

CONTRACT FOR SUPPLIER SERVICES

Section 1 - FORM OF CONTRACT

CONTRACT FOR : **Good Governance Fund - Programme Management Unit - Lot 1**
PURCHASE ORDER NUMBER : **8582**

THIS CONTRACT is made

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

AND: Alinea International Limited ("**Supplier**") whose principal place of business is situated at 14707 Bannister Road South East, Suite 200 Calgary, Alberta, CANADA, T2X 1Z.

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

WHEREAS:

- A.** DFID requires the Supplier to provide the Services to citizens' in the targeted countries who benefit from the greater effectiveness of political and economic institutions (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

August 2018

The Services shall commence on 4th May 2020 and the end date of the Initial Period shall be 3rd November 2023.

4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed £7,528,229 inclusive of any government tax, if applicable. Please see Section 4, paragraph 13.

5. Programme Name

The Programme Name to which this Contract relates is Good Governance Fund (GGF) Programme Management Unit (PMU) – Lot 1.

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

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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, including in the country of performance, 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 gather, collate, and provide such information and cooperation as DFID may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract.
- 5.5 The Supplier shall ensure that the Services:
- 5.5.1 comply in all respects with the description of Services in Section 3 (Terms of Reference) or elsewhere in this Contract; and
 - 5.5.2 are supplied in accordance with the provisions of this Contract and the Tender.
- 5.6 The Supplier shall perform its obligations under this Contract in accordance with:
- 5.6.1 all applicable Law;
 - 5.6.2 Good Industry Practice;
 - 5.6.3 any policies provided by DFID; and
 - 5.6.4 the Supplier's own established procedures and practices to the extent they do not conflict with the requirements of Clauses 5.6.1 to 5.6.3.
- 5.7 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 16 (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;
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/301861/Security_Policy_for_Contractors_Consultants_Suppliers.pdf
 - (c) shall be subject to pre-employment checks that include, as a minimum, employment history for the last three years, identity checks, unspent criminal convictions and right to work (including nationality and immigration status);
 - (d) 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
 - (e) 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 both act in accordance with Clause 8 below and 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 13.3 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.
- 7.8.4 where Sub-Contracting has been Approved by DFID, promptly provide DFID with written confirmation from each Sub-Contractor identified within Section 4 of the Contract that they accept provisions set out at Clauses 50.1 to 50.7, which shall be included in all Supplier Sub-Contracts.

8. VISIBILITY OF SUBCONTRACT OPPORTUNITIES

8.1 The Supplier shall:

- 8.1.1 subject to Clause 8.3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;
- 8.1.2 within 90 days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
- 8.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- 8.1.4 provide reports on the information at clause 8.1.3 to DFID in the format and frequency as reasonably specified by DFID; and
- 8.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

8.2 Each advert referred to at Clause 8.1 above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

8.3 The obligation at Clause 8.1 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.

8.4 Notwithstanding Clause 8.1, DFID may by giving its Approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.

9. STAFF TRANSFER

9.1 The Parties agree that:

- 9.1.1 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.

9.1.2 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

9.1.3 Part D of Schedule 2 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;

9.2 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.

10. DUTY OF CARE

10.1 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.

10.2 The Supplier warrants that it has and will throughout the duration of the Contract:

10.2.1 carry out the appropriate risk assessment with regard to its delivery of the Services;

10.2.2 provide the Supplier Personnel with adequate information, instruction, training and supervision;

10.2.3 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.

10.3 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 10. 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.

10.4 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.

10.5 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 10, are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.

10.6 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.

10.7 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).

10.8 The Supplier shall provide training on a continuing basis for all Supplier Personnel, in compliance with the Security Policy and the security plan.

11. PROCUREMENT OF EQUIPMENT

11.1 The Supplier shall ensure that procurement of goods and equipment shall:

11.1.1 be undertaken in accordance with best practice principles of openness fairness and transparency;

11.1.2 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;

- 11.1.3 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
- 11.1.4 be on the basis that the ownership of Equipment shall vest in DFID, and shall be so marked.

12. USE OF AND RESPONSIBILITY FOR EQUIPMENT

- 12.1 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.
- 12.2 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.
- 12.3 Subject to Clause 12.4 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
- 12.4 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.
- 12.5 The Supplier shall obtain DFID's instructions on the disposal of Equipment and comply with such instructions.

Contract Governance

13. MONITORING OF CONTRACT PERFORMANCE

- 13.1 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 13 shall apply.
- 13.2 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.
- 13.3 The Supplier shall provide DFID with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Clause 13.2 above which shall contain, as a minimum, the following information:
 - 13.3.1 details of compliance with its obligations under Clause 7.8.2
 - 13.3.2 details of compliance with any additional obligations set out in Section 3 (Terms of Reference);
 - 13.3.3 details of compliance with its obligations under Annex 1b of Section 2 (Contractual Annual Compliance Declaration); and
 - 13.3.4 such other details as DFID may reasonably require from time to time.
- 13.4 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):
 - 13.4.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
 - 13.4.2 take place at such location and time (within normal business hours) as DFID shall reasonably require unless otherwise agreed in advance;
 - 13.4.3 be attended by the Supplier's Contract Officer and the DFID's Project Officer; and
 - 13.4.4 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 Project 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 Project Officer at each meeting.
- 13.5 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.

14. PROGRESS & FINANCIAL REPORTS

- 14.1 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.
- 15. OPEN BOOK ACCOUNTING AND AUDIT**
- 15.1 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.
- 15.2 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).
- 15.3 The Supplier shall:
- 15.3.1 keep the records and accounts referred to in Clause 15.1 in accordance with Good Industry Practice and Law; and
- 15.3.2 afford DFID and/or its Auditors access to the records and accounts referred to in Clause 15.1 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 15.1, 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.
- 15.4 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.
- 15.5 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:
 - 15.5.1 all reasonable information requested by DFID within the scope of the audit;
 - 15.5.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 15.5.3 access to the Supplier Personnel.
- 15.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 15, 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.
- 16. EXIT MANAGEMENT**
- 16.1 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:
 - 16.1.1 details of the Service(s);
 - 16.1.2 a copy of the Register, updated by the Supplier up to the date of delivery of such Registers;
 - 16.1.3 an inventory of DFID Data in the Supplier's possession or control;
 - 16.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 16.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 16.1.6 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
 - 16.1.7 such other material and information as DFID shall reasonably require,
 (together, the "Exit Information").
- 16.2 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).
- 16.3 if the Exit Information materially changes from the Exit Information previously provided and it could reasonably adversely affect:
 - 16.3.1 the provision of the Services; and/or
 - 16.3.2 the delivery of the exit services/exit plan; and/or
 - 16.3.3 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.

- 16.4 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:
- 16.4.1 prepare an informed offer for those Services; and
 - 16.4.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 16.5 The Supplier shall, within three (3) months after the Commencement Date, deliver to DFID an Exit Plan which:
- 16.5.1 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;
 - 16.5.2 complies with the requirements set out in Clause 16.7 below;
 - 16.5.3 is otherwise reasonably satisfactory to DFID.
- 16.6 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.
- 16.7 Unless otherwise specified by DFID, the Exit Plan shall set out, as a minimum:
- 16.7.1 how the Exit Information is obtained;
 - 16.7.2 the management structure to be employed during both transfer and cessation of the Services;
 - 16.7.3 the management structure to be employed whilst carrying out the activities to be performed by the Supplier as identified in the Exit Plan;
 - 16.7.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 16.7.5 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);
 - 16.7.6 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);
 - 16.7.7 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;
 - 16.7.8 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;
 - 16.7.9 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;
 - 16.7.10 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);
 - 16.7.11 proposals for the disposal of any redundant Services and materials;
 - 16.7.12 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;
- 16.7.13 how each of the issues set out in this Clause 16 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;
- 16.7.14 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

17. Charges

- 17.1 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 22.
- 17.2 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.

18. VAT

- 18.1 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.
- 18.2 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.

19. RETENTION AND SET OFF

- 19.1 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.
- 19.2 If DFID wishes to exercise its right pursuant to Clause 19.1 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.
- 19.3 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

20. SUPPLIER PROFIT

- 20.1 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 an overall format determined by DFID but to include an updated cost pro-forma template, setting out the Actual Profit Margin including any change to the Projected Profit Margin.
- 20.2 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:
- 20.2.1 pay DFID an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount; or
 - 20.2.2 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

20.2.3 adjust the Charges.

21. SATISFACTORY PERFORMANCE

- 21.1 Payments made pursuant to Clause 17.1 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.
- 21.2 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.
- 21.3 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.

22. PAYMENTS & INVOICING INSTRUCTIONS

- 22.1 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.
- 22.2 Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in OANDA (www.oanda.com) on the Friday immediately preceding the date on which the purchase was made or services acquired by the Supplier or, if this took place on a Friday, at the rate so stated on that day.
- 22.3 Unless otherwise expressly provided in Section 4 (Special Conditions) or Section 5 (Schedule of Prices), invoices should be submitted electronically monthly in arrears to the Accounts Payable Section, DFID Financial Management Group e-invoicing@dfid.gov.uk, and in accordance with this Clause 22.
- 22.4 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:
- 22.4.1 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).
 - 22.4.2 the date of the invoice;
 - 22.4.3 a unique invoice number;
 - 22.4.4 the period(s) to which the relevant charge(s) relate;
 - 22.4.5 the correct reference for this Agreement and the purchase order to which it relates;
 - 22.4.6 a contact name and telephone number of a responsible person in the supplier's finance department;
 - 22.4.7 a detailed breakdown of the Services and the appropriate Charges and supported by any other documentation required by DFID to substantiate the invoice.
- 22.5 All Valid Invoices should correspond with the budget lines identified in Section 5 (Schedule of Prices) of this Contract.
- 22.6 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.
- 22.7 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.

23. UNITED KINGDOM INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

- 23.1 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:

- 23.1.1 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;
- 23.1.2 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.

24. TAX COMPLIANCE

- 24.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
 - 24.1.1 notify DFID in writing of such fact within 5 Working Days of its occurrence;
 - 24.1.2 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

25. INTELLECTUAL PROPERTY RIGHTS

- 25.1 Save as expressly granted elsewhere under this Contract:
 - 25.1.1 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.
 - 25.1.2 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.
- 25.2 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 25.1, 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).
- 25.3 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.
- 25.4 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.
- 25.5 Subject to Clause 25.7, 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.

- 25.6 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 25.5 above and the Supplier shall provide full details of the adverse effect this may have on DFID's use of the Project Specific IPRs.
- 25.7 Where the Supplier is unable to comply with Clause 25.5, 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.
- 25.8 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.
- 25.9 If an IPR Claim is made or anticipated, the Supplier must at its own expense and DFID's sole option, either:
- 25.9.1 procure for DFID the rights in Clause 25.5 without infringing the IPR of any third party; or
- 25.9.2 replace or modify the relevant item with non-infringing substitutes with no detriment to functionality of performance of the Services.

26. SECURITY REQUIREMENTS

- 26.1 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.
- 26.2 The Supplier shall ensure that it keeps up to date with the latest version of the Security Policy.
- 26.3 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 38. 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.
- 26.4 Until and/or unless a change to the Charges is agreed by DFID pursuant to Clause 26.3 the Supplier shall continue to perform the Services in accordance with its obligations and for the Charges applicable prior to any change request.

27. MALICIOUS SOFTWARE

- 27.1 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.
- 27.2 Notwithstanding Clause 27.1 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.
- 27.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 27.2 shall be borne by the Parties as follows:
- 27.3.1 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
- 27.3.2 by DFID if the Malicious Software originates from the DFID Software or the DFID Data (whilst DFID Data was under the control of DFID).

28. TRANSPARENCY

- 28.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of Clause 30 (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.
- 28.2 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.
- 28.3 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.
- 28.4 The Supplier shall assist and cooperate with DFID to enable DFID to publish this Contract.

- 28.5 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.
- 28.6 The Supplier shall:
- 28.6.1 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
 - 28.6.2 provide all necessary assistance as reasonably requested by DFID to enable DFID to respond to the IATI requirements.
- 28.7 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;
- 28.7.1 as required in the terms of reference;
 - 28.7.2 annually;
 - 28.7.3 when there are material changes in the delivery chain; and
 - 28.7.4 as part of the project completion process.
- 29. CONFIDENTIALITY**
- 29.1 Except to the extent set out in this Clause 29 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 29.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;
 - 29.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 29.2 Clause 29.1 shall not apply to the extent that:
- 29.2.1 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 30 (Freedom of Information);
 - 29.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 29.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 29.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 29.2.5 it is independently developed without access to the other Party's Confidential Information.
- 29.3 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.
- 29.4 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.
- 29.5 At the written request of DFID, the Supplier shall procure that those members of the Supplier Personnel referred to in Clause 29.3, respectively sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 29.6 Nothing in this Contract shall prevent DFID from disclosing the Supplier's Confidential Information:
- 29.6.1 on a confidential basis to any Central Government Body for any proper purpose of DFID or of the relevant Central Government Body;

- 29.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 29.6.3 to the extent that DFID (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 29.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 29.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- 29.6.5 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 15 (Open Book Accounting and Audit), its rights to appoint an advisor pursuant to Clause 47 (Dispute Resolution) and any rights set out in Clause 16 (Exit Management);
- 29.6.6 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
- 29.6.7 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 29.

- 29.7 Nothing in this Clause 29 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.

30. FREEDOM OF INFORMATION

- 30.1 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.
- 30.2 The Supplier shall and shall ensure that its Sub-Contractors shall:
 - 30.2.1 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;
 - 30.2.2 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
 - 30.2.3 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.
- 30.3 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.
- 30.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by DFID.
- 30.5 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:
 - 30.5.1 in certain circumstances without consulting the Supplier;
 - 30.5.2 following consultation with the Supplier and having taken their views into account;
 - 30.5.3 provided always that where Clause 30.5.1 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.
- 30.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clauses 30.7 and 30.8 and shall permit DFID to inspect such records as requested by DFID from time to time.

- 30.7 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:
- 30.7.1 in accordance with Good Industry Practice and Law;
 - 30.7.2 in chronological order;
 - 30.7.3 in a form that is capable of audit;
 - 30.7.4 at its own expense.

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

31. OFFICIAL SECRETS ACT

31.1 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.

32. DFID DATA

- 32.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to DFID Data.
- 32.2 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.
- 32.3 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.
- 32.4 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.
- 32.5 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.
- 32.6 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.
- 32.7 If DFID Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, DFID may:
- 32.7.1 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
 - 32.7.2 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.
- 32.8 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.
- 32.9 The Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme.

33. PROTECTION OF PERSONAL DATA

- 33.1 The Parties acknowledge that the factual activity carried out by each of them in relation to their obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as "Joint Controller" or a "Controller" or a "Processor" of certain Personal Data under this Contract. The Parties shall detail the envisaged status in Appendix A of the Terms of Reference (at Section 3 of the Contract) and update it where appropriate.
- 33.2 **Where a Party is Processing on behalf of the other Party who is the Controller**

- 33.2.1 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.
- 33.2.2 The Processor shall notify the Controller immediately if it considers that any of Controller's instructions infringe the Data Protection Legislation.
- 33.2.3 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.
- 33.2.4 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 Clause 33.2.1, 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:
 - a. nature of the data to be protected;
 - b. harm that might result from a Data Loss Event;
 - c. state of technological development; and
 - d. 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 Clause 33.2.1);
 - 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:
 - a. 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;
 - b. the Data Subject has enforceable rights and effective legal remedies;

- c. 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
 - d. 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.
- 33.2.5 Subject to clause 33.2.6, the Processor shall notify the Controller without due delay and in any event within 48 hours 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.
- 33.2.6 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 33.2.5 (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.
- 33.2.7 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.
- 33.2.8 Where the Supplier is the Processor it shall allow for audits of its Data Processing activity by the DFID or its DFID's designated auditor.
- 33.2.9 Each party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 33.2.10 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 33.2 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.

33.2.11 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

33.2.12 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).

33.2.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. DFID 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.

33.3 **Where the Parties both Control Personal Data Independently**

33.3.1 With respect to Personal Data which a Party acts as Controller but which is not under the Joint Control (because the Parties determine the means and purposes of processing Personal Data independently of each other) each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller and with this Clause 33.3.

33.3.2 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 33(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

33.3.3 Each Party shall promptly (and without undue delay) notify the other Party if in relation to any Personal Data processed by it as independent Controller in the performance of its obligations or the exercise of its rights under this Contract if:

- (a) it receives a complaint, notice or communication which relates to either Party's actual or alleged non-compliance with the Data Protection Legislation; or
- (b) it becomes aware of a Personal Data Breach;

and shall provide the other Party with such assistance and cooperation as is reasonably requested by the other Party in order to address and resolve the complaint, notice, communication or Personal Data Breach.

33.3.4 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (**the "Claim Losses"**): the Party responsible for the relevant breach shall be responsible for the Claim Losses.

33.3.5 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be appropriate for them to retain such Personal Data under applicable Data Protection Law Legislation and their privacy policy (save to the extent and for the limited period) that such information needs to be retained by the a Party for statutory compliance the purposes of complying with Law or as otherwise required by this Contract), and taking all further actions as may be necessary or desirable to ensure its compliance with Data Protection Law Legislation and its privacy policy

33.4 **Where the Parties are both Controllers of Personal Data Jointly**

33.4.1 Where the Parties jointly determine the purposes of means of processing Personal Data in accordance with GDPR Article 26, the Parties shall identify the applicable Personal Data under Joint Control in Appendix A and the Parties shall enter into a Joint Controller Agreement based on the terms outlined in Appendix B in replacement of Clause 33.2-33.3 which shall not apply for any such the Personal Data under Joint Control.

34. PUBLICITY AND BRANDING

34.1 The Supplier shall not:

34.1.1 make any press announcements or publicise this Contract or its contents in any way; or

34.1.2 use DFID's name or brand (including the 'UK aid logo') in any promotion, marketing, communications or announcement of orders;
without the prior written consent of the DFID.

34.2 Where and to the extent that DFID has provided consent pursuant to Clause 34.1, then the Supplier:

34.2.1 shall collaborate with DFID and proactively look for ways to build support for development and raise awareness of DFID's funding.

34.2.2 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.

34.2.3 shall provide a visibility statement of how and when they or Sub-Contractors 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.

34.2.4 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**35. LIMIT OF LIABILITY**

35.1 Neither Party limits its liability for:

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

35.1.2 fraud or fraudulent misrepresentation by it or its employees;

35.1.3 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

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

35.2 Subject to Clause 35.1, 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.

35.3 Subject to Clause 35.1, 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).

35.4 Subject to Clause 35.1 neither Party be liable to the other for any:

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

35.4.2 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.

35.5 Subject to Clause 35.2, and notwithstanding Clause 35.4, 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:

35.5.1 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;

- 35.5.2 any wasted expenditure or charges;
- 35.5.3 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;
- 35.5.4 any compensation or interest paid to a third party by DFID; and
- 35.5.5 any fine, penalty or costs incurred by DFID pursuant to Law.

36. INDEMNITY

- 36.1 Subject to Clauses 35.1 to 35.5 (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.
- 36.2 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.

37. INSURANCE

- 37.1 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).
- 37.2 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.
- 37.3 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

38. VARIATIONS

- 38.1 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"**.
- 38.2 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:
 - 38.2.1 the extent of the proposed Variation and any additional cost that may be incurred; and
 - 38.2.2 a formal, technical and commercial justification.
- 38.3 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:
 - 38.3.1 agree to continue to perform its obligations under this Contract without the Variation; or
 - 38.3.2 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.
- 38.4 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. DFID shall not be liable for any costs for any additional activity or otherwise undertaken by the Supplier where the Parties have not agreed in writing in an executed Contract Amendment Letter in accordance with this Clause 38 for such costs to be incurred or for the additional activity to be undertaken. The Supplier shall promptly return on request by DFID, any monies which DFID may have paid the Supplier in respect of activities or payments which have not been authorised by DFID in accordance with this Clause 38.

39. ASSIGNMENT AND NOVATION

- 39.1 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.
- 39.2 Subject to Clause 39.1, 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 39.2 shall be subject to:
- 39.2.1 deduction of any sums in respect of which DFID exercises its right of recovery under Clause 19 (Retention and Set Off);
 - 39.2.2 all related rights of DFID under the Contract in relation to the recovery of sums due but unpaid; and
 - 39.2.3 DFID receiving notification under both Clauses 39.3 and 39.4.
- 39.3 In the event that the Supplier assigns the right to receive the Charges under Clause 39.2, the Supplier shall notify DFID in writing of the assignment and the date upon which the assignment becomes effective.
- 39.4 The Supplier shall notify DFID of the assignee's contact information and bank account details to which DFID shall make payment.

Default and Termination**40. DFID REMEDIES FOR DEFAULT****40.1 Remedies**

- 40.1.1 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 45 (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 45 (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.
- 40.1.2 Where DFID exercises any of its step-in rights under Clauses 40.1.1 (c) (ii) or 40.1.1 (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.

40.2 Rectification Plan Process

- 40.2.1 Where DFID has instructed the Supplier to comply with the Rectification Plan Process pursuant to 40.1.1 (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).

40.2.2 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.

40.2.3 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.

40.2.4 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.

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

41. FINANCIAL DISTRESS

41.1 The Supplier acknowledges and agrees that the financial stability and solvency of the Supplier and its key Sub-Contractors is critical to the successful delivery of the Services and that any deterioration or potential deterioration of their financial position may have an adverse effect on the performance of the Contract. The Supplier shall monitor its own financial standing and that of its key Sub-Contractors on a regular basis throughout the term using a Financial Monitoring Plan and shall report on this to DFID.

41.2 The Financial Monitoring Plan shall be designed by the Supplier to ensure that DFID has an early and clear warning indicator of any financial distress of the Supplier and key Sub-Contractors which may affect the Services; such design to be proportionate for the circumstances; taking into account the nature of the Services and the identity of the suppliers.

41.3 Except where DFID has agreed otherwise, the Supplier shall within four (4) weeks of the Commencement Date, prepare and submit via the Project Officer for Approval by DFID, a Financial Monitoring Plan which shall set out the Supplier's proposals for the monitoring and reporting of its financial stability, and the financial stability of its key Sub-Contractors to DFID on a regular basis throughout the Term.

41.4 The Financial Monitoring Plan may include (but shall not be limited to):

41.4.1 A summary of the Supplier's and key Sub-Contractors' financial positions at the date of submission of the Financial Distress Plan and on a regular basis thereafter to DFID (including credit ratings, financial ratios, details of current liabilities, value of marketable securities, cash in hand and bank, account receivables etc.);

41.4.2 An objective means of measuring the Supplier and key Sub-Contractor's financial standing on a regular basis throughout the Term against historical financial standing to show trend (including use of credit ratings, financial ratios and/or other financial indicators);

- 41.4.3 The Supplier's proposals for reporting financial standing to DFID (including the template reporting forms which the Supplier intends to use);
 - 41.4.4 The frequency of monitoring and reporting activity;
 - 41.4.5 Provision of reporting lines for the supply chain to notify DFID of incidents of non-payment of valid and undisputed invoices;
 - 41.4.6 Any other provisions which in the reasonable opinion of the Supplier may be required by DFID to assess current financial standing of the Supplier and key Sub-Contractors and which enable quick and easy assessment of any movement in financial standing.
- 41.5 The Supplier shall make any reasonable amendments to the Financial Monitoring Plan as may be requested by DFID and shall resubmit it for Approval. If Approved by DFID, the Supplier shall promptly implement the Financial Monitoring Plan throughout the Term.
- 41.6 In addition to its obligations under the Financial Monitoring Plan, the Supplier shall promptly notify DFID in writing if any of the following "Financial Distress Events" occurs in respect of the Supplier or a key Sub-Contractor:
- 41.6.1 there is a material deterioration of its financial standing;
 - 41.6.2 the appointment of an administrator or receiver;
 - 41.6.3 late filing of statutory accounts with Companies House;
 - 41.6.4 it issues a profits warning or other similar public announcement about a deterioration in its finances or prospects;
 - 41.6.5 it is being publicly investigated for improper financial accounting and reporting, fraud or any other financial impropriety;
 - 41.6.6 it commits a material breach of covenant to its lenders;
 - 41.6.7 a key Sub-Contractor not being paid any sums properly due under a specified invoice that is not subject to a genuine dispute;
 - 41.6.8 it is subject to any claims, litigation, investigations, actions or decisions in respect of financial indebtedness.
- 41.7 In the event of a Financial Distress Event occurring, then the Supplier shall and shall procure that any affected key Sub-Contractor shall, as soon as reasonably practicable review the effect of the Financial Distress Event on the continued performance of the Services under this Contract and provide a report to DFID. Where DFID reasonably believes that the Financial Distress Event is likely to adversely impact on the performance of the Services, the Supplier shall submit to DFID for Approval a Financial Distress Service Continuity Plan as soon as is reasonably practicable and shall provide any further financial information as DFID may reasonably require to assess financial standing and risks.
- 41.8 If DFID acting reasonably considers that the Financial Distress Service Continuity Plan is insufficient to remedy the effects of the Financial Distress Event on the Service, then it may require the Supplier (and/or key Sub-Contractor) to redraft and resubmit an improved and updated plan or may require the issue to be escalated via the Dispute Resolution Procedure.
- 41.9 If DFID Approves the Financial Distress Service Continuity Plan, then the Supplier shall execute and continue to review the plan (with submissions to DFID for Approval where it is updated).
- 41.10 Where the Parties agree that the Financial Distress Event no longer adversely affects the delivery of the Services, the Supplier shall be relieved of its obligations in respect of the current Financial Distress Service Continuity Plan.
- 41.11 DFID shall be entitled to terminate this Contract for material Default if:
- 41.11.1 The Supplier fails to notify DFID of a Financial Distress Event in accordance with Clause 41.6;
 - 41.11.2 DFID and the Supplier fail to agree a Financial Distress Service Continuity Plan or any updates to a plan within a reasonable timescale (taking into account the effects of the Financial Distress Event on the Services);
 - 41.11.3 The Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan or any updates to the plan.

42. FORCE MAJEURE

- 42.1 Subject to the remainder of this Clause 42, a Party may claim relief under this Clause 42 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.
- 42.2 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.
- 42.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 42 to the extent that consequences of the relevant Force Majeure Event:
- 42.3.1 are capable of being mitigated by any of the provision of any Services but the Supplier has failed to do so; and/or
 - 42.3.2 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.
- 42.4 Subject to DFID's right to terminate set out in Clause 42.5, 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.
- 42.5 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.
- 42.6 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.
- 42.7 Relief from liability for the Affected Party under this Clause 42 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 42.6.
- 42.8 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.

43. TERMINATION WITHOUT DEFAULT OF THE SUPPLIER

- 43.1 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)).

44. TERMINATION WITH DEFAULT OF THE SUPPLIER

- 44.1 DFID may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:
- 44.1.1 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;
 - 44.1.2 DFID expressly reserves the right to terminate this Contract for material Default;
 - 44.1.3 the Supplier commits any material Default of the Contract which is not, in the reasonable opinion of DFID, capable of remedy; and/or
 - 44.1.4 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.
- 44.2 For the purpose of Clause 44.1, 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.

- 44.3 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:
- 44.3.1 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
 - 44.3.2 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 48 or 49 of this Contract; or
 - 44.3.3 DFID has the right to terminate under Clause 38.3.2; or
 - 44.3.4 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 24 (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 24 (Tax Compliance); or
 - (g) the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of DFID, are acceptable; or
 - 44.3.5 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
 - 44.3.6 the Supplier is a partnership or a company and there is a Change of Control.
 - 44.3.7 there is an occurrence of any of the statutory provisos contained in Regulation 73(1)(a)-(c) of the Regulations.
- 44.4 Where this Contract is terminated in accordance with this Clause 44, the Supplier shall without prejudice to DFID's other remedies, take any steps necessary to terminate the provision of the Services in a timely and orderly manner and in compliance with Clause 16 (Exit Management) but shall not be entitled to any further payment in relation to this Contract.

45. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

- 45.1 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.
- 45.2 Any suspension of this Contract under Clause 45.1 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.
- 45.3 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 38 (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:
- 45.3.1 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 44 (Termination With Default of the Supplier) except Clause 43 (Termination Without Default of the Supplier); and
 - 45.3.2 reject the Variation.

46. CONSEQUENCES OF EXPIRY OR TERMINATION

- 46.1 Where this Contract has been terminated pursuant to Clause 43 (Termination Without Default of the Supplier), the Supplier shall:
- 46.1.1 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;
 - 46.1.2 act in accordance with Clause 16 (Exit Management); and
 - 46.1.3 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 46.1.3 to the Supplier within 30 days of receipt from the Supplier of a Valid Invoice in respect of the amount due.
- 46.2 Where this Contract is terminated under Clause 44 (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 19 (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.
- 46.3 Where this Contract is terminated for any reason, save as expressly provided in this Contract:
- 46.3.1 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
 - 46.3.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of DFID or the Supplier under Clauses 15, 16, 17, 18, 19, 21, 22, 25, 28, 29, 30, 31, 32, 33, 35, 36, 46, 47, 52 and 57, 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**47. DISPUTE RESOLUTION PROCEDURE**

- 47.1 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.
- 47.2 The decision of the arbitrator shall be final and binding on both Parties.
- 47.3 The seat and place of arbitration shall be London.

48. PREVENTION OF FRAUD AND BRIBERY

- 48.1 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:
- 48.1.1 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

- 48.1.2 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.
- 48.2 The Supplier, Supplier Personnel, or any person acting on their behalf shall not during the Term:
- 48.2.1 commit a Prohibited Act; and/or
- 48.2.2 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.
- 48.3 The Supplier shall during the Term:
- 48.3.1 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;
- 48.3.2 keep appropriate records of its compliance with its obligations under Clause 48.3.1 and make such records available to DFID on request.
- 48.4 The Supplier shall immediately notify DFID in writing if it becomes aware of any breach of Clause 48.1 and/or Clause 48.2, 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:
- 48.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 48.4.2 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
- 48.4.3 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.
- 48.5 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:
- 48.5.1 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
- 48.5.2 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.
- 48.6 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.
- 48.7 Where the Supplier or Supplier Personnel, or any person acting on their behalf, does any of the acts mentioned in Clause 48.5 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:
- 48.7.1 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;
- 48.7.2 to recover from the Supplier the amount or value of any such gift, consideration or commission;
- 48.7.3 to recover from the Supplier any other Losses sustained as a result of any breach of this Clause 48, whether or not the Contract is terminated.
- 48.8 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 or +44 (0)1355 843747. All suspicions will be treated with the utmost confidentiality.

49. ANTI-TERRORISM REGULATIONS

- 49.1 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.
- 49.2 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.
- 49.3 The Supplier shall immediately notify DFID in writing if it becomes aware of any breach of Clause 49.1 and/or Clause 49.2, 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:
- 49.3.1 been subject to an investigation or prosecution which relates to an alleged infringement of Clause 49.1 and/or Clause 49.2;
 - 49.3.2 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.
- 49.4 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 49.1 and/or Clause 49.2 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:
- 49.4.1 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;
 - 49.4.2 to recover from the Supplier any other loss sustained as a result of any breach of this Clause 49, whether or not the Contract has been terminated.

50. SAFEGUARDING

- 50.1 For the purposes of this Clause 50, “Reasonable Measures” shall mean:

all reasonable endeavours expected to be taken by a professional and prudent supplier in the Supplier’s industry to eliminate or minimise risk of actual, attempted or threatened exploitation, abuse and harassment (including Sexual Abuse, Sexual Exploitation and Sexual Harassment) and whether or not such conduct would amount to a criminal offence in the United Kingdom or an offence under the laws of the territory in which it takes place (together “**Serious Misconduct**”) as is reasonable and proportionate under the circumstances. Such endeavours may include (but shall not be limited to):

- (a) clear and detailed policies and guidance for Supplier Personnel, Supplier Providers and where appropriate, beneficiaries;
- (b) developing, implementing and maintaining a safeguarding plan throughout the term (including monitoring);
- (c) provision of regular training to Supplier Personnel, Supplier Providers and where appropriate, beneficiaries
- (d) clear reporting lines and whistleblowing policies in place for Supplier Personnel, Supplier Providers and beneficiaries,
- (e) maintaining detailed records of any allegations of Serious Misconduct and regular reporting to DFID and the Appropriate Authorities (where relevant) of any such incidents;
- (f) any other Good Industry Practice measures (including any innovative solutions),

- 50.2 The Supplier shall take all Reasonable Measures to prevent Serious Misconduct by the Supplier Personnel or any other persons engaged and controlled by it to perform any activities under this Agreement (“**Supplier Providers**”) and shall have in place at all times robust procedures which enable the reporting by Supplier Personnel, Supplier Providers and beneficiaries of any such Serious Misconduct, illegal acts and/or failures by the Supplier or Supplier Personnel to investigate such reports.
- 50.3 The Supplier shall take all Reasonable Measures to ensure that the Supplier Personnel and Supplier Providers do not engage in sexual activity with any person under the age of 18, regardless of the local age of majority or age of consent or any mistaken belief held by the Supplier Personnel or Supplier Provider as to the age of the person. Furthermore, the Supplier shall ensure that the Supplier Personnel and Supplier Providers do not engage in ‘transactional sex’ which shall include but not be limited to the

exchange of money, employment, goods, or services for sex and such reference to sex shall include sexual favours or any form of humiliating, degrading or exploitative behavior on the part of the Supplier Personnel and the Supplier Providers. For the avoidance of doubt, such 'transactional sex' shall be deemed to be Serious Misconduct in accordance with Clause 50.1.

- 50.4 The Supplier shall promptly report in writing any complaints, concerns and incidents regarding Serious Misconduct or any attempted or threatened Serious Misconduct by the Supplier Personnel and Supplier Providers to DFID, including DFID's Counter Fraud Section at reportingconcerns@dfid.gov.uk or +44 (0)1355 843747, and where necessary, the Appropriate Authorities.
- 50.5 The Supplier shall fully investigate and document all cases or potential cases of Serious Misconduct and shall take appropriate corrective action to reduce the risk and/or eliminate Serious Misconduct being committed by the Supplier Personnel and Supplier Providers (which may include disciplinary action, termination of contracts etc.), such investigations and actions to be reported to DFID as soon as is reasonably practicable
- 50.6 The Supplier shall not engage as Supplier Personnel or Supplier Provider for the purposes of the Services any person whose previous record or conduct known to the Supplier (or reasonably ought to be known by a diligent supplier which undertakes the appropriate checks) indicates that they are unsuitable to perform the Services and/or where they represent an increased and unacceptable risk of committing Serious Misconduct.
- 50.7 The Supplier shall comply with all applicable laws, legislation, codes of practice and government guidance in the UK and additionally, in the territories where the Services are being performed, relevant to safeguarding and protection of children and vulnerable adults, which the Supplier acknowledges may include vetting of the Supplier Personnel by the UK Disclosure and Barring Service in respect of any regulated activity performed by the Supplier Personnel (as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended)) and/or vetting by a local equivalent service. Where DFID reasonably believes that there is an increased risk to safeguarding in the performance of the Services, the Supplier shall comply with any reasonable request by DFID for additional vetting to be undertaken.
- 50.8 Failure by the Supplier to:
- 50.8.1 put in place preventative measures to eliminate and/or reduce the risk of Serious Misconduct; or
 - 50.8.2 fully investigate allegations of Serious Misconduct; or
 - 50.8.3 report any complaints to DFID and where appropriate, the relevant authorities (including law enforcement)

shall be a material Default of this Contract and shall entitle DFID to terminate this Contract with immediate effect.

51. DISCRIMINATION

- 51.1 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. The Supplier shall ensure that in its delivery of the Services, it has due regard for the advancement of equal opportunity and promotes good relations between people who share a protected characteristic and those who do not, as required by the equality legislation.
- 51.2 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.
- 51.3 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.
- 51.4 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.

52. LAW AND JURISDICTION

- 52.1 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.

53. ENVIRONMENTAL REQUIREMENTS

- 53.1 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.
- 53.2 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.
- 53.3 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 53.1 and 53.2 as a result of its own operations or those of Sub-Contractors working on its behalf.
- 53.4 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.
- 53.5 Nothing in Clauses 53.1 to 53.3 shall relieve the obligations of the Supplier to comply with its statutory duties and Good Industry Practice.

54. CONFLICT OF INTEREST

- 54.1 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.
- 54.2 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.
- 54.3 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.
- 54.4 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.
- 54.5 Pursuant to Clause 54.4, 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.
- 54.6 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.

55. WAIVER

- 55.1 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.

56. ENTIRE AGREEMENT

- 56.1 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 56.1 shall not exclude liability in respect of any fraudulent misrepresentation.
- 56.2 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.
- 56.3 Nothing in this Contract is intended to make nor shall it make DFID the employer of the Supplier or any of the Supplier Personnel.
- 56.4 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).

57. THIRD PARTY RIGHTS

- 57.1 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 Contracts (Rights of Third Parties) Act 1999 (**"CRTPA"**).
- 57.2 Subject to Clause 57.1, a person who is not a Party to this Contract has no right under the CRTPA 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.
- 57.3 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.
- 57.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 57.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

58. NOTICES

- 58.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of Clause 58, an e-mail is accepted as being "in writing".
- 58.2 Subject to Clause 58.3, 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 58.3 and 58.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 58.3 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 58.2:
- 58.3.1 any Termination Notice (Clause 43 (Termination Without Default of the Supplier) and Clause 44 (Termination With Default of the Supplier)); and
- 58.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 45 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 55 (Waiver)); or
- (c) Default.

- 58.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 58.3 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 58.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 58.5 Clause 58 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.
- 58.6 For the purposes of Clause 58, the address and email address of each Party shall be as specified in Section 4 (Special Conditions).

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 20.1;

“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.

“Appropriate Authorities” means any and/or all of (as may be relevant under the circumstances) the UK government bodies and/or government bodies/agencies in the territory where Serious Misconduct may have or is suspected of having taken place, which have responsibility for safeguarding, recording, investigating, enforcing and/or determining allegations of Serious Misconduct and which may include (but shall not be limited to), the DFID, the National Crime Agency, UK Police force, local territory police forces, and social services.

“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.

“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.

“Contracts Finder” means the Government’s publishing portal for public sector procurement opportunities.

“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;

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

“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” means the 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;

“Delivery Chain” means all of the Supplier’s Sub-Contractors, Supplier Providers and partners involved in delivering a specific good, service or change for the purposes of the Services provided under this Agreement, down to the end beneficiary;

“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 47;

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

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

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

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

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

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

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

“Euro Compliant” means that:

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

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

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

“Exit Plan” the plan produced and updated by the Supplier during the Term in accordance with Terms of Reference and Clause 16;

“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 Control" means Personal Data which under the Control of Joint Controllers in accordance with GDPR Article 26;

"Joint Controllers" means 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” means 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;

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

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

“Occasion of Tax Non-Compliance” means:

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

“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 costs.

“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;

“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;

“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.

“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 HMG’s security policy, as updated periodically by the Cabinet Office, which can be accessed at <https://www.gov.uk/government/collections/government-security>, 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).

“Sexual Abuse” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions, and all sexual activity with someone under the age of 18, regardless of local age of majority or consent under the laws of the territory in which it takes place and regardless of any mistaken belief (by the relevant individual) as to the age of a child;

“Sexual Exploitation” means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes. Includes profiting monetarily, socially, or politically from sexual exploitation of another;

“Sexual Harassment” means unwelcome sexual advances (also but not exclusively without touching). It includes requests for sexual favours, or other verbal or physical behaviour of a sexual nature, which may create a hostile or offensive environment.

“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 HMG’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 Provider” means persons engaged and/or controlled by or on behalf of the Supplier pursuant to any activities undertaken by the Supplier under this Agreement.

“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 22.4;

“Variation” means a properly executed variation to the Contract in compliance with Clause 38;

“Variation Procedure” means the procedure set out in Clause 38;

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

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

SCHEDULE 2: STAFF TRANSFER**1. DEFINITIONS**

In this Schedule 2, the following definitions shall apply:

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

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

2. INTERPRETATION

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

PART A**TRANSFERRING DFID EMPLOYEES AT COMMENCEMENT OF SERVICES****1. RELEVANT TRANSFERS****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****9. RELEVANT TRANSFERS**

9.1 DFID and the Supplier agree that:

9.1.1 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

9.1.2 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 disapplying 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.

9.2 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.

10. FORMER SUPPLIER INDEMNITIES

10.1 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:

10.1.1 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;

10.1.2 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;

10.1.3 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;

10.1.4 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;

10.1.5 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

- 10.1.6 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.
- 10.2 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:
- 10.2.1 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
- 10.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 10.3 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:
- 10.3.1 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
- 10.3.2 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.
- 10.4 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.
- 10.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 10.5.1 no such offer of employment has been made;
- 10.5.2 such offer has been made but not accepted; or
- 10.5.3 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.
- 10.6 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.
- 10.7 The indemnity in Paragraph 2.6:
- 10.7.1 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

10.7.2 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.

10.8 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.

11. SUPPLIER INDEMNITIES AND OBLIGATIONS

11.1 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:

11.1.1 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;

11.1.2 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;

11.1.3 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;

11.1.4 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;

11.1.5 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;

11.1.6 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;

11.1.7 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;

- 11.1.8 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
- 11.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 11.2 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.
- 11.3 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.

12. 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.

13. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 13.1 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:
 - 13.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 13.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 13.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - 13.1.4 the New Fair Deal.
- 13.2 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.

14. 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.

15. 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

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 in respect of any one occurrence, the number of occurrences being unlimited.

4.TERRITORIAL LIMITS

4.1.1 Worldwide.

5.PERIOD OF INSURANCE

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

6.COVER FEATURES AND EXTENSIONS

- 6.1 Indemnity to principals clause.

7.PRINCIPAL EXCLUSIONS

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

8.MAXIMUM DEDUCTIBLE THRESHOLD

- 8.1 Not to exceed £0 for each and every third party property damage claim (personal injury claims to be paid in full).

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 in respect of any one claim and in the aggregate per annum.

4.TERRITORIAL LIMITS

- 4.1 Worldwide.

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

8.MAXIMUM DEDUCTIBLE THRESHOLD

- 8.1 Not to exceed £0 for each and every claim.

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 Schedule 4 sets out a copy of the Supplier's Tender and is attached at the end of this contract document.

1.2 Schedule 4 contains:

- I. Part A Executive Summary
- II. Part B General and Technical Proposal
- III. Part C Commercial Proposal

1.3 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

International Development

Department for

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:

APPENDIX B



DFID Supply Partner Code of Conduct

Principles

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

Overarching Principles for Supply Partners

- ✓ **Act responsibly and with integrity**
- ✓ **Be transparent and accountable**
- ✓ **Seek to improve value for money**
- ✓ **Demonstrate commitment to poverty reduction and DFID priorities¹**
- ✓ **Demonstrate commitment to wider HMG priorities²**

DFID Supply Partner responsibilities

Supply Partners and their subcontractors (delivery chain partners) 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 subcontractors (delivery chain partners) 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/grants 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 /grants with DFID with a value of less than £5m;

Compliance Level 3 - Supply Partners with an individual Contract value, or component of a Contract/Grant, with a value below the EU contracting 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 contracted Supply Partners.

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

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

Adherence to the Code at the appropriate level is also a requirement for DFID direct and delivery chain Supply Partners in receipt of funding. DFID will monitor Supply Partners in six priority areas as set out below using a set of Key Performance Indicators (KPIs) as referenced in Annex 1a and 1b.

1. Value for Money and Governance

Key Performance Indicators KPI 1 a - c

Value for Money and financial transparency 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 and applying stringent financial management and governance 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;
- ✓ Strict adherence to all UK and in-country government tax requirements;
- ✓ Processes for timely identification and resolution of issues and for sharing lessons learned which might be requested by DFID at any time.

2. Ethical Behaviour

Key Performance Indicators KPI 2 a- f

DFID Supply Partners and their delivery chain partners act on behalf of the UK government and interact globally with country governments, other aid donors and their delivery partners, many stakeholders including citizens and directly and indirectly with aid beneficiaries. These interactions must therefore meet the highest standards of ethical and professional behaviour in order to uphold the reputation of the UK 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 Supply Partner and delivery chain staff who:

- a) are directly involved in the management of a programme or procurement of services; or
- b) who engage with i) frontline DFID staff ii) other deliverers of aid iii) beneficiaries (of aid)

Where those in a) and b) could be susceptible to undue negative or detrimental influence.

Supply Partners and their delivery chain partners must declare to DFID where there may be instances or allegations of previous unethical behaviour by an existing or potential staff member or where there is a known or suspected conflict of interest. Where a potential or existing staff member has been employed by DFID or the Crown in the preceding two years Supply Partners and their delivery chain partner must provide proof of compliance with the HMG approval requirements under the Business Appointment Rules.

Supply Partners and their delivery chain partners must have the following policies and procedures in place:

- ✓ Development and proof of application and embedding of a Staff Recruitment, Management and Retention policy (which must address circumstances where there may be potential or actual conflict of interest and embedding of a Whistleblowing Policy)
- ✓ Ongoing monitoring of potential or existing personal, business or professional conflict of interest and their mitigation and management
- ✓ Ethical training for every staff member and staff updates in ethical working practices suitable to the development sector (e.g. UN Global Compact principles) including awareness of modern day slavery and human rights abuses
- ✓ 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 DFID Counter Fraud and Whistleblowing Unit (CFWU) at reportingconcerns@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 direct Supply Partners and their delivery chain partners must adhere to wider HMG policy initiatives including the support and capacity building 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 recognises the critical value that downstream delivery partners contribute. Direct Supply Partners must engage their delivery chain partners in a manner that is consistent with DFID's treatment of its direct Supply Partners. This includes, but is not limited to: appropriate pricing of services; fiduciary and financial risk management processes; applying transparent and responsive measures where delivery chain partners underperform against the KPI areas; taking a zero tolerance approach to tax evasion, corruption, bribery and fraud in subsequent service delivery or in partnership agreements. Direct Supply Partners must cascade the principles of the Code throughout their delivery chain to ensure DFID ethical behaviour standards are embedded and maintained.

Specific requirements for direct Supply Partners include:

- ✓ Provide assurance to DFID that the policies and practices of their delivery chain Supply Partners and affiliates comply with the 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 expressly notified of the DFID 'reporting concerns' mail box³ found on DFID's external website and of the circumstances in which this should be used;
- ✓ Publication of DFID funding data in accordance with the International Aid Transparency Initiative (IATI)⁴
- ✓ Supply Partners shall adhere to HMG prompt payment policy and not use restrictive exclusivity agreements with sub-partners.

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

⁴ <http://www.aidtransparency.net/>

4. Environmental issues

Key Performance Indicators KPI 4 a – b

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

Commitment to environmental sustainability may be demonstrated by:

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

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 the Terrorism Act 2000, and any subsequent regulations pursuant to this Act.

DFID Supply Partners must maintain high levels of data security in accordance with the Data Protection Act 1998 and any subsequent regulations pursuant to this Act, or new Act and with the General Data Protection Regulation (Directive 95/46/EC).

Specific requirements:

- ✓ Development and proof of application and embedding of a comprehensive Terrorism and Security Policy
- ✓ Development and proof of application and embedding of personal data processing processes within a Data Protection Policy
- ✓ DFID Supply Partners must safeguard the integrity and security of their IT and mobile communications systems in line with the HMG Cyber Essentials Scheme⁶. Award of the Cyber Essentials or Cyber Essential Plus badges would provide organisational evidence of meeting the UK Government-endorsed standard;
- ✓ All DFID Supply Partners who manage aid programmes with a digital element must adhere to the global Principles for Digital Development⁷, which sets out best practice in technology-enabled programmes
- ✓ Ensure that DFID funding is not linked to terrorist offences, terrorist activities or financing.

6. Safeguarding, Social Responsibility and Human Rights

Key Performance Indicators: KPI 6 a – d

Safeguarding, social responsibility and respect for human rights are central to DFID's expectations of its Supply Partners. Supply Partners must ensure that robust procedures are adopted and maintained to eliminate the risk of poor human rights practices within complex delivery chain environments funded by DFID. These practices include

⁵ <https://eiti.org/>

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

⁷ <http://digitalprinciples.org/>

sexual exploitation, abuse and harassment; all forms of child abuse and inequality or discrimination on the basis of race, gender, age, religion, sexuality, culture or disability. Supply Partners must place an emphasis on the control of these and further unethical and illegal employment practices, such as modern day slavery, forced and child labour and other forms of exploitative and unethical treatment of workers and aid recipients. DFID will expect a particular emphasis on the 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:

- ✓ Development and proof of application and embedding of a Safeguarding Policy;
- ✓ Delivery of Social Responsibility, Human Rights and Safeguarding training throughout the delivery chain;
- ✓ Compliance level 1 Supply Partners must be fully signed up to the UN Global Compact⁸;
- ✓ Practices in line with the International Labour Organisation (ILO) 138⁹ and the Ethical Trading Initiative (ETI) Base Code¹⁰ are to be encouraged throughout the delivery chain;
- ✓ Policies to embed good practice in line with the UN Global Compact Guiding Principles 1 & 2 on business and human rights throughout the delivery chain are required, as detailed in Annex 2;
- ✓ Compliance level 1 Supply Partners to submit a Statement of Compliance outlining how the organisation's business activities help to develop local markets and institutions and further how they contribute to social and environmental sustainability, whilst complying with international principles on Safeguarding and Human Rights 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.

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

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

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

Compliance KPIs and contractual checking mechanisms - DFID Contracts

Maintaining standards of assurance and driving sustainable improvements, in connection with the Code's principles through Supply 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 checks.

Where appropriate, a plan setting out the Code of Conduct delivery methodology for the Supply Partner arrangements during the contract term may be jointly developed with DFID 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 Supply Partner 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 6 sections received
	Declaration of sign up to the UN Global Compact	Annual declaration submitted by the direct Supply Partner	Standard Selection Questionnaire (SSQ)	Declaration of applicable sign up / application received
1.	<u>VfM and Governance standards</u>			
a)	Economic and governance policies in practice	Annual updated documentation provided (copy of Policies with detailed annual financial breakdown relating to contract)	Terms and Conditions Clauses 13, 14 & 15	Annual contract review/programme management Audit checks Compliance checks
b)	VfM being maximised over the life of a contract 1. By confirmation of annual profit level fluctuations since tender submittal 2. by timely identification and resolution of issues 3. ensuring lessons learned are shared	Updated documentation submitted once annually	Contract T&Cs Clauses 15 & 20 Terms of Reference Terms of Reference	Compliance checks Annual contract review/programme management Compliance checks Annual contract review/programme management Compliance checks

c)	<u>Tax Declaration (HMRC format)</u> <ul style="list-style-type: none"> Tax the organisation paid on profits made in the last 3 years, and in which countries Compliance with relevant country level tax regulations fully understood and met 	Annually updated documentation submitted by contracted supplier and on behalf of delivery chain partners	Terms and Conditions Clauses 15, 23 & 24 Terms of reference	Annual return Compliance checks
2. a)	<u>Ethical Behaviour</u> Recruitment policy (which must address circumstances where there may be potential or actual conflict of interest)	Updated policy documentation submitted once annually by contracted supplier and on behalf of delivery chain partners	Terms and Conditions Clauses 6, 51 & 54	Annual return Compliance checks
b)	Ongoing conflict of interest, mitigation and management	As 2a. above	Terms and conditions Clause 54	Annual return Compliance checks
c)	Refresher ethical training and staff updates (including disclosure restrictions on DFID confidential information)	Copy of training logs provided Delivery in accordance with training programme in place	Terms and conditions Clause 6, 29, 51 & 54	Annual return Compliance checks
d)	A workforce whistleblowing policy	Continuous workforce awareness maintained Policy in place	Terms and Conditions Clause 48	Annual return Compliance checks
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 reportingconcerns@dfid.gov.uk or on +44(0)1355 843747 2. Employees working on DFID Contracts fully aware of the DFID external website reporting concerns mailbox	Continuous awareness maintained Procedure in place Continuous awareness maintained	Terms and Conditions Clauses 6, 48 & 54 Terms and Conditions Clause 48	Annual return Compliance checks Annual return Compliance checks
f)	Declarations of direct or subcontractor staff members proposed to work on DFID funded business if employed by DFID or the Crown in the preceding two years Supply Partners and their subcontractors must provide proof of compliance with the HMG approval requirements under the business appointment rules	Details submitted as applicable	Terms and Conditions Clause 48 HMG business appointment rules	Annual return Compliance checks Contract management

3.	<u>Transparency and Delivery Chain Management</u>		Updated documentation submitted once annually	Contract Terms and Conditions Clause 28	Tender evaluation Periodic spot checks Compliance checks
	a)	IATI compliance for Supply Partner and their delivery chain Supply Partners			
	b)				
	c)	Up to date and accurate records of all delivery chain Supply Partners	Updated documentation submitted in accordance with Clause 26.7	Contract Terms & conditions Clause 9 & 28 Tender submittal – delivery chain	Annual return Compliance checks Contract management
	d)	Policies and practices for the management of delivery chain partners and affiliates aligned to the DFID Supply Partner Code of Conduct	Updated documentation submitted annually	Contract Terms & conditions Clause 7	Contract management processes Periodic spot checks Compliance checks
	e)	Tax evasion, bribery, corruption and fraud - statements of assurance provided	Updated documentation submitted once annually	Contract Terms and Conditions 23 & 24	Periodic and annual return spot checks Compliance checks
	f)	All delivery chain partner employees working on DFID Contracts fully aware of the DFID reporting concerns mailbox	Updated documentation submitted once annually	Contract Terms & Conditions Clause 48	Periodic and annual return spot checks
		HMG prompt payment policy adhered to by all delivery chain partners	Updated documentation submitted once annually	Contract Terms & conditions 7	HMG spot checks Compliance checks Annual return
4.	<u>Environmental Issues</u>		Updated documentation submitted once annually	Contract Terms & Conditions Clause 53 and ToRs	Contract management Periodic and annual return spot checks Compliance 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			
	b)	Published annual environmental performance reports	Updated documentation submitted once annually	Contracts ToRs	Periodic and annual return spot checks
5.	<u>Terrorism and Security</u>		Updated documentation submitted if and when changes identified since tender submittal	Standard Selection Questionnaire (SSQ)	Annual return Spot checks Compliance checks Annual contract review
	a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing			
	b)	Certification at or above the level set out in the tender submittal	Updated documentation submitted if changes identified since	Standard Selection Questionnaire (SSQ)	Annual return Compliance checks

c)		tender submittal		
d)	Data managed in accordance with DFID Security Policy and systems in accordance with the HMG Cyber Essentials Scheme	Updated documentation submitted if changes identified since tender submittal	Contract T&Cs Clause 32 & 33	Compliance checks
	Best practice global Principles for Digital Development in place	Updated documentation submitted if changes identified since tender submittal	Terms of reference (TORs)	Annual contract review Compliance checks
6.	<u>Safeguarding, Social Responsibility and Human Rights</u>			
a)	Provision of a current internal document demonstrating good practice and assuring compliance with key legislation on international principles on labour and ethical employment	Confirmation of UN Global Compact Membership	Standard Selection Questionnaire	Tender evaluation Annual return Compliance checks
b)	Agreed level of measures in place and cascaded to assure the prevention of actual, attempted or threatened sexual exploitation or abuse or other forms of inequality or discrimination by employees or any other persons engaged and controlled by the Supply Partner to perform any activities relating to DFID funded work. Robust procedures for the reporting of suspected misconduct, illegal acts or failures to investigate in place	Updated documentation submitted once annually	Contract T&Cs Clause 50	Tender evaluation, Compliance checks
c)	Recognition of the ILO standards Membership of Ethical Trading Initiative (ETI)	Membership number		Compliance checks
d)	1.Principles cascaded to employees and delivery chain partners via an internal policy or written outline of good practice service delivery approaches to Human Rights and Safeguarding reflecting UN Global Compact Principles 1 & 2 2. Number and details of any organisational safeguarding allegations reported 3.Level of commitment in relation to the	Updated documentation submitted annually Updated documentation submitted if and when changes identified since tender submittal Updated	Contract T&Cs Clause 50	Annual return Compliance checks Annual checks Compliance checks

	Contract evident in delivery practices in line with the workplace and community guidance provided in the DFID Supply Partner Code of Conduct Annex 2	documentation submitted annually		Tender evaluation Compliance checks
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Contractual Annual Compliance Declaration

Prior to Contract Award and thereafter on an annual basis at the end of each financial year, the Supply Partner is required to submit a Compliance Declaration in connection with the management of any DFID Contract in place and on behalf of their delivery chain partners. Supply Partners should be aware that spot check compliance monitoring will take place to verify responses.

Supply Partner Compliance Declaration**Key:****Contractual Requirement:**

X denotes full compliance 1 required

O denotes reduced compliance level 2, unless otherwise 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 funded by 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 funded by DFID with a value of less than £5m.

Compliance Level 3

Supply Partners with an individual contract value or component of a contract funded by DFID 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		Supply Partner Compliance Level		Commentary	CEO Signatory	Signature & date of signing
		1	2			
1.	<u>VfM and Governance standards</u>					
a)	Evidence of how economic and governance policies work in practice	X	O			
b)	VfM maximisation over contract life					
	1. Annual confirmation of % profit on contract	X	X			
	2. timely identification and resolution of issues	X	X			
	3. ensuring lessons learned are shared	X	O			
c)	<u>Tax Declaration (HMRC format)</u>					
	Comply with all tax requirements	X	X			
2.	<u>Ethical Behaviour</u>					
a)	Adherence to agreed conflict of interest management procedures	X	X			
b)	Evidence of workforce ethical training updates taking place	X	X			

c)	Confirmation of direct and delivery chain partner compliance with the HMG approval requirements under the Business Appointment Rules.	X	X			
d)	Confirmation and full evidence of awareness of an up to date workforce whistleblowing policy	X	X			
e)	Procedures in place and full evidence of awareness of 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 reportingconcerns@dfid.gov.uk or on +44(0)1355 843747	X	X			
f)	HMG Business appointment rules followed - Conflict of Interest(COI) declarations made for direct or delivery chain staff members proposed to work on DFID funded business if employed by DFID or the Crown in the preceding two years.	X	X			
3.	<u>Transparency and Delivery Chain Management</u>					
a)	Supply Partner and delivery chain partners IATI compliant	X	O			
b)	Provision of up to date and accurate records of all delivery chain Supply Partners provided within the required frequencies, including annual contractual spend on SME's, women owned businesses and modern apprenticeships in place	X	O			
c)	Verification that policies and practices for the management of delivery chain Supply Partners are aligned to the DFID Supply Partner Code of Conduct i.e. by demonstrating delivery chain governance arrangements in place	X	O			
d)	Assurance there has been no change to previous statements provided in relation to tax evasion, bribery, corruption and fraud	X	X			
e)	Confirmation that all delivery chain Supply Partners' employees working on DFID Contracts are fully aware of the DFID external website reportingconcerns mailbox	X	X			
f)	Confirmation of adherence to HMG prompt payment policy with all their delivery chain Supply Partners	X	O			
4.	<u>Environmental Issues</u>					
a)	Environmental risks identified (e.g. by					

	maintaining a risk register) with formal context specific environmental safeguarding policies in place	X	O			
b)	Annual published environmental performance reports	X	O			
5.	<u>Terrorism and Security</u>					
a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	X	X			
b)	No engaged employees or delivery chain partner personnel appears on the Home Office Prescribed Terrorist Organisations List	X	X			
c)	Data is managed in accordance with DFID security policy and systems are in accordance with the HMG cyber essentials scheme	X	X			
d)	Adherence to the best practice global principles for digital development	X	O			
6.	<u>Safeguarding, Social Responsibility and Human Rights</u>					
a)	Provision of a document demonstrating current organisational good practice and assuring compliance with key legislation on international principles on labour and ethical employment (to include Modern Day Slavery Act 2015 compliance detail)	X	O			
b)	Organisational procedures in place directly, and within the delivery chain: 1.To prevent actual, attempted or threatened sexual exploitation and abuse or other forms of inequality or discrimination by employees or any other persons engaged and controlled by the Supply Partner to perform any activities relating to DFID funded work 2.For reporting suspected misconduct, illegal acts or failures to investigate actual attempted or threatened sexual exploitation or abuse	X X	X X			
c)	Current membership of UN Global Compact	X	O			
	Current membership of ETI	O	O			
d)	1.Evidence of cascade to employees of an internal policy or written outline of good practice service delivery approaches to Human Rights and Safeguarding reflecting UN Global Compact Principles 1&2 demonstrating an appropriate level of commitment in relation to the Contract 2.Numbers and details of organisational safeguarding allegations reported	X X	O X			

	3. Examples of delivery practice that demonstrate commitments in line with workplace and community in line with UN Global Compact Principles 1 & 2 (Annex 2)	X	O			
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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

TERMS OF REFERENCE

GOOD GOVERNANCE FUND

LOT 1 - Programme Management Unit

LOT 2A – Technical Assistance Facility: Eastern Partnership

LOT 2B - Technical Assistance Facility: Western Balkans

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Introduction

1. The UK Good Governance Fund (GGF) is a programme portfolio delivered jointly by the Department for International Development (DFID) and the Foreign and Commonwealth Office (FCO). All funds are classified as Official Development Assistance (ODA) and provided through the cross-government Conflict, Stability and Security Fund (CSSF) which works to reduce the risk of conflict and stability according to the strategic direction set by the National Security Council (NSC). The GGF currently delivers projects in Armenia, Georgia, Ukraine, Moldova, Serbia, Bosnia and Macedonia.
2. The GGF's primary objective is to build resilience in targeted countries by providing support for domestic reform agendas which reduce corruption; promote transparent and accountable institutions; and build open, inclusive economies and societies.
3. DFID requires a Programme Management Unit and two regional Technical Assistance Facilities (TAF) to support the delivery of a flexible portfolio of technical assistance and capacity building projects to support domestic reform efforts in target countries.
4. DFID aim to award this contract in three lots according to the following lots: Terms of Reference (ToR).
 - i. **Lot 1: Portfolio Management Unit (PMU):** See Annex A
 - ii. **Lot 2A: Technical Assistance Facility: Eastern Partnership** (currently Armenia, Georgia, Moldova and Ukraine): See Annex B
 - iii. **Lot 2B: Technical Assistance Facility (TAF): Western Balkans** (currently Bosnia, Serbia, North Macedonia): See Annex B
5. Tenderers (lead bidders **and delivery partners**) can bid for both Lots 2A and 2B if they desire. This will still require a full tender for each separate lot. Tenderers bidding for Lot 1 cannot bid for Lots 2A and/or 2B, and vice versa, tenderers bidding for Lot 2A and/or 2B cannot bid for Lot 1.
6. If a tenderer bids for both 2A and 2B and is successful in both, DFID reserves the right to enter in to one contract for lots 2A and 2B with the Potential Supplier.

Objectives

7. The GGF provides technical assistance and capacity building support in beneficiary countries. The PMU and TAFs will be responsible for delivery of a significant proportion of the GGF's portfolio, which complements other GGF activity delivered through bilateral/multilateral partners (such as the World Bank and UN agencies) and an Embassy-led small grants facility. **The overarching objectives and added-value of this programme are provided below:**

- i. **Provide beneficiaries with rapid access to high-quality technical expertise which builds domestic capacity** to deliver, champion and unblock reforms in response to identified needs.
- ii. **Deliver a flexible and mixed portfolio of projects**, which retains an ability to adapt to contextual changes (including by responding to emerging trends, issues and opportunities to catalyse or unblock broader reform processes) and to scale projects up and down in response to emerging evidence, challenges and opportunities.
- iii. **Bring together international technical expertise and best-practice with a strong understanding of local need and context** – including through a high degree of sensitivity to local political economies and sensitivities – in order to ensure that the assistance delivered is responsive and promotes local ownership.
- iv. **Work closely with UK government** – through both British Embassies and the London-based GGF Joint Unit – to ensure that the portfolio reflects country-level priorities and are managed in accordance with DFID programme management practices.

The Recipient

- 8. The recipient of the services provided will be Ministries and officials in partner governments and/or those working in key professions, sectors or civil society organisations in target countries. The ultimate beneficiaries of this programme are citizens' in the targeted countries who benefit from the greater effectiveness of political and economic institutions.

Overall Scope

Programme Management Unit (Lot 1)

- 9. The Supplier will be responsible for supporting Her Majesty's Government (HMG) in assessing beneficiary needs and supporting HMG's identification of areas in which targeted technical assistance can support domestic reforms in target countries. This will require the Supplier to be committed to working closely and collaboratively with British Embassies, the GGF Joint Unit in London and government and non-government counterparts in key institutions and sectors in target countries. The Supplier will provide appropriately skilled personnel in target countries who are able to effectively manage a complex network of stakeholders, and to understand and consider how targeted interventions can support HMG strategic objectives. This will enable the development of a pipeline of project concepts/TORs which will be used to commission further proposal development by the TAF. This pipeline will respond to HMG's strategic priorities in the region and reflect a strong technical understanding of relevant thematic areas. The Supplier will also provide a quality-assurance function in assessing proposals, drawing on appropriate technical knowledge to ensure these reflect emerging evidence in the relevant thematic areas.
- 10. The Supplier will also be responsible for monitoring the delivery of approved projects by the TAF, and will act as the primary agent of HMG for routine management of TAF-delivered projects: this means ensuring that projects are delivered according to agreed timelines and budgets, and ensuring that risks (including contextual, reputational, fiduciary, operational and safeguarding risks) are managed and escalated appropriately. The Supplier will be responsible for providing regular, consolidated reporting to HMG at both a country and portfolio-level, detailing project delivery, risk management and key financial information. The Supplier will

also ensure that emerging risks or issues are proactively and promptly highlighted to HMG where required. This will require the Supplier to provide appropriately skilled personnel and systems to ensure the successful monitoring of projects delivered by the TAF through this programme, as well as the production and dissemination of high-quality reports as set out in the Reporting paragraphs in Annex A and Annex B.

Technical Assistance Facilities (Lots 2A and 2B)

11. Two regional Suppliers will be responsible for the development and delivery of high-quality technical assistance projects responding to concepts and TORs developed by the PMU and HMG through this programme. The Supplier will draw upon expertise and experience in delivering capacity building projects to support long-term behavioural change across the relevant thematic areas and demonstrate an ability to adapt projects during both design and implementation in response to emerging evidence and complex, dynamic political and economic contexts. This will require the Supplier to draw upon a combination of international technical experts, and also to possess a sophisticated understanding of the local political and economic environment in each of the target countries in the relevant lot. The Supplier will need to demonstrate an ability to draw together, mobilise, deploy and manage project teams to/in target countries rapidly in response to commissioned projects, as rapidity and flexibility is a key added-value of this programme.
12. The Supplier will need to demonstrate the capacity to effectively manage technical assistance projects: including through effective mobilisation of project resources; managing the delivery of projects and milestones to agreed timescales; effective management of budgets and risks (including contextual, reputational, fiduciary, operational and safeguarding risks); and the production of quality project reporting. This will require the Supplier to provide appropriately skilled personnel and processes to effectively manage projects, and to cooperate with the PMU in overseeing the delivery of projects.
13. For each TAF, DFID encourages bids from groups of economic operators (such as consortia, or a supplier with delivery partners / sub-contractors) comprising both local and international organisations, who possess all of the relevant expertise (international and local), capacity, and geographical presence required to deliver this programme. Local context knowledge is considered particularly important. A lead supplier of any group of economic operators must be identified who will have overall management and financial responsibility and will be expected to set out an approach to determining the most effective way of drawing upon the range of expertise provided within the group. All partners and sub-contractors must guarantee their participation in the programme and should not participate where they would be unable to deliver. The lead supplier must be confident in the capability of the other partners. It is vital that the lead supplier has a clear governance and management structure in place for the programme which is viable, feasible, and represents good value for money.

Dependencies, Collaboration and Co-ordination

PMU and TAFs

14. Delivery of this programme will require the Suppliers of each lot to establish and maintain a close and collaborative relationship. Suppliers will be expected to ensure the effective delivery of approved projects with limited HMG intervention in routine issues.

15. The Suppliers for each lot must continually consult each other and should develop a clear and co-owned communication plan during inception on how they will maintain regular contact with each other, interact and engage at fixed periods; enabling HMG to engage with this at key moments. They must maintain this and adhere to it throughout the programme duration. Furthermore, they must ensure a clear process and shared understanding of who is involved when during the project cycle (the broad parameters of which are set out in Figure One). This should include when the PMU engage the TAFs to mobilise a project, ensuring the TAF has early and advance visibility of pipeline projects to mobilise projects rapidly; when emerging issues or challenges within projects will be communicated and escalated from the TAF to the PMU and/or HMG; and how relationships with beneficiaries will be managed, shared and transferred between the PMU and TAF as needed to ensure the success of projects. To ensure sustainability, a decision tree process, and oversight structures will be in place.
16. The PMU Supplier will have overall responsibility for the day-to-day management of TAF projects and the delivery of milestones; and will play a role (alongside HMG) in the consideration of project proposals to ensure project designs are high-quality and achievable. This will require the Supplier to have a clear governance and management structure in place for the programme, and the appropriate resources to assess proposals received. The PMU and TAF will need to agree on the timing, regularity and format of the reporting required to enable the PMU to deliver its obligations under this programme to HMG. This also requires a guarantee from the TAF Supplier that they will cooperate with the PMU in their exercise of this responsibility. The PMU Supplier must ensure that this responsibility is delivered in a collaborative manner, for example by enabling the TAF to participate appropriately in the development of project pipelines, not least to ensure that the relevant expertise and interest is available in order to guarantee that the TAF is in a position to respond promptly to concepts and TORs when commissioned.
17. Responsibility for programme results will lie with the Suppliers, under oversight and supervision of the SRO and assigned HMG programme staff in both relevant British Embassies and the GGF Joint Unit in London.
18. Both Suppliers will, from time to time, be expected to cooperate with the GGF's independent Monitoring, Evaluation and Learning (MEL) provider who are already in place; as well as with HMG teams conducting internal annual reviews. This is likely to involve providing access to project documentation, staff and facilitating access to beneficiaries in order for the MEL provider to make an assessment of the quality of projects delivered and of outcomes achieved. In some cases, for post-completion evaluations, this is likely to include facilitating visits after the immediate project has closed.

Delivery Partners

19. Where the Supplier of each respective lot is a group of economic operators or similar, the identified Lead Supplier will have overall management and financial responsibility of any partners and sub-contractors and must guarantee their participation in the programme. It is expected that the Supplier is confident in the capability of the other partners, and supports their participation. It is vital that the Supplier has a clear governance and management structure in place for the programme which is viable, feasible, and represents good value for money.

20. The Lead Supplier must ensure their fair participation in the programme and will ensure not to include any provision of exclusivity, the effect of which would limit the ability of sub-contractors to contract directly with DFID or a replacement supplier for the duration of the Programme; and will ensure prompt payment to sub-contractors.

Geographic Focus

21. The GGF will operate in seven countries covered by two geographic Directorates within UK government: four Eastern Partnership countries (Armenia, Georgia, Moldova, Ukraine) and three Western Balkans countries (Bosnia, Serbia and North Macedonia). DFID reserves the right to change the geographic focus within the regions within the lifetime of the programme based on HMG's assessment of changes to the continued viability of delivering results through this programme as a result of contextual changes and/or an assessment of the continuing strategic prioritisation of these countries for HMG. HMG is not able to provide any further specificity at this stage given the sensitivity of such decisions and continued dynamism of the target regions. In extreme cases, this may include removing any of the countries covered by the programme. This may also include adding additional ODA-eligible countries within either the Eastern Partnership or Western Balkans. Decisions around adding or removing target countries from the programme are most likely to coincide with UK financial years. Suppliers should demonstrate the capacity to amend strategies, work plans and budgets as required should DFID be required to scale-up or down the programme.

Thematic Areas

22. The Suppliers **will be responsible for supporting HMG in the identification of needs and managing the portfolio of projects across their regional portfolio (Lot 1); and the detailed design and delivery of tailored technical assistance and capacity building projects (Lots 2A and 2B)** in each of the GGF's countries.
23. Specific thematic priorities in each country vary depending on the local context, but the successful Suppliers will demonstrate an ability to provide or access expertise across the thematic areas listed below. Suppliers are not expected to possess a capacity to deliver across all these areas themselves; however, should have the ability to access and mobilise relevant expertise as required:
- i. **Reform to the regulation of the business environment and economic governance**, to support alignment with international standards and promote broad-based economic growth and job creation; including through small- and medium-sized enterprise development and attraction of foreign direct investment.
 - ii. **Institutional capacity building to develop more effective governance, public administration and management of public finances**, in order that governments in target countries become increasingly accountable and responsive to the needs of citizens.
 - iii. **Anti-corruption measures and judicial reform** to strengthen the rule of law, reduce opportunities for corruption and increase the capacity of countries to address corruption when it does occur.

- iv. **Modernisation of key sectors** (such as energy, banking) **and reform of state-owned enterprises** to support transition to market-driven, modern economies.
- v. **Stronger and more independent media and civil society** to ensure that the public is able to engage in active, informed debate and to enable governments to effectively communicate the benefits of reforms to citizens.

Budget and Timeframe

- 24. The total budget across all three lots is up to £15m/annum. **A range for the value of each lot is defined in Annex A and Annex B.**
- 25. The range provided within Annex A is the expected cost of the initial 42 month contract with the PMU. Bidders are expected to propose the total budget amount within this range and will be commercially evaluated on the total cost proposed.
- 26. The range provided in Annex B will not change, but the funding allocation of each contract may change within this range (based on demand or scale up / down). As such, the budget, Payment by Results (PbR), Key Performance Indicators (KPIs) and milestones will be reviewed on an annual basis and a formal contract amendment will coincide with this. More information on funding scaling up and scaling down is provided in paragraphs 34 - 38. KPIs, PbR and milestones mechanisms are outlined respectively in each Annex A and Annex B.
- 27. Whilst this value is inclusive of the full value of funding from CSSF over the 42 months, funding for the CSSF is only agreed and committed on an annual basis, therefore flexibility and capability of the Supplier to scale-up/down is key. Annual break clauses will be built in to the contract to coincide with each CSSF funding window, which are defined by UK fiscal years.
- 28. **The contract awarded for each lot will be for a period of 42 months**, this includes a 4 month inception phase. DFID may extend the contract beyond 42 months for up to an additional 24 months, and up to an additional value which is stated in Annex A and Annex B for each respective lot, subject to available funding, programme and supplier performance, the need and situation on the ground, and value for money.

Break Clauses

- 29. DfID will monitor programme performance through quarterly results reporting in addition to formal annual performance reviews.
- 30. In addition to Annual Reviews, the contract will allow for formal break points after the first 4 months Inception phase (completion of the programme handover/transition process and development of inception reports) and annual break clauses have been built in to the contract to coincide with each CSSF funding window, defined according to UK fiscal years as explained above.
- 31. Therefore, flexibility and capability of the Supplier to scale-up/down is key.
- 32. The Suppliers should be prepared to amend the strategy, work plans and budgets should DFID decide to scale up or down on the programme.

33. Continuation of the services at each break point will be subject to available funding, programme and supplier performance, the need and situation on the ground, and value for money.

Scale Up/Down

34. In order to reflect lessons learned, changes in circumstances within the local and political context, or policies and objectives relating to or affecting the programme, the Suppliers must have the ability to adapt to such changes that occur during the life of the programme and that require the work to be scaled up or scaled down in terms of geographic reach, budget or timeframe. This may include shifts in territorial control that require the Supplier to change partners.
35. **Geographic change:** As explained in paragraph 21 above, DFID reserves the right to change geographic focus within the lifetime of the programme, including by adding additional countries in these regions or removing existing countries. Such decisions will be taken based on HMGs assessment of the continued viability of supporting reform processes through the use of this facility in particular countries and/or the continuing strategic prioritisation of HMG. Given the sensitivity of such assessments it is not possible to provide greater specificity at this time.
36. **Budget:** As per paragraph 25-26 above, DFID reserves the right to change the funding allocation of each lot within the ranges provided in Annex A and Annex B. This change may occur as a result of the annual CSSF funding approval and the on-demand nature of the projects within each region.
37. **Timeframe:** The contract is for 42 months, with an option to extend for up to 24 months. However, since funding for the CSSF is only agreed and committed on an annual basis, break clauses will be included in the contract on an annual basis to allow for a termination of the contract if no funding is provided.
38. DfID may scale up or extend the programme where the programme has been demonstrated to have a strong impact, and has the potential to yield better results if continued over a longer timeframe.

DFID Governance

39. The senior officer with responsibility for this programme will be the Deputy Director Eastern Europe and Central Asia, and Head of Good Governance Fund Unit. The GGF's Senior Programme Manager (in the London-based Joint Unit) will maintain oversight of the programme's overall delivery on behalf of the senior officer and will appoint a Programme Manager to manage the contract.
40. The provider(s) primary day to day contacts will be relevant country programme managers in the London-based Joint Unit, and Heads of GGF Programmes in relevant British Embassies.
41. Approval for the inclusion of new projects in the programme will be provided by either (depending on value) Country Programme Boards chaired by Her Majesty's Ambassador in the relevant country; or by the senior officer in the Joint Unit. No project-related activity carried

out prior to the relevant approval being given will be chargeable under this award (except for design elements, as agreed).

42. DFID will award a contract under each lot. The PMU will coordinate closely with the TAF Supplier. If the TAF Suppliers are a group of economic operators / consortium, the identified lead of the group will be the main point of contact, and will co-ordinate and represent the other members of the TAF group.
43. DFID will organise and facilitate initial setup and introduction meetings between the PMU, TAFs and respective Embassy teams during the inception phase; and will continue to engage with the PMU and TAF(s) collectively at appropriate points throughout implementation.

Escalation Process

44. If a dispute/issue arises then the identified individuals in paragraph 39 above shall follow the procedure for escalation:
 - a) the DFID Senior Programme Manager and the Supplier Project Manager shall attempt in good faith to resolve the dispute/issue;
 - b) If the DFID Senior Programme Manager and Supplier Project Manager are for any reason unable to resolve the Dispute/Issue within 15 working days, the matter shall be referred to the DFID SRO, the DFID Commercial Delivery Manager, and Supplier Project Director who shall attempt in good faith to resolve it;
 - c) If the DFID SRO, the DFID Commercial Delivery Manager, and Supplier Project Director are for any reason unable to resolve the Dispute/Issue within 15 working days, the matter shall be referred to the DFID Head of Department, DFID Procurement and Commercial (PCD) Management and the Managing Director of the Supplier who shall attempt in good faith to resolve it;
 - d) if the DFID Head of Department, DFID's PCD Management and the Supplier Managing Director are for any reason unable to resolve the dispute/issue then Clause 47 of Section 2, Terms and Conditions of the Contract will apply.
45. In the case of a dispute between the PMU and the TAF which cannot be resolved through good faith engagement between the parties themselves, the PMU and TAF should escalate this to HMG's relevant Country Programme Manager in the first instance. Should the Country Programme Manager be unable to effectively arbitrate, they will escalate this to the GGF's Senior Programme Manager who will attempt to do so. Where an agreement still cannot be reached they will escalate this to the programme SRO, who will ultimately have final authority to make a determination regarding HMG's preference in resolving any dispute

Exit Strategy

Both parties are responsible for ensuring that their teams are working towards the planned completion and exit of the contract. The programme team should liaise with PCD early on if there will be a subsequent required procurement.

The following tasks are required to successfully close the contract:

- Recovery of equipment
- Handover procedures, transition schedules
- Evaluation
- Review of overall supplier performance

- Documentation and dissemination of lessons learned
- Notification of close to stakeholders.

The persons responsible for facilitating the exit will be the SRO. Please also see Section 2, Clause 16 on Exit Management.

Duty of Care

46. The Supplier is responsible for the safety and wellbeing 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. British Embassies in participating countries, in consultation with the GGF JU, will share available information with the SP on security status and developments in-country where appropriate.
47. The Supplier is responsible for ensuring appropriate safety and security briefings for all their personnel working under this contract and ensuring that their personnel register and receive briefing as outlined above. Travel advice is also available on the FCO website and the Supplier must ensure they and their personnel are up to date with the latest position.
48. 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.
49. 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 (see Annex C to this Terms of Reference).
50. If the Supplier reasonably believes that there are circumstances that pose a threat to the health, safety or security of its personnel (including subcontractors) which impact on its ability to exercise its obligations in respect of duty of care, then those circumstances will be treated as a Force Majeure event. The Supplier may withdraw its personnel from any affected locations and will discuss next steps with the GGF Joint Unit. Tenderers must develop their ITT response on the basis of being fully responsible for Duty of Care in line with the details provided above. They must confirm 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.
51. 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.

Delivery Chain Mapping

52. Suppliers will also be able to demonstrate a full and comprehensive approach and methodology for undertaking due diligence and taking on the risk management of all downstream delivery partners. DFID may request specific audits of the project and all project partners to be undertaken.
53. Suppliers will be required to produce a delivery chain risk map which should, where possible, identify all involved in the delivery of a programme. Risk maps should be reviewed and updated periodically, in line with agreed programme monitoring processes and procedures. As a minimum, it should include details of:
- The name of all downstream delivery partners and their functions.
 - Funding flows (e.g. amount, type) to each delivery partner
 - High level risks involved in programme delivery, mitigating measures and associated controls.

Procurement of Goods and Equipment

54. Where procurement is undertaken as part of programme activities, this must be done using robust systems which ensure best value for money for the programme. The Supplier must ensure that programme assets are accurately tracked, reach their intended beneficiary, and are used for their intended purpose.

Digital Spend

55. The UK government defines digital spend as 'any external-facing service provided through the internet to citizens, businesses, civil society or non-governmental organizations. The Government Digital Service (GDS), on behalf of the Cabinet Office, monitors all digital spend across government and DFID is required to report all spend and show that what we have approved meets with GDS Digital Service Standard. In DFID, this applies to any spend on web-based or mobile information services, websites, knowledge or open data portals, transactional services such as cash transfers, web applications and mobile phone apps. Plans to spend programme funds on any form of digital service must be cleared with DFID in advance and must adhere to the following principles:
1. Design with the user
 2. Understand the existing ecosystem
 3. Design for scale
 4. Build for sustainability
 5. Be data driven
 6. Use open standards, open data, open source & open innovation
 7. Reuse & improve
 8. Address privacy & security
 9. Be collaborative
56. The Supplier must ensure to highlight any digital aspects including potential budget assigned to these interventions, licenses/permissions required and sustainability of investment.

General Data Protection Regulations

57. Please refer to the details of the GDPR relationship status and personal data (where applicable) for this project as detailed in Appendix A and the standard clause 33 in section 2 of the contract.

ANNEX A – Programme Management Unit – Lot 1

Budget

1. The initial contract value will be within the following range from £6,125,000 to £7,875,000 (£1,175,000 up to £2,250,000 per annum) for the duration of 42 months from Contract Commencement. Bidders are expected to propose the total budget amount over the initial 42-month contract period within this range and will be commercially evaluated on the total cost proposed.
2. There is provision to extend by up to a further 24 months and/or up to a further £4,500,000 at the discretion of DFID, subject to satisfactory supplier performance, on-going programme need and availability of additional funding. Any extension would be agreed through a contract amendment. The budget includes any local or UK tax if applicable.
3. Note: DFID programmes are not automatically tax exempt and therefore suppliers may be liable to pay tax in respective countries of operation. Tax liabilities should therefore be taken into consideration in commercial proposals. Failure to take account of applicable tax obligations may result in your final tender being deemed abnormally low and excluded from the final tender process.

Geographic Reach

4. Without prejudice to the possibility of scaling up or scaling down as described in para 34 - 38 of the Terms of Reference, since the PMU supplier will work closely with Lot 2A and Lot 2B suppliers, Lot 1 will encompass work relating to four Eastern Partnership countries (Armenia, Georgia, Moldova, Ukraine) and three Western Balkans countries (Bosnia, Serbia and North Macedonia).

The Requirements

5. A Supplier is required to support the development of a pipeline of projects which respond to beneficiary needs and HMG priorities; to lead the mobilisation of full project proposals through the relevant TAF; and to provide project and portfolio management services for the portfolio of projects delivered within the programme. During the inception phase, the Supplier will be expected to develop a detailed “manual” setting out the processes, practices and structures governing the programme, and which deliver the requirements of this service.

Inception Phase

6. There will be an inception phase to enable the mobilisation of project management teams, governance structures and processes. The inception phase should result in the completion of the below deliverables:
 - i. A “programme manual” or similar describing the governance and processes for delivery of the programme and these requirements should be prepared by the Supplier under Lot 1 and agreed with DFID within 4 months. The Supplier should then be able to implement this on an ongoing basis.
 - ii. A pipeline of initial project concepts agreed with relevant Embassies which respond to beneficiary needs and support delivery of HMG strategic objectives.

- iii. Proposed monitoring and evaluation methodology for assessing results and value for money (including indicative milestones and targets); and an agreed format for concept notes and project proposals and reports (as set out in the covering progress, risks and finances) set out below.

Implementation Phase

7. During implementation, the Supplier will be required to:

a) **Manage the portfolio: including management of individual projects delivered by the TAF:**

- i. The PMU will be responsible for day to day management of the portfolio of projects delivered by the TAF. This will require the PMU to assume responsibility for managing the performance of TAF project teams to ensure the delivery of outputs and milestones agreed during the project design process, in which the PMU will play a leading role. The PMU will constitute the principal intermediary between project teams and HMG, ensuring that progress reports and key deliverables are received to a high-standard and according to schedule; addressing routine requests from the TAF for support or minor amendments to project work schedules and plans¹; and ensuring that more significant challenges, risks or issues are escalated to Embassy and Joint Unit teams as required (including by exercising sound judgement in identifying those which require rapid escalation).
- ii. The PMU will be responsible for providing routine (monthly) management reports for the portfolio and in each country detailing progress in the delivery of projects by the TAF and toward the achievement of milestones/objectives as defined in project proposals; ensuring an effective process across the portfolio for identifying, monitoring and escalating risks or issues, including proposed mitigating actions and/or recommendations for HMG response as required; and financial reports including up to date and accurate spend and forecast information, disaggregated by project.
- iii. To provide consolidated financial management and reporting across the portfolio; including by monitoring project spending to ensure that it is within agreed budgets and to escalate significant issues or concerns to HMG; by providing consolidated monthly financial reports detailing expenditure across projects, and a forecast of anticipated future spend based on an understanding of progress toward the delivery of key milestones.
- iv. To promote evidence generation and lesson learning across the portfolio, to support assessment of the higher-level strategic impact of interventions and to ensure that evidence of 'what works' is available to inform portfolio and project development in other countries/regions; this will include

¹ A routine request could be considered any request to the project design or workplan which would not significantly affect the focus of the project or deliverables; significantly affect the budget; or cause reputational or operational risks for HMG.

collaborative working with the GGF's existing Monitoring, Evaluation and Learning provider.

b) To support assessment of strategic priorities, beneficiary needs and develop a pipeline of concepts/terms of reference:

- i. The PMU will be responsible for liaising with relevant British Embassies to understand their strategic priorities and objectives and working with relevant government and non-government counterparts to identify capacity gaps and needs in areas where HMG interventions through the TAF can support long-term behavioural and organisational change. This will require the PMU to have a presence in each country, to assess technical needs and opportunities for change in beneficiary organisations, and to adopt a sophisticated approach to stakeholder engagement to build and/or draw upon a network in each country to assess areas where UK support can add-value and contribute to UK objectives.
- ii. This will enable the development of a pipeline of concepts/terms of reference which will be agreed with HMG. The PMU will then be responsible for commissioning the production of detailed proposals responding to these from the TAF provider. The PMU will also be responsible for facilitating an effective transfer of relevant relationships to project teams in a manner which continues to promote the project's success and ensure a common understanding between the project delivery team and beneficiary regarding the assistance to be provided and objectives of the project.

c) Support HMG assessment of project proposals and design through quality assurance and advice

- i. The PMU will support HMG in assessing project proposals provided by the TAF in response to agreed concepts and terms of reference. This is expected to be a collaborative process, including ensuring that the PMU is satisfied that outputs and milestones are realistic and achievable, given the PMU's responsibility for managing delivery.
- ii. The PMU will act as an initial quality-assurer to ensure that proposals received by HMG meets minimum standards and criteria, to be further defined during the inception phase. The PMU will also support HMG's more detailed assessment of proposals, including an assessment of the technical and strategic merits of the proposed approach, and of cross-cutting criteria such as a proportionate assessment of the impact of projects on Gender Equality and Social Inclusion (GESI); value for money; and identification of an appropriate delivery team with the capability to deliver.

Reporting

8. Exact reporting requirements, structures and timings will be determined during the inception phase; however, the Supplier should anticipate being able to report by:

a) facilitating regular meetings with the London-based Unit (monthly) and relevant Embassy teams (frequency to be determined in each case due to demand, but are likely to be at least monthly) to enable substantive discussion of progress in delivery of projects by the TAF including: strategic priorities and pipeline development; emerging evidence and lessons learned; the financial status of

the programme; risks, issues and mitigation approaches (at project and programme level); and progress in the delivery of specific milestones and objectives.

b) Monthly financial reporting to be received no later than 10 days prior to the final working day of each month. This should provide actual expenditure against agreed project budgets for previous months, highlight any variances compared to previous forecasts and provide an explanation for this; forecast future expenditure, by month, disaggregated by each project within the portfolio; and an indication of overall levels of variance versus the financial position forecast at the beginning of the relevant quarter.

c) Quarterly written reports to be provided within 2 weeks of the end of each UK fiscal quarter, at both portfolio and country level, detailing:

- i. progress in the delivery of approved projects and toward the achievement of the objectives set out in project proposals;
- ii. risks (including contextual, reputational, fiduciary, operational and safeguarding risks) in a risk matrix format and proposed mitigating strategies for these;
- iii. results delivered to date including, where possible, assessment of strategic impact and case studies which can be used for communication purposes;
- iv. evidence of the achievement of key performance indicators (KPIs) and an evidence of the achievement of specific milestones and targets established by the monitoring and evaluation approach;
- v. emerging evidence and lessons learned.

d) Annual written reports, in alignment with the Annual Reviews, must be provided at the end of each financial year, considering the overall strategic impact of the programme over the year; an assessment of the evidence and lessons generated so far, and how they have/will be applied in the future delivery of the programme; and an assessment of achievement of the objectives set out in the results framework. In the final year of the programme this requirement will change to an overall programme completion report, the content of which will be agreed between HMG and the Supplier during the final year.

e) The PMU and TAF will need to agree on the timing, regularity and format of the reporting required of the TAF, to enable the PMU to deliver its obligations under this programme to HMG including; this should be detailed in the programme manual delivered under the inception phase.

f) The Technical Assistance Facilities will routinely report to the PMU and the PMU will consolidate this in their reporting to DFID. DFID may on occasion request reporting from the TAF directly.

9. The Supplier will forecast budgets on an annual basis and update them every month. DFID will monitor and expect the supplier to keep quarterly spending within 5% of the forecast provided at the beginning of the relevant quarter. The accuracy of the financial profile and forecasting will be closely assessed as a Key Performance Indicator (see Table 1 below).

10. Further to the above outline, the format, content and detail of the report will be finalised during the inception phase and are therefore subject to change to reflect best practices, experience, and DFID comments. This should reflect the PMU's responsibility for consolidating data and information across the portfolio in a usable format for HMG, and to act as the primary point of contact to enable HMG to effectively oversee the programme. . The quality and timeliness of reports will be assessed as a Key Performance Indicator (see Table 1 below).

Contract Management

11. This will be an inputs-based contract, with an element of Payment by Results (PbR) linked to achievement of Key Performance Indicators (KPIs). Key Performance Indicators (KPIs) will link delivery of targets to an agreed payment schedule. A detailed results framework will be agreed during the contract inception phase and approved by DfID. The results framework will also be updated quarterly during the mobilisation phase. Performance will also be tracked through checking the progress against the results framework.
12. Invoices will be submitted on a monthly basis. Payments will be made to the Supplier, who would manage any payments to partners, sub-contractors or other related suppliers.
13. Expenses will be reimbursed to the Supplier on the basis of the monthly invoicing of actual costs incurred. All, or a proportion, of the payment of Programme Team fees will be linked to delivery against KPI's. Bidders must propose the percentage they will link this as PbR approach and will be commercially evaluated on this – see ITT Volume 2. This percentage will be retained by DFID until the quarterly review for that period which will include a KPI assessment/review. Any remaining percentage of the fees which are not linked to KPI's will be reimbursed to the Supplier on the basis of the monthly invoices for actual costs incurred.
14. In summary, monthly invoices will reflect the full value of costs incurred, and these will be reimbursed less the proportion of fees (PoF) to be linked to successful delivery of KPIs which will be retained until the quarterly review for that period. Up to the full amount of PoF retained for that quarter will be paid if KPIs have been successfully achieved, or may not be paid, and may not be retained for payment at any future point, if KPIs for that quarter are not achieved.
15. Some indicative KPIs are outlined in Table 1, alongside their indicative weighting and scoring methodology which can be further refined during the inception phase, as well as the exact measure to evaluate satisfactory performance for full payment.
16. Further KPIs will be developed against the results framework during Inception and on an annual basis to develop along with the programme as it progresses.
17. Invoices should be accompanied by details of spend undertaken in alignment with forecasts and easily aligned with the budget / pro formas.

TABLE 1

KPI	Full Description	Weighting	Assessment	Frequency
KPI 1 – Reporting Quality and Delivery	Consolidated, high-quality quarterly reports at both portfolio and country level are received by	35%	Pass/Fail Resubmitted once, if failed again, relevant	Quarterly

	the agreed deadline without major revisions being made and without omissions; HMG assesses that these enable HMG to effectively exercise oversight over the portfolio by reflecting in full the elements described in paragraph 8.		milestone is not paid.	
KPI 2 – Financial Forecasting	DfID requires quarterly financial forecasting for the whole portfolio, including TAF milestone payments, with a permitted variance of a maximum of 5% of the financial amount reported compared to the forecast at the commencement of that quarter. Monthly forecasting, quarterly review.	5%	Pass/Fail Pass - a variance of equal to or less than 5% of the financial amount reported. Fail - a variance more than X% of the financial amount reported.	Checkpoint each quarter, formal check bi-annually
KPI 3 – PROGRESS	Milestones/outputs from approved projects are delivered successfully and according to schedule by the TAF; with minor changes or risks addressed without HMG intervention.	15%	Proportionate to % of milestones delivered according to schedule; no payment for partially delivered outputs.	Annual
KPI 4 - Engagement	A pipeline of project concepts which respond to identified beneficiary needs and to British Embassy priorities is developed; with selected concepts being further developed into high-quality proposals by	15%	Pass/fail: one payment by country based on HMG assessment of evidence presented in end-year annual reports.	Annual

	TAF implementers. Effective handover of concepts and relationships between PMU and TAF.			
KPI 6 – LESSON LEARNING	Evidence provided of lessons learning/emerging evidence being integrated into ongoing implementation or future design of projects and improving the effectiveness and impact of projects	20%	Pass/fail: one payment based on HMG assessment of evidence presented in end-year annual reports.	Annual
KPI 7 – RESULTS	Evidence of strategic outcome-level impact in target countries as a result of HMG programming; to be defined alongside DFID based on results framework and progressively through contract.	10%	Pass/fail: one payment by country based on HMG assessment of evidence presented in end-year annual reports.	Annual From Year 2 onwards

Indicative weightings have been provided but may be refined depending on final KPI's or any KPI revisions as the programme progresses.

ANNEX B - Lot 2A Technical Assistance Facility: Eastern Partnership and Lot 2B Technical Assistance Facility: Western Balkans

Budget

1. In view of the on-demand nature and options for scaling up and scaling down, the contract value may change but only within the following range for **each** lot: from £14,000,000 to £28,000,000 for the 42 month contract duration (inclusive of all applicable local government taxes), with an option to extend for up to an additional 2 years and/or up to an additional budget of £16,000,000 million at the discretion of DFID, subject to satisfactory supplier performance, on-going programme need and availability of additional funding Any extension would be agreed through a contract amendment..
2. Note: DfID programmes are not automatically tax exempt and therefore suppliers may be liable to pay tax in respective countries of operation. Tax liabilities should therefore be taken into consideration in commercial proposals. Failure to take account of applicable tax obligations may result in your final tender being deemed abnormally low and excluded from the final tender process.

Geographic Reach

3. Without prejudice to the possibility of scaling up or scaling down as described in paragraphs 34 -38 of the Terms of Reference, Lot 2A will operate in four Eastern Partnership countries (Armenia, Georgia, Moldova, Ukraine), and Lot 2B will operate in three Western Balkans countries (Bosnia, Serbia, North Macedonia).

The Requirements

4. A small core team will be required to facilitate communication with HMG and the PMU and to ensure that the TAFs resources are mobilised/activated in response to commissions in the form of TORs and project concepts; and to support delivery of the reporting requirements to the PMU. There will then be the pool of Technical Experts.
5. **The Supplier is required to support the development of detailed project proposals from concepts or terms of reference endorsed by British Embassies, and to deliver these projects once approved by HMG programme boards and the London-based Joint Unit.** The Supplier must work collaboratively with the PMU, who will act as HMG's primary agent in day to day management; including by providing access to information and relevant teams to enable the assessment of progress in delivering the project.
 - a. **The Supplier will be required to produce high-quality project proposals in response to identified UK priorities and local needs** for consideration and approval by country-level programme boards and the GGF Joint Unit in London. These proposals will respond to concepts endorsed by HMG and communicated to the framework by the PMU. In all cases these proposals should:
 - i. Draw on international best-practice, technical expertise and evidence in relevant thematic areas to ensure that projects provide access to a consistently high-standard of technical expertise; including by identifying a team able to rapidly deliver the project following approval.

- ii. Reflect an awareness of and sensitivity to local contexts and incentives to ensure that projects are designed in a way which promotes their own success and not only “Do No Harm” but are able to make a sustainable contribution to more open societies, politics and economies.
 - iii. Respond to identified beneficiary needs, and support sustainable change to promote open societies, politics and economies for the benefit of citizens. They should reflect the partner(s) best judgement of the way in which to achieve these objectives. This may necessitate flexibility from HMG in considering different approaches to achieving the objectives set out in concepts, and where this is the case partner(s) would be encouraged to communicate this at an early point of the design stage.
 - iv. Include a proportionate assessment of the impact of the project on Gender Equality and Social Inclusion, ensuring that opportunities within the project to strengthen equality and inclusion of protected characteristics are taken.
 - v. Have appropriate mechanisms in place for managing risks, downstream partners and ensuring robust safeguarding measures are in place to protect beneficiaries and the environment.
 - vi. Provide an appropriate activity-based budget which reflects Value for Money (VfM), understood as providing economy, efficiency, effectiveness and equity; and can demonstrate an approach increasing the chances of delivering a sustainable impact.
 - vii. Include objectives which are achievable and appropriate and identifies relevant risks and takes proportionate and appropriate steps to mitigate these. This should include measurable results with Smart (specific; measurable; achievable; relevant; and time-bound) indicators for success and appropriate milestones which will form the basis for results-based payment within individual projects.
 - viii. A technical proposal narrative, in alignment with the above points will be required, and a commercial project breakdown template for each project to show the cost breakdown and milestones. DFID will provide project proposal templates.
6. **The Supplier will be required to deliver approved projects.** The Supplier will be required to work closely with the PMU throughout implementation to enable progress to be monitored, to provide the required financial reporting and to highlight risks throughout the project. The Supplier must be able to deliver high-quality technical assistance projects including through appropriate management of results, risks and finances in across the GGF’s priority thematic areas and across the Western Balkans/Eastern Partnership countries in which the GGF delivers. The Supplier should also be able to rapidly identify and mobilise resources to deliver projects in response to commissions and approvals from UK Embassies (acting through the

PMU), and to adapt and respond to changes in local context, emerging evidence and opportunities throughout implementation. The relevant thematic areas are:

- a. Institutional capacity building to develop more effective governance, public administration and management of public finances, in order that governments in target countries become increasingly accountable and responsive to the needs of citizens.
 - b. Reform to the regulation of the business environment and economic governance, to support alignment with international standards and promote broad-based economic growth and job creation; including through small- and medium-sized enterprise development and attraction of foreign direct investment.
 - c. Anti-corruption measures and judicial reform to strengthen the rule of law, reduce opportunities for corruption and increase the capacity of countries to address corruption when it does occur.
 - d. Modernisation of key sectors (such as energy, banking) and reform of state-owned enterprises to support transition to market-driven, modern economies.
 - e. Stronger and more independent media and civil society to ensure that the public is able to engage in active, informed debate and to enable government's to effectively communicate the benefits of reforms to citizens.
7. There will be a 4-month inception phase, aligned across all lots, to enable the Supplier to establish the necessary relationships with Embassy teams and the PMU to enable (in collaboration with the Embassy team and PMU Supplier) the development of a pipeline of projects for delivery from contract commencement. The project's designed during this period will further detail future deliverables, milestones and timelines as required reflecting the nature of the projects themselves.

Contract Management

8. This contract will be based on Payment by Results (PbR) through a milestone-based payment model, centred around key outputs, quarterly, for each individual project.
9. Quarterly payments will be made against each project, concomitant to the successful delivery of the output-linked milestones agreed for each project which will be established during each project design and agreed between the TAF and HMG prior to the commencement of project implementation. The milestone will be paid if successfully achieved, or may not be paid in part or in full, and may not be retained for payment at any future point, if not achieved. If perverse incentives are identified at any point the milestones will be reviewed.
10. Note that the above will be beyond the 4-month inception phase. During the inception phase costs incurred based on the workplan activities will be paid on an inputs-based basis.

11. The breakdown of inputs for each milestone must be provided and monitored and recorded in order to check the forecasting accuracy of milestone payments. If necessary, DFID will recover amounts paid in alignment with Contract Section 2, Clause 3, Supplier Profit.
12. Some KPI's may be incorporated in to the review and monitoring process but will not be linked to payment. They will be routinely monitored as part of quarterly and annual programme review.

Reporting

13. The format, content and detail of the reporting will be finalised during the inception phase and are therefore subject to change to reflect best practices, experience, and DFID comments, but will follow the objectives and milestones defined in agreed project proposals. The Supplier will be required to report regularly to the PMU on project progress, risks and expenditure to enable their effective reporting to HMG. This is likely to consist of both routine contact, and the preparation of some written reporting to provide evidence and support lessons learning. The TAF will routinely report to the PMU and the PMU will consolidate this in their reporting to DFID. DFID may request reporting from the TAF directly. The PMU and TAF will need to agree on the timing, regularity and format of the reporting required to enable the PMU to deliver its obligations under this programme to HMG including:
 - a. Ensuring that the PMU is familiar with the status of and progress in the delivery of key milestones and results ahead of regular (monthly) meetings with HMG; including of emerging risks/issues and proposed mitigation strategies; emerging evidence, results and lessons learned; and the financial status of projects.
 - b. In a format to be agreed with the PMU, regular (monthly) reporting of the financial status of projects including details of expenditure to date and a forecast of expected future expenditure to enable monitoring of budgets and the production of accurate forecasts across the programme.
 - c. Quarterly written reporting, providing evidence of progress in the delivery of projects; achievement of results (including, where possible, of strategic impact); a risk report detailing risks and mitigating strategies for the project (in a risk matrix format, with initial risks agreed during project design phase); and any emerging lessons or evidence generated.

Annex C – Risk Assessment Matrix

Duty of Care Risk Assessments for Serbia, Bosnia, Ukraine, Georgia, Moldova, Armenia & Macedonia										
Date of Assessments: MM/YYYY										
Risk	Serbia	Bosnia	Ukraine	Georgia	Moldova	Armenia	Macedonia			
DFID Overall Rating	2									1 Very Low Risk
FCO Travel Advice	FCO Travel Advice									2 Low Risk
										3 Medium Risk
										4 High Risk
										5 Very High Risk
Transportation	2	2	2	3	3	3	3			
Security	2	2	3	2	1	2	2			
Civil Unrest	2	2	3	2	1	2	2			
Violence/Crime	2	2	3	2	1	2	2			
Terrorism	2	2	3	2	1	2	2			
War	2	2	3	2	2	2	2			
Hurricane	1	1	1	1	1	1	1			
Earthquake	2	1	1	2	1	3	2			
Flood	2	2	1	1	2	1	1			
Medical Services	2	2	3	3	3	3	2			
Nature of Project/Intervention	2	2	3	2	2	2	2			
Total	21	20	26	22	18	23	21			
11										
Weighting Score	2	2	2	2	2	2	2			

Figure One|

