1.Steps in place to identify environmental risks (e.g. by maintaining a risk register) Ensuring legislative requirements are being met  2. Formal context specific environmental safeguarding policies in place to ensure legislative requirements are being met	Updated documentation submitted once annually	Contract ToR	Periodic and annual return spot checks
b)	Published annual environmental performance reports	Updated documentation submitted once annually		
5.	<b><u>Terrorism and Security</u></b>	Updated documentation submitted if	Standard Selection Questionnaire (SQ) Contract Terms and	Annual return Spot checks Annual contract review
a)	Status declaration regarding the reporting of terrorist offences or offences linked to	Updated documentation submitted if		

	terrorist activities or financing	changes identified since tender submittal	Conditions Clause 47	
b)	Certification at or above the level set out in the tender submittal	Updated documentation submitted if changes identified since tender submittal	Standard Selection Questionnaire (SQ)	Annual return
c)	Data managed in accordance with DFID Security Policy and their systems in accordance with the HMG Cyber Essentials Scheme	Updated documentation submitted if changes identified since tender submittal	Contract Terms & Conditions Clause 31 & 32	Spot checks
d)	Best practice global Principles for Digital Development in place	Updated documentation submitted if changes identified since tender submittal	Terms of Reference (TOR)	Annual contract review
6.	<b><u>Social Responsibility and Human Rights</u></b>			
a)	Provision of a current internal document demonstrating good practice and assuring compliance with key legislation on international principles on labour and ethical employment	Confirmation of UN Global Compact Membership	Standard Selection Questionnaire (SQ)	Tender evaluation Annual return spot checking
b)	Recognition of the International Labour Organisation (ILO) Standards. Membership of Ethical Trading Initiative (ETI)	Membership number		Periodic spot checks
c)	Principles cascaded to employees and delivery chain partners via an internal policy or written outline of good practice service delivery approaches to UN Global Compact Principles 1 & 2	Updated documentation submitted once annually	Contract Terms and Conditions Annex 2	Annual return spot checking
d)	Level of commitment in relation to the Contract evident in delivery practices in line with the workplace and community guidance provided in the DFID Supply Partner Code of Conduct	Updated documentation submitted once annually		Tender evaluation Periodic spot checks

## Annex 1b

### **Contractual Annual Compliance Declaration**

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

**UN Global Compact – Human Rights**

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

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

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

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

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

**In the workplace**

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

#### **In the community**

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





### Section 3, Appendix A

#### Schedule of Processing, Personal Data and Data Subjects

This schedule is for use with the standard GDPR clause where [DFID is the - select as appropriate - Controller or Joint Controller and] the Supplier is the [select as appropriate - Controller, Joint Controller and / or Processor].

It shall be completed by the Controller, who may take account of the views of the Processors. The completed schedule must be agreed formally as part of the contract with DFID and any changes to the content of this schedule must be agreed formally with DFID under a Contract Amendment.

The Supplier shall comply with any further written instructions from DFID with respect to compliance with the Clause 32 and the agreed schedule below. Any such further instructions shall be incorporated into this Schedule by way of a formal DFID Contract Amendment.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, in accordance with Clause 32 (Section 2 of the contract), the Controller and Processor roles will be determined during the initial 3 months of this contract. The Controller will then be required to complete this Schedule (Appendix A) to clearly state the personal data to be processed as part of the contracted services, along with the purpose and means of processing. This must be agreed under a formal contract amendment before any personal data can be processed by the Supplier under this contract, and Appendix A must be concluded formally within 3 months of the Contract Award date.
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract. Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data [and Special Categories of Personal Data]	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete. UNLESS requirement under European Union or European member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>





Department  
for International  
Development



### Supply Partner Compliance Declaration

**Key:**

**Contractual Requirement:**

**X denotes full compliance required**

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

**Compliance Level 1**

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



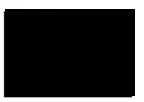





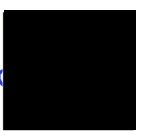










**Compliance Level 2**









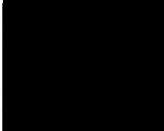





Supply partners with an individual contract value below £1m, or two or more contracts with DFID with a value of less than £5m.

**Compliance Level 3**

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

KPI Compliance Area		Supplier Compliance Level		Commentary	CEO Signatory	Signature & date of signing
		1	2			
1.	<b><u>VfM and Governance standards</u></b>					
a)	Evidence of how economic and governance policies work in practice	X	O	Monitoring of contract performance (12), progress and financial reports (13) and open book accounting and audit (14) clauses applied and evidenced during the programme.		29.06.18
b)						
c)	VfM maximisation over contract life					
	1. Annual confirmation of % profit on contract	X	X	1. The Projected Profit Margin at the start of the contract (INSET START DATE) is 6%.		
	2. timely identification and resolution of issues	X	X			
	3. ensuring lessons learned are shared	X	O	The Actual Profit Margin will be reported at completion of each Contract Year.  2. & 3. via annual contract review/programme management & spot checks		29.06.18
	<b><u>Tax Declaration (HMRC format)</u></b>					
	Comply with all tax requirements	X	X	MM corporate compliance to be assessed with DFID compliance team (July 18)		29.06.18

<b>2. <u>Ethical Behaviour</u></b>						
a)	Adherence to set and agreed conflict of interest management procedures	X	X	MM corporate compliance to be assessed with DFID compliance team (July 18)		 29-06-'18
b)	Evidence of workforce ethical training updates taking place	X	X	MM corporate compliance to be assessed with DFID compliance team (July 18)		 29-06-'18
c)	Confirmation of direct and delivery chain partner compliance with the HMG approval requirements under the Business Appointment Rules.	X	X	MM confirms that the Business Appointment Rules do not apply to any personnel currently intended to be deployed on this programme.		 29-06-'18
<b>3. <u>Transparency and Delivery Chain Management</u></b>						
a)	Supply partner and delivery chain partners IATI compliant	X	O	MM publishes data to the IATI standard. MM to assess the delivery chain partners during subcontracting.		 29-06-'18
b)	Provision of up to date and accurate records of all downstream supply partners provided within the required frequencies, including annual contractual spend on MSME's, women owned businesses and apprenticeships in place	X	O	Annual return to be supplied.		 29-06-'18
c)	Verification that policies and practices for the management of delivery chain supply partners and affiliates are aligned to the DFID Supply Partner Code of Conduct i.e. by demonstrating delivery chain governance arrangements in place	X	O	Terms to be passed down to delivery chain supply partners. Confirmation of subcontracts.		 29-06-'18
d)	Assurance there has been no change to previous statements provided in relation to tax evasion, bribery, corruption and fraud	X	X	d) MM confirm adherence to clauses 22, 23 & 46 on signing the contract. To be monitored throughout the contract.		 29-06-'18
e)	Confirmation that all delivery chain supply partners' employees working on DFID Contracts are fully aware of the DFID external website fraud mailbox	X	X	e) Terms to be flowed down via subcontracts, including MM Ethics policy and Code of Business Conduct. Reporting concerns email address to be publicised to the delivery chain supply partners.		
f)	Confirmation of adherence to HMG prompt payment policy with all their delivery chain supply partners	X	O	MM corporate compliance to be assessed with DFID compliance team (July 18)		
<b>4. <u>Environmental Issues</u></b>						
a)	Environmental risks identified (e.g. by maintaining a risk register) with formal context specific environmental safeguarding policies in place	X	O	Project environmental risk assessment to be considered during commencement phase.		 29-06-'18
b)	Annual published environmental performance reports	X	O	MM corporate compliance to be assessed with DFID compliance team (July 18)		 29-06-'18

<b>5.</b>	<b><u>Terrorism and Security</u></b>					
<b>a)</b>	Status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	X	X	MM confirmation at tender stage is still in place. To be confirmed annually or via spot checks.		 29-06-'18
<b>b)</b>	No engaged employees or delivery chain partner personnel appears on the Home Office Prescribed Terrorist Organisations List	X	X	MM confirmation at tender stage is still in place. To be confirmed annually or via spot checks.		 29-06-'18
<b>c)</b>	Data is managed in accordance with DFID security policy and systems are in accordance with the HMG cyber essentials scheme	X	X	MM corporate compliance to be assessed with DFID compliance team (July 18)		 29-06-'18
<b>d)</b>	Adherence to the best practice global principles for digital development	X	O	There is no digital element to this programme for which the digital principles would apply.		 29-06-'18
<b>6.</b>	<b><u>Social Responsibility and Human Rights</u></b>					
<b>a)</b>	Provision of a current internal document demonstrating good practice and assuring compliance with key legislation on international principles on labour and ethical employment (to include Modern Day Slavery Act 2015 compliance detail)	X	O	MM corporate compliance to be assessed with DFID compliance team (July 18)		 29-06-'18
<b>b)</b>	Current membership of UN Global Compact?	X	X			
<b>c)</b>	Current membership of ethical trading initiative (ETI)?	O	O	MM corporate compliance to be assessed with DFID compliance team (July 18)		 29-06-'18
	Has the supply partner provided an internal policy or written outline of good practice service delivery approaches to UN Global Compact Principles 1&2 demonstrating an appropriate level of commitment in relation to their Contract?	X	O	MM corporate compliance to be assessed with DFID compliance team (July 18)		 29-06-'18

For and on behalf of Mott MacDonald:

Date: 28<sup>th</sup> June 2018

### UN Global Compact – Human Rights

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

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

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

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

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

#### **In the workplace**

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

#### **In the community**

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

**PO 7751 – Contract Section 2**

**Terms of Reference for**

**Fund Manager for the Supply Component of the Somali Health and Nutrition  
Programme (SHINE)**



## 1. Introduction

DFID is seeking a suitably qualified Supplier who will be the Fund Manager responsible for effective management of the Supply Component of SHINE, which includes the Essential Package of Health Services (EPHS) and Health System Strengthening (HSS) activities, delivered in close collaboration with the Somali Health Authorities (SHA)<sup>1</sup>

- i) **Support for the Essential Package of Health Services (EPHS)** (value up to 90% of Total).

The Supplier will work closely with the SHA to

- Provide effective contract management services for the delivery of EPHS
- Deliver quality essential health services in a standardised manner
- Strengthen the SHA oversight of the delivery of EPHS

- ii) **Support Health System Strengthening (HSS)** (value up to 10% of Total).

The Fund Manager will provide specialist expertise on HSS to the SHAs, with a focus on systems strengthening for improved EPHS delivery. The initial focus will be on:

- Human Resources (HR)
- Health Information management system (HMIS)
- Supply Chain Strengthening (SCS)
- Governance and Leadership (GL)

## 2. Programme context, and Budget

The overarching SHINE Business Case (BC) was approved by Ministers in November 2015, with a total programme value of £92m. SHINE is a 5 year programme to reduce mother and child deaths in Somalia by improving the supply and demand for improved health and nutrition services. The programme aims to strengthen Somali Health Authorities (SHA) oversight of basic service delivery and contribute to the wider state building agenda

DFID will contract one supplier, or lead consortium member, who will be responsible for delivering these Terms of Reference. The contract will commence in June 2018 and end in March 2021 (to coincide with end of the SHINE programme). The contract will consist of two Phases (i) Inception and (ii) Implementation. The Inception Phase will last for 12 months at which point, there will be a Break Point in the contract. Upon satisfactory completion of the Inception Phase, the Implementation Phase will start and last for 23 months with a mid-term review and further break point two years into the programme to assess progress against overall objectives and to realign the programme if required; stakeholder and beneficiary engagement will strengthen this

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<sup>1</sup> Definition of SHA: Somalia Health Authorities

process. Progression to the Implementation Phase will be dependent upon satisfactory performance of the Supplier that will be assessed through an end of Inception phase review, the continued need in the regions selected and availability of funding.

It is possible that the contract could be extended for up to 12 months following this period, during the design of the successive programme.

The maximum budget for this contract is £20m for the programme and management costs, this is inclusive of all government taxes.

### 3. Recipient

The principal recipients are the Somali Health Authorities in Somalia and Somaliland, including the Federal Government (Mogadishu), Puntland (Garowe), Somaliland (Hargeisa) and the new SHA in the Interim South West Administration (ISWA), Jubbaland (Kisimayo), and Galmudug and other new states still under formation; according to prioritisation to be agreed. The key beneficiaries of the SHINE programme (Supply Component) are Somali women and children.

### 4. Programme Components

Under SHINE there is a Supply Component which is designed to support three programme areas:

- a. Fund Management of the Essential Package of Health Services (EPHS). Effective NGO contract management, including delivery of health service results and VfM.
- b. Commodity Security. Global procurement at competitive prices with uninterrupted pipeline to facility levels (for EPHS, including SRH and Nutrition).
- c. Health Systems Strengthening (HSS). Initial focus on three critical areas necessary to strengthen EPHS delivery: human resources, supply chain and governance.

In terms of management and delivery arrangements for these three components are split between a mix of two delivery partners, the UN and a private MA.

- Up to 40% to be managed by the UN through an MoU for commodity security.
- Up to 60% to be contracted to a private MA through a contract for EPHS Fund management and Health Systems Strengthening.



## 5. Objectives

This ToR is for the management of up to (60%) of the Supply Component. We will require that the Supplier works closely with the UN agencies managing the Commodity Security programme. The Governance arrangements will be set up to have one oversight mechanism, linking the two. The Supplier will be expected to propose innovative ways to manage and monitor this collaboration.

## 6. Gender

In designing the programme, due consideration has been given to gender considerations. Women and girls face numerous challenges in Somalia, and many have suffered the worst effects of the long running conflict. As a result, Somalia is in fourth lowest position globally on the Gender Inequality Index. Female formal sector unemployment stands at 74% and participation in wage employment of any sort is only 33%. Therefore, it is important that this health service delivery programme pays sufficient attention to the specific needs of women and girls, including ensuring that the services also benefit men and women equally.

## 7. Scope of Programme

The programme will focus on two programme areas: **Support the Delivery of the Essential Package of Health Services (EPHS)** and **Health Systems Strengthening (HSS)**.

**Overarching Fund Management Tasks:** The Supplier will be responsible for the overall strategic planning, implementation, monitoring and reporting on the EPHS and HSS activities and will be accountable for the implementation of the aims and objectives. Responsibilities will include:

- Set up the Fund Management Structures offices in Somalia/Somaliland to effectively operate with existing SHAs and allow flexibility to respond to the new SHA under new administrations
- Develop partnership/coordination arrangements with the UN Commodity Security programme with clear roles and responsibilities outlined.
- Set up appropriate Risk, Results and VfM procedures for managing the programme
- Develop procurement procedures and systems for effective delivery
- Develop robust monitoring and learning systems for the programme with clear linkages to the commodities security programme and the wider SHINE M&E framework; and contribute to the wider Somali health sector learning to inform policy and practice.
- Develop strong partnership, collaboration and coordination arrangements within the wider health sector; especially with UN agencies, health sector donors and other key stakeholders as well as other key health funding mechanisms (GFATM, GAVI)

**Support for the Essential Package of Health Services (EPHS)**

- Through a consultative process with, and endorsed by the SHA, key health sector partners (UN agencies, health donors and NGOs) identify and prioritise regions where the EPHS support will be implemented.
- Ensure a smooth transition and continuity of health service availability in the regions prioritised for implementation of the programme.
- Develop standard operating procedures (SoPs) and work plans to guide the process to contract NGOs to support EPHS delivery.
- Manage the performance of contracted NGOs according to service delivery and capacity building requirements in conjunction with the SHA as well as UN agencies implementing the commodities security programme.
- Develop a robust, joint monitoring of NGO performance with the SHA and UN agencies. This should include timely establishment of baseline data, a supervision framework using the SHA HMIS and supervision tools to monitor performance.
- Maintain regular communication with NGO contract recipients and a clear process for rectifying problems identified during monitoring and lessons learning.
- Make contractual payments to NGOs in accordance with their performance and contracting terms.
- Maximize use of technology and develop synergies across the SHINE programme to augment the programme's impact.
- Support the planning and delivery of quality health essential service delivery results, according to EPHS standards to reach a 2 million population.

**Support to the Health Systems Strengthening (HSS)**

- Carry out a joint needs assessment with the SHA, UN agencies (UNICEF/UNFPA) and NGOs to determine the capacity building and HSS needs in areas such as:
  - Quality Service Delivery,
  - Health Information systems
  - Supply chain systems
  - Human Resources
  - Governance and leadership
- Develop a HSS approach for the regions where the programme is implemented and the different levels of SHA management structure. Set out clear milestones targets and a performance monitoring mechanism.

- Engage the SHA on capacity building and HSS activities including provision of technical assistance, on the job training and mentorship to increase SHA ownership of health service delivery and sustainability of the SHINE programme investments.
- Participate in and support health sector planning processes to ensure close integration of the programme funded activities with other health programmes and funding mechanisms within the Somali health sector.
- Strengthen the SHA coordination role and engage humanitarian actors in the programme implementation areas to ensure coordinated monitoring and response to emerging health and nutrition crisis.

## **8. Institutional focus**

The focus of the project will include the SHA, in particular those departments responsible for policy and planning and service delivery, commodity distribution in the Federal Government, Puntland, Somaliland, Interim South West Administration (ISWA), Jubbaland, Galmudug and new states; according to prioritization to be agreed.

The Fund Manager should expect to engage and work closely within the wider health sector, and also the NGOs who will be running and managing the health facilities. We expect HSS activities to support the wider state building agenda.

## **9. Geographic focus**

The programme should aim to reach a population of 2 million. The exact EPHS implementation regions and states will be determined by the EPHS mapping and prioritization exercise which will be led by the SHA with support and collaboration from health sector stakeholders (UN agencies, NGOs and the health sector donors). Given the challenging and sometimes risky nature of delivering services in all these regions, it will be important to work in a flexible and adaptable way and also consider the possibility for adopting a phased approach which could be fast tracked in some areas while setting up support to other areas which will require a longer lead in time.

## **10. Approach**

The Fund Manager should ensure that throughout the project SHAs are placed in the lead of the programme and also adequately manage all risks that may affect the successful implementation of the programme. It will be vital to carry out thorough technical and political economy analysis and properly understand the Somali context. However the design and start up should focus on commencing hands-on implementation of activities as soon possible, together with practical capacity building of the SHAs. Lessons should be learned from the recently/soon to be ended EPHS programmes supported under HCS & JHNP.

*DFID considers overall success of the project to be about the delivery of outcome-level results – and whatever the downstream activities, this is the spirit in which we expect the contract to be implemented.*

## 11. The Inception and Implementation requirements

Overall, the key tasks that the fund manager is expected to deliver are:

### **Inception phase: June 2018 – April 2019 (12 months)**

#### **i) Technical Tasks:**

Plan for EPHS roll out to include:

- X # EPHS implementing partner (NGO) contracts fast tracked and finalised by the supplier by July/August 18
- Y # of EPHS of second phase new implementing partner (NGO) contracts finalised by October/November 18
- Minimum Standards for the implementation of the EPHS as guided by: ([https://www.unicef.org/somalia/SOM\\_EssentialSomalilandReport\\_3\\_WEB.pdf](https://www.unicef.org/somalia/SOM_EssentialSomalilandReport_3_WEB.pdf)) and agreed with Ministry of Health, and DFID and documented,
- Supervisory tools to be used for the implementation phase of the programme, ready and pre-tested
- Completion of HSS assessment reports (HR, CS, GL) and HSS implementation plan developed and endorsed by Ministry of Health, with clear action plans to be agreed with the Ministry of Health and DFID

#### **ii) Fund Management Tasks**

- Develop and refine an overall Programme Strategy, Governance Arrangement, including how the programme will ensure VfM
- Develop the proposed working arrangements with SHA, UN agencies<sup>2</sup>, NGOs and donors which will include reporting arrangements, co-ordination arrangements and other Standard Operating Procedures (SoPs)
- Conduct a political economy analysis that covers all aspect of the programme and proposed approach to integrating political economy analysis into the programme on an ongoing basis;
- Conduct a gender/inclusivity analysis of the programme and proposed approach to address which gender and inclusivity issues into the programme
- Prepare a master workplan and fully-costed budget for the full programme<sup>3</sup> within the first 3 month of the Inception phase
- Prepare a Monitoring and Learning strategy (including Log Frame) for the full programme with clear linkages to the commodities security programme;
- Identify technical assistance (TA) needs for full programme and develop TA plan;
- Map key partners and other stakeholders and identify procedures for collaboration and coordination to ensure effective and efficient service delivery;

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<sup>2</sup> Coordinate with the UN led Commodities Security Programme

<sup>3</sup> Full programme = inception & implementation phase

- Identify proposed milestones/key performance indicators to trigger payments for the Implementation Phase. Noting DFID's focus on outcome-level results, the logframe and payment related milestones should reflect this<sup>4</sup>
- Develop a proposed Implementation Phase payment plan and Audit plan.
- Prepare a risk assessment matrix with mitigation measures;
- Prepare a Value for money strategy and metrics in consultation with DFID. This should cover efficiency, effectiveness and economy;

A validation workshop to be attended by the Ministry of Health, NGO implementing partners, donors, UN agencies and other sector stakeholders will take place at the end of the Inception Period. At the validation workshop the proposed work-plan, governance arrangements, risk matrix, M&E and milestones will be discussed

## **12. Implementation phase (June 2019 – Mar 2021) – 23 months**

Following acceptance of the Inception Report by the SHA, DFID, the Fund Manager will implement the agreed programme with responsibility for timely and effective management and implementation of the project. In doing so, the Fund manager should be mindful of DFID's focus on results and strategy, meaning that the Fund manager should demonstrate flexibility and proactivity according to changes in the context, and what is found to be delivering results. There should not be a mechanistic focus on compliance with activity level milestones/outputs in the workplans alone, rather the Fund manager should constantly and proactively gauge, analyse and propose any necessary adjustments, solutions and options as the contract progresses.

### **i) Technical Tasks**

- Continuous technical and strategic advice provided to the SHA on EPHS oversight and HSS
- Supervision of health facilities being conducted jointly with SHA and the UN agencies implementing the Commodity Security Programme.
- Monitoring and learning system for the programme established to track performance on service delivery (monthly, quarterly or as per the programme's M&L framework) and other performance indicators
- Risk monitoring in place with quarterly updates and overview
- Value for Money (VfM) indicators agreed in the first quarter of the contract and being reported against quarterly or as agreed at the start of the programme

### **ii) Programme Development Tasks**

These tasks are expected to start immediately as they will have been reviewed and agreed by the end of the inception phase.

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<sup>4</sup> We advise to have fewer indicators focusing on relative progress rather than a larger number of specific activity level milestones. Proxy indicators should be used (e.g. 1-5 with definitions of assessors and success criteria) or achieving x out of y possible signs of progress.

- Continuous management advice being provided to the SHA and implementing partners on the programme to ensure its full success;
- Master work plan and budget for the provision of services in the identified areas of the programme developed and being used for planning purposes;
- Consolidated annual work plans, budgets and progress reports (project and financial) being prepared as a planning tool
- Implementation of progress being monitored against the annual log frame and work plans;
- Risks monitored and mitigation action undertaken (in close consultation with MoH, DFID and partners);
- TA planned and procured in line with work plans;
- Strategic gaps and opportunities monitored to propose relevant action;
- Annual Reviews of the programme prepared and conducted (documentation, support partners, prepare strategic analysis, propose changes where relevant);
- Support being provided in audit preparation and audit follow-up.

### **13. Methodology**

The Supply programme (EPHS and HSS) objectives and outcomes can be achieved in a number of ways. The programme methodology must have a clear focus on results and value for money. DFID is ready to accept innovative or high risk/high return strategies in terms of programme implementation. In terms of financial risk, DFID has a very low risk appetite. The programme approach must demonstrate expert-level technical knowledge on the approaches to health service provision, health system strengthening and experience of working in fragile states and conflict environments, and working knowledge of conflict sensitive programming.

### **14. Competency and Expertise Required**

The Supply programme (EPHS and HSS) will be expected to set up a specialist team with the task of supporting the development and management of the projects. This team will need to use a range of methodologies and processes for the successful implementation of the programme such as project management, risk management, financial reporting, and monitoring and evaluation of projects to achieve desired outputs.

The Fund Manager will need to field a team of international and national experts, bearing in mind that security in some Federal Government states and Somaliland, may make long-term deployment of international experts there difficult. The team will need to include a permanent coordinator (s) or regional team leader (s) based in the states prioritised for implementation. Sub-contracting of local or regional firms may well be part of a suppliers proposed solution, although DFID would expect to see a senior figure in the lead firm taking overall responsibility for contract delivery.

Given the vast geographical coverage of this programme and the need to maintain strong relationships with government, it is expected that the team would include (but not limited to) the following expertise:



- Team Leader with experience managing and effectively delivering public health programmes in fragile states;
- Knowledge of Somalia, Sub Saharan countries and/or other similar fragile states, be familiar with existing Somali Government structures and operation of Ministries especially the SHA capacity to manage such a large programme and any systems (financial/contracting, Monitoring) that need to be put in place
- Awarding and managing of contracts with NGOs for delivery of inclusive and conflict sensitive health services similar to the EPHS.
- Providing health system expertise and building government capacity in areas such as: health planning, strengthening the health workforce, and improving the effectiveness of health service delivery, building information systems such as HMIS, reinforcing leadership and governance.
- Managing the fiduciary risk of similar size program funding.
- Demonstrate cultural sensitivity and successful experience working closely with government counterparts, especially ministries of health, to improve the overall coordination, planning and effectiveness of the health system performance at all levels.
- Implementation team expertise; experienced team leader with an appropriate technical understanding, ability to juggle strategic, technical and implementation issues;
- Quality and availability of technical backup support and facility to draw down ad hoc technical assistance
- Knowledge of DFID financial and due diligence requirements would be an advantage

## **15. Reporting**

Over the course of the contract the supplier is expected to directly engage with the Ministers of Health, the NGOs, UN Agencies implementing the commodities security programme and donors contributing to this programme. Additionally, other stakeholders may be identified during the inception phase.

The supplier will report to the DFID Health Adviser. At the start of the contract, the supplier will maintain bi-monthly in person meeting (or in some cases phone, email) the SHA and the DFID Health Adviser to inform them of pertinent issues as they arise. As the project progresses the governance arrangements will be in place and these may be reduced to less frequent contact but will be no less than monthly.

The supplier will be responsible for reporting progress and finances to DFID and will agree reporting formats and frequency for financial and technical reports with DFID during the inception phase. It is anticipated that the fund manager will provide the following reports during the Inception and Implementation phases:

### **➤ Inception Phase Reporting:**

The reports to be provided by the supplier during the inception phase include, but are not limited to those listed in the table below. These will include monthly

narratives (financial and progress) and an end of inception phase report to be agreed with DFID.

Timeframe	Report
Monthly	<ul style="list-style-type: none"> <li>Monthly narratives (financial and progress)</li> <li>Meetings with DFID lead adviser and DFID project officer.</li> </ul>
Quarterly	<ul style="list-style-type: none"> <li>Quarterly progress reports (including financial reports). An update of the risk analysis will also be provided.</li> </ul>
End of Inception Phase (12 months after Contract Issue)	<ul style="list-style-type: none"> <li>Inception Report (including all outputs and deliverables of the inception phase)</li> <li>Validation workshop with MoH &amp; donors at the end of the inception phase enabling a decision to move to the implementation phase</li> </ul>

It is anticipated that the deliverables for the Inception phase may, include, but are not limited to the following:

	Key Deliverables	Delivered
1.	Conduct sector and conflict analysis. Identify and report entry points/ key private sector across the 3 regions for each sub-component	
2.	Develop Standard Operating Procedures/ Operational Guidelines and manuals	
3.	Develop a communication Strategy	
4.	Analysis of local delivery / facilitators and conducting due diligence	
5.	Develop programme governance structure (incl. coordination with government entities)	
6.	Collection of baseline data	
7.	Monitoring and learning framework and an implementation work plan	
8.	Develop risk matrix ( to be updated continuously), VfM and conflict sensitive indicators	
9.	Develop result based system and identify key milestones to trigger the payments	
10.	Develop quarterly reporting format ( both narrative/ financial reports) and progress meeting schedules	
11.	Implementation Phase Workplan	

### ➤ Full Implementation Phase Reporting

The reporting schedule for the implementation phase is highlighted below. Reporting will feed into DFID annual reviews. DFID staff will conduct regular field as well as independent external audits of the programme. Financial reports will

present data by output as well as by type of expenditures (such as training, workshops, consultancies, grants). The detailed requirements will be agreed with DFID during the Full Implementation Phase.

<b>Timeframe</b>	<b>Report</b>
<b>Quarterly</b>	<ul style="list-style-type: none"> <li>Quarterly progress reports (gender disaggregated) which will include (financial reports) against which DFID will make payments and reimbursements. An update of the risk analysis will also be provided.</li> </ul>
<b>Bi-annually</b>	<ul style="list-style-type: none"> <li>Six monthly comparison of budget with expenditure;</li> <li>Bi-annual case studies of successful interventions;</li> <li>Bi-annual monitoring and evaluation report (including an annual financial report). The M&amp;E report will be submitted with the results of the performance reporting (gender disaggregated) against the logical framework indicators. A more detailed update of the risk analysis will be presented together with any recommendations to modify the risk mitigation strategy. Additionally an annual statement on progress on gender, climate change adaptation and value for money will be provided as part of the report.</li> </ul>
<b>Annual</b>	<ul style="list-style-type: none"> <li>Annual forecast of expenditures (the budget) disaggregated monthly – for the financial year April to March. These should be updated on a monthly basis;</li> <li>Annual work plans (it may be necessary to review and update this every six months). Progress in delivering these plans, especially at activity and output levels, shall be reported quarterly to DFID in an agreed format;</li> <li>Annual audited financial statements.</li> </ul>
<b>On-going</b>	<ul style="list-style-type: none"> <li>Document and disseminate useful results and lessons learned through a variety of media, noting that DFID funds should not be used to develop or update websites. DFID can provide exceptions on a case by case when this contributes to platforms for knowledge and sharing, acting as a conduit of information and best practice between partners, and to key stakeholders.</li> </ul>

DFID will agree Key Performance Indicators with the fund manager and are likely to include: quality and delivery; management, financial; personnel; and innovation indicators. These will be set out within the contract management section. The fund manager should also consider the establishment of an intervention mechanism that allows for the piloting and scaling up of interventions, quality of research and analysis and quality of VfM approach to scaling up and ending interventions. The fund manager should propose a suite of KPIs for the inception period as part of their bid. The KPIs for the implementation period will be agreed by the end of the inception period. You should note that these Key Performance Indicators (KPI's) will be linked to a percentage of the fees payable under this contract. The percentage will be

agreed by the end of the inception and is expected to be a minimum of 25% , supplier to indicate/suggest.

## **16. Payment**

It is expected that the payment approach for both stages will be defined by the Service Provider during their bid. Bidders will be expected to profile their payment mechanism to maximise the achievement of both contract outputs and milestones to support DFID's Payment by Results aspirations, proportionate to each output. The payment profile will be reviewed and agreed annually.

All fees proposed should cover the cost of salary, overseas inducements, leave allowances, bonuses, profit, taxes, insurances, superannuation, non-working days and all other costs including, but not limited to, passports, visas and vaccinations, overheads and expenses of whatsoever nature that may be incurred.

## **17. Coordination**

### **DFID Coordination**

This Supplier will be managed by DFID Somalia Health Team. The overall lead manager/adviser will be the DFID Somalia Health Adviser.

Coordination for the selected fund manager will be carried out by the Senior Programme Officer and Programme Officer. Programme document/s produced by the fund manager will be discussed by the Humanitarian, Resilience and Health team and approved by the Section Team Leader.

### **Coordination with UNICEF / UNFPA**

The UN led commodities security programme will support EPHS service delivery through consistent supply of essential drugs and medical commodities for EPHS service delivery in this programme. As such, coordination between the supplier and the UN agencies needs to be very strong.

The supplier is expected to work closely with the UN agencies to identify key areas of support and capacity development at the health facilities and within the SHA necessary for HSS on supply chain for essential medicines and commodities. The supplier together with the UN agencies responsible will set clear roles and responsibilities and a coordination structure to facilitate this.

### **Coordination with the wider SHINE programme**

The programme is expected to feed into the wider SHINE programme log-frame and Monitoring and Learning framework. The supplier is expected to work closely with the managing agent implementing the SHINE programme monitoring and learning component.

## **18. Contract Management**

- DFID will expect the fund manager to provide targets and define the measures of success for deliverables after the end of the inception phase through a results based payment mechanism;
- The inception phase report itself should therefore include the finalisation of the result based payment mechanism for the remainder of the project. In order to ensure that results are met, the successful fund manager should take as a guiding principle that payments will be made based on results achieved/delivered.
- The successful fund manager will be responsible for the accurate forecasting and spending of funds in line with the contractual arrangements the successful fund manager enters into with each element of the Supply programme and in line with the mechanisms determined for the interventions;
- As detailed in Section 2 the contract will be issued for the full period, with a review point and further break point incorporated to coincide with the end of the inception phase. At this stage, DFID will review the fund manager's performance and the finalised design for the implementation phase. The implementation phase activities and the related KPIs for this phase against which payment is to be made will be agreed based on the finalised design;
- As detailed in Section 2 continuation of the contract beyond the inception phase will be subject to acceptance by DFID of the deliverables, satisfactory performance of the fund manager and agreement to the fund manager's proposed costs for the implementation phase. The implementation phase is expected to begin immediately thereafter. The fund manager will be tasked with ensuring there is continuity from the completion of the inception phase through to implementation, noting that the fund manager will not have full control over the decision-making process;
- In the event that DFID decides not to proceed with the implementation phase, the contract will be terminated at no cost to DFID. In the event that DFID decides to proceed to the full implementation, a contract amendment will be issued to include details of the services to be provided in the form of updated Terms of Reference and KPIs, updated implementation costing<sup>5</sup> and a provision for a mid-term review to be undertaken after the first three years (including the inception period);

## **19. Duty of Care (DoC)**

Please refer to Annex 3 for information regarding Duty of Care and Security requirements.

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<sup>5</sup> Costs for the implementation phase will be considered indicative until confirmed following the inception phase.

## **20. Transparency**

DFID has transformed its approach to transparency, reshaping our own working practices and pressuring others across the world to do the same. DFID requires Suppliers receiving and managing funds, to release open data on how this money is spent, in a common, standard, re-usable format and to require this level of information from immediate sub-contractors, sub-agencies and partners.

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

DFID Somalia will instruct the SP to publish and disseminate in appropriate forms all knowledge material and reporting produced by or with support from the programme. Exceptions to this requirement in case of confidential or sensitive information (eg. analysis from the stakeholder maps component, financial reports, commercial sensitive data discussed with investors, etc.) will need to be agreed case by case with DFID. The SP will take all necessary steps with the programme counterparts and direct beneficiaries to make sure they provide their consent to this publication and dissemination policy, or have the opportunity to recommend motivated withholding when appropriate.

## **21. UK Aid Branding**

Suppliers that receive funding from DFID must use the UK aid logo on their development and humanitarian programmes to be transparent and acknowledge that they are funded by UK taxpayers. Suppliers should also acknowledge funding from the UK government in broader communications but no publicity is to be given to this Contract without the prior written consent of DFID.

## **22. End of Contract Activities**

Three months before the expiry date of the contract the Supplier will prepare for DFID Somalia approval a draft Exit Plan which shall include:

- A disposal plan for all assets procured throughout the lifetime of the programme in accordance with DFID procedures on asset management and disposal;
- Addresses any material items that are necessary or desirable for the continued co-operation of the UK Government with Uganda after the contract ends;
- The supplier's plans on co-operating to ensure the smooth transfer of responsibilities from the supplier to any persons or organisation taking over such responsibilities after the contract ends;
- The supplier's plan to deliver to DFID (if requested or as otherwise directed by DFID) prior to the contract end date (or termination of the contract), any finished work or unfinished materials or work-in-progress which relate to the contract;
- The supplier's plans to provide DFID Somalia before the contract ends a summary of the status and next steps in relation to any on-

- going projects or other material and unfinished activities being conducted or monitored by the supplier;
- The return by the Supplier of all Confidential Information to DFID before the contract end date.

Allow for a period of up to sixty days after the contract end date (or termination date) for the exit process to be properly implemented.

## 23. Background

Somalia is one of the most fragile states in the world, rated 2nd to South Sudan on the fragile states index<sup>6</sup> Following the collapse of the Barre regime in 1991 the country effectively partitioned into three separate geographical regions; North East Zone (Puntland), North West Zone (Somaliland) and South Central Somalia. In 2012 the interim transition period for the Federal Government and Puntland was ended with the formation of Parliament and a Constitution, encompassing the principles of devolution and the new Federal Government of Somalia (FGS) was established<sup>7</sup>.

The government has defined a new six pillar strategy for peace and state building and as part of the New Deal process. The Somali Compact, between the FGS and the international community was endorsed at the Brussels Conference in September 2013<sup>8</sup>. The principles of the New Deal architecture focus on greater government oversight, ownership and leadership in decision making, greater use of government systems and mutual accountability.

The establishment of the FGS in 2012 represented a move towards increased stability and state formation; however the government has lurched from one political crisis to the next. Establishment of sub-national federalism is now gaining pace with an already established Puntland and two interim Administrations – Interim Jubaland Administration and Interim South West Administration currently being recognised by the Federal Government with three more Administrations under formation. Somaliland, who declared independence in 1991, is not formally recognised but has relative political stability.

The country has a population of 12.3m people of whom 3.1m are nomads with little access to basic services. There are 3 million Somalis in need of humanitarian assistance that includes 1.1m Internally Displaced People (IDP), with the highest proportion in South Central Somalia.<sup>9</sup> The majority of displaced women are widows and heads of household.<sup>10</sup> Just under half the population is aged between 10 and 29 years old.

Somalia ranks amongst the Least Developed Countries and until 2014 was considered the most fragile state in the world. This fragility impacts on the health status of the population and available data positions Somalia among the lowest ranking countries for the majority of health indicators. The maternal mortality ratio is exceptionally high across Somalia at an estimated 850 deaths per 100,000 live

<sup>6</sup> [www.foreignpolicy.com/fragile-states-2014/#rankings](http://www.foreignpolicy.com/fragile-states-2014/#rankings)

<sup>7</sup> Somaliland is a self-declared independent state, which does not come under the federal Government of Somalia.

<sup>8</sup> <http://www.newdeal4peace.org/about-the-new-deal/>

<sup>9</sup> UNFPA Population Estimation Survey 2014

<sup>10</sup> UNICEF, Emergency Obstetric and Neonatal Care (EmONC) Needs Assessment in Selected Health Facilities in Somaliland, 2011.

births. One in 18 women die due to preventable causes related to child birth. Less than 10% of women deliver in a health care facility, without the help of a skilled birth attendant. Women have on average six children, a direct result of only 15% using modern contraceptive methods. Giving birth remains one of the greatest risks to women's lives with 1 in 18 dying due to pregnancy related causes. Consequently neonatal, infant and U5 mortality rates are also high.

DFID Somalia has been the lead donor in health for the last five years, helping to set the national policy and strategic framework and successfully rolling out a routine delivery of essential services in over 50 of the 90 Somali districts. We have effectively demonstrated that it is possible to deliver essential health and nutrition services at a reasonable cost, in a complex and fragile state. The EPHS roll out, which started through a DFID funded pilot in 2011 is now delivering basic health and nutrition services covering approximately 40% of the Somali population, serving many women and children who have never experienced any form of public basic service provision for over 30 years. Through decentralised delivery mechanisms, EPHS has the potential to establish and strengthen state-citizen relations of accountability.

The programme will help deliver the UK Government's commitments on health and nutrition, and will directly contribute to reducing gender inequality in Somalia, given its strong focus on women and girls. Health is identified as a priority area in DFID Somalia's Country Poverty Reduction Diagnostic (2014) and the draft Bilateral Aid Review (2015), with commitments to continue to engage in human development over the long term. Through this new programme DFID Somalia will also aim to open up the market to greater competition for the management of DFID health funds in Somalia. We will seek to achieve greater VfM by promoting the space for private and NGO management agents to compete and engage, while assuring that delivery mechanisms are in line with our long term strategic aims. We will prioritise a systems building approach to help rebuild state capabilities to oversee basic service delivery, contributing to the state building and recovery agenda that is central to our overall engagement with Somalia

## **24. Introduction to DFID**

The Department for International Development (DFID) is the UK government department assigned to manage Britain's aid to poor countries and works to tackle extreme poverty. We are working to reach the Sustainable Development Goals (SDGs),.

DFID's mission is to help eradicate poverty in the world's poorest countries and this is underpinned by our set of values:

- Ambition and determination to eliminate poverty;
- Ability to work effectively with others;
- Desire to listen, learn and be creative;
- Diversity and the need to balance work and private life;
- Professionalism and knowledge



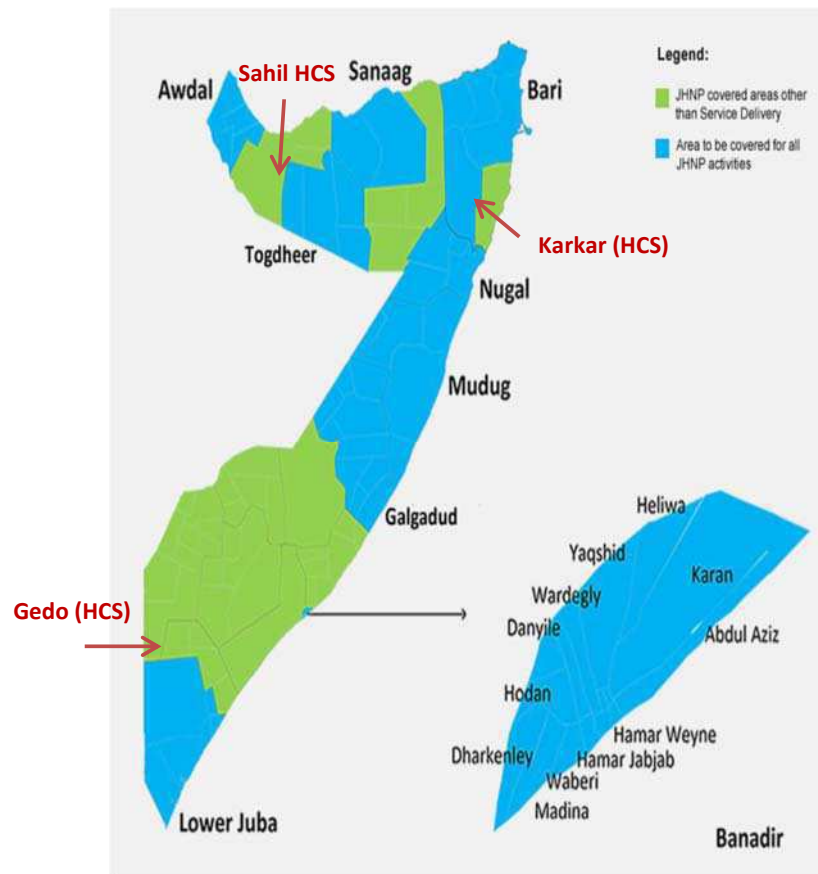
## **25. Background Documents**

The following documents are provided:

- Annex 1. Map of Current EPHS coverage areas with JHNP (coloured in blue) and HCS (written in red) – Map 1
- Annex 2 Fund Management Role Profile
- Annex 3 Duty of Care
- Annex 4 DFID Risk Assessment
- JHNP Mid Term Review (separate)
- SHINE BC - Intervention Summary, including latest Logical Framework (separate)

## Annex 1

**Map 1: Map of Current EPHS coverage areas with JHNP (coloured in blue) and HCS (written in red).**



## **Annex 2: Fund Management Role Profile**

Anticipated areas that the Programme Management Fund manager (PMS) will consider but not be limited to, include the following tasks:

### **➤ Programme strategy, planning and design:**

- Undertake an economic analysis of project proposals to ensure they are cost effective and value for money;
- Undertake a Conflict Analysis of project proposals to ensure adherence to “do no harm” principles;
- Prepare annual and quarterly work programmes which ensure that activities are supporting the milestones, outputs, purpose and goal of the programme as contained in the log-frame;
- Determine the scope and costs of the work programmes and the extent of the logistics support required for the programme;
- Prepare documentation, descriptions and detailed specifications for projects and activities included in the programme;
- Develop and implement an appropriate communication strategy for the programme.

### **➤ Management:**

- Provide skilled personnel to manage and deliver the programme in close collaboration with regional Somali governments and related stakeholders;
- Develop Standard Operating Procedures for to manage all aspects of the programme from: the Selection of partners, Contracting of partners, Results reporting/ M&E etc.
- Provide overall management of the programme including programme management, organisation of meetings/events, the preparation of work plans and budgets, the keeping of records, liaison with all implementing partners and interested parties, etc.

➤ **Financial management:**

- Develop appropriate financial procedures; implement and enforce an adequate control system;
- Document accounting and reporting procedures for implementing and facilitating organisations;
- Design and set up a computerised financial management system for the adequate capture, analysis, and reporting of financial information;
- Develop programme budgets in line with the work-programme and ensure that the annual forecasts are realistic and achievable.
- Effect payments to appropriate implementing sub-contractors;
- Ensure all payment documentation is in order and in accordance with international best practice;
- Receive and examine financial and narrative reports from implementing and facilitating organisations;
- Monitor utilisation of payments and monitor actual expenditures against budgets and disbursements;
- Maintain up to date asset inventory records, accounting records and ledgers and record all financial transactions pertaining to the Supply programme;
- Contract, through the Supply programme funds, an annual independent audit of the programme. Auditing services will be procured from a reputable audit company.

➤ **Procurement:**

- Plan for and facilitate procurement in the Supply programme. All procurement work must be carried out in accordance with DFID Procurement Procedures. To clarify, with regard to any commodity purchases, the Fund manager is authorised to procure goods and equipment up to the current EU threshold, providing they are able to demonstrate procurement capability and good value for money. The budget for goods and equipment must be calculated on an aggregated figure, the allowance for a budget of current EU Threshold does not mean that Fund manager can spend the first Threshold value and then revert to the Procurement Agent. Any goods and equipment purchased must be reported to DFID and will be managed by separated invoices.
- It is anticipated the Infrastructure/ refurbishment work may require specialists. Therefore, the fund manager will identify and manage the

specialists on a sub-contracting basis for the development of the Supply programmes and projects.

- Prepare technical specifications, Terms of Reference and bidding documents for the Supply projects using international best practice in procurement procedures;
- Prepare Terms of Reference (ToR) and contracts in accordance with the procurement policy, procurement plan and PMS delegated authority;
- Record and monitor all procurement processes;
- Carry out due diligence checks on all implementing partners/sub-contractors before the awarding of sub-contracts to ensure close fiduciary control;
- Issue and manage sub-contracts through to successful implementation;
- Seek and maintain VfM in all aspects of the Supply programme;
- Ensure that conflict sensitive approaches to procurement are carried out at all stages;
- Manage a Supply programme asset register.

➤ **Reporting, Monitoring and Evaluation:**

- Develop and maintain a project monitoring and evaluation framework and report on progress to DFID Somalia every quarter;
- Generate, manage and provide baseline data, information and documents to implement, monitor performance and evaluate the programme's impact;
- Develop VfM indicators and monitor and report on progress in achieving these every quarter;
- Finalise the log frame and results framework in the Inception Period;
- Prepare quarterly progress, financial and other management reports to DFID Somalia which should include sections on Risk Management and Value for Money;
- Monitor all implementation aspects of the Supply programme, including progress on achieving outputs and outcomes and institute corrective actions as and when required. In addition, the PMS will assist with programme review and evaluation requirements through support and the provision of access to, project sites, previous audit documentation and evaluations when required;

- The Supply programme, whenever necessary, is responsible for taking the appropriate actions to any evaluation, audit or review recommendations.
- **Knowledge management/ information generation (tenderers responses to this must be in line with the Government Digital Service Design Principals <https://www.gov.uk/design-principles>):**
  - Communicate and disseminate information/knowledge on the Supply programme. Over time, the programme will be required to build up a base of credible data on conflict, sector analysis, private sector development and impact in Somalia through:
  - Systematic gathering of data to evaluate programme progress, starting with data gathering to establish baseline indicators;
  - Implementing surveys (sector, enterprise) as far as possible in cooperation with the local institutions;
  - Synthesising information and performing data analysis to feed into reports, briefing notes and other information products for presentation to DFID Somalia;
  - Data management of the Supply project information using modern data management techniques;

During both the inception and implementation phases, DFID will evaluate the performance of the fund manager throughout the life of the programme intervention through its yearly annual review of the programme. Additionally, DFID will simultaneously implement an independent third party monitoring and evaluation of the programme. The fund manager is required to comply fully with all evaluations, which will be contracted and managed separately.

### **Annex 3: Duty of Care**

The supplier is responsible for the safety and well-being of their personnel and third parties affected by their activities under this contract, including appropriate security arrangements. They will also be responsible for the provision of suitable security arrangements for their domestic and business property.

DFID will share available information with the supplier on security status and developments in-country where appropriate. DFID will provide a copy of the DFID visitor notes (and a further copy each time these are updated), which the supplier may use to brief their personnel on arrival. A named person from the contracted organisation should be responsible for being in contact with DFID to ensure information updates are obtained. There should be a process of regular updates so that information can be passed on (if necessary). This named individual should be responsible for monitoring the situation in conjunction with DFID.

Travel advice is also available on the FCO website and the supplier must ensure it (and its personnel) are aware of this. The supplier is responsible for ensuring appropriate safety and security briefings for all of its personnel working under this contract.

The supplier is responsible for ensuring that appropriate arrangements, processes and procedures are in place for its personnel, taking into account the environment they will be working in and the level of risk involved in delivery of the contract (such as working in dangerous, fragile and hostile environments etc.). The supplier must ensure its personnel receive the required level of appropriate training prior to deployment.

Suppliers must develop tenders on the basis of being fully responsible for Duty of Care in line with the details provided above and the initial risk assessment matrix prepared by DFID. They must confirm in the tender that:

- They fully accept responsibility for security and Duty of Care.
- They understand the potential risks and have the knowledge and experience to develop an effective risk plan.
- They have the capability to manage their Duty of Care responsibilities throughout the life of the contract.
- They will give responsibility to a named person in their organisation to liaise with DFID and work with DFID to monitor the security context for the evaluation.

If you are unwilling or unable to accept responsibility for security and Duty of Care as detailed above, your tender will be viewed as non-compliant and excluded from further evaluation.

Acceptance of responsibility must be supported with evidence of capability (no more than 2 A4 pages) and DFID reserves the right to clarify any aspect of this evidence. In providing evidence tenderers should consider and answer yes or no (with supporting evidence) to the following questions:

- i. Have you completed an initial assessment of potential risks that demonstrates your knowledge and understanding, and are you satisfied that you understand the risk management implications (not solely relying on information provided by DFID)?

- ii. Have you prepared an outline plan that you consider appropriate to manage these risks at this stage (or will you do so if you are awarded the contract) and are you confident/comfortable that you can implement this effectively?
- iii. Have you ensured or will you ensure that your staff are appropriately trained (including specialist training where required) before they are deployed and will you ensure that on-going training is provided where necessary?
- iv. Have you an appropriate mechanism in place to monitor risk on a live / on-going basis (or will you put one in place if you are awarded the contract)?
- v. Have you ensured or will you ensure that your staff are provided with and have access to suitable equipment and will you ensure that this is reviewed and provided on an on-going basis?
- vi. Have you appropriate systems in place to manage an emergency / incident if one arises?



## Annex 4: DFID Risk Assessment - Somalia

### DFID Overall Project/Intervention Summary Risk Assessment matrix

Project/intervention title:

Location: **PUNTLAND**

Date of assessment: **12 February 2018**

Assessing official:

Theme	DFID score	Risk	DFID Score	Risk	DFID score	Risk	DFID score	Risk
	Garowe		Bossaso		Galkayo		Other Parts of Puntland	
<b>OVERALL RATING</b>	4		4		4		5	
<b>FCO travel advice</b>	4		4		4		4	
<b>Host nation travel advice</b>	Not available		Not available		Not available		Not available	
<b>Transportation</b>	5		4		5		5	
<b>Security</b>	4		4		5		4	
<b>Civil unrest</b>	3		4		3		4	
<b>Violence/crime</b>	3		3		5		4	
<b>Terrorism</b>	4		4		5		5	
<b>War</b>	2		3		3		3	
<b>Hurricane</b>	2		2		1		1	
<b>Earthquake</b>	1		1		1		1	
<b>Flood</b>	2		2		1		1	
<b>Medical Services</b>	4		5		5		5	
<b>Nature of Project/ Intervention</b>								

1 Very Low risk	2 Low risk	3 Med risk	4 High risk	5 Very High risk
			SIGNIFICANTLY GREATER THAN NORMAL RISK	

## DFID Overall Project/Intervention / Summary Risk Assessment matrix

Project/intervention title:

Location: **Mogadishu/South Central Somalia**

Date of assessment: **20 April 2018**

Assessing official:

Theme	DFID Risk score	DFID Risk score		DFID Risk score	DFID Risk score	DFID Risk score
	Mogadishu Airport	Mogadishu	Kismayo Airport	Kismaayo	Dollow	Other Parts of South Central Somalia
<b>OVERALL RATING</b>	4	4	4	4	4	4
<b>FCO travel advice</b>	4	4	4	4	4	4
<b>Host nation travel advice</b>	Not available	Not available	Not available	Not available	Not available	Not available
<b>Transportation</b>	3	4	4	4	4	5
<b>Security</b>	3	4	3	4	3	4
<b>Civil unrest</b>	2	4	2	4	4	4
<b>Violence/crime</b>	3	4	2	4	4	4
<b>Terrorism</b>	3	5	3	4	4	4
<b>War</b>	2	2	2	2	2	2
<b>Hurricane</b>	1	1	1	1	1	1
<b>Earthquake</b>	1	1	1	1	1	1
<b>Flood</b>	1	1	1	1	1	1
<b>Medical Services</b>	2	4	3	4	5	5
<b>Nature of Project/ Intervention</b>						

1 Very Low risk	2 Low risk	3 Med risk	4 High risk	5 Very High risk

		<b>SIGNIFICANTLY GREATER THAN NORMAL RISK</b>
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**DFID Overall Project/Intervention  
Summary Risk Assessment matrix**

Project/intervention title:

Location: **SOMALILAND**

Date of assessment: 20 February 2018

Assessing official:

Theme	DFID Risk score	DFID Risk score	DFID Risk score
	Hargeisa, Berbera	Borama, Burao	Other Parts of Somaliland
<b>OVERALL RATING</b>	<b>4</b>	<b>5</b>	<b>5</b>
<b>FCO travel advice</b>	<b>4</b>	<b>5</b>	<b>5</b>
<b>Host nation travel advice</b>	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>
<b>Transportation</b>	<b>4</b>	<b>4</b>	<b>4</b>
<b>Security</b>	<b>4</b>	<b>4</b>	<b>4</b>
<b>Civil unrest</b>	<b>3</b>	<b>4</b>	<b>4</b>
<b>Violence/crime</b>	<b>3</b>	<b>4</b>	<b>4</b>
<b>Terrorism</b>	<b>4</b>	<b>4</b>	<b>4</b>
<b>War</b>	<b>2</b>	<b>2</b>	<b>3</b>
<b>Hurricane</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>Earthquake</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>Flood</b>	<b>1</b>	<b>1</b>	<b>3</b>
<b>Medical Services</b>	<b>4</b>	<b>5</b>	<b>5</b>
<b>Nature of Project/ Intervention</b>			

<b>1</b> Very Low risk	<b>2</b> Low risk	<b>3</b> Med risk	<b>4</b> High risk	<b>5</b> Very High risk
			<b>SIGNIFICANTLY GREATER THAN NORMAL RISK</b>	

**Section 4**  
**SPECIAL CONDITIONS**

**1. Party Contacts**

**DFID**

1.1 The Contract Officer is:

[REDACTED]

Department for International Development

Email: [REDACTED]@dfid.gov.uk

Telephone: 01355 [REDACTED]

1.2 The Project Officer is:

[REDACTED]

Email: [REDACTED]@dfid.gov.uk

Telephone: [REDACTED]

**Supplier**

1.3 The Contract Officer is:

[REDACTED]

BMB Mott MacDonald

Email: [REDACTED]@mottmac.com

Telephone: [REDACTED]

1.4 The Project Officer is:

[REDACTED]

BMB Mott MacDonald

Email: [REDACTED]@mottmac.com

Telephone: [REDACTED]

**2. Expiry Date**

2.1 End date of Extension Period:

*31<sup>st</sup> March 2022*

2.2 Minimum written notice to Supplier in respect of extension:

6 Months

**3. Additional Documents to be included in this Contract**

The following documents are included in and form part of the Contract in addition to Sections 1-5 inclusive:

Mott MacDonald Technical Proposal dated 18<sup>th</sup> May 2017  
Mott MacDonald Commercial proposal dated 18<sup>th</sup> May 2017  
Mott MacDonald Value for Money response 18<sup>th</sup> May 2017  
Responses to questions for Clarification 25<sup>th</sup> August 2017

**4. Key Personnel**

The following of the Supplier's Personnel cannot be substituted by the Supplier without DFID's Approval:



**5. Sub-Contractors**

DFID has consented to the appointment of the following Sub-Contractors:

- Tropical Health and Education Trust
- Charlie Goldsmith Associates (CGA)
- International Procurement Agency (IPA) BV

**6. Limitation of Liability**

The Supplier's limit of liability shall be equal to the financial limit of the contract.

**7. Termination Notice**

The period of written notice under Clause 43 (Termination Without Default of the Supplier) in Section 2 (Standard Terms and Conditions) shall be as follows:

1 month

**8. Reports**

The Supplier is required to submit project reports to the Recipient through the Project Officer at the address shown in Clause 1.3 of Section 4 in accordance with Section 3 (Terms of Reference) or as provided for below.

**9. Medical Insurance**

The Supplier is responsible for ensuring adequate and appropriate medical insurance cover before beginning work overseas under a DFID contract for services. The Supplier's fee is deemed to include an element to cover the cost of medical insurance.

It is not the responsibility of the local DFID office, British Embassy or High Commission to meet the cost of the Supplier's medical care nor to make arrangements for evacuation in a medical emergency, although they will provide assistance if they can. On arrival, the Supplier should report to the DFID local office, British Embassy or High Commission with details of medical insurance arrangements in case of a medical emergency.

**10. Commercially Sensitive Information**

The Mott MacDonald Commercial proposal dated 18th May 2017 is Commercially Sensitive Information as per the definitions in Schedule 1 of Section 2 and has been prepared by BMB Mott MacDonald B.V. in confidence for the sole review of DFID. It contains confidential information which is not to be disclosed to other parties on the grounds that disclosure of such information would prejudice the commercial interest of the Mott MacDonald Group and its partners. This information shall be held in confidence until three years after completion of all Services for PO 7751 – Fund Manager for the Supply Component of the Somali Health and Nutrition Programme.

**11. Formal Review points**

There will be a formal review point at the end of the 12 month inception period. There will also be a formal review point at the end of year 2 (after the first year of implementation), 24 months after the contract start date. For the avoidance of doubt, DFID shall notify the Supplier in writing at least 30 days prior to any intended suspension or termination of the Services (in whole or in part) in connection with a formal review point and Clauses 41, 43 and 44 of Section 2 (Standard Terms & Conditions) shall apply.

**ANY ADDITIONAL SPECIAL CONDITIONS THAT MAY BE REQUIRED SHOULD BE INSERTED BELOW.**

**15. New Terms and Conditions**

The Supplier's Tender was submitted under DFID's Terms and Conditions (Version 2 March 2015). The Supplier agrees to adopt the new Terms and Conditions (Version 1.1 October 207) on the following condition:

- a) 