

## SECTION 2 – FRAMEWORK AGREEMENTGENERAL CONDITIONS

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## DEFINITIONS AND INTERPRETATION

### 1. Definitions

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

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

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

"the Supplier's Personnel" means any person instructed pursuant to this Agreement to undertake any of the Supplier's obligations under this Agreement and/or any Calldown Contracts issued from time to time, including the Supplier's employees, agents and sub-contractors.

"the Contract Officer" means the person named in Section 4 of this Agreement who is responsible for all contractual aspects of the Agreement and each Calldown Contract wherein the Contract Officer will be named.

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

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

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

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

“Data Processor” shall have the same meaning as set out in the Data Protection Act 1998;

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

“Data Subject” shall have the same meaning as set out in the Data Protection Act 1998;

"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.

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

"the 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.

"the Financial Limit" means the amount specified as the maximum amount payable by DFID under each Calldown Contract.

"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;

"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.

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

"Information" has the meaning given under Section 84 of the Freedom of Information Act 2000;

"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;

"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 1 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 or evasion,

"Personal Data" shall have the same meaning as set out in the Data Protection Act 1998;

"Process" has the meaning given to it under the Data Protection Legislation but, for the purposes of this Agreement, it shall include both manual and automatic processing;

"the Project Officer" means the person named in Section 4 of this Agreement who is responsible for issuing instructions and dealing with all correspondence in connection with the technical aspects of the Agreement and each Calldown Contract. This person may differ in relation to each Calldown Contract wherein the Project Officer will be named;

"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 Agreement and/or any Calldown Contract, or any other affairs of DFID and "Regulatory Body" shall be construed accordingly;

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

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

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

"the Services" means the services set out in the Terms of Reference (Section 3) of this Agreement and more particularly defined in each Calldown Contract.

## **2. Interpretation**

- 2.1 In the event of any inconsistency between the Form of Agreement (Section 1), these General Conditions (Section 2) and the Special Conditions (Section 4), the Special Conditions shall prevail, unless otherwise specified in any Calldown Contract in which event the applicable condition(s) shall apply solely to the Calldown Contract in question and shall not be an amendment to the Agreement for the purposes of other Calldown Contracts.
- 2.2 Except as expressly provided in Clause 23 the Supplier is not the agent of DFID and has no authority to represent and shall not purport to represent or enter into any commitments on behalf of DFID in any respect.
- 2.3 Nothing in this Agreement and/or any Calldown Contract is intended to make nor shall it make DFID the employer of the Supplier or any of the Supplier's Personnel.
- 2.4 All communications by the Supplier relating to notifications or applications for consents or instructions must be addressed to the DFID Contract Officer whose name and address are given in Section 4 of this Agreement and/or as named in each Calldown Contract.

## **OBLIGATIONS OF THE SUPPLIER**

### **3. Obligations**

- 3.1 The Supplier shall perform all its obligations under this Agreement (including the provision of the Services required under each Calldown Contract) with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts.
- 3.2 If the Supplier is a joint venture then each of the joint venture parties shall have joint and several liability in respect of the Supplier's obligations under this Agreement and each Calldown Contract.

### **4. Personnel**

- 4.1 All members of the Supplier's Personnel shall be appropriately qualified, experienced and in a suitable physical condition so as to ensure that the Supplier complies with all the Supplier's obligations under this Agreement and/or any Calldown Contract.
- 4.2 No changes or substitutions may be made to members of the Supplier's Personnel identified as key personnel in Section 4 of this Agreement and/or any Calldown Contract without DFID's prior written consent.
- 4.3 If DFID considers any member of the Supplier's Personnel unsuitable, the Supplier shall substitute such member as quickly as reasonably possible without direct or indirect charge to DFID with a replacement acceptable to DFID.
- 4.4 The Supplier is responsible for all acts and omissions of the Supplier's Personnel and for the health, safety and security of such persons and their property. The provision of information by DFID shall not in any respect relieve the Supplier from responsibility for its obligations under this Agreement. Positive evaluation of proposals and award of this Agreement (any subsequent Amendments to the Agreement or Call-down Contracts awarded under the Agreement) is not an endorsement by DFID of the Supplier's security arrangements.
- 4.5 The Supplier shall comply with the Staff Vetting Procedures in respect of all Supplier's Personnel employed or engaged in the provision of the Services. The Supplier confirms that all Supplier's Personnel employed or engaged by the Supplier by the agreed start date of this Agreement or any Calldown Contract were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures, as provided within DFID's Security Policy.
- 4.6 The Supplier shall provide training on a continuing basis for all Supplier Personnel employed or engaged in the provision of the Services in compliance with the the Security Policy and the Security Plan.

### **5. Sub Contractors**

- 5.1 The Supplier shall not sub-contract any of its obligations under this Agreement and/or any Calldown Contract without the prior written consent of DFID.

- 5.2 If, having obtained DFID's consent, the Supplier sub-contracts any of its obligations, the sub-contract shall:-
- (a) provide that payments due to the sub-contractor shall be made not more than 30 days after provision to the Supplier of a valid invoice; and
  - (b) include rights for the Supplier and obligations on the sub-contractor to ensure that DFID's rights to require replacement of personnel (as set out in Clause 4.3) and DFID's rights and the Supplier's obligations (as detailed within this Agreement and/or any Calldown Contract) can be enforced against the sub-contractor.

## **6. DFID Data**

- 6.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to DFID Data.
- 6.2 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 Agreement and/or any Calldown Contract or as otherwise expressly authorised in writing by DFID.
- 6.3 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.
- 6.4 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.
- 6.5 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.
- 6.6 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.
- 6.7 If DFID Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, DFID may:
- 6.7.1 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 written request from DFID; and/or
  - 6.7.2 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
- 6.8 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.

## **7. Protection of Personal Data**

- 7.1 With respect to the parties' rights and obligations under this Agreement and/or any Calldown Contract, the parties agree that DFID is the Data Controller and that the Supplier is the Data Processor.
- 7.2 The Supplier shall:
- 7.2.1 process the Personal Data only in accordance with instructions from DFID (which may be specific instructions or instructions of a general nature as set out in this Agreement and/or any Calldown Contract or as otherwise notified by DFID to the Supplier during the Term);
  - 7.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;

7.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

7.2.4 take reasonable steps to ensure the reliability of any Supplier's Personnel who have access to the Personal Data;

7.2.5 obtain prior written consent from DFID in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;

7.2.6 ensure that all Supplier's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 7;

7.2.7 ensure that none of Supplier's Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by DFID;

7.2.8 notify DFID (within two Working Days) if it receives:

7.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or

7.2.8.2 a complaint or request relating to DFID's obligations under the Data Protection Legislation;

7.2.9 provide DFID with full cooperation and assistance in relation to any complaint or request made, including by:

7.2.9.1 providing DFID with full details of the complaint or request;

7.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with DFID's instructions;

7.2.9.3 providing DFID with any Personal Data it holds in relation to a Data Subject (within the timescales required by DFID); and

7.2.9.4 providing DFID with any information requested by DFID;

7.2.10 permit DFID or its representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 16 (Access and Audit), Supplier's data processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by DFID to enable DFID to verify and/or procure that the Supplier is in full compliance with its obligations under this Agreement and/or any Calldown Contract;

7.2.11 provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by DFID); and

7.2.12 not Process Personal Data outside the United Kingdom without the prior written consent of DFID and, where DFID consents to a transfer, to comply with:

7.2.12.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and

7.2.12.2 any reasonable instructions notified to it by DFID.

7.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement and/or any Calldown Contract in such a way as to cause DFID to breach any of its applicable obligations under the Data Protection Legislation.

## **8. Freedom of Information**

8.1 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.

8.2 The Supplier shall and shall ensure that its Sub-contractors shall:

8.2.1 transfer to DFID all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

8.2.2 provide DFID with a copy of all Information in its possession, or power in the form that DFID requires within five Working Days (or such other period as DFID may specify) of DFID's request; and

8.2.3 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.

8.3 DFID shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement and/or any Calldown 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.

8.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by DFID.

8.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 8) DFID may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:

8.5.1 in certain circumstances without consulting the Supplier; or

8.5.2 following consultation with the Supplier and having taken their views into account;

provided always that where 8.5.1 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.

8.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with clauses 8.7 and 8.8 and shall permit DFID to inspect such records as requested from time to time.

8.7 The Supplier shall, during this Agreement and/or any Calldown Contract and for a period of at least seven years following the expiry or termination of this Agreement and/or any Calldown Contract, retain and maintain all Information:

8.7.1 in accordance with the requirements of the Public Records Office and in accordance with the exercise of the degree of care that would be expected from a leading company within the relevant industry or business sector;

8.7.2 in chronological order;

8.7.3 in a form that is capable of audit;

8.7.4 at its own expense.

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

8.9 The Supplier acknowledges that any Commercially Sensitive Information noted within this Agreement and/or any Calldown Contract is of indicative value only and that DFID may be obliged to disclose it in accordance with clause 8.5.

## 9. Confidentiality

9.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement and/or any Calldown Contract, each party shall:

9.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

9.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

9.2 Clause 9.1 shall not apply to the extent that:

9.2.1 such disclosure is a requirement of Law placed upon 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 42 (Freedom of Information);

9.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

9.2.3 such information was obtained from a third party without obligation of confidentiality;

9.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement and/or any Calldown Contract; or

9.2.5 it is independently developed without access to the other party's Confidential Information.

9.3 The Supplier may only disclose DFID's Confidential Information to the Supplier's Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier's Personnel are aware of and shall comply with these obligations as to confidentiality.

9.4 The Supplier shall not, and shall procure that the Supplier's Personnel do not, use any of DFID's Confidential Information received otherwise than for the purposes of this Agreement and/or any Calldown Contract.

9.5 At the written request of DFID, the Supplier shall procure that those members of the Supplier's Personnel identified in DFID's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement and/or any Calldown Contract.

9.6 Nothing in this Agreement and/or any Calldown Contract shall prevent DFID from disclosing the Supplier's Confidential Information:

9.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

9.6.2 to any person conducting an Office of Government Commerce gateway review;

9.6.3 for the purpose of the examination and certification of DFID's accounts; or

9.6.4 for any 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.

9.7 DFID shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 9.6 is made aware of DFID's obligations of confidentiality.

9.8 Nothing in this clause 9 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Agreement and/or any Calldown 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.

## **10. Warranties**

10.1 The Supplier warrants, represents and undertakes for the duration of the Term that:

10.1.1 all personnel used to provide the Services will be vetted in accordance with Good Industry Practice and the Security Policy;



10.1.2 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Supplier's obligations under this Agreement and/or any Calldown Contract;

10.1.3 it has and will continue to have all necessary rights in and to the Supplier's Software or the Third Party Software and/or the Supplier's Background IPRs, or any other materials made available by the Supplier and/or the Sub-contractors to DFID necessary to perform the Supplier's obligations under this Agreement and/or any Calldown Contract;

10.1.4 in performing its obligations under this Agreement and/or any Calldown Contract, all Software used by or on behalf of the Supplier will:

10.1.4.1 be currently supported versions of that Software; and

10.1.4.2 perform in all material respects in accordance with its specification,

10.1.5 as at the agreed start date of this Agreement and/or any Calldown Contract all statements and representations in the Supplier's response to the ITT and any follow up information provided by the Supplier are to the best of its knowledge, information and belief, true and accurate and that it will advise DFID of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;

10.1.6 as detailed in this contract or at the request of DFID, the Supplier will provide a Business Process Manual and supporting documentation containing all necessary information and explanation required for the purpose of executing the Exit Plan and for suitably qualified employees of DFID or of the Replacement Contractor to be able to use the Software and receive the Services and to perform the Replacement Services on termination or expiry; and

10.1.7 the Supplier's system and assets used in the performance of the Services:

10.1.7.1 will be free of all encumbrances [any exceptions must be agreed in writing with DFID]

10.1.7.2 will be Date Compliant; and

10.1.7.3 will be Euro Compliant.

10.1.8 it shall at all times comply with Law in carrying out its obligations under this Agreement and/or any Calldown Contract.

## **11. Security Requirements**

- 11.1 The Supplier shall comply, and shall procure the compliance of the Suppliers Personnel, with the Security Policy and the Security Plan and the Supplier shall ensure that the Security Plan produced by the Supplier fully complies with the Security Policy.
- 11.2 DFID's Security Policy can be accessed on the DFID website at <http://www.dfid.gov.uk/work-with-us/procurement/dfid-information-security-policy-for-contractorsconsultants/> or as notified to the Supplier from time to time. The Supplier shall ensure that they keep up to date with the latest version of the Security Policy on this website.
- 11.3 If the Supplier believes that a change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in discussion with the Contract Officer.
- 11.4 Until and/or unless a change to the Charges is agreed by DFID pursuant to clause 11.3 the Supplier shall continue to perform the Services in accordance with its existing obligations.

## **12. Malicious Software**

- 12.1 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.

- 12.2 Notwithstanding clause 12.1 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.
- 12.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 12.2 shall be borne by the parties as follows:

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

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

### **13. Disclosure of Information**

- 13.1 The Supplier and the Supplier's Personnel shall not, without the prior written consent of DFID, disclose to any third party any confidential information obtained during or arising from this Agreement and /or Calldown Contract (other than in the proper performance of this Agreement and/or any Calldown Contract, or as may be required by authority of competent jurisdiction). In addition, no publicity is to be given to this Agreement and/or any Calldown Contract without the prior written consent of DFID.

### **14. Intellectual Property Rights**

- 14.1 All intellectual property rights in all material (including but not limited to reports, data, designs whether or not electronically stored) produced by the Supplier or the Supplier's Personnel pursuant to the performance of the Services ("the Material") shall be the property of the Supplier.
- 14.2 The Supplier hereby grants to DFID a world-wide, non-exclusive, irrevocable, royalty-free licence to use all the Material.
- 14.3 For the purpose of Clause 14.2, "use" shall mean, without limitation, the reproduction, publication and sub-licence of all the Material and the intellectual property rights therein, including the reproduction and sale of the Material and products incorporating the same for use by any person or for sale or other dealing anywhere in the world.

### **15. Official Secrets Acts**

- 15.1 The Supplier shall ensure that all members of the Supplier's Personnel are aware that the Official Secrets Acts 1911 to 1989 apply to them.

### **16. Access and Audit**

- 16.1 The Supplier shall keep accurate and systematic accounts, files and records ("the Records"). The Records shall clearly identify, among other things, the basis upon which invoices have been calculated and the Supplier shall keep the Records throughout the duration of this Agreement and/or any Calldown Contract and in line with Clause 8.7 above.
- 16.2 The Supplier shall upon request provide DFID or its representatives including the National Audit Office, unrestricted access to the Records in order that the Records may be inspected and copied. The Supplier shall co-operate fully in providing to DFID or its representatives answers to such enquiries as may be made about the Records.
- 16.3 Where it is found by DFID that any overpayment has been made to the Supplier the Supplier shall reimburse DFID such amount within 28 days of the date of DFID's written demand.

### **17. Corruption, Commission, Discounts and Fraud**

- 17.1 The Supplier warrants and represents to DFID that neither the Supplier nor any of the Supplier's Personnel:
- (a) has given, offered or agreed to give or accepted, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or

execution of any contract or for showing or forbearing to show favour or disfavour to any person or entity in relation to any contract; or

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

- 17.2 Neither the Supplier nor any of the Supplier's Personnel shall accept for or on their own benefit any trade commission, discount or similar payment or benefit in connection with this Agreement and/or any Calldown Contract.
- 17.3 The Supplier undertakes that neither the Supplier nor the Supplier's Personnel shall attempt or commit any fraud, deception, financial or procedural wrongdoing in relation to the performance by the Supplier of its obligations under this Agreement and/or any Calldown Contract and shall immediately notify DFID of any circumstances giving rise to a suspicion that such wrongful activity may occur or has occurred.
- 17.4 DFID and the Supplier will immediately and without undue delay inform each other of any event that interferes or threatens to materially interfere with the successful implementation of the project, whether financed in full or in part by DFID, including credible suspicion of or actual fraud, bribery, corruption or any other financial irregularity or impropriety.

DFID have an expert fraud investigation unit, that should be contacted in the first instance at [fraud@dfid.gov.uk](mailto:fraud@dfid.gov.uk) or +44 (0)1355 843551. All suspicions will be treated with the upmost confidentiality.

## **18. Conflict of Interest**

- 18.1 Neither the Supplier nor any of the Supplier's Personnel shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Agreement and/or any Calldown Contract.
- 18.2 The Supplier and the Supplier's Personnel shall notify DFID immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.

## **19. Discrimination**

- 19.1 The Contractor shall not unlawfully discriminate either directly or indirectly on 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 Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 19.2 The Supplier shall take all reasonable steps to secure that the Supplier's Personnel do not unlawfully discriminate as set out in Clause 19.1.

## **20. Environmental Requirements**

- 20.1 The Supplier shall take all reasonable steps to protect the environment in relation to the performance of the Services under this Agreement and/or any Calldown Contract and shall comply with all applicable environmental laws, regulations and DFID practice.

## **21. Insurances**

- 21.1 The Supplier shall maintain professional indemnity insurance cover of an amount not less than the aggregate value of Financial Limits of any Calldown Contracts in existence.
- 21.2 At the request of DFID, or its representatives, the Supplier shall provide evidence showing that such insurance has been taken out and maintained and that current premiums have been paid.

## **22. Indemnity**

- 22.1 Except where arising from the negligence of DFID or DFID's employees, the Supplier shall indemnify DFID in respect of any costs or damages howsoever arising out of or related to breach of warranty or representation, contract or statutory duty, or tortious acts or omissions by the Supplier or the Supplier's Personnel or any claims made against DFID by third parties in respect thereof.

## **PROCUREMENT AND EQUIPMENT**

### **23. Procurement**

- 23.1 Subject to Clause 23.4 all Equipment to be procured pursuant to this Agreement and/or any Calldown Contract and paid for by DFID shall be procured by a DFID registered Procurement Agent, acting as agent of DFID ("the Procurement Agent").
- 23.2 For the purpose of the appointment of a Procurement Agent and for this purpose only, the Supplier shall act as an agent of DFID.
- 23.3 The Supplier shall provide the Procurement Agent with sufficient details for the satisfactory procurement and delivery of Equipment and shall manage the Procurement Agent on DFID's behalf.
- 23.4 Where the total value of the Equipment to be procured under a Calldown Contract is less than 50% of the Financial Limit of that Calldown Contract or £100,000, whichever is less the Supplier may, subject to DFID's prior written consent, procure such Equipment.
- 23.5 All procurement of Equipment shall
- (a) be undertaken in accordance with DFID Guidance on Procurement of Goods and Environmental Procurement Policy or such other procedures as may be agreed in writing by DFID;
  - (b) achieve "Value for Money" and be conducted in a fully transparent manner;
  - (c) be on the basis that the ownership in Equipment shall vest in DFID, and shall be so marked.
- 23.6 "Value for Money" shall mean procuring at the optimum combination of whole-life cost and quality to meet requirements.

### **24. Use of and Responsibility for Equipment**

- 24.1 Equipment may only be used in providing the Services and shall be safely kept and maintained. Personal use of Equipment by the Supplier is not permitted unless DFID gives prior written consent.
- 24.2 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.
- 24.3 Subject to Clause 24.4 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.
- 24.4 Except as required by law, 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 others.
- 24.5 The Supplier shall obtain DFID's instructions on the disposal of Equipment and comply with such instructions.

## **PRICE AND PAYMENT**

### **25. Applicable Provisions and Financial Limit**

- 25.1 Unless different provisions are substituted in Section 4 of this Agreement and/or in any Calldown Contract, Clauses 25 to 29 inclusive shall apply in relation to price and payment.

25.2 The components which comprise the Financial Limit will be set out in each Calldown Contract. No expenditure may be incurred in excess of the Financial Limit and no virements between components shown in the schedule of prices in each Calldown Contract are permitted without the prior written authority of the Contract Officer.

## **26. Fees**

26.1 Any fees payable are deemed to cover the cost of salary, overseas inducements, leave allowances, bonuses, profit, taxes, insurances, superannuation, non-working days and all other costs including, but not limited to, clothing, passports, visas and vaccinations, overheads and expenses of whatsoever nature that may be incurred except those otherwise specifically provided for in this Agreement and/or any Calldown Contract.

## **27. Expenses**

27.1 Travel and living expenses will be paid at a rate consistent with the Schedule of Prices at Section 5 of this Agreement and/or any Calldown Contract. All journeys by Rail or Air will be made by a class of travel that is no more than Standard / Economy.

## **28. Invoicing Instructions**

28.1 Unless otherwise expressly provided in Section 4 or Section 5 of this Agreement and/or any Calldown Contract, invoices should be submitted monthly in arrears to the Accounts Payable Section, DFID Financial Management Group, Abercrombie House, Eaglesham Road, East Kilbride, Glasgow, G75 8EA, and in accordance with the remainder of clause 28.

28.2 DFID shall unless otherwise expressly provided in Section 4 of this Agreement and/or any Calldown Contract, make payments due by direct credit through the UK Bank Clearing Systems (BACS). All invoices must contain details of the UK bank account to which payments are to be made.

28.3 Invoices should include a form of letterhead, the Purchase Order number, bear an original signature and be numbered sequentially and dated. Each invoice should state the period the services were provided using "from" and "to" dates. The final invoice presented in connection with this Agreement and/or any Calldown Contract should be endorsed "Final Invoice".

28.4 All invoices should correspond with the budget lines identified in each Calldown Contract.

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

28.6 Any invoice not presented in accordance with the above may be rejected and in any event shall be liable to query and delay in payment. DFID reserves the right not to pay any amount due in respect of an invoice received by DFID more than 90 days after the day of the Supplier becoming entitled to invoice for the payment to which it relates.

## **29. Payments**

29.1 Subject to DFID being satisfied that the Supplier is or has been carrying out their duties, obligations and responsibilities under this Agreement and/or any Calldown Contract, sums duly approved shall be paid within 30 days of receipt of a valid invoice.

29.2 Payment shall be made in sterling in the UK. Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in the London Financial Times "Guide to World Currencies" on the Friday immediately preceding the date on which the purchase was made or services acquired by the Supplier or, if this took place on a Friday, at the rate so stated on that day.

29.3 If for any reason DFID is dissatisfied with performance of this Agreement and/or any Calldown Contract, an appropriate sum may be withheld from any payment otherwise due. In such event DFID shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction, and payment of the amount outstanding will be made upon remedy of any unsatisfactory work or resolution of outstanding queries.

- 29.4 Should DFID determine after paying for a particular service that the service has not been completed satisfactorily, DFID may recover, or withhold from further payments due under the Calldown Contract in question and/or any other Calldown Contract in existence, an amount not exceeding that previously charged for that service until the unsatisfactory service is remedied to its satisfaction.

## **FORCE MAJEURE AND TERMINATION**

### **30. Force Majeure**

- 30.1 Where the performance by the Supplier of their obligations under this Agreement and/or any Calldown Contract is delayed, hindered or prevented by an event or events beyond the reasonable control of the Supplier and against which an experienced Supplier could not reasonably have been expected to take precautions, the Supplier shall promptly notify DFID in writing, specifying the nature of the force majeure event and stating the anticipated delay in the performance of this Agreement and/or any Calldown Contract.
- 30.2 From the date of receipt of notice given in accordance with Clause 30.1, DFID may, at its sole discretion, either suspend this Agreement and/or any Calldown Contract in question for up to a period of 6 months ("the Suspension Period") or terminate this Agreement and/or any Calldown Contract in question forthwith.
- 30.3 If by the end of the Suspension Period the parties have not agreed a further period of suspension or re-instatement of the Agreement and/or any Calldown Contract in question, this Agreement and/or any Calldown Contract in question shall terminate automatically.

### **31. Suspension or Termination without Default of the Supplier**

- 31.1 DFID may, at its sole discretion, suspend or terminate this Agreement and/or any Calldown Contract at any time by so notifying the Supplier in writing and giving the reason(s) for such suspension or termination.
- 31.2 Where this Agreement and/or Calldown Contract has been suspended or terminated pursuant to Clause 31.1, the Supplier shall:
- (a) take such steps as are necessary to terminate the provision of the Services, (including suspending or terminating any Sub-Contracts) in a cost-effective, timely and orderly manner; and
  - (b) provide to DFID, not more than 60 days after DFID notifies the Supplier of the suspension or termination of this Agreement and/or any Calldown Contract an account in writing, stating:
    - (i) any costs, if any, due before the date of suspension or termination;
    - (ii) any costs to be expended after the date of suspension or termination which the Supplier necessarily incurred in the proper performance of this Agreement and/or any Calldown Contract and which it cannot reasonably be expected to avoid or recover.
- 31.3 Subject to DFID's approval DFID shall pay such amount to the Supplier within 30 days after receipt from the Supplier of an Invoice in respect of the amount due.

### **32. Suspension or Termination with Default of the Supplier**

- 32.1 DFID may notify the Supplier in writing of the suspension or termination of this Agreement and/or any Calldown Contract where the Services or any part of them are not provided to the satisfaction of DFID, giving the reasons for such dissatisfaction and, in the case of suspension, the action required by the Supplier to remedy that dissatisfaction and the time within which it must be completed.
- 32.2 Where this Agreement and/or any Calldown Contract is suspended under Clause 32.1 and the Supplier subsequently fails to remedy the dissatisfaction DFID may terminate this Agreement and/or any Calldown Contract forthwith.
- 32.3 DFID may, without prejudice to its other rights, including but not limited to the right to claim for costs and losses incurred, terminate this Agreement and/or any Calldown Contract forthwith where:
- (a) the Supplier or any member of the Supplier's Personnel, either directly or through their servants or agents, breaches any of their obligations under this Agreement and/or any Calldown Contract; or

- (b) the Supplier or any member of the Supplier's Personnel has committed an offence under the Prevention of Corruption Acts 1889 to 1916 or the Anti-Terrorism Crime and Security Act 2001 or in breach of Clause 17 of this Agreement; or
- (c) the Supplier is an individual or a partnership and at any time:
  - (i) becomes bankrupt; or
  - (ii) is the subject of a receiving order or administration order; or
  - (iii) makes any composition or arrangement with or for the benefit of the Supplier's creditors; or
  - (iv) makes any conveyance or assignment for the benefit of the Supplier's creditors; or
  - (v) the warranty given by the supplier pursuant to Clause 41 is materially untrue; or
  - (vi) the supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non Compliance as required by Clause 41; or
  - (vii) the supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of DFID, are acceptable.
- (d) the Supplier is a company and:
  - (i) an order is made or a resolution is passed for the winding up of the Supplier; or
  - (ii) a receiver or administrator is appointed in respect of the whole or any part of the undertaking of the Supplier.
- (e) the Supplier is a partnership or a company and there is a Change in Control. "Change in Control" means that the person(s) (including corporate bodies) directly or indirectly in Control of the Supplier at the time this Agreement is entered into cease to be in Control. "Control" means the power of a person to secure that the affairs of the Supplier are conducted in accordance with the wishes of that person.

- 32.4 Where this Agreement and/or any Calldown Contract is terminated in accordance with this Clause, the Supplier shall without prejudice to DFID's other remedies, take any steps necessary to terminate the provision of the Services in a timely and orderly manner but shall not be entitled to any further payment in relation to this Agreement and/or any Calldown Contract already entered into.
- 32.5 Where this Agreement and/or any Calldown Contract is terminated pursuant to Clause 32.3(b) the Supplier shall pay DFID within 10 days of notification such amount as DFID shall have determined as the amount of any loss to DFID resulting from such termination together with the amount or value of any gift, consideration or commission concerned.

## GENERAL PROVISIONS

### 33. Variations

- 33.1 No variation in the terms or scope of this Agreement and/or any Calldown Contract shall be effective without DFID's prior written consent and recorded in writing [in the form of a letter entitled "Agreement (or Contract ) Amendment No. "]. DFID shall have no liability in respect of work performed outside the Services set out in Section 3 of this Agreement and/or any Calldown Contract.

### 34. Assignment

- 34.1 Except where clause 34.2 applies, the Supplier shall not, without the prior written consent of DFID, assign or transfer or cause to be assigned or transferred, whether actually or as the result of takeover, merger or other change of identity or character of the Supplier, any of its rights or obligations under this Agreement and/or any Calldown Contract or any part, share or interest therein.
- 34.2 Notwithstanding clause 34.1 of this Agreement, the Supplier may assign to a third party (“**the Assignee**”) the right to receive payment of the Calldown Contract Price or any part thereof due to the Supplier under the Calldown Contract in question (including any interest to which DFID is liable under the Late Payments of Commercial Debts (Interest) Act 1998). Any assignment under this clause 34.2 shall be subject to:
- (a) reduction of any sums in respect of which DFID exercises its right of recovery under clauses 29.3 and 29.4 of this Agreement;

(b) all related rights of DFID under this Agreement and/or any Calldown Contract in relation to the recovery of sums due but unpaid; and

(c) DFID receiving notification under both clauses 34.3 and 34.4 of this Agreement.

34.3 In the event that the Supplier assigns the right to receive the Calldown Contract Price under clause 34.2 of this Agreement, the Supplier shall notify DFID in writing of the assignment and the date upon which the assignment becomes effective.

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

## **35. Limit of Liability**

35.1 Except where there has been misconduct, gross negligence, dishonesty or fraud on behalf of the Supplier or the Supplier's Personnel the Supplier's liability under this Agreement shall be limited to the total amount of the Financial Limit as specified in each Calldown Contract placed pursuant to this Agreement.

## **36. Retention of Rights**

36.1 Clauses 5.2(b), 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 22, 23, 35.1, 37 and 38 of this Section 2 and any relevant clauses listed under Section 4 of this Agreement shall continue in force following the termination of this Agreement and/or any Calldown Contract.

## **37. Law**

37.1 This Agreement and/or any Calldown Contract shall be governed by the laws of England and Wales.

## **38. Amicable Settlement**

38.1 The parties will attempt in good faith to negotiate a settlement to any claim or dispute between them arising out of or in connection with this Agreement and/or any Calldown Contract. If the matter is not resolved by negotiation 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 a mediation provided that such request is copied to the other party (ies).

38.2 The decision of the arbitrator shall be final and binding on both parties.

38.3 The seat and place of arbitration shall be London.

## **39. Transparency of UK Government Spend**

39.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement and/or any Calldown Contract is not confidential information. DFID shall be responsible for determining in its absolute discretion whether any of the content of the Agreement and/or any Calldown Contract is exempt from disclosure in accordance with the provisions of the FOIA.

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

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

39.4 The Supplier shall assist and cooperate with DFID to enable DFID to publish this Agreement and/or any Calldown Contract.

## **40. United Kingdom Income Tax and National Insurance Contributions**



- 40.1 Where the Supplier is liable to be taxed in the UK in respect of consideration received under any call-down contract issued under this Agreement, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 40.2 Where the Supplier is liable to National Insurance Contributions (NICs) in respect of consideration received under any call-down contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 40.3 For those workers contracted on PAYE terms via the Supplier, their contract with the Supplier, signed in advance of any employment, will specifically state:
- “The Temporary Staff shall be engaged by and shall sign terms of engagement with the Supplier and at no stage shall be deemed to have employment or co-employment with DFID. The Supplier shall be responsible for payment of remuneration of the Suppliers Temporary Staff and for making statutory deductions and payment of all statutory contributions in response of earnings in relation to National Insurance and the administration of Income Tax (PAYE) applicable to the Contractors Temporary Staff by Law.”
- 40.4 Where the Supplier engages a limited company (“The Company”) on behalf of DFID, the contract they enter into sets out that The Company has responsibility for, and indemnifies the Supplier in respect of any tax and NI payments:
- “The Company shall indemnify the Employment Business in respect of any tax or employees national insurance together with any interest of penalties, costs or expenses incurred or arising out of or in connection with any such payments.”

#### **41. Tax Compliance**

Particularly relating to occasions of Disclosure of Tax Avoidance Schemes (DOTAS) in line with General Anti-Abuse Rule (GAAR)

41.1 The Supplier represents and warrants that as at the Effective Date, it has notified DFID in writing of any Occasion of Tax Non-Compliance or any litigation that is involved in that is connection with any Occasions of Tax Non-Compliance.

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

- (a) notify DFID in writing of such fact within 5 Working Days of its occurrence; and
- (b) promptly provide to DFID:
  - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (ii) such other information in relation to the Occasion of Tax Non-Compliance as DFID may reasonably require.