

CONTRACT FOR SUPPLIER SERVICES

Section 1 - FORM OF CONTRACT

CONTRACT FOR : **Multi-stakeholder Forest Governance and Accountability Project (MFGAP), Liberia**

PURCHASE ORDER NUMBER : **PO 8600**

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 : Palladium International Limited ("**Supplier**")
whose principal place of business, or, where the Supplier is a company, whose registered office is situate at 2nd Floor Turnberry House, 100 Bunhill Row, London, EC1Y 8ND.

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

WHEREAS:

- A.** DFID requires the Supplier to provide the Services to DFID (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
Section 5	Schedule of Prices – Detailed Proformas
	Technical Proposal
	Commercial Proposal

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.

August 2018

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

3. Commencement Date and End Date of Initial Period

The Services shall commence on 18 July 2019 and the end date of the Initial Period shall be 17 July 2022.

4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed £5,254,594.37 exclusive of any government tax, if applicable.

5. Programme Name

The Programme Name to which this Contract relates is Forest Governance, Markets and Climate Programme.

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:

Palladium International Ltd.

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 variations 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 efinvoicing@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 issued by the Information Commissioner or relevant Government Department in relation to such regulations;

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

“Euro Compliant” means that:

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

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

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

“Exit Plan” the plan produced and updated by the Supplier during the Term in accordance with Terms of Reference and Clause 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, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

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 disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.

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

N/A

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, but £5,000,000 any one occurrence and in the aggregate per annum in respect of products and pollution liability.

4.TERRITORIAL LIMITS

4.1.1 Global

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 N/A

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 Global

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 N/A.

PART C: UNITED KINGDOM COMPULSORY INSURANCES

1.GENERAL

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

SCHEDULE 4: TENDER

1. GENERAL

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

APPENDIX A. CONTRACT AMENDMENT LETTER

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:



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.

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

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

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

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/departments-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

⁵ <https://eiti.org/>

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

⁷ <http://digitalprinciples.org/>

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 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
	ii. 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 <ol style="list-style-type: none"> 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.	<u>Ethical Behaviour</u>			
a)	Recruitment policy (which must address circumstances where there may be potential or actual conflict of interest)	Updated policy documentation submitted once annually by contracted supplier and on behalf of delivery chain partners	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>			
a)	IATI compliance for Supply Partner and their delivery chain Supply Partners	Updated documentation submitted once annually	Contract Terms and Conditions Clause 28	Tender evaluation Periodic spot checks Compliance checks
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>			
a)	1.Steps in place to identify environmental risks (e.g. by maintaining a risk register) Ensuring legislative requirements are being met 2. Formal context specific environmental safeguarding policies in place to ensure legislative requirements are being met	Updated documentation submitted once annually	Contract Terms & Conditions Clause 53 and ToRs	Contract management Periodic and annual return spot checks Compliance checks
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>			
a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	Updated documentation submitted if and when changes identified since tender submittal	Standard Selection Questionnaire (SSQ)	Annual return Spot checks Compliance checks Annual contract review
b)	Certification at or above the level set out in the tender submittal	Updated documentation submitted if changes	Standard Selection Questionnaire (SSQ)	Annual return Compliance checks

	3.Level of commitment in relation to the Contract evident in delivery practices in line with the workplace and community guidance provided in the DFID Supply Partner Code of Conduct Annex 2	Updated 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			21/06/2019
b)	VfM maximisation over contract life					
	1. Annual confirmation of % profit on contract	X	X			
	2. timely identification and resolution of issues	X	X			
c)	3. ensuring lessons learned are shared	X	O			

				<div></div> <div></div> <div></div>		
	<u>Tax Declaration (HMRC format)</u> Comply with all tax requirements	X	X	<div></div> <div></div>	<div></div>	21/06/2019
2.	<u>Ethical Behaviour</u>					21/06/2019
a)	Adherence to agreed conflict of interest management procedures	X	X	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>	<div></div>	21/06/2019
b)	Evidence of workforce ethical training updates taking place	X	X	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div>	<div></div>	21/06/2019
c)	Confirmation of direct and delivery chain partner compliance with the HMG approval requirements under the Business Appointment Rules.	X	X	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>	<div></div>	21/06/2019
d)	Confirmation and full evidence of awareness of an up to date workforce whistleblowing policy	X	X	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>	<div></div>	21/06/2019
e)	Procedures in place and full evidence of awareness of how, staff involved in DFID funded business, can immediately report	X	X	<div></div> <div></div> <div></div>	<div></div>	21/06/2019

	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			[REDACTED]		
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	[REDACTED]	■	21/06/2019
3.	<u>Transparency and Delivery Chain Management</u>			[REDACTED]	■	21/06/2019
a)	Supply Partner and delivery chain partners IATI compliant	X	O	[REDACTED]		
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	[REDACTED]	■	21/06/2019
c)						
d)	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	[REDACTED]	■	21/06/2019
e)				[REDACTED]		
f)				[REDACTED]		
	Assurance there has been no change to previous statements provided in relation to tax evasion, bribery, corruption and fraud	X	X	[REDACTED]	■	21/06/2019
	Confirmation that all delivery chain Supply Partners' employees working on DFID Contracts are fully aware of the DFID external website reportingconcerns	X	X	[REDACTED]		

	mailbox			[REDACTED]		
	Confirmation of adherence to HMG prompt payment policy with all their delivery chain Supply Partners	X	O	[REDACTED]	■	21/06/2019
4.	<u>Environmental Issues</u>				■	21/06/2019
a)	Environmental risks identified (e.g. by maintaining a risk register) with formal context specific environmental safeguarding policies in place	X	O	[REDACTED]		
b)	Annual published environmental performance reports	X	O	[REDACTED]	■	21/06/2019
5.	<u>Terrorism and Security</u>				■	21/06/2019
a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	X	X	[REDACTED]		
b)	No engaged employees or delivery chain partner personnel appears on the Home Office Prescribed Terrorist Organisations List	X	X	[REDACTED]	■	21/06/2019
c)				[REDACTED]		
d)				[REDACTED]		
	Data is managed in accordance with DFID security policy and systems are in accordance with the HMG cyber essentials scheme	X	X	[REDACTED]	■	21/06/2019
	Adherence to the best practice global principles for digital development	X	O	[REDACTED]	■	21/06/2019
6.	<u>Safeguarding, Social Responsibility and Human Rights</u>				■	21/06/2019
a)	Provision of a document demonstrating current organisational good practice and assuring compliance with key legislation on international principles on labour and	X	O	[REDACTED]		

[illegible]

<p>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</p> <p>2.Numbers and details of organisational safeguarding allegations reported</p> <p>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)</p>	X	O	[REDACTED]		21/06/2019
	X	X	[REDACTED]		
	X	O	[REDACTED]		

UN Global Compact – Human Rights

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

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

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

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

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

In the workplace

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

In the community

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

Section 3

TERMS OF REFERENCE

A Supplier to Manage Implementation of the Multi-stakeholder Forest Governance and Accountability Project (MFGAP), Liberia

INTRODUCTION

1. The Department for International Development (DFID) leads the UK's efforts to tackle poverty and global challenges in the national interest. The Forest Governance, Markets and Climate Programme (FGMC) is a 10-year, £250 million programme aimed at tackling forest governance failures in developing timber-producing countries and the consequent market failures that result in illegal exploitation of forest land and resources and the associated trade in timber and other commodities. As DFID's flagship forestry programme, FGMC is an important part of the United Kingdom's (UK) government's broader international initiative on climate – the International Climate Fund (ICF). As part of this global effort, FGMC provides support to the government of Liberia in its efforts to tackle illegal logging and strengthen governance in the sector.
2. Liberia contains more than half the entire rainforest remaining in West Africa. About 45% of the country, 4.3 million hectares, is covered by forest. During Liberia's civil war in the 1990s and early 2000s, timber revenues were misappropriated and used to sustain the conflict. In 2003, the UN Security Council imposed sanctions on timber exports from Liberia. These sanctions were lifted in 2006 following the country's efforts to reform the forest sector. These efforts included a comprehensive review of the regulatory framework and the development of a national timber traceability system, called "LiberTrack", to track timber production. This has since been upgraded to a new more comprehensive system known as "Libertrace"
3. In December 2013 a legally binding Voluntary Partnership Agreement (VPA) entered into force between the European Union (EU) and the Government of Liberia (GoL) which commits the government to implementing law and governance reforms with a view to re-establishing international trade in timber and forest products. Liberia is developing the systems needed to control, verify and license its forest production. With support from various development partners, GoL is implementing reforms designed to improve and verify legal compliance, which will allow it to reassure international markets, and in particular to meet UK and EU requirements for verified legal timber. These systems will be universally applied to all export markets worldwide as well as to products traded within Liberia.
4. Progress with forest governance reforms and more broadly with VPA implementation is monitored by the multi-stakeholder bodies established under the VPA. These bodies provide the platforms for Liberian stakeholder engagement with policy development and should strengthen national ownership. They include:

- National Multi-Stakeholder Monitoring Committee (NMSMC): Acts as sounding board for hearing the views of the full range of stakeholders, and for reporting progress with VPA implementation. Chaired by the Managing Director FDA.
 - Liberian Implementation Committee (LIC): Acts as an advisory/steering committee, particularly for decision-making on how the VPA is integrated into Liberian government, civil society and industry. Chaired by the Chairman of the FDA Board.
 - Joint Implementation Committee (JIC): responsible for overseeing VPA implementation. Jointly chaired by GoL and EU and composed of EU, FDA Board of Directors, Key Government ministries and non-governmental stakeholders.
5. Development assistance in support of these governance reforms has been jointly financed by DFID, EU and Norway and channelled through DFID through two large contracts. Firstly, a new Liberia Verification Department (LVD) was developed within the Forest Development Authority with the aim of ensuring timber legality verification, tracking of timber from forest to export, assessing revenues due to Government and invoicing operators. FDA staff have been trained in the LVD and responsibilities are gradually being transferred around the operation of the chain of custody system, verification and issuance of export permits. A second project supported the VPA Support Unit (VPA SU) to coordinate and support the Liberian government, private sector and civil society institutions in VPA implementation.
 6. In addition to the two jointly financed projects described in para 5, the EU has established the independent audit. DFID has posted a facilitator, to help national stakeholders in VPA implementation. Other forms of support (such as through EFI, FAO-FLEGT and various NGO grant schemes) provide additional and complementary support. The Theory of Change (ToC) for the governance reforms as framed in the VPA and the associated projects that are helping to build capacity to implement them are set out in Annex 5. The MFGAP actions are framed within that overarching ToC.
 7. Under the co-financing arrangement to support the implementation of VPA-linked governance reforms, DFID has been managing EU and Norway funds. DFID is responsible for general oversight of the projects including technical and financial reporting and joint coordination together with the GoL, in close collaboration with the EU and Norway. DFID's long experience in VPA-processes has been beneficial in managing these programmes and supporting the EU Delegation in Liberia. Even though it has been decided to support future development actions and VPA implementation separately through two distinct projects, close coordination between the projects will be essential to avoid overlap and conflict. This has already been reflected in the joint process of developing the respective programmes of support by EU and DFID. Furthermore, the overall priority setting for the MFGAP and EU VPA support will be guided by the priorities agreed annually at the VPA joint implementation committee (JIC) that will endorse priorities established by Liberian stakeholder in the LIC or NMSC (see para 4 for institutional mapping).

8. Annex 2 presents a summary of progress made across these initiatives to date. Major gains have been made in establishing the TLAS within FDA and piloting its work in the field. LiberTrace¹ is now functional and its operations are in the process of being transferred to the Government. Law enforcement procedures have been strengthened in the FDA and in other concerned government agencies. Forest assessment and mapping capacity has been built within the FDA. Private sector operators have been supported to meet timber legality requirements. The VPA SU has provided technical assistance to FDA in reviewing applications for Community Forestry Management Agreements (CFMAs). VPA SU has also provided support to capacity development of key civil society organisations and apex organisations, including support to Independent Forest Monitoring (IFM) through the NGO-coalition. Key documentation and data on forest harvesting, revenue and operations is being made publicly available on the FDA website in accordance with transparency commitments in the VPA.
9. Despite the progress in building capacity and building institutions, considerably more work is required to enable Government services, forest operators and communities to meet the requirements framed in law and forest management standards. Over the past 5 years, the Ebola outbreak, extremely limited capacity in government services, slow infrastructure development (that enables forest production) and challenges of rebuilding from the protracted civil conflict have all contributed to slower than anticipated progress.

Main achievements and shortfalls in first phase of support		
	<u>Achievements</u>	<u>Not yet done</u>
<i>Capacity Building</i>	<ul style="list-style-type: none"> Private Operators are better aware and trained to meet their requirements. Chainsaw millers union engaged. FDA Depts. and other govt. bodies have increased knowledge and capacity for their regulatory roles Coordinated regulatory functions piloted in region 3 and could inform future institutional reforms at decentralized level Civil Society act as Independent Forest Monitors. NBST is established and funds have been released to communities. Regulations and forest operational guidance documents produced. Institutions monitoring and oversight of reforms and VPA are established. Legal framework for community forestry has been clarified by harmonizing laws and regulations. 	<ul style="list-style-type: none"> Framework for legality monitoring (Matrix) needs updating to integrate changed law and regulation Licensing Department not established. FDA performing very little routine field inspection and enforcement Other Govt. agencies not fully engaged with reforms (or VPA) or performing their regulatory function. Many forest operations not fully compliant with requirements. Benefits to communities have been a fraction of that due and very late. Enforcement of new and old regulations and laws is very limited. Steerage of institutions guiding reforms and VPA remain too project/ EU driven. No proposals agreed for engaging with and regulating informal chainsaw milling Increased interest in commercial operations in Community Forests but no regulatory framework yet

¹ LiberTrace is an updated version of LiberTrack, which incorporates legality checks as well as chain of custody aspects. LiberTrace replaced Libertrack in April 2017

<i>LVD and Libertrace</i>	<ul style="list-style-type: none"> • Legality Verification Dept established within FDA. • LiberTrace (information management and CoC tracking) is established and effective. • FDA operates the CoC and capable of its monitoring in the field. • FDA also finances the export licensing function and manages the SGS service contract. 	<ul style="list-style-type: none"> • Handover to FDA from SGS is limited to CoC and financial verification. • LiberTrace not yet handed over. • LVD managers lack experience and do not demonstrate ability to manage. • Necessary budget for LVD operations and recruitment of staff is not available from national budget or FDA's. • Institutional arrangements to ensure checks and balance between field controls and compliance audits not yet established
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10. The current phase of support from EU and UK ends in September 2018. EU, DFID and Norway have signalled their willingness to continue providing support to the GoL to achieve its aims as framed in the VPA. A framework document has been drafted that reflects the proposed division of labour between the EU/Norway and DFID with regard to the implementation of two separate, but complementary projects (Annex 4).
11. It is proposed that two projects are implemented in parallel, with EU leading in support to the FDA as the organization central to VPA implementation, including building capacity to effectively manage legality assurance, licensing systems and other regulatory requirements, licensing and concession oversight as well as legality assurance. This support follows on directly as a continuation from the existing DFID-led contracts held by DAI and SGS (see <https://devtracker.dfid.gov.uk/projects/GB-1-201724/documents>)
12. By contrast, the new project to be supported by DFID will focus on aspects of governance reforms that have been neglected to date, or that are designed to meet new pressures. As such, the DFID action will require flexibility and an adaptive learning approach to assist Liberian stakeholders to tackle these new governance challenges.
13. To date reforms and support have focused on larger operators with secured rights to long term timber concessions. However, recently there has been a rise in commercial forest activity outside of the concession areas. Increasingly, communities are establishing ownership of forests and are selling logging rights to timber companies. Exports of timber coming from Community Forest Management Agreements (CFMAs) now match that from privately held concessions and the future expansion of commercial logging is expected to mostly take place in community forests. To address this challenge future DFID support will focus on strengthening accountability once forest controls are transferred to the FDA, and addressing the new challenges that require innovation and piloting with chainsaw milling operations and community forest enterprises in particular. The MFGAP will work with stakeholders outside FDA to ensure that the new systems built deliver the intended results in practice and counter the risk of corruption and are anchored in the overall Liberian institutional landscape. An over-arching theory of change of VPA implementation and support is provided in Annex 5.

14. A key aspect of future support to GoL will be to ensure that actions are driven and in large part determined by local implementation structures and processes such as the Joint Implementation Committee² (and its own plan of work), the National Multi-Stakeholder Monitoring Committee³ and the Liberia VPA implementation planner / dashboard⁴. With this in mind, it will be important to balance the need for accountable and results-based service provider contracts with the need for flexibility and responsiveness to local decisions and plans. With regard to UK-financing, providing for an inception period that allows for short and medium-term implementation plans to be developed in partnership with local stakeholders will ensure local ownership and relevance. This is particularly important given the recent change in government (in January 2018) and the need for more detailed discussions with the new administration to reconfirm these priorities.

OBJECTIVES

15. In support of Liberia's objectives for strengthening forest governance, the Multi-stakeholder Forest Governance and Accountability Project (MFGAP) will directly contribute towards FGMC's outcome to bring about governance and market reforms that reduce the illegal use of forest resources and benefit poor people, and contribute to FGMC's impact to improve management of forests for poverty reduction, biodiversity conservation, and climate protection.
16. The MFGAP will deliver against these outcome and impact areas through the following objective:

Strengthen the effectiveness and sustainability of legal and governance reforms enshrined in the VPA by building institutional checks and balances and greater accountability.

OUTPUTS

17. The MFGAP is expected to deliver four outputs against the following problem statements:
- A. **Problem Statement:** As framed in national law and policy, forests are critical natural capital for Liberia: providing global and national public goods for national development (combatting climate change, regulating microclimate for water and agricultural resources and conserving biodiversity). Governance of the sector is mainly the responsibility of the FDA, but poor governance has implications for many other government services, sectors and stakeholders. Limited engagement by other parts of government hampers FDA's ability to

² The Joint Implementation Committee (JIC) is composed of Liberian and EU representatives and enables both parties to oversee the implementation of the Agreement.

³ The National Multi-Stakeholder Monitoring Committee (NSMC) is composed of representatives from all Liberian stakeholder groups (administration, civil society, private sector, communities), is the main forum for debate and discussion on VPA implementation and generally meets on a monthly basis.

⁴ The VPA implementation planner/dashboard, also called TLAS forward planner, is a technical tool that is used to plan future actions, monitor progress and identify responsible entities. Outcomes follow the VPA legality definition and all stakeholders are expected to contribute to its updating and monitoring.

drive forward the ambitious reforms anticipated in the 2006 reform law and enshrined in the VPA and risks incoherent policies that make implementation and compliance difficult. Limited communications and accountability pose additional challenges to coherent cross-government functionality. The current baseline status of capacity in the key institutions is more fully described in the documents “Liberia VPA implementation forward planner” and the “Region 3 VPA Pilot and Rollout Plan - Lessons Learnt” Report. Both documents are available in the tender pack.

Output 1: Government services and agencies hold the FDA to account on the regulation of forest production as enshrined in the VPA. Institutional options to strengthen the checks and balances of sector governance will be developed and agreed between the FDA and other government agencies respecting roles and responsibilities framed in Liberian legislation. Joint action plans are agreed and implemented with other government agencies, including Parliament, to strengthen sector accountability. In addition, GoL agencies responsible for aspects of regulation, for example environmental assessments, are better positioned to provide the necessary evidence of compliance and play their role in the smooth operation of legality assurance. The following illustrative actions are envisaged (subject to development and review during the inception period):

- i. Targeted capacity support is provided to the Liberia Revenue Authority (LRA) and other agencies to drive and demand legal compliance and implementation of forest sector reforms. For example, supporting LRA’s information system to link to the FDA’s Libertrace system and adding to the Open Government Data reforms. This could be expanded to include data from a range of sources including small business development and trade promotion, land rights allocation, law enforcement, export and trade figures.
- ii. Informed discussions convened between the different agencies to develop agreed action plans using where feasible established inter-governmental structures.
- iii. Support to enforcement actions by other (non FDA) agencies, in collaboration with Ministry of Justice when evidence of non-compliance is identified. This could include evidence gathering and other actions to inform judiciary proceedings.
- iv. Support to public reporting of progress including through the Liberia Extractive Industries Transparency Initiative (LEITI), ensuring consistency of information published in the context of the VPA implementation
- v. Relevant members of the national legislature are supported to enable them to hold Government to account for progress of forest governance reforms and benefits delivered to trade and local development

KPIs:

- A demonstrable increase in the capacity of LRA, MoJ and at least one other government agency involved in TLAS, relative to the baselines described in the Forward Planner and Lessons Learned report, both available in the tender pack.
- The LRA system is successfully linked to FDA’s Libertrace system

B. Problem Statement: Community level forest users have insufficient knowledge and voice to secure rights and demand accountability from government, local forest enterprises and large-scale private sector companies on forest governance and trade. Precise baseline data is not available, but it is accepted that limited capacity exists within civil society to exercise an effective oversight function in order to demand accountability from government and the private sector.

Output 2: Increased capacity and engagement of civil society and community actors to monitor the forest sector and hold government to account. Communities and civil society actors are demanding accountability from government, community forestry bodies and private sector in the implementation of forest sector reforms. Communities and civil society organisations are working to a coherent strategy of co-ordinated advocacy and related actions. The following illustrative actions are envisaged (subject to development and review during the inception period):

- i. Strengthened capacity and voice within communities to demand rights and accountability on forest governance, and in particular on issues of revenue collection and sharing.
 - Through CFMBs⁵, communities are supported to monitor forest activities and related impacts and benefits and communicate effectively with national representative bodies
 - NUCFDC⁶ supported with regards to monitoring social agreements and other contract obligations with companies and engaging in VPA structures (such as NMSMC and JIC). This will involve capacity support to NUCFDC and members with regard to intelligence and information gathering, analysis of findings and presentation of findings in an informed manner. Supporting information flow between the NUCFDC and members will also help improve representation and legitimacy at national level.
 - NUCFMBs⁷ supported, including building internal capacity on legal rights and responsibilities and engaging in VPA structures (such as CFWG⁸, NMSMC and JIC)
 - Needs and capacity gaps within National Benefit Sharing Trust Board (NBSTB) ⁹ are identified and addressed, including financial management, monitoring and information outreach
- ii. Effective independent forest monitoring (IFM)

⁵ Community Forestry Management Bodies (CFMBs) are community level institutions responsible for overseeing community forest management at local level

⁶ The National Union of Community Forestry Development Committees (NUCFDC) is a national body representing community level interests that holds government and private sector to account in areas such as payment of local level forest revenues, as stipulated in law.

⁷ The National Union of Community Forestry Management Bodies (NUCFMB) is an apex organization representing the interests of individual CFMBs

⁸ Community Forestry Working Group

⁹ The National Benefit Sharing Trust Board (NBSTB) is the national body responsible for disbursing forest revenues to local communities

- Medium term strategic plan of action for IFM in Liberia facilitated and produced, including a clear definition of roles and responsibilities, expansion of IFM members, reporting framework, communication plan, accountability (including links to NGO coalition) recourse mechanisms, principles, standards and formats for reporting as well as sustainable financing options.
 - Links between IFM monitors, whistleblowing functions of the Legality Verification audits as well as VPA Independent Auditor are strengthened
 - Capacity of key Liberian NGOs involved in IM is built to implement strategic plan in partnership relevant international NGOs
- iii. Strengthened capacity and participation by civil society to engage actively in VPA processes and monitoring structures and improved effectiveness of the NGO coalition
- In collaboration with the FLEGT Facilitator, civil society actors at local and national level are supported to encourage active participation in VPA processes and structures (such as JIC and NMSMC) to hold government to account on agreed actions.
 - Greater efficiency and coordination, definition of potential roles and responsibilities (and division of labour) between various interests in Liberian civil society, including social and environmental advocacy, monitoring effectiveness, grass-roots capacity building and development and communication clarified and agreed through a facilitated process
 - Civil society organisations and platforms increase their capacity to understand, participate in and communicate on VPA priority areas

KPI:

- Civil society and community organisations effectively participate in VPA governance structures using evidence provided by Independent Forest Monitors.

- C. **Problem Statement:** Media has insufficient capacity for analysis, intelligence gathering and reporting on progress with forest sector reforms, opportunities and bottlenecks of the VPA and timber legality compliance and enforcement more generally. As a result, the general public is insufficiently informed about forest sector reforms and progress.

Output 3: Independent media holds government, civil society, communities and private sector to account on the implementation of sector reforms that are framed by the VPA: Independent journalists are reporting in printed, radio, TV and social media on implementation, progress and reporting on sector reforms. The following illustrative actions are envisaged (subject to development and review during the inception period):

- i. A baseline assessment of existing media capacity to work in this area is provided as part of the inception report.
- ii. A method to assess forest users' representation is provided as part of the inception report.

- iii. A negotiated action plan for chainsaw milling is provided as part of the inception report.
- iv. An informal network of interested, independent media professionals from TV, radio and printed media is developed and supported, and links established to VPA Secretariat and FDA communications officers.
- v. Targeted training on VPA rationale, process and progress is undertaken
- vi. Opportunities are provided for media professionals to travel to the field to meet with local-level stakeholders and report back
- vii. Support is provided to editing and production of news articles, bulletins and communication materials

KPI

- A demonstrable increase in media attention for forest sector accountability, performance and on the VPA-process, relative to the baseline described in the inception report.

D. Problem Statement: Private sector, community forest management bodies and informal sector players face a range of barriers with regard to meeting legal requirements and have insufficient capacity and representation to ensure their concerns are voiced at national level within the context of VPA discussions. Competing interests from different private sector interests (for example, small and large enterprises) and power imbalances mean that arbitration and conflict resolution need different approaches.

Output 4: Private sector actors engage in policy development processes to address underlying causes of illegal and unsustainable practices and comply with national regulations and provide evidence to inform compliance checks. Private sector (including informal sector) voices are better represented in national policy making framed by VPA Different private sector interests have the capacity and incentives to comply with regulations and are able to provide evidence that confirms their compliance. Innovative approaches, and partnerships are identified and tested that incentivise forest users (including community forestry groups), informal sector, small, and large forest enterprises to comply with regulations. The following illustrative actions are envisaged (subject to development and review during the inception period):

- i. New and innovative approaches are developed with community forestry enterprises, timber companies and chainsaw millers in support of legal compliance
 - Private sector and community level conflicting interests are moderated and arbitrated within a given forest landscape (such as a within an active concession area) and potential solutions and options identified to incentivise compliance
 - **Forest-based enterprises** (i.e. businesses holding forest concessions or permits) gain an improved understanding of legality requirements, the

benefits of compliance (in terms of market opportunities) and evidence required to demonstrate compliance

- **Community forestry enterprise** approaches are developed in collaboration with key stakeholders (timber companies, chain-saw millers, community forestry managers, small-scale mills and government) that will support these community forest enterprises to meet legal and regulatory requirements, generate efficiency and productivity. Pilot actions are tested in selected field sites and results are communicated widely. This could promote partnerships between responsible timber companies and community forestry groups in ways that are both mutually beneficial and sustainable. This action may help community enterprises leverage non-project finance for scaling up of field projects (for example, through P4F, IDH, FAO FFF and FAO FLEGT)
- Facilitated dialogue with the **chainsaw milling sector** is supported, linked to multi-stakeholder structures under the VPA and informed by independent research and with strong representation from across the chainsaw milling sector. The dialogue will explore incentives that encourage chainsaw millers to meet legal requirements. It should result in an action plan and the identification of any necessary legislative changes.
- Exchanges and cross-country visits are supported between European timber interests (eg ETTF, UKTTF, GTF) and Liberian private sector/government VPA stakeholders to communicate current progress and future steps in strengthening compliance and enforcement as well as European market requirements and concerns.

ii. Building capacity, representation and voice of private sector interests

- Liberian Timber Association (LTA), Chainsaw milling association (LICISADUN) and charcoal producers association (NACUL) understand their rights, responsibilities and roles within VPA process and actively participating in key forums and events
- Structural sector consultations between FDA, private sector and key government departments are facilitated to ensure concerns are raised, discussed and actions agreed by all relevant stakeholders

KPIs:

- Forest users' interests are effectively represented in VPA governance structures.
- Legal compliance in community forestry using various community forestry enterprise models is demonstrated and verified through Libertrace.
- A negotiated action plan for chainsaw milling is developed and agreed. The timing to be agreed during inception, and at the latest by the end of year 2.

18. Users' participation in governance structures will be regularly assessed and reported in Facilitator Quarterly reports; PMST oversight missions and transformational change assessments. Legal compliance will be independently measured and assessed in Libertrace by the LVD.

19. The outputs are expected to deliver results against performance measures such as key performance indicators (KPIs) above and milestones. These will be further developed together with Liberian stakeholder during the inception phase for the first year and be further refined annually for subsequent years. See paragraphs 62-65.

RECIPIENTS OF SERVICES

20. The client of this service is the UK Department for International Development (DFID).
21. The principal recipients of services are the Government of Liberia and concerned communities and small businesses engaged in sector governance reforms.
22. The beneficiaries of the services are the Liberian forest communities and small businesses working in forests and other citizen's whose livelihoods depend on forests, and the Liberia Government seeking to manage its forests sustainably and other Liberian citizens engaged in ensuring effective governance, law enforcement and accountability.

SCOPE OF SERVICES

23. The programme is expected to support the GoL and other Liberian stakeholders to implement and enforce forest sector legal requirements as well as commitments to transparency and accountability as framed in the VPA. Paragraph 23 of these TORs sets out priority areas for action and illustrative activities to be implemented. These build from earlier capacity building projects whose results and current capacity assessment status are available as supplementary information for this tender. Suppliers are expected to set out options and supporting rationale for the approaches they will adopt to define results targeting specific stakeholders as indicated above in paragraphs 21-22. The detailed results and milestones will be defined during the inception period with newly elected Liberian administration and stakeholders actively engaged with the VPA process.
24. These services will target capacity building and Technical Assistance (TA) to:
- Government bodies (beyond the FDA) responsible for monitoring forest sector performance and aspects of compliance with Liberia's laws and regulations
 - Private enterprises (including community forest bodies, chainsaw millers) to enable them to achieve full legal compliance as framed in Liberia's VPA
25. It will provide support to Liberian CSO and the various representative bodies of forest communities and forest enterprises through subcontracts and TA.

TIMING AND DURATION

26. The contract will be let for an initial period of up to 36 months, (a 6 month Inception period followed by a 30 month Implementation Period), with the option for extension for two further years subject to continuing need in one or more outputs and subject to available resources, and will be subject throughout to continued satisfactory performance.

Table 1. Timeline

Requirement	Timing
Proposed results framework including output indicators or milestones	As part of inception report
Conflict Sensitivity strategy (including country analysis)	As part of the bid/proposal
Gender Strategy (including country analysis)	As part of the bid/proposal
Inception report with confirmed baseline against output indicators	Within 6 months of contract start date
Annual Workplan agreed with key stakeholder representation	Within 6 months of contract start date, then annually
Narrative reports with update on progress against results frame, project KPIs, quarterly milestones and risk register	Annually and Quarterly a period following the preceding financial quarter)
Learning seminars and workshops	Throughout the programme
Monitoring, Evaluation and Learning Strategy	As part of the inception report
Project closure report and asset disposal plan	Draft 90 days before project end date; final closure report by 2 months after closure.

27. There will be a formal Review Point in the contract at the end of the Inception phase 6 months after contract start date. Movement from Inception to Implementation phases will be subject to satisfactory performance and progress of the Supplier. There will be a contract review point after 18 months informed by an independent mid-term review that will assess performance (the MTR will be undertaken by the FGMC independent review team. As per DFID's standard Terms and Conditions, DFID reserves the right to terminate the contract with 30

day notice to the Supplier. The Supplier must allow for a 90 day termination period after giving notice to DFID of conclusion of the contract.

BUDGET

28. DFID has identified a budget of up to a maximum of £6,000,000 for this programme covering the 36-month period and a budget of up to a maximum of £2 million in the event of any extension. Suppliers should not craft their bids in such a way as to reach the budget ceiling that this parameter implies. Note that DFID programmes are not automatically tax exempt and therefore Suppliers will be liable to pay any relevant taxes in the country of operation. Tax liabilities should therefore be taken into consideration in commercial proposals. .
29. Subject to the satisfactory performance of the Supplier, continuing need and availability of funding, the contract may be extended, for a period of up to a further 24 months and up to the contract maximum value shown above to cover continuing work.
30. Payments during the inception phase will be due upon approval of output milestones. Expenses during the Inception period will be paid as actuals. A quarterly payment schedule for the implementation phase will be agreed during the inception phase which will be reviewed every six months over the life of the project. This payment schedule will forecast delivery against an work plan and reimbursement of expenses as actuals.

THE REQUIREMENTS

31. The Supplier will establish a Technical Assistance Facility (TAF) in Liberia by the end of the 2nd month, building from previous DFID project experience and signalling a balanced approach to support government and non-government actors. Experience has demonstrated that local presence is critical to build credible relationships and to be able to follow sector developments.
32. The services of the TAF will include:
 - i. Provision of programme management, technical, financial, and administrative services against the workplan agreed during the Inception period – aiming at all times to raise local capacity and deliver Value for Money.
 - ii. Provision of additional Technical Assistance if required. The costs for this must be provided as part of the tender. This may include expertise in fostering multi-stakeholder processes, organisational development, communication and media skills, IT-system development, community forestry, trade and market measures including customs, forest law and law enforcement, CSO-led independent forest monitoring, and community-based enterprise development. All use of personnel or sub-contractors outside the core team must be pre-approved in writing by DFID. The supplier will complete a Fee Rate Card for short term expertise as part of the proposal, using a template provided by DFID. Technical experts will be graded by up to four levels, based on the criteria provided, with capped daily fee rates for each level of national or international expert.

- iii. Support to strategic and management oversight by GoL and DFID as framed in governance structures agreed during the Inception period
 - iv. Performance management, quality assurance and monitoring covering finance, risk, and results, supported by regular quarterly reporting to an agreed FGMC framework.
33. In delivering its services the TAF will be guided by the following principles:
- i. Ensuring that all activities support the reforms framed by the VPA and JIC decisions;
 - ii. Strengthening existing institutional structures, rather than establishing new ones;
 - iii. Ensuring synergy and linkages with existing projects and initiatives and the wider VPA implementation (particularly those supported by the EU and Norway in this context)
 - iv. Foster inter- and intra-ministry cooperation, and partnerships with civil society and private sector organisations
 - v. Applying a learning-centred approach to capture and share lessons and improve programming and impact
 - vi. Maximise ownership and sustainability of the functions of in-country partners
 - vii. Deploying, as far as possible, Liberian technical expertise
 - viii. Demonstrating quantified, positive impact on labour standards, gender, and equality
34. The Supplier will establish a consistent presence in Monrovia with sufficient space and services to deliver the programme effectively, ensuring regular contact with Liberian officials formally engaged in the programme. The frequency of contact will be determined in consultation with counterparts.
35. The Supplier will ensure that the TAF retains flexibility to respond to changing needs and priorities, to manage risks and maximise opportunities in pursuit of FGMC's outcome and impact, and MFGAP objectives. The degree of flexibility will be agreed during the Inception period and reviewed annually so as to be guided by the priorities established in the VPA process and its rolling workplan. Information on the rolling VPA workplan is appended to the Aide Memoire of the JIC (available at <http://www.euflegt.efi.int/liberia>)
36. We expect Suppliers to propose in their bid a relevant structure and an appropriate mix of staff within the team to fully meet the needs of this requirement.
37. Suppliers should demonstrate in their bid how they intend to ensure continuity of their core personnel over the life of the contract, through strong recruitment, retention, and performance management processes. Any need for changes to key personnel shall be agreed, in writing, with DFID in advance. For any long-term staff, the Supplier will operate a staff performance management system modelled on international best practice.

38. **Value for Money:** Suppliers should ensure their proposals demonstrate how they will deliver maximum value for money from the budgetary envelope. Proposals should include a detailed approach to value for money metrics. The Supplier's proposal will:
- A. identify how the supplier will maximise value for money, including how they will evaluate and report value for money elements
 - B. provide any cost benchmarking information where available to allow DFID to make a good value for money assessment.
 - C. present a full breakdown of costs specifying any management or overhead costs and profit margins if applicable. Such detail must be provided within the pricing pro-formas.
39. **Conflict sensitivity:** The Supplier shall provide, as part of their proposal, a conflict sensitivity strategy and indicate how planned project action will identify and where feasible target local level conflicts between competing forest users.
40. **Gender:** The Supplier shall provide, as part of their proposal, a gender strategy that will detail how the Supplier shall design, develop and implement the project in a way that takes into account the different needs, priorities, knowledge and capabilities of women, girls, men and boys, ensuring that they participate in, and benefit equally from, the proposed project.
41. **Disability and Inclusion:** The Supplier shall outline in their proposal how they intend to design, develop and implement the project in ways that take into account the needs and capabilities of people with disability and other vulnerable groups. The Supplier shall also include details of how they will encourage inclusive stakeholder engagement process to ensure the participation of marginalised and vulnerable groups in relevant policy-making.
42. **Risk Assessment:** The Supplier shall evaluate the risks associated with the successful development and implementation of the project, and shall propose measures which aim to reduce the probability and mitigate the impact of the risks. The risk assessment will form part of the Supplier's proposal and will be further elaborated during the Inception phase. In the Inception report the Supplier will propose how they will systematically monitor risk throughout the project lifecycle and the escalation chain. Risks will be identified in accordance with DFID risk matrix. For the avoidance of doubt, this risk assessment is in addition to the risk assessments required to meet the Supplier's Duty of Care set out in Annex 7.

Constraints and Dependencies

43. The MFGAP project is interlinked to progress with the DFID-supported project with SGS that is building FDA capacity for chain of custody controls and legality verification. That SGS project is developing the main IT tool, known as Libertrace, that other government departments such as the Liberia Revenue Authority would like to build efficient interfaces to with the support of MFGAP. This will require effective interface and coordination.

44. As outlined in the introduction and Annex 4, MFGAP contributes to wider efforts of governance reform and VPA implementation that will be supported by the EU and Norway. That support will focus on further strengthening the capacity of the FDA for forest regulation, internal audit, export clearances and community forest rights allocation. The Supplier will need to work closely with that new project, once operational to ensure effective coordination. MFGAP will support capacity development of other government services that need to engage with the FDA in this regard.
45. The overarching aims for governance reforms and greater accountability that are the key objective of MFGAP are enshrined in the VPA. Progress and priority setting for VPA implementation are agreed at the political level at the Joint Implementation Committee (see paragraph 4). Therefore this project should establish its annual prioritisation guided by the signals set at the JIC.

Inception Phase

46. The contract will have a 6 month Inception Phase which will commence from the Contract start date. The performance of the Supplier will be assessed at the end of this six-month Inception phase, which will also serve as a formal review point. DFID will review the performance of the Supplier and the Inception Report itself, and if satisfied confirm the full contract and move to the Implementation Phase.
47. The supplier will receive fixed milestone payments for the delivery of draft and final inception reports and cost these as part of their commercial proposal.
48. The main objectives of this Inception phase are to establish a Technical Assistance Facility that is fit for purpose and identify, assess the feasibility of, and plan together with concerned actors, the specific actions under the four output areas defined in Paragraph 17. Furthermore, the Inception period will facilitate discussions with key actors engaged in implementing and supporting the VPA process to ensure that proposed activities complement existing plans supported by other development partners.
49. The Inception Report will include the elements set out in Paragraph 27 of these TORs and be based on a thorough situation and need analysis conducted with key governmental, NGO and private sector players. The report should describe the consultation processes and actions agreed with concerned government and non-government agencies who will be directly involved with project implementation. It should also confirm the establishment of the TAF and that it is fit for purpose. DFID will provide a written response within two weeks. A final Inception Report will be submitted to DFID within two weeks of receiving DFID's response to the draft Inception Report.
50. As indicated in paragraph 26, the Supplier will develop as part of the Inception phase the following key documents that will form the basis for operations in the Implementation phase:

- i. Theory of Change, testing whether the outputs will generate the results expected through the programme, with clear articulation of the assumptions that underpin the change process envisaged
 - ii. Results Framework / Logframe, setting out results and milestones to be delivered and reviewed annually during the Implementation Phase, ensuring consistency with agreed indicators and milestones in the Liberian VPA workplan which is reviewed annually, consistency with FGMC outputs and monitoring, and contributing to assessing Key Performance Indicators in the UK International Climate Fund, in particular the KPI related to transformational change.
 - iii. Monitoring, evaluation and learning plan, outlining the way the programme will stimulate learning and ensure adequate monitoring, linking up to FGMC's monitoring processes and working closely with the FGMC's programme management and support team (PMST). See FGMC Monitoring Framework in Annex 6. This should include a summary of key baseline information.
 - iv. Workplan, outlining activities agreed through consultation with programme stakeholders, which will be updated annually, including an indication of key milestones where appropriate.
 - v. Financial plan, outlining financial review and performance management processes, workplan-linked payment milestones where appropriate, audit requirements, an asset register, and approach to counter-fraud and anti-corruption
 - vi. Risk register and management, outlining principal risks and plans for their treatment where needed, including mapping and risk management of downstream partners
 - vii. Reporting plan, outlining the schedule for drafting, reviewing, and finalisation and consistent with the reporting requirements of FGMC as a whole (see Annex 6)
 - viii. Governance arrangements both structure and timing of meetings, agreed with DFID (see Management and Oversight). The governance arrangements for the project will be consistent with the principle of empowering Liberian stakeholders to lead sector reform processes.
51. The Supplier will be required to have the information, knowledge, experience, procedures, equipment and trained people deployed and ready to implement the project by the end of the Inception phase. This must include having all necessary government approvals in place prior to the start date of the contract.

Implementation phase

52. The Supplier will operate on the basis of the work plan; to achieve the outputs described in para 17 above, and follow the financial and performance management structures agreed during the Inception phase. They will ensure DFID is informed of any significant changes in expected results through

quarterly reporting and make recommendations for adjustments in the programme to ensure overall delivery of results is on track. Any such changes must be agreed in advance and in writing by DFID.

53. The Supplier will ensure that the operations of the project, including any goods procurement, aim to maximise resource efficiency and minimise carbon emissions.
54. To be effective in providing the services of this project, the Supplier will be expected to liaise and cooperate with a range of donor-funded initiatives operating in Liberia. International NGOs with plans (or funded activities) in support of the VPA process in Liberia include FERN, Global Witness, Tropenbos, Client Earth, Rights and Resources Initiative, World Resources Institute and others. The FAO FLEGT programme also finances a range of governmental, NGO and private sector actors. Suppliers will be required to demonstrate knowledge of these initiatives in their bids and include proposals for how the MFGAP project will support and add value to these projects.

Management and Oversight

55. MFGAP will be managed directly through the Climate and Environment Department (CED) within DFID, coming under the centrally managed Forest Governance Markets and Climate (FGMC) programme. It will report directly to the FGMC Senior Responsible Owner.
56. The project management arrangements will be determined by DFID and GoL in discussion with the Supplier during the Inception phase. The management structure will be governed in accordance with the principles set out in the Letter of Agreement between the Governments of Liberia and the United Kingdom. A tentative structure and reporting framework, based on previous Liberia project experience is presented below:
 - i. Steering Committee. A Project Steering Committee will be established during the Inception period that will provide oversight to the project over its three-year life. The Supplier will work with local stakeholders to propose an appropriate oversight and governance structure for agreement with DFID by the end of the Inception Period. Representation will be drawn from DFID, the government of Liberia, non-government stakeholders (representing private sector, forest communities and civil society¹⁰ interests), the European Forestry Institute FLEGT Facility (providing technical guidance to VPA across all countries). Other sector donors will be invited as observers to facilitate coordination. The Steering Committee should meet periodically guided by key milestones established during the Inception Period.
 - ii. External peer review. To encourage infusion of new ideas, lessons, experiences and tested models, a process that facilitates advice and peer review of support MFGAP action will be encouraged. Bidders are invited to consider and propose approaches to facilitate inputs from resource persons

¹⁰ It will be important to ensure that selection of representatives from civil society or private sector does not lead to conflict of interest, given possible direct support from the project.

with experiences of small business and community enterprise development and VPA implementation in other countries. Costs for this will be expected to be included in the bid

- iii. Contract management. Issues of a contractual nature will be overseen by DFID CED, but major decisions relating to staffing or budgets will be taken in collaboration with the project steering committee. Invoices for payments and independent audit reports will be submitted to DFID for review and approval.
 - iv. Reporting and planning. The Supplier will deliver quarterly and annual progress reports to DFID and the Steering Committee. Reports will be approved by the DFID. Annual workplans will be developed based on progress and emerging priorities agreed at the JIC. Annual reports and workplans will be reviewed by the Steering Committee and approved by DFID. The Supplier will be guided by the global FGMC reporting needs as outlined in Annex 6. This will facilitate aggregation of results across countries and the FGMC as a whole.
57. If the Supplier has chosen to submit a proposal which will be delivered through a consortium model, the proposal must include a governance plan which sets out the proposed management structure including lines of reporting and accountability.
58. In the case of proposals delivered by consortia and/or through downstream partners, the proposal must include full details of governance arrangements and how the engagement, capacity development and management of specific downstream partners will be managed.
59. The Supplier's work will be monitored by the FGMC Programme Management Support team (PMST) who work under the overall supervision of the Senior Responsible Owner (SRO). The PMST will report back on all MFGAP deliverables to the SRO in CED.
60. The Supplier will be expected to contribute to the evidence (including lessons learned and best practice) gathered by the PMST for programme reviews and evaluations. The Supplier will also be expected to contribute evidence to the FGMC Independent Review Team on instruction of the SRO (see Annex 6).

Financial

61. The supplier will receive fixed milestone payments to cover fees incurred in the delivery of draft and final inception reports and cost these as part of their commercial proposal. Expenses will be reimbursed based on actuals.
62. For the implementation phase, 30% of the supplier's fees will be contingent on the following Key Performance Indicators, to be scored by DFID. Suggested KPI included here may be revised in consultation with DFID, after consultation with concerned stakeholders to ensure a focus on priority actions.

Theme	Indicator	Overall % of fee	Scoring Criteria			
			100% payment	75% payment	50% payment	0% payment
Linked to ToR output 1	A demonstrable increase in the capacity of LRA, MoJ and at least one other government agency involved in TLAS	5	Support services for achieving this indicator are on track, relative to agreed work plan	n/a*	Support services off track by more than 2 months	No progress since inception
Linked to ToR output 2	Civil society and community organisations participate in VPA governance structures using evidence provided by Independent Forest Monitors.	3	Strong evidence of participation, drawing from up-to date- evidence in the review period	Evidence of participation, but limited intervention in governance structures	n/a	No progress since inception
Theme	Indicator	% of fee	100% payment	75% payment	50% payment	0% payment
Linked to ToR output 3	A demonstrable increase in media attention for forest sector accountability, performance and on the VPA-process	3	Delivery on track relative to agreed work plan	n/a	Off track by more than 1 month	No progress since inception
Linked to ToR output 4	A negotiated action plan for chainsaw milling is i) developed , ii) agreed iii) implemented	3	Delivery on track relative to agreed work plan	n/a	Off track by more than 1 month	No progress since inception
Management: Report quality	Draft reports are clear, concise and timely.	10	Reports are timely and provide clear update on progress	Substantial redrafting of content required, or report deadlines missed (unless revised deadlines agreed in advance with DFID)	Reporting not signed off within one month of submission in draft (unless agreed in advance with DFID)	Reporting due in the period not submitted by the KPI assessment date.
Management: Financial	Strong financial management of the services, demonstrated through: accurate	6	Invoices do not require queries or correction; Strong evidence of vfm provided e.g.	More than one invoice unclearly presented or contains errors	n/a	Repeated inaccuracies in invoicing or forecasting. No evidence

	and timely invoicing; accurate forecasting, and ; optimisation of value for money		additional project benefits and /or savings achieved in assessment period; No more than 5% variance between annual spend and an agreed baseline forecast (unless vfm related).	requiring correction. Weak evidence of vfm ; over 5% variance between annual spend and an agreed baseline(unless vfm related) forecast.		that vfm is being considered in project delivery.
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*where fields marked n/a, there will be only 3 available scores for this indicator.

63. As part of the Inception phase, consideration may be given to refining the KPIs based on discussions with key stakeholders during the Inception period and framing the remaining non-KPI element of Implementation fees into work plan-related milestones where appropriate. Milestones will be developed annually in consultation with Liberian stakeholders and reflected in updated milestone plans. Payments for all costs and expenses will be strictly in arrears and wherever applicable linked to reporting of satisfactory progress against milestones. All expenditure will be against pre-agreed fee rates and project costs. All fee rates, costs and expenses should be clearly set out in the proposal and must be justified in terms of value for money.
64. Any procurement undertaken by the Supplier will be in accordance with international best practice. The Supplier should generate a manual/manuals setting out the way in which they will undertake procurement and all subsequent monitoring for agreement with DFID during the Inception Phase.
65. The Supplier will be expected to generate and maintain a Delivery Chain Map that captures in visual form the names of all grantees and/or subcontracts involved in delivering the programme through to the end recipient. The Map will include a summary assessment of risk identified through due diligence procedures and on-going performance monitoring of sub-partners.

Monitoring, Evaluation, Learning and Reporting

66. The Supplier will deliver the following reports during the lifetime of the contract:
 - i. Quarterly progress reports, covering progress during the previous quarter against the workplan and agreed milestones, to include financial performance and review of risks, and submitted within 15 working days following the end of each UK financial quarter
 - ii. Annual reports, covering progress and providing in depth discussion of results at the outcome and impact levels and reflecting on the learning objectives, submitted by 31 March each year to inform the FGMC Annual review. ,
 - iii. Provide annual audited statements. The audit reports must be completed within six months of the completion of financial year.
 - iv. Exit Plan, submitted in draft within 3 months before conclusion of the contract

- v. ICF Key Performance Indicator (KPI) reporting, submitted on an annual basis (by 31 March each year); suppliers may consider tracking progress on livelihoods, forest condition in addition to contributing to FGMC tracking of the KPI on transformational change. (Report on FGMC transformational change will be provided to the Supplier
- vi. The objectives and main headings of the reports will be outlined in the Inception Report. All reports are to be submitted to DFID for review within the stated timescales. With the exception of annual independent audits, all submitted reports will be reviewed by the Project Steering Committee (see Paragraph 56.

End of Contract Activities

- 67. Three months before the expiry date of the contract the Supplier will prepare for DFID approval, a draft Exit Plan which shall include plans for:
 - i. disposal for all assets procured throughout the lifetime of the programme in accordance with DFID procedures on asset management and disposal;
 - ii. addressing any material items that are necessary or desirable for the continued co-operation of the UK Government after the contract ends;
 - iii. ensuring the smooth transfer of responsibilities from the Supplier to any persons or organisations taking over such responsibilities after the contract ends;
 - iv. delivering to DFID (if requested or as otherwise directed by DFID) prior to the contract end date (or termination of the contract) any finished work or unfinished materials or work-in-progress which relate to the contract;
 - v. providing DFID before the contract ends a summary of the status and next steps in relation to any on-going projects or other material and unfinished activities being conducted or monitored by the supplier;
 - vi. returning all confidential information to DFID before the contract end date.
- 68. The Supplier should allow for a period of up to sixty days after the contract end date (or termination date) for the exit process to be properly implemented.

TRANSPARENCY

- 69. DFID requires Suppliers receiving and managing funds to release data on how this money is spent, in a common, standard, re-usable format and to require this level of information from immediate sub-contractors, sub-agencies and partners.
- 70. It is a contractual requirement for all Suppliers to comply with this approach, and to ensure they have the appropriate tools to enable routine financial reporting, publishing of accurate data and providing evidence of this to DFID. Further information is available from the International Aid Transparency Initiative (IATI): www.aidtransparency.net.

UK AID BRANDING

71. Suppliers that receive funding from DFID must use the UK aid logo on their development and humanitarian programmes to be transparent and acknowledge that they are funded by UK taxpayers. Suppliers should also acknowledge funding from the UK government in broader communications, but no publicity is to be given to this Contract without the prior written consent of DFID. The Supplier must adhere to UK aid branding guidance. For more information see: www.gov.uk/government/publications/uk-aid-standards-for-using-the-logo

DIGITAL

72. Suppliers that receive funding from DFID must follow UK Government's and DFID's standards for the use of digital in international development programmes. Details are available here: www.gov.uk/government/publications/guidance-on-digital-spend-advice-and-controls-for-dfid-partners-and-suppliers

DUTY OF CARE

73. The supplier ensures the highest standards of ethical and professional conduct, respecting transparency obligations, environmental sustainability and social responsibility.
74. The Supplier is responsible for the safety and well-being of their personnel and third parties affected by their activities under this contract, including appropriate security arrangements. They will also be responsible for the provision of suitable security arrangements for their domestic and business property.
75. DFID will share available information with the Supplier on security status and related developments in-country where appropriate.
76. The Supplier is responsible for ensuring appropriate safety and security briefings for all of 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 latest information.
77. The Supplier must develop their proposal on the basis of being fully responsible for Duty of Care. They must confirm in their bid that they:
- i. Fully accept responsibility for Security and Duty of Care of all programme Personnel;
 - ii. Understand the potential security risks and have the knowledge and experience to develop an effective risk mitigation plan;
 - iii. Have the capability to manage their Duty of Care responsibilities throughout the life of the programme.

78. Acceptance of Security and Duty of Care responsibility must be supported with evidence of capability and DFID reserves the right to clarify any aspect of this evidence. In providing evidence the bidders should consider the following questions:
- i. Have you completed an initial assessment of potential risks that demonstrates your knowledge and understanding of the security environment in Liberia, and are you satisfied that you understand the risk management implications (not solely relying on information provided by DFID)?
 - ii. Have you prepared an outline plan that you consider appropriate to manage these risks at this stage (or will you do so if you are awarded the contract) and are you confident/comfortable that you can implement this effectively?
 - iii. Have you ensured or will you ensure that your staff are appropriately trained (including specialist training where required) before they are deployed and will you ensure that on-going training is provided where necessary?
 - iv. Have you an appropriate mechanism in place to monitor risk on a live/on-going basis (or will you put one in place if you are awarded the contract)?
 - v. Have you ensured or will you ensure that your staff are provided with and have access to suitable equipment and will you ensure that this is reviewed and provided on an on-going basis?
 - vi. Have you appropriate systems in place to manage an emergency/incident if one arises?

Do No Harm

79. DFID requires assurances regarding protection from violence, exploitation and abuse through involvement, directly or indirectly, with DFID suppliers and programmes. This includes sexual exploitation and abuse, but should also be understood as all forms of physical or emotional violence or abuse and financial exploitation.
80. The supplier will be required to include a statement that they have duty of care to project stakeholders and their own staff, and that they will comply with the ethics principles in all activities. Their adherence to this duty of care, including reporting and addressing incidences, should be included in both regular and annual reporting to DFID;
81. A commitment to the ethical design and delivery of evaluations including the duty of care to informants, other programme stakeholders and their own staff must be demonstrated.
82. DFID does not envisage the necessity to conduct any environmental impact assessment for the implementation of this project given that it aims to improve environmental and social safeguards of forest operations in Liberia. It is, nonetheless, important to adhere to principles of “Do No Harm” to the environment.

General Data Protection Regulations (GDPR)

83. Please refer to the details of the GDPR relationship status and personal data (where applicable) for this project as detailed in Annex 8: the Appendix A and the standard clause 33 in section 2 of the contract.

Annexes

1. List of Acronyms used
2. Background: summary of implementation progress of EU and DFID support to date – separate file
3. List of references and links
4. Summary description of EU project and division of labour between EU and DFID (Framework document – separate file)
5. Theory of Change for VPA implementation in Liberia (EFI)
6. FGMC monitoring and reporting framework (PMST)
7. Duty of Care Liberia risk assessment (DFID)
8. Annex 8: Appendix A Processing personal Data

Annex 1

Acronyms

CFMA	Community Forest Management Agreement
CFMB	Community Forest Management Body
CFWG	Community Forestry Working Group
CoC	Chain of Custody
CSO	Civil Society Organisation
DAI	Service provider that manages the VPA SU
DFID	UK Department for International Development (UKAid)
DFID-CED	Climate and Environment Department within DFID
EFI	European Forestry Institute
ETTF	European Timber Trade Federation
EU	European Union
FAO FFF	FAO Forest & Farm Facility
FCO	Foreign and Commonwealth Office
FDA	Forestry Development Authority
FLEGT	Forest Law Enforcement Governance and Trade
FGMC	DFID's Forest Governance Markets and Climate Programme
GoL	Government of Liberia
GTF	Global Timber Forum
IATI	International Aid Transparency Initiative
ICF	International Climate Fund
IFM	Independent Forest Monitors
IM	Independent Monitoring
JIC	Joint Implementation Committee
KPI	Key Performance Indicator
LEITI	Liberia Extractive Industries Transparency Initiative
LIC	Liberian Implementation Committee
LICSATDUN	Liberia Chainsaw and Timber Dealers Union
LRA	Liberia Revenue Authority
LTA	Liberia Timber Association
LVD	FDA Legality Verification Department
MFGAP	Multi-stakeholder Forest Governance and Accountability Project
MoJ	Ministry of Justice
MTR	Mid-term Review
NACUL	Charcoal producers association
NBST	National Benefit Sharing Trust
NBSTB	National Benefit Sharing Trust Board
NMSCM	National Multi-stakeholder Coordination Mechanism
NUCFDC	National Union of Community Forest Development Committees
P4F	Partnership for Forests
PMST	FGMC's Programme Management Support Team (based in UK).
SGS	Société Générale de Surveillance (service provider to put LVD in place)
SRO	Senior Responsible Owner
TA	Technical Assistance
TAF	Technical Assistance Facility
TLAS	Timber Legality Assurance System
ToC	Theory of Change
ToR	Terms of Reference
VPA	Voluntary Partnership Agreement
VPA SU	VPA Support Unit
UK	United Kingdom
UKTTF	UK Timber Trade Federation

Annex 2: Summary of implementation progress (September 2018)

Introduction

In 2013 the UK Department for International Development (DFID) and the European Commission (EC) have agreed to provide longer-term support to Liberia to implement activities aimed at meeting its VPA-obligations. Part of this support has been provided through a funding arrangement whereby the responsibility for the management of EC funds have been delegated to DFID.

The funding covered two areas of work for which DFID has contracted two service providers:

- i. SGS: Establishment of a new Liberia Verification Department (LVD) within the Forest Development Authority (FDA), to build its capacity and develop the systems necessary for its operations (which include verification of compliance with defined legislation, tracking timber from forest to export, assessing revenues due to Government and invoicing operators) before transferring the department to the FDA within a 5-year period; and
- ii. DAI: Establishment of a VPA Support Unit (VPA SU) to coordinate the capacity building of Liberian government, private sector and civil society institutions necessary for them to implement the VPA.

(Additional EU-funding is supporting an Independent Audit Function: the Independent Auditor has been recruited in 2017, for three years.)

Further support to VPA-implementation is provided by DFID through financing of the FLEGT Facilitation Unit (contract with Palladium) and of various organisations through the Forest Governance, Markets and Climate (FGMC) Programme that mostly targets CSOs in Liberia.

Goal, purpose and results of this programme:

Goal: To contribute to the renewal and development of Liberia's forest sector so that it plays a key role in the country's sustainable socio-economic development, poverty reduction and economic growth.

Purpose: to strengthen forest sector governance and enforcement of national forest sector-related laws.

Results:

- i) The capacity of Liberian institutions and stakeholders will be strengthened so that they are capable of regulating and managing forest resources in a way that ensures legal timber production and expected environmental, economic and social benefits.
- ii) A credible and functioning system for assuring the legality of timber production will be established
- iii) Regulatory reforms necessary for VPA implementation will be adopted and effectively enforced
- iv) Effective monitoring to review and strengthen progress in forest sector governance will be developed and implemented

Forest sector accountability will be strengthened through improved public access to key information as identified by stakeholders and set out in the VPA Annex.

In the following table an overview is provided of the progress of the programme in September 2018

What	Description	Achievements
Result 1: Strengthening the capacity of Liberian institutions and stakeholders		
Capacity FDA		
Legality Verification Department (LVD)	In October 2013 SGS has been contracted to establish an LVD within FDA: SGS has provided the needed capacity to build, operate and transfer to the FDA the LVD department and its functions over a period of 5 years.	<ul style="list-style-type: none"> - Functional Legality Verification Department (LVD) within the Forest Development Authority (FDA): <ul style="list-style-type: none"> • Sufficient staff recruited based on estimation of the number of concessions and expected activity in the Liberian timber sector (ap. 70 staff) • Capacity of staff built and assessed • CoC operations transferred to LVD - SGS-contract extension foreseen to finalise capacity building of legality verification and handing over.
Commercial Forestry Department	<p>Since 2014 VPA SU has built the capacity of the other FDA divisions: Commercial Forestry Department, Community Forestry Department, Forest Law Enforcement, GIS, Strategic Planning Unit (M&E)).</p> <p>VPA SU has also invested in the renovation of the FDA-building to make the building fit for office residency.</p>	<ul style="list-style-type: none"> - FDA Region 3 pilot for rolling out and testing the Legality Verification system, including Libertrace: <ul style="list-style-type: none"> • Adjusted FDA regional management structure • Capacity built of all regional stakeholders in LAS (Commercial staff incomplete) • Renovation of regional offices - Revision of the Code of Harvesting Practices (CFHP) - Capacity built in Improved Forest Management Planning: <ul style="list-style-type: none"> • Code of Harvesting Practices (CFHP) • Annual Operation Plans (AOP): agreed process and procedures around AOPs starting with Annual Coupe registration and ending with issuance of the Annual Harvesting Certificates
Community Forestry Department (CyFD)		<ul style="list-style-type: none"> - Technical assistance in reviewing CFMA applications
Forest Law Enforcement Division (FLED)	Extra support on law enforcement has been provided to Ministry of Justice (MoJ) and FDA's Law enforcement department in cooperation with the Environmental Law Institute (ELI) (Forest	<ul style="list-style-type: none"> - Restructured FLED & staff assigned to the most relevant positions particularly for inspecting FMCs - Capacity built of the staff - Administrative Enforcement Process Developed: <ul style="list-style-type: none"> • Coordination mechanisms for law enforcement and administration of justice established • Compliance and Enforcement Handbook developed - Development and vetting of regulations (see details under result 3)

GIS and Remote Sensing (GIS/RS) Division	Governance Capacity Building programme).	<ul style="list-style-type: none">- Capacity building:<ul style="list-style-type: none">• Reviewing annual operation plans, validation and approval processes.• Forest mapping: procedure for creating contour lines and buffers, using plugins to generate a geo-referenced raster map (.kmz file) from QGIS vector layers that can be uploaded to GPS devices and creating block grid (1km²) maps for commercial forest areas based on the proposed national level Block Graticule system.• Introduction to geodesy and the Liberian geodetic network re-established in 2013.- Equipment: computers and software enabling FDA to issue detailed maps
VPA Secretariat		<ul style="list-style-type: none">- VPA secretariat established within FDA:<ul style="list-style-type: none">• staff trained and capable to organise VPA meetings (JIC, LIC, NMSMC, IACC)• FDA-budget to support the secretariat not confirmed
Liberia Licensing Department (LLD)		
Other gov. agencies		<ul style="list-style-type: none">- LLD not established yet
EPA		
MoL	VPA SU has supported key VPA role playing Ministries, Agencies and Corporations (MACs): the Environmental Protection Agency (EPA), Liberia Revenue Authority (LRA), Ministry of Labour (MoL) and Ministry of Justice (MoJ) in building their capacity for implementing the LAS.	<ul style="list-style-type: none">- Environmental impact provisions incorporated in revised CFHP including an environmental impact assessment checklist to be used by the EPA's Department of Compliance and Enforcement.- Capacity built irt to LAS (incl GPS application)- Equipment provided: office furniture, computer and printer for staff in FDA's Buchanan office
MoJ		<ul style="list-style-type: none">- Work safety provisions incorporated in revised CFHP, including a checklist
LRA		<ul style="list-style-type: none">- Part of Forest Governance Capacity Building programme: see under FDA's FLED
Private sector		<ul style="list-style-type: none">- Capacity built irt to LAS:<ul style="list-style-type: none">• timber tracking and monitoring the payment of the forest-related taxes with the help of Libertrace
Chainsaw millers		
LTA	Private sector has been supported by both VPA SU and SGS through various trainings on LAS and	<ul style="list-style-type: none">- Activities were pending review of Chainsaw Regulation (draft ready, pending vetting process)- The FAO FLEGT Program has supported a study on the domestic market in Liberia "Liberia: Domestic Timber Value Chain Analysis", in partnership with Building Markets through

	Libertrace.	support of USAID
Forest operators	Pilot in region 3 for rolling out and testing the Legality Verification system including Libertrace.	- FAO FLEGT program supported an institutional assessment of Liberia Chainsaw and Timber Dealer's Union (LICSATDUN).
Civil society and forest affected communities		- Institutional strengthening of LTA
		- Development of community Engagement Guidelines for operators
		- Capacity built in LAS, a/o: <ul style="list-style-type: none"> • Development of AOPs that meet the legal requirements • Development of community engagement plans • Social Agreement Administration and Monitoring Guidelines • Libertrace training
		- Region 3: All active forest operators have received training in LAS and specifically on developing appropriate AOPs.
NGO-coalition		
NUCFDC	VPA SU has supported civil society and community organisations	- Institutional strengthening of the NGO Coalition: <ul style="list-style-type: none"> • Development of strategic plan • Financial management
National Benefit Sharing Trust (NBST)		- Renovation of the NGO-coalition's Resource Centre
		- Organisational, technical and financial support to the NUCFDC Secretariat (since 2016): <ul style="list-style-type: none"> • development of strategic plan • financial management to manage own funds and to monitor the National Benefit Trust Board's (NBSTB) management of funds received from the GoL for affected community projects • monitoring the execution of the Social Agreements
		- Capacity built in financial management, networking and developing fundraising capabilities.
		- Reactivation of the NBSTB
		- Capacity built: <ul style="list-style-type: none"> • Community Forestry Development Committees (CFDCs): development of proposals for community development projects to access funds managed by the Trust Board
		- Financial management assistance provided

Result 2: Credible and functioning system for assuring the legality of timber production established		
Building the system (Libertrace)	SGS has been contracted since October 2013 to build, operate and transfer the legality verification function (Libertrace).	<ul style="list-style-type: none">- Libertrace fully functional:<ul style="list-style-type: none">• Web-based application developed in compliance with the requirements of the VPA. Key decision-making tool for FDA by offering:<ul style="list-style-type: none">▪ A Chain of Custody Information System (COCIS) to ensure the traceability of timber products along the supply chain from the forest to export.▪ A Legality Verification System (LVS) to ensure that timber products were produced transported and sold in compliance with the Liberian definition of legal timber.▪ A Licensing system to issue Export Permits, Certificates of Origin and ultimately FLEGT Licenses.- Revised Standard Operating Procedures (SOP) and Work Instructions (WI)
Operating legality verification function and CoC		<ul style="list-style-type: none">- LiberTrace users training:<ul style="list-style-type: none">• Logging companies and exporters to declare information linked to their operations• The FDA Legality Verification Department (LVD) to manage traceability and legality verification• Other relevant government authorities that require input into the legality matrix• (Future) FDA Liberia Licensing Department (LLD) to issue FLEGT licenses• (Independent Auditor uses the system on a read-only mode)
Transfer of functions to LVD		<ul style="list-style-type: none">- Completed phased handover process resulting in transfer of CoC functions to LVD- SGS-contract extension foreseen to finalise capacity building of legality verification and handing over.
FLEGT licensing		<ul style="list-style-type: none">- FLEGT licensing function in Libertrace available but not switched on
Complaint functions for LAS		<ul style="list-style-type: none">- Frontline Helpdesk established aimed at addressing issues emanating from the use of LiberTrace.
Result 3: Regulatory reforms necessary for VPA implementation are adopted and effectively enforced		
Development and passing of regulations, including work safety	VPA SU has supported the development and vetting of regulations, supported the	<ul style="list-style-type: none">- Approved:<ul style="list-style-type: none">• Abandoned Logs• Confiscated Timber• Third Party Access to Forest Resource License Areas

and environmental impact	development of guidance around social agreements	<ul style="list-style-type: none"> • Sustainable Wood-Based Biomass Energy Production and Marketing in Liberia • Harmonized version of the Community Rights Regulation - Pending: <ul style="list-style-type: none"> • Import Timber • Transit Timber • Chainsaw Milling Regulation (updated through process supported by FAO) • Private Use Permit (PUP) Regulation • Revised Forestry Related Fees/Taxes • Bid Premium Fee Payment Regulation • Amendment to the Forest Products and Marketing Regulation • EIA Regulation # 113-08 • Timber Processing Regulation # 112-08 • Regulation on Work Safety and Welfare in timber industry • Regulation on Penalties #109-07
Social agreements		<ul style="list-style-type: none"> - Manual for logging companies to engage with communities - Guidance on strengthening social agreement administration and monitoring
Guidance on handling breaches and imposing sanctions	Supported by both VPA SU and SGS	<ul style="list-style-type: none"> - Non-compliance procedures developed - Compliance and Enforcement Handbook developed - Summary of the most frequent violations to the Code of Forest Harvesting Practices and corresponding penalties proposed
Result 4: effective monitoring in place to review and strengthen forest sector governance		
NMSMC	VPA SU has supported the NMSMC and LIC including the logistical support.	<ul style="list-style-type: none"> - National Multi-Stakeholder Monitoring Committee (NMSMC) established upon entry into force of the VPA-agreement. - NMSMC functional: <ul style="list-style-type: none"> • Procedures and terms of reference developed and approved (annexed to the aide memoire of the first JIC) • NMSMC meets monthly
LIC		<ul style="list-style-type: none"> - The Liberia Implementation Committee (LIC) has been established to oversee the implementation of the VPA at the Liberian side and convenes in preparation of the JIC
JIC	VPA SU has provided support in logistical arrangements of the JIC	<ul style="list-style-type: none"> - Meetings of the joint implementation committee (JIC) are organised biannually and recorded through aide-memoires that are signed by both the EU and the GoL.

		<ul style="list-style-type: none"> - For more structural engagement technical JICs have been organised - Aide-memoires have been made public on FDA's website: http://www.fda.gov.lr/aide-memoire/ and EU FLEGT Facility's website: http://www.euflegt.efi.int/official-documents-liberia. - A VPA legality Matrix tracking system, the 'LAS Dashboard' or Forward Planner, has been established to allow the JIC to monitor progress on the implementation of the LAS and to identify and prioritize actions
Civil society monitoring modalities	VPA SU has supported the capacity building in independent monitoring according to NGO Coalition's strategic plan	<ul style="list-style-type: none"> - A team of four Independent Forest Monitors (IFM) has been established since 2013 (mandated under the NGO Coalition) - IFM reports are regularly discussed in the multi-stakeholder fora and brought to the attention of the JIC and relevant authorities.
VPA impact monitoring	VPA SU has provided logistical support to EFI in organising the VPA impact monitoring	<ul style="list-style-type: none"> - A framework for VPA impact monitoring developed
Monitoring of informal sector		
Monitoring access of exports to international markets		<ul style="list-style-type: none"> - FLEGT Independent Market Monitoring (IMM) has been established to monitor the market impact of Timber Legality Assurance Systems. Hosted by International Tropical Timber Organisation (ITTO), Funded by EC through DG International Cooperation and Development. See www.itto.int/imm
Result 5: Forest sector accountability strengthened through improved public access to key information identified by VPA stakeholders		
Support to FDA Public Affairs Division (PAD)	FDA Public Affairs Division (PAD) has been supported by VPA SU since mid-2014 in communication matters around VPA	<ul style="list-style-type: none"> - Capacity PAD staff built - Communication strategy available
Implementation of the Freedom of Information Act		<ul style="list-style-type: none"> - Freedom of Information Protocols and Procedures developed and published on FDA's website
Public information sites		<ul style="list-style-type: none"> - Restructured FDA website - VPA documentation available

Annex 3: List of references and links

What		Means to access
VPA documentation, incl. legal docs	VPA agreement, etc	http://www.euflegt.efi.int/es/official-documents-liberia http://www.fda.gov.lr/vpa-flegt/
	JIC aide-memoires	http://www.euflegt.efi.int/es/official-documents-liberia http://www.fda.gov.lr/vpa-flegt/
	Annual reports VPA	http://www.euflegt.efi.int/es/official-documents-liberia
	Legal documentation: <ul style="list-style-type: none"> ▪ Gazetted Regulations ▪ Liberian Forest Sector Compliance and Enforcement Handbook ▪ Revised Community Forest Procedures 	http://www.euflegt.efi.int/es/official-documents-liberia
	<ul style="list-style-type: none"> ▪ Manual of Procedures LVD staff ▪ Manual of Procedures for Forestry Operators 	Libertrace website (https://libertrace.sgs.com): request via support@libertrace.com
	<ul style="list-style-type: none"> ▪ FOI Protocols 	http://www.fda.gov.lr/wp-content/uploads/bsk-pdf-manager/FOI_Protocols_for_FDA..._76.pdf
Documents developed through FGMC-support	Forward planner	Annexed to tender and Tender pack
	VPA-impact monitoring framework	Tender pack
	Lessons learnt report, incl. region 3 pilot	Tender pack
	Strategic plan NGO coalition	Tender pack
	Strategic plan NUCFDC	Tender pack
	Theory of Change Liberia (EFI)	Tender pack
	Readiness assessment of LVD's FDA to assume full responsibility for its operations	Tender pack

ANNEX 4: EU Support to VPA Implementation in Liberia, 2019-2021

Overarching document: Context and rationale for intervention



Annex 4 Overarching
framework document

EU Support to VPA Implementation in Liberia, 2019-2021 Overarching document: Context and rationale for intervention

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ABBREVIATIONS

Note: Acronyms are used extensively in this document for brevity and because readers will be familiar with the terms.

CFMA	Community Forestry Management Agreement
CoC	Chain of Custody
CoO	Certificate of Origin
CSO	Civil Society Organisation
DCI	Development Cooperation Instrument
DFID	Department for International Development
DMDO	Deputy Managing Director of Operations
DSA	Daily Subsistence Allowance
ENRTP	Environment and Natural Resource Thematic Programme
EP	Export Permit
EU	European Union
EUTR	EU Timber Regulation
FDA	Forest Development Authority
FLEGT	Forest Law Enforcement, Governance and Trade
FMC	Forest Management Contract
FAO	Food and Agricultural Organisation of the UN
GoL	Government of Liberia
GPGC	Global Public Goods & Challenges (GPGC)
JIC	Joint Implementation Committee
LAS	Legality Assurance System
LFSP	Liberian Forest Sector Project (Norwegian bi-lateral assistance project)
LiberTrace	IT-based information management system developed by SGS for Liberia's VPA LAS
LIC	Liberia Implementation Committee
LLD	Liberia (Legality) Licensing Department
LRA	Liberia Revenue Authority
LVD	Legality Verification Department
MAC	Ministries, Agencies and Commissions (Government of Liberia)
MD	Managing Director (of FDA)
MoU	Memorandum of Understanding
NMSMC	National Multi-Stakeholder Monitoring Committee
QMS	Quality Management System
SGS	Société Générale de Surveillance
SOP	Standard Operating Procedure
VPA	Voluntary Partnership Agreement
VPASU	VPA Support Unit

1. INTRODUCTION

The EU and UK have been the principal supporters of implementation of the Voluntary Partnership Agreement (VPA) between EU and Liberia since 2013. The current phase of support ends in September 2018 and the donors have agreed to provide further support to the GoL to complete implementation of the VPA. This time, EU and UK (DFID) will finance separate but complementary projects.

The purpose of this Overarching Document is to inform the drafting of Terms of Reference for the EU project. It sets out the context for intervention, building on an EU Action Document which justified the further support and a Framework Document which established a division of responsibilities between EU and DFID^{1,2}.

Although focussed on the EU component, this Overarching Document aims to meet the need for a “*single, coherent strategy for the next phase of support*” identified in the Framework Document. It does this by linking the EU project to the context of the DFID project and the wider package of projects that directly or indirectly support implementation of the Liberia VPA. It also examines the achievements and lessons learned from the previous phase of support. This context is used to shape a new project that builds on previous work, but is distinctly different in a number of ways:

- More attention will be paid to the financing and management of VPA by Government of Liberia, seeing it more as a trade agreement and less as an aid project.
- There will be a shift from building systems and infrastructure in the previous phase to the transfer of these to FDA and GoL for implementation and maintenance.
- There will be less emphasis on creating procedures/regulations and more on applying and enforcing these.
- Increased support will be given for progress towards the inclusion of community forestry and the domestic timber industry in the VPA system of governance and revenue collection.
- The VPA Governance arrangements that were established in the last phase will now be used to manage and coordinate VPA support (e.g. the Forward Planner and the VPA Secretariat).
- Capacity building will be tightly focussed on the practical needs of VPA implementation; (e.g. completing and operating the LAS, LVD and LLD and solving non-compliance identified in LiberTrace).
- There will be an emphasis on the internal checks and balances in LVD, LLD and FDA that give integrity to the VPA, and on improving transparency to assist with external scrutiny.

2. DONOR SUPPORT TO VPA

The previous phase of VPA support was supported by a total of approximately EUR 20.6 million, mostly through a co-financing arrangement between EU and DFID. This was implemented through two main technical assistance projects; one to create a Legality Verification Department (LVD) and the other a VPA Support Unit (VPA-SU). The next phase has aggregated commitments of a similar scale, totalling around EUR 19.9 Million. But this new funding is for three years as compared to the previous five-year phase so there is effectively an **increase in the annual budget**.

In the next phase the EU will fund a core technical assistance project as proposed in these ToRs, which might be further funded by the Government of Norway. DFID will separately fund a second technical assistance project to give complementary support. In addition, the EU, DFID and FAO-EU FLEGT Programme will continue to provide funding for VPA facilitation, civil society monitoring and other VPA activities.

The current LVD project, implemented by a private service provider (SGS), is due to end in October 2018 but is likely to be extended for a further year. At this point, SGS will complete the handover of

¹ EU (2017) Annex I: of the Commission Decision on the Support to the VPA/FLEGT process in Liberia under EDF11. Action Document for the Support to the VPA/FLEGT process in Liberia.

² DFID/EU (2018) EU-DFID Support to the VPA/FLEGT process in Liberia: A joint framework for action. Internal document.

LVD, LiberTrace and the export licensing process to GoL. The EU project will therefore need to support GoL/FDA to make a success of its take-over in years 2 and 3. The VPA Support Unit (VPA-SU) project is implemented by a private consulting company (DAI) and will end in September 2018 without possibility for extension. This project will, to a large extent, continue the work initiated under the VPA-SU.

Table 1: VPA Donor Landscape: Phases 1 and 2 of VPA support			
<i>Lead Donor and approximate value (EUR € million.)</i>			
2013-2018		2019-2021 (indicative)	
EU-DFID (Technical assistance for VPA implementation: VPA-SU, LVD and FLEGT Facilitation)	16.2	EU-Norway (Technical Assistance for VPA Implementation)	5.5
		EU (Independent Auditor and Non State Actors project)	3.0
DFID (Grants for independent forest monitoring)	2.2	DFID (Technical Assistance for VPA Implementation and FLEGT Facilitation)	8.2
NICFI (Norway)	0.8	DFID (Grants for independent forest monitoring)	2.2
EU-FLEGT FACILITY (multi-donor)	1.0	EU-FLEGT FACILITY	0.6
FAO-EU FLEGT (multi-donor)	0.4	FAO-EU FLEGT	0.4
Total	20.6	Total	19.9

2.1 VPA projects and their contribution to implementation

EU, DFID and FAO-EU FLEGT will continue to have additional and complementary lines of support to VPA, for VPA facilitation, civil society monitoring and improving forest management. Projects that will be operating in the 2019-2021 period and which are intended to directly support the VPA are listed in table 2. Note that:

- The second phase is shorter and represents an additional “push” to implement the VPA.
- There is a greater emphasis on community forestry and informal forestry practices.
- The forthcoming projects are numerous and some are overlapping in scope, so there is a need for coordination.
- The current LVD project, implemented by SGS, is due to end in September 2018 but is likely to be extended for a further year. At this point, SGS will complete the handover of LVD, LiberTrace and the export licensing process to GoL. The EU project will therefore need to support GoL/FDA to make a success of its take-over in years 2 and 3.

Table 2: Checklist of project contributions to VPA, 2019-2021						
<u>VPA implementation needs:</u>						
1. Further capacity building in FDA, GoL and other VPA stakeholders.						
2. Completion and enforcement of Liberian laws and regulations framed in the VPA Legality Assurance System.						
3. VPA extended to community forestry and informal timber operations.						
4. LVD and LLD fully operational and transferred to FDA/GoL.						
5. Governance, monitoring and reporting strengthened and facilitated by FDA.						
Projects		Value € M	Contribution to implementation needs			
Donor/Contractor	Title/Purpose		1.	2.	3.	5.
FDA/GoL						

SGS	"Side Agreement" to operate COC and export licensing (Ends Oct. 2018, extension possible)			✓		✓	✓
EU-Norway							
(ToR)	FLEGT Support, 2018-2021	5.50	✓	✓	✓	✓	✓
EU							
SOFRECO	Independent Auditor, 2017-2020	1.9					✓
TROPENBOS	Strengthening the capacity of non-state actors to improve FLEGT-VPA and REDD+ processes in Western Africa.	3.3					✓
EU-DFID							
SGS	LVD: Contract to build and transfer LVD (Ends Oct. 2018, extension possible)	7.2	✓	✓	✓	✓	✓
DFID (FGMC)							
(ToR)	Multi-stakeholder Forest Governance and Accountability Project (MFGAP)	6.82	✓	✓	✓		✓
(Tendering)	FLEGT Facilitation Unit	1.4	✓		✓		✓
(Pre-tender)	Grants to support FLEGT related initiatives from non-profit organisations.	2.2					✓
EU-FLEGT Facility							
EFI	Technical support to EU. Rapid Response Mechanism.	0.6	✓	✓	✓	✓	✓
FAO-EU FLEGT							
NUCFDC	Tracking Progress: Strengthening community capacity to monitor benefits from commercial logging in Liberia	0.06	✓		✓		✓
SDI	Strengthening community forestry structures and their governance	0.08	✓		✓		
NBSTB	Increasing the capacity of the National Benefit Sharing Trust Board (NBSTB) for self-sustainability	0.02	✓				✓
FAO							
(Pre-tender)	National Forest Inventory	1.0	✓				✓

There are also a large number of "non-VPA" projects in the forestry sector that may contribute to VPA objectives. For example the NICFI-funded and World Bank implemented *Liberia Forest Sector Project* is particularly important because it provides a substantial resource that is targeted at community forestry, FDA capacity building and reforms required to formalise commercial timber production in community forest areas. These are listed in Appendix 1 and considered in the following section 3.

2.2 Complementarities with DFID Support

EU and DFID support to VPA is no longer to be delivered jointly, so close coordination in the design and delivery of EU and DFID projects is required.

The two projects should be complementary and communicate as much as possible to ensure synergies of support. A combined effort is needed to meet the challenge of completing VPA implementation. Overlap should be minimised and stakeholders should experience joined-up support, not a confusion of competing activities.

2.2.1 Target beneficiaries

The EU will lead in supporting GoL to implement VPA reforms within FDA, as well as ensuring that other government agencies with a direct role in VPA are able to fulfil their responsibilities for regulatory oversight and enforcement. DFID will provide complementary support by working with stakeholders outside FDA (state as well as non-state) to strengthen checks & balances and accountability in Liberia's governance of the forestry sector.

Table 3: Targeted beneficiaries of EU and DFID Projects	
<i>EU Targeted Beneficiaries</i>	<i>DFID Targeted beneficiaries</i>
FDA	
FDA Commercial Department	
FDA Community Department	
FDA LVD (After handover from SGS)	
LLD	
FDA Public Affairs Department	
FDA Law Enforcement Department	
Other Government Departments	
LRA (Customs + Revenue Depts.)	LRA
EPA	EPA
	MFDP (Finance & Development Planning).
	MoJ (Justice)
MoL (Labour)	MoL (Labour)
MOCI (Commerce & Industry)	MOCI (Commerce & Industry)
	MME (Mines & Energy)
	LLA (Liberia Land Authority)
	NBC – (National Bureau of Concessions)
LEITI	LEITI
Civil Society/Community representation	
NUCFDC	NUCFDC
NUCFMB	NUCFMB
NBSTB	NBSTB
NGO Coalition/Independent Forest Monitors ³	NGO Coalition/Independent Forest Monitors
	NGOs (FLEGT related initiatives)
Private Sector	
	Independent Media
Forest sector enterprises (LiberTrace users)	Forest sector enterprises, including community forest enterprises.
	LTA
	LICSADUN
	NACUL
	European Timber Bodies (e.g. ETTF, UKTTF, GTF)
VPA Governance committees	
VPA Secretariat	
JIC and Technical JIC	
LIC	

³ Currently ongoing support to CSOs through Tropenbos. Additional grants in preparation to support roles of CSOs within the current financing agreement.

NMSMC	
NBSTB	

Source: DFID MFGAP ToR⁴, Action Document, Framework Document and consultations.

2.2.2 Connections between EU and DFID projects

The projects share some beneficiaries and a degree of overlap which is inevitable and desirable, because they are both supporting the same overall goal of VPA implementation.

The Contractor for the EU project will be expected to maximise synergies with the DFID and other projects. As a guide, collaboration between the projects can mirror the relationship between FDA and the other stakeholders in the VPA: the FDA, as lead agency, calls on timber operators to achieve legal compliance, calls on other government bodies to play their role in legality assurance, and then verifies the results. The EU project will therefore support the FDA and Government in this role of guiding, enforcing and verifying legal compliance. The role of the DFID project includes helping the non-FDA bodies and forest users to respond to the demands of legal compliance and, together with civil society, hold the FDA to account on the regulation of forestry, as enshrined in the VPA.

Examples of how the two projects may complement each other to achieve VPA functions are given in table 4.

Table 4: Connections in the support from EU and DFID (examples)		
<i>EU supported actions</i>	<i>VPA Functions</i>	<i>DFID supported actions</i>
<ul style="list-style-type: none"> FDA Departments conduct inspection and enforcement and upload documentation to LiberTrace. 	<i>Routine Inspection & Enforcement</i>	<ul style="list-style-type: none"> Operators and non-FDA regulators inspect, enforce and contribute evidence for VPA verification and monitoring. Operators and non-FDA government bodies demand an effective and efficient legality verification process.
<ul style="list-style-type: none"> Corrective actions to address non-compliance are issued and the response is overseen by LVD. 	<i>Audit, legality verification and corrective actions</i>	<ul style="list-style-type: none"> Agencies outside FDA undertake enforcement actions, in collaboration with Ministry of Justice when evidence of non-compliance is identified. Joint action plans are made between other govt. bodies and FDA.
<ul style="list-style-type: none"> LLD is established and made operational, verifying compliance using LiberTrace and issuing export licenses. 	<i>Licensing</i>	<ul style="list-style-type: none"> Government understands the basis for export approval and monitors FDA's verification/licensing role, including fiscal compliance.
<ul style="list-style-type: none"> After handover from SGS, LVD maintains an effective and transparent process of auditing fiscal compliance and invoicing companies. LVD integrates revenue collection systems with LRA etc. 	<i>Revenue Collection and benefit sharing</i>	<ul style="list-style-type: none"> Govt. bodies improve information & financial management systems so they can link to the LAS (e.g. financial systems at LRA is made compatible with LiberTrace.) The National Benefit Sharing Trust Board is able to act effectively and transparently, in allocating funding due to communities.
<ul style="list-style-type: none"> FDA makes information accessible, listens to feedback and takes appropriate action. LVD and FDA establish an effective complaints mechanism. NMSMC continues to be an effective space for dialogue and complaints. 	<i>Independent Monitoring</i>	<ul style="list-style-type: none"> CFMBs, NUCFDC and CSOs monitor forestry impacts and adherence to social agreements, environmental standards and other contractual obligations of operators; Independent news media are informed and organized so they can link to VPA issues and assist with scrutiny and public awareness. Public reporting of progress in implementing

⁴ DFID (2018) Terms of Reference: A supplier to manage implementation of the Multi-stakeholder Forest Governance and Accountability Project (MFGAP), Liberia. (version 29 January 2018)

		reforms is done in non-VPA forums, such as LEITI, ensuring consistency of information published on VPA implementation
<ul style="list-style-type: none"> • FDA and GoL complete the Legality Matrix, through process with JIC and all stakeholders. • FDA and GoL develop policies and regulations for the domestic market (Chainsaw milling and charcoal). • FDA bodies develop regulations and SOPs to regulate the sector in accordance with the VPA LAS. 	<i>Regulatory improvements (Regulations, Laws, policies)</i>	<ul style="list-style-type: none"> • Forestry enterprises, including community forestry groups and chainsaw millers are supported so they can raise standards and engage better with FDA and the VPA. • Facilitated dialogue on chainsaw milling sector will result in an action plan with incentives that encourage chainsaw millers to meet legal requirements and identification of any necessary legislative changes. • Other gov. bodies develop SOPs to regulate the sector in accordance with the VPA LAS.
<ul style="list-style-type: none"> • FDA develops a sustainable financial plan for implementing the timber legality assurance system with LRA, MOFDP etc. • FDA prepares a business case and supporting information for influencing GoL and stakeholders. • Procedures and systems developed in LVD are shared in order to raise standards across FDA and MACs involved in TLAS.(e.g. for data management, quality control and complaints handling) 	<i>Resourcing (financial, political and technical support)</i>	<ul style="list-style-type: none"> • Members of the national legislature are supported to understand the rationale, basis and progress of forest governance reforms and benefits delivered to trade and local development. • Govt. bodies improve information & financial management systems so they can link to the LAS (e.g. financial systems at LRA is made compatible with LiberTrace.)
<ul style="list-style-type: none"> • VPA Secretariat organizes VPA governance committees and maintains Dashboard/Forward Planner for monitoring and planning VPA implementation. • FDA makes information readily available and responds to complaints. 	<i>VPA Governance (JIC, LIC, NMSMC)</i>	<ul style="list-style-type: none"> • Non-FDA stakeholders participate on inter-governmental VPA governance structures (e.g. JIC, Technical JIC) and monitor commitment set out in the Forward Planner. • Independent Forest Monitors feed information into VPA governance structures (e.g. NMSMC, LIC, JIC).

Source: DFID MFGAP ToR⁵, Action Document, Framework Document and consultations.

2.2.3 Coordination and the FDA as Lead-Agency

Coordination can be achieved through the institutions and processes that were set up for VPA in the earlier phase; such as the VPA Secretariat, the Liberia Implementation Committee (LIC), National Multi Stakeholder Monitoring Committee (NMSMC) and the Forward Planner. A key feature of the EU project is that it aims to support FDA to act as the “Lead Agency”⁶ for driving the VPA process, engaging Liberian stakeholders and coordinating the support provided by DFID and other projects.

2.2.4 Coordination with the LVD-SGS project and “Side Agreement”.

The current LVD project implemented by SGS is due to end by October 2018. It is clear that the task of making LVD full operational and handing it over the FDA to run will not be complete by then⁷. An

⁵ DFID (2018) Terms of Reference: A supplier to manage implementation of the Multi-stakeholder Forest Governance and Accountability Project (MFGAP), Liberia. (version 29 January 2018)

⁶ The “Lead-Agency” model is adopted widely in EU and other institutions for managing programs with many implementing partners.

⁷ See SGS Handover Progress Reports 2018 and 2017. See also, Independent Consultants Assessment Report: Readiness of the LVD within Liberia’s FDA to assume full responsibility for its operations as prescribed in Liberia’s VPA with EU. Report to DFID, June 2018.

extension for a further year, to October 2019, is under consideration. It is assumed for the purposes of the EU project that it will incorporate any continuing need for advisory/mentoring support to FDA after the SGS contract is completed in late 2019, to enable FDA to take on the full set of LVD functions.

Similarly, the “Side Agreement” under which FDA contracts SGS to operate the Chain of Custody, export permit and invoicing system (using *LiberTrace*) is also due to end by October 2018. The FDA will take over CoC functions from October 2018 with further support to other functions sustained through a possible renewed side agreement. It is assumed that the EU project should include some resources to sustain FDA capacity after the handover from SGS is completed in late 2019.

So, from October 2019, the EU project should be prepared to support FDA to:

- Implement the full range of LVD functions;
- manage the current Export Permit and Certificate of Origin (CoO) system, either by further outsourcing or “in-house” in FDA;
- complete key components of the VPA (e.g. the Legality Matrix and LLD); and
- manage the transition from the current system to FLEGT Licensing.

2.3 Relevance of VPA to Liberia and EU Strategic Priorities

VPA objectives were anchored firmly in the national economic development strategy of the 2015-2018 Liberian Government and in agreed EU-Liberia strategic objectives⁸. Under the national economic development pillar, the relevant objective is to “*minimize illegal harvesting of forest resources and assimilate and strengthen the informal forestry sector*”⁹. For this objective, the indicator of progress is the implementation status of the FLEGT VPA.

Under the Governance and Public Sector Modernization pillar, the agreed objective is to “*strengthen public institutions to ensure revenues and government assets, including from natural resources, are well managed, free from corruption and monitored and increase transparency and accountability of public and private institutions*”.

With a new Government taking office in early 2018, there is the opportunity to re-confirm these objectives and commitment to the VPA (E.g. by recognising the VPA as the main tool and indicator for improved Governance in the Forestry sector). The National Development Plan¹⁰ of the incoming Government (currently in draft) maintains the focus on economic growth and the importance of forestry. The difference is perhaps that the emphasis is on infrastructure, especially roads, as the driver of development, with forestry and other extractive industries being the means to pay for this. Behind the new Agenda there is the aim of increasing the budget for public sector investment by almost 100% compared to the 2017-18 budget¹¹. This places even greater pressure on forestry and other extractive industries to generate foreign export earning so that investment and borrowing can be increased.

This pressure creates both a threat and an opportunity. Commercial forestry currently generates around USD 8 million per annum of export earning for the Government of Liberia, approximately 10% of GDP¹². To increase this significantly there would have to be a substantial increase in either the volume or value of exported timber. Increasing volume is the most obvious solution although the poor state of roads and bridges and limited port facilities act as a bottleneck. Furthermore, increased felling at a time in which the quality of logging practices is low and regulation is limited presents a greater risk of permanent deforestation, environmental damage and social conflict.

The alternative of value-added exports depends upon Liberia achieving FLEGT licenses or some other form of certification recognised in discerning markets such as EU and USA. National policy is for value-added exports and domestic processing of timber, but currently, over 70% of exports are to the

⁸ EU-Liberia National Indicative Programme for the period 2014-2020.

⁹ Refers to Pillar II of the national Agenda for Transformation (AfT), on economic transformation.

¹⁰ GoL (2018) Pro-Poor Agenda for Prosperity and Development: An integrated pro-poor multi-sectoral based approach to the National Development Plan (in draft).

¹¹ From Ministry of Finance & Development Planning presentation to JIC 13 June 2018.

¹² Based on figures presented to 6th JIC by LRA on 13 June 2018.

relatively low-paying China market, while FLEGT Licensing is at least 2-3 years off and there is very little local processing.

On the EU side, future priorities for Development Cooperation Instrument (DCI) support are favourable for sustainable forest management, not only through Environment and Natural Resource Thematic Programme (ENRTP) support to FLEGT and REDD+¹³ but also through a growing alignment of the Global Public Goods & Challenges (GPGC) with climate change and sustainable development objectives. The EU has developed “Flagship” programmes, financed from the GPGC and from geographical programmes, that will support partnerships and initiatives to promote transformation towards “inclusive green economies”¹⁴. A FLEGT flagship exists, grouping all FLEGT related activities and operating alongside a REDD+ flagship.

The GPGC strategy specifically includes support for combatting illegal logging. This reflects a greater demand in the EU for good governance and effective implementation of the EU Timber Regulation (EUTR) and it is, in part, a response to a European Court of Auditors report¹⁵ which was critical of the extent of illegality in FLEGT participating countries (including Liberia)

Within the field of trade, EU support is directed towards supporting least developed countries to integrate with global trade, with a growing emphasis on engaging local and small-to-medium scale producers and operators. In Liberia, the VPA and other EU projects such as the technical assistance to the Customs Department in LRA, reflect this emphasis on trade.

At the same time, the EU has been following up a commitment to double support for biodiversity conservation in developing countries for the period up to 2020¹⁶. Thus conservation, reducing forest loss and poverty alleviation are increasingly aligned and supported by EU programmes. It will therefore be important for the Liberia VPA to show that improved governance of commercial forestry delivers results in each of these areas, as well as its principal objective of improving trade.

3. OTHER PROJECTS RELEVANT TO VPA

There are complementarities between the planned EU support and “non-VPA” projects supporting the Liberian forestry sector and capacity building in GoL. The most relevant are described below. A full list of relevant projects is included in appendix 1.

As a general point, the additional contributions that can come from these other projects are important because VPA implementation is challenging. This is especially true for the objective of incorporating community forestry and domestic markets into VPA implementation, because the sector is currently so unregulated and because there are many more commercial and community actors to engage with.

3.1 Liberian Forest Sector Project (LFSP)

The aims and activities of the LFSP are directly relevant to VPA (see Box 2). The size of the project, with a budget of USD 37.5 million (approx. EUR 31 million) for the period 2016 to 2020, and its focus on community forestry and sustainable production, means that it is particularly relevant to the challenge of incorporating community and domestic forestry into the VPA.

Box 2: The Liberian Forest Sector Project

Goal: Reduced deforestation and degradation in targeted landscapes

Objective: Improved management and increased benefit-sharing.

Project Components:

¹³ DCI Regulation. . Environment and climate change will continue to be supported the Environment and Sustainable Management of Resources Thematic Programme

¹⁴ EU. Programming Thematic programmes and instruments: Programme on Global Public Goods and Challenges 2014-2020

¹⁵ EU Court of Auditors Special Report No. 13/2015 (Observation 49 notes that the context in Liberia is of widespread illegal logging.)

¹⁶ EU Biodiversity Strategy to 2020, cited in GPGC Programming document.

1. Institutional and policy strengthening: FDA, EPA, LLA, MoAgric, LISGIS
2. Protected areas, forest management and sustainable production: Land use planning and community management in targeted areas.
3. Forest monitoring systems: Degradation, emissions and safeguards.
4. Management, monitoring, communication: Project management, Env & Social safeguards, Grievance mechanism, Communications Strategy.

The LFSP is funded by Norway (NICFI). It provides capacity building support to FDA as well as other stakeholders also involved in the VPA, and supports community-based forest management, forest monitoring systems and forest governance mechanisms. At a strategic level, EU-Norway cooperation is strong because of their history of cooperation over support to the forest sector in the country. At a practical level, the links between LFSP and VPA are limited and there is an opportunity to address this in the EU project, for example by incorporating relevant LFSP actions into the Forward Planner for VPA implementation. The LFSP is proceeding as a package of projects commissioned and managed by the World Bank and the REDD+ Implementation Unit within the FDA. Several LFSP projects are of particular relevance to VPA:

3.1.1 *Community forestry*

The LFSP aims to support 70 communities to become effective forest managers. This involves digital mapping of community forests, data collection and the preparation of Community Forestry Management Planning guidelines. The LFSP will contribute to the process of supporting Community Forestry Management Agreements (CFMA) through the 9-step approval process, starting with 10 pilot communities. This work contributes directly to the objectives of supporting FDA to incorporate community forestry into the VPA (EU project) and supporting Community Forestry Management Boards to engage with VPA (DFID project).

The “targeted landscape” approach in the LFSP means that its actions are often focussed at sub-national level. In principle, this could be complementary to VPA implementation which has piloted and then rolled-out of LiberTrace and LVD operations at regional level, and which has focussed recently on building capacity at field level. Geographically, the LFSP targets areas are large and coincide with where logging activity is greatest (e.g. the ‘Southeast Targeted Forest Landscapes’ encompasses Grand Gedeh, Sinoe, River Gee, Rivercess and Grand Kru counties) and overlaps with FDA Region 3 where approximately 70-80% of the current logging activity is taking place.

3.1.2 *Review of Concessions*

Directly relevant to VPA is a project to review the legality of logging concessions¹⁷, due to start in 2018. The results of this will likely feed directly into verification of several principles of the VPA legality definition (especially Principle 2 which deals with concession allocation). It may confirm the finding of previous audits of forestry concessions, which found considerable non-compliance with the granting of FMC, TSC and PUP concessions¹⁸. If so, governing bodies for the VPA may have to take decisions on the whether illegalities and missing information are to be resolved by retrospective action, or amnesty. A separate review of all concessions entered into by the previous administration has been initiated by the incoming President George Weah¹⁹. Arrangements for this Presidential review are still being decided by GoL and this has delayed the start of the FDA’s review of concessions (under LFSP).

3.1.3 *FDA Institutional Development: “Vision 2030”*

The LFSP has begun its capacity building support to FDA with a recently completed strategic planning exercise. This sets out new strategic priorities and objectives for the organisation, along with short-term

¹⁷ Review of forestry concessions commissioned by the REDD+ Implementation Unit at the FDA, funded through the LFSP. Due to start in early 2018.

¹⁸ LEITI (2013) Post award process Audit: Final Report. Moore Stephens for LEITI. May 2013

¹⁹ Personal communication with FDA and also reported in national/international press. E.g. Reuters, February 15 “Liberia’s new President orders review of concession agreements”.

and long-term implementation plans. This is work-in-progress and it is difficult at this stage to judge the practical relevance of this work to VPA. It makes positive reference to the VPA; *“the VPA process has contributed greatly to strengthening the forestry sector governance system”* and it contains relevant policy shifts (e.g. favouring domestic timber processing over roundwood exports). It also prioritizes revenue collection and retention of an adequate portion of this to fund forest management. The VPA would be the main instrument for achieving this and would benefit greatly if FDA’s budget was put on a more stable footing. On the other hand, Vision 2030 does not factor the specific needs of the VPA into the proposed organisational development; e.g. it proposes a new structure of 6 Departments that does not include LVD or LLD²⁰.

Implementation of the Strategic Plan depends upon a sea-change in GoL funding to FDA. E.g. the priority for the first year is a “massive” human resource development program. Yet the relatively modest task of staffing LVD has not been fully achieved in the past 5 years and comprehensive reform of FDA’s staff has been a FDA/Donor priority since the LFI-backed “rightsizing” exercise in 2006²¹. Improvement to FDA staff and structures are more likely to be achieved by building out from joint GoL/donor projects, as has happened with the creation of LVD in FDA. This progress could be accelerated if VPA, LFSP and other initiatives coordinated their efforts on removing the capacity and other constraints that are common to all.

3.2 REDD+

Liberia’s preparations for REDD+ were initially supported by Norwegian (NORAD) funding and subsequently through the World Bank’s Forest Carbon Partnership Facility. This support is to enable the FDA and EPA to establish the foundations for results-based payments for avoiding emissions. These include a national REDD+ Strategy, a national monitoring, reporting and Verification system (MRV), a national registry of emissions reductions, a financial mechanism to receive and distribute REDD+ payments and institutional arrangements for managing implementation.

The national REDD+ Strategy identifies VPA as the main instrument to achieve the second of its 5 strategic priorities: *“Reduce impact of commercial logging”*²². The rationale for this is that FMCs contain approximately 24% of the total forest area and 29% of the most dense forest. Hence, sustainable forestry practices in forestry concessions are essential to Liberia’s REDD+ goals. VPA also has a vital role to play in the first priority of the REDD+ Strategy, which aligns with the goal of incorporating chainsaw milling (“pitsawing”) into the VPA.

Box 3: National REDD+ Strategic Priorities

1. Reduce forest loss from pit sawing, charcoal production and shifting agriculture.
2. Reduce impact of commercial logging.
3. Complete and manage a network of Protected Areas.
4. Prevent or offset clearance of high carbon stock and high conservation value forest in agricultural and mining concessions.
5. Fair and sustainable benefits from REDD+.

As the Liberia REDD+ programme nears the end of the “REDD+ Readiness” phase it is starting to focus on implementation. Currently it is commissioning two Emissions Reductions Programs using an additional USD 5 million from the Forest Carbon Partnership Facility (FCPF). These are to be in the two South-East and North-West landscapes that are also targeted by the LFSP. Indeed, the LFSP is a

²⁰ FDA (2018) Forestry Development Authority Vision 2030, March 2018

²¹ The LFI (Liberian Forestry Institute) was a USAID/FAO led program to reform the FDA and forestry sector and allow the lifting of forest sanctions. It did much to establish the ‘3-Cs’ approach and forest policy, but with hindsight it failed to address the fundamental weaknesses of capacity and lawlessness in FDA and the sector.

²² FDA (2016) National Strategy for Reducing Emissions from Deforestation and forest Degradation (REDD+) in Liberia, July 2016.

REDD+ project and with a budget of over USD 37 million it is the principal means by which methods for reducing deforestation/degradation will be developed and tested. Separately, Norway has financed since 2010 a REDD+ pilot project in the Wonogizi designated Protected Areas that is attempting to establish community-led conservation accredited for carbon payments²³. To date, a total of over USD 45 million of donor support has been directed at REDD+ in Liberia²⁴ so this is a substantial resource for the VPA to align with. Research on the areas for synergy between FLEGT and REDD+ has been done in Liberia, funded by FAO²⁵, but practical connections are yet to be made.

In the short-to-medium term, the important links are those proposed with the LFSP. The EU support should therefore develop links with the REDD+ Implementation Unit as a way of linking to LFSP and REDD+ more generally. The RIU has become established as an effective project-management unit within the FDA so it may be a useful model or ally for the VPA Secretariat, which has to perform a similar project management, coordination and communication role. Other links between VPA and REDD+ are possible; for example both LVD and REDD+ are setting up (separate) complaints systems. It is unhelpful to stakeholders and FDA to have several, incompatible, complaints systems in the same organisation so it is desirable to share good practices and align systems, so that in the future FDA can offer a single gateway for receiving and managing complaints.

3.3 Forest Incomes For Environmental Sustainability (FIFES)

FIFES is a USD22 million project funded by USAID²⁶. It follows on from a previous project (PROSPER) that created the “nine step” approval process for establishing community forests. FIFES aims to help establish and strengthen Community Forest Management Bodies (CFMBs), remove barriers to signing effective CFMAs and establish Community Forest Management Plans (CFMPs). It complements the community forestry/CFMA work within the LFSP and both these projects will help establish the regulatory framework against which compliance can be verified in the VPA.

Like the LFSP, FIFES is targeted on communities in or around the 17 community forests that will be supported²⁷. The communities where FIFES (and LFSP) are working are the ideal location for developing and testing measures to engage community CFMBs in the VPA process. The EU projects can support outreach by FDA to these communities and DFID support the community forestry institutions to become compliant.

Early donor support for Community forestry in Liberia concentrated on conservation outcomes. FIFES is more focussed on the development of rural forest-based enterprises. Donors have tended to support small-scale non-timber forest product (NTFP) businesses, whereas the commercial model followed by communities has been either a) selling trees to chainsaw millers and/ or b) selling felling rights to a logging company.

FIFES, PROSPER (and PROSPER's predecessor project) illustrate the difficulties of establishing regulated forestry in community forests. To date, after more than 10 year and USD 20 million of donor support, nine Community Forests had been established²⁸. Of these, four have permission to harvest timber, of which one is considered ‘active’. How timber produced by such a community enters the Legality Assurance System has not yet been established and will require a revision of the VPA Legality Definition. Progress with formalising community forests lags well behind the demand for CFMAs that allow communities to sell timber/rights (the FDA has over 120 applications). This means that the FDA is under huge political pressure to give approvals despite the lack of effective controls. This raises fears

²³ The current project is “REDD+ and community forest management in Liberia and Myanmar”, 2016-2020, approx. €4.5 million.

²⁴ Figure cited in National REDD+ strategy and coming from a package of REDD+ projects.

²⁵ FAO, UN-REDD, ACP FLEGT and Tropenbos, “Workshop on opportunities for synergies in the preparation and implementation of REDD+ and FLEGT in the context of national forest policy frameworks in West and Central Africa”. See also EU FLEGT Facility Briefing: Linking FLEGT and REDD+.

²⁶ ACDI/VOCA <http://www.acdivoca.org/projects/forest-incomes-for-environmental-sustainability-fifes/>

²⁷ The 17 will be made up from the 3 existing CFs in Northern Nimba and 7 CFs that PROSPER previously supported. An additional 7 CFs will be selected From the 2 CFs in Sinoe County and the CFMA candidates whose applications have been accepted by the Community Forest Working Group (CFWG).

²⁸ This is an update on 2015 data from ACDI/VOCA: By 2015, 5 had CFMAs signed and CFMPs approved. 8 were advancing through the 9 steps. 54 had applications for community forest status accepted and were starting the process.

that CFMAs will be abused by logging companies to avoid the tighter regulations and tax requirements in FMCs, in the same way that Private Use Permits (PUPs) were misused, and mis-sold by FDA, in the recent past.

A goal that is common to VPA, FIFES and LFSP projects is therefore to establish successful examples of commercial forestry (VPA compliant), including chainsaw milling, in a community forest setting.

3.4 Forest biodiversity conservation projects

Biodiversity conservation is a further, major, channel for donor support to Liberia's forestry sector. DFID (Darwin Initiative) provided early support for protected areas in Sapo and Nimba and now GIZ, USAID and EU are funding trans-boundary conservation projects in and around Gola (EU and USAID) and Tai-Grebo-Krahn-Sapo (GIZ, USAID).

These projects are concerned with illegal and informal logging and are supporting FDA and communities with forest planning and management. These are the same communities that, in some areas, are involved in social agreements or CFMAs with logging concessions, or are selling trees to chainsaw millers and enabling charcoal production. There is an opportunity to align VPA support with these projects in order to focus resources on selected communities.

Given that informal logging and charcoal production is widespread except in the most inaccessible areas, and government capacity to engage, inspect and enforce is extremely limited, there is a need in the VPA process to focus on **priority areas**. These could be in protected areas/proposed protected areas and in the buffer zones around these where these conservation projects operate. The trans-boundary biodiversity projects are also of interest because they engage with cross-border communities and may therefore help FDA/GoL to gain a better understanding of the extent of illegal timber exports into Cote d'Ivoire, Guinea and Sierra Leone, and how this can be managed.

3.4.1 *Productive Landscapes*

A recent development in conservation and forestry sector interventions has been the emergence of public-private initiatives with joint production and conservation objectives at a landscape scale. A sizeable component of the LFSP is allocated to promoting sustainable agricultural in forest landscapes. Separately, Norway (NICFI) has funded a large "green growth" project, run by IDH, to demonstrate how conservation can be achieved on palm oil and mining concessions. The mining operator Arcelor Mittal participated in this project and has funded its own conservation and community forestry program around its iron-ore concession in Nimba, with approximately USD 1 million per annum. DFID too is backing public-private initiatives in the palm oil sector in Liberia through its global Partnerships for Forests (P4F) project.

3.5 Land rights projects

The EU currently has a package of projects to help communities engage with and benefit from land rights reforms. These involve awareness raising and support to the CSO Working Group on Land Rights. Implementing partners are SDI, CAFOD and Welthungerhilfe. Although there is not an explicit forestry element to these projects, there is potential complementarity with the CSOs and institutions (CFDCs, NUCFDS) that are involved in VPA. This falls more within the scope of the DFID MFGAP project but the FDA community and commercial departments, as well as some of the NGOs, that will be supported by the EU project should benefit from the policy connections, community contacts and learning that comes from these projects.

The World Bank began in 2017 a project to support capacity building in the new Liberian Land Authority (LLA) and to establish a land administrative system²⁹. This will include an inventory and analysis of tribal land certificates. Although the LLA is more of a target beneficiary for the DFID project, it is possible that the Land Administration project will provide information that would help establish effective verifiers in the TLAS for community forestry operations.

²⁹ Liberian Land Administration Project (LLAP) 2017-2022. USD\$7 million.

More generally, these land rights projects should assist the VPA process with clarifying and formalising the land rights that underpin community forestry. They also include mapping/inventory initiatives that may be relevant to forest planning, and the set-up of complaints and dispute resolution systems that may provide lessons for the VPA complaints system.

3.6 Capacity building projects for Government of Liberia

EU has given substantial backing to governance improvements in GoL. It is funding long-term technical assistance to the customs department of the LRA (EUR 2.2. million 2016-2019) with the aim of increasing trade and revenue collection. In the past it provided similar support to the General Audit Commission (EUR 2 million in 2016). The EU also funded a major State Building contract from 2012 to 2018, providing EUR 65 million for general budget support, an Integrated Public Financial Management Program and capacity building of Ministry of Finance. From this broad and deep support there are several practical links to VPA that could be utilised:

- *Leverage*: The EU has a relationships and high-level dialogue on policy, financial management and governance with GoL that could be used to facilitate a re-confirmation, with the new Liberian administration, of political and financial support to the VPA.
- *Systems and Good Practices*: Projects such as that with LRA support enhanced systems and procedures that could benefit VPA, e.g. the ‘centre of excellence’ supported in LRA for revenue collection and the prevention of smuggling and fraud.

The World Bank is funding the Liberia Land Administration project mentioned above and also contributing USD 2 million to the Liberian Civil Service Agency’s Public Sector Modernization Project. This project does not include FDA but it does support VPA stakeholders such as Finance and Justice and the FDA may be able to benefit from the systems and processes developed through this project, or the services offered by the CSA (e.g. the Senior Executive Service to support top-managers).

These general capacity building support projects may provide practical benefits to FDA/VPA but the point of supporting links with them is also to strengthen FDAs relationships and reputation within GoL (to counter the perception that it is a small and troubled agency with the sole purpose of generating revenue).

4. PROGRESS AND LEARNING FROM PREVIOUS VPA SUPPORT

The EU project will build on the achievements of the first phase and also take on the ‘unfinished business’ of VPA actions that extend into 2019; from both VPA-SU and LVD projects. This legacy is considered firstly by looking at the overall achievements and shortfalls in the first phase of VPA support, and the main obstacles encountered. A more detailed set of issues and activities that will run from the first phase into the second is then identified. Some of these are captured in the VPA Forward Planner, organised under the 11 principles of the Legality Matrix, or as “Cross-cutting issues”³⁰.

4.1 Main achievements and shortfalls in the first phase of VPA support

Table 5: Main achievements and shortfalls in first phase of VPA support

<u>Achievements</u>	<u>Shortfalls</u>
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³⁰ The Forward Planner in its current state is not perfect for this, because its use as a forward planning tool is not fully developed. the focus and detail is on the technicalities of completing the LAS principles rather than solving the “cross-cutting”. An updated version was annexed to the 6th JIC Aide-memoire and is available on this webpage <http://www.euflegt.efi.int/es/liberia>

Capacity Building	<ul style="list-style-type: none"> Private Operators are better aware and trained to meet their requirements. Chainsaw millers union engaged. FDA Depts. and other govt. bodies have increased knowledge and capacity for their VPA role. Civil Society act as Independent Forest Monitors. NBST is established and funds have been released to communities. Regulations and guidance documents have been produced. Committees for governing and monitoring VPA have been established. Legal framework for community forestry has been clarified by harmonizing laws and regulations. 	<ul style="list-style-type: none"> Chainsaw millers union engaged but chainsaw millers not complying with rules & regulations LLD not established. FDA performing very little routine inspection and enforcement in the field. Other Govt. agencies not fully engaged with VPA or performing role. Most operators not engaged or compliant with forestry laws. Capacity of civil society still needs further support. Benefits to communities have been a fraction of that due and very late. Application/enforcement of new and old regulations and laws is very limited. Still some work needed on harmonizing laws and regulations for community forestry Reliance on donors/technical assistance for managing VPA remains too high.
LVD and LiberTrace	<ul style="list-style-type: none"> LVD has been established within FDA. LiberTrace is established and effective. FDA has financed the CoC and has enhanced capacity of its monitoring in the field. FDA also finances the export licensing function and manages the CoC service contract. 	<ul style="list-style-type: none"> Handover to FDA is limited to CoC and financial verification, with considerable support. LiberTrace has not been handed over. LVD needs further institutional strengthening. National budget for LVD operations and recruitment staff is too limited.

Source: Based on monitoring/progress reports from projects and consultations.

4.1.1 Obstacles to progress

Progress with both VPA-SU and LVD projects was limited by several factors. Some of these have been internal to the projects, but above all, the projects underestimated the depth and scale of capacity building required in FDA and other VPA stakeholders.

Table 6: Internal and external obstacles to progress with phase 1 of VPA support	
Internal	External
<ul style="list-style-type: none"> Capacity building support was not well focused on needs, in the early stages. The “build and operate” stage of the LVD took longer than expected (e.g. LiberTrace went “live” more than 2 years later than planned) which meant that the time available for handover to FDA was reduced. The two projects could have coordinated and combined efforts more effectively; this improved in the last stages but still lacked cooperation and the strategic coordination required to improve controls and thus compliance. 	<ul style="list-style-type: none"> The FDA has received year-on-year a much smaller budget than requested and has therefore been unable to fund normal operations or the recruitment of skilled staff. Other role-playing government bodies are similarly affected. The staffing structure at FDA is very heavily skewed towards non-specialist staff and there is a high proportion of staff at or near retirement age. Performance management systems are absent. Some progress with retirement has been made recently but fundamental reform is still required. Informal and corrupt practices are fairly widespread (as the PUP scandal demonstrated) and internal controls are largely absent. Most of the concession-holding companies are not organised or resourced to operate to the standards required by national regulations (identified under the VPA) and they have been reluctant to engage.

	<ul style="list-style-type: none"> • There has been a rapid rise in demand from community forests to engage in commercial forestry, and a growing recognition that most timber is cut and processed in the domestic market, mostly unregulated and untaxed. The VPA has therefore to engage with a larger and more complex set of actors. The FDA is not yet able to deal with the many requests for CFMAs and operations. • A delay of approximately 1 year in project activities was caused by the Ebola outbreak in 2014.
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Source: Internal project monitoring documents and assessments of progress.

4.2 Completion of the Legality Matrix

The Legality Matrix is to be completed by 2020 so this now falls into the scope and timeframe of the EU project. The Forward Planner identifies actions required, for example:

- Obtain and upload documents and evidence required for verification. Less than a third (43 out of 132) of the verifiers have the necessary evidence for a full compliance check³¹.
- Complete regulations and procedures: E.g. Procedures for principles 8 and 11 and for the seizure of abandoned and illegal timber are not yet complete.
- Full integration of CFMAs in the legality matrix.
- Review and revise LAS in response to missing or unworkable verifiers and the findings of the review of concessions.
- Further capacity building and technical assistance so that FDA and MACs are able to check verifiers and keep records. (none of the 11 indicators have yet reached “green” on the scorecard for capacity³²).

The Forward Planner (in its current state) does not give a detailed list of tasks and milestones to complete the legality Matrix by 2020. This might be done in the remaining time of the VPA-SU. In any case, the contractor of the EU project should work, together with the VPA Secretariat on the updating and further development of the Forward Planner so that it serves as a detailed implementation plan.

This makes it difficult to anticipate accurately the scale of the work required, but certainly, it is substantial - with less than half of verifiers in place and insufficient capacity across all 11 indicators. It is likely that the forthcoming FDA review of forestry concessions³³ (and a separate review ordered by the President)³⁴ will identify a significant number of illegalities. These, and missing information, will have to be resolved by retrospective action or amnesty. It is known from previous audits of forestry concessions that there is considerable non-compliance³⁵.

4.2.1 Integration of Community forestry and chainsaw logging into the Legality Assurance System

Work has started on a roadmap for integration of timber from Community Forests into the Legality Matrix. Relevant engagement with stakeholders, negotiations and proposed amendments to the matrix are yet to be made³⁶. There is a need to anticipate and plan for the demands on FDA that are being created through the approval of CFMAs.

³¹ This is based on the VPA Forward Planner. December 2017 Edition gives 43 verifiers as being compliant in all concessions. SGS data on LAS Implementation priorities from November 2017 lists 46 verifiers as “available” It is assumed that available has the same meaning as compliant in the Forward Planner. An exact number is not given because it is work in progress by both VPA-SU and LVD and because some verifiers may be partly available. i.e. the required evidence may be available, but is not yet uploaded.

³² From VPA Forward Planner Dashboard, December 2017.

³³ Review of forestry concessions commissioned by the REDD+ Implementation Unit at the FDA, funded through the LFSP. Due to start in early 2018.

³⁴ Personal communication with FDA and also reported in national/international press. E.g. Reuters, February 15 “Liberia’s new President orders review of concession agreements”.

³⁵ LEITI (2013) Post award process Audit: Final Report. Moore Stephens for LEITI. May 2013

³⁶ Technical JIC forward plan, December 2017

Work on incorporating chainsaw milling is at the stage of research to understand the scale of the industry and its economic, social and environmental effects³⁷. There is a chainsaw regulation from 2012 but is not implemented and it is not clear that it is 'fit-for-purpose'³⁸. Policy development work is required before interventions can be framed and so effective regulations and verifiers for the legality matrix are a long way off. The priority for the next few years and the EU project should therefore be to prevent or at least properly monitor chainsaw milled timber from entering the export market, and support development of the policy and regulatory basis for managing the industry³⁹. The Charcoal industry is at an even earlier stage in terms of preparations to regulate the industry so again the interest of the VPA process in the next 3 years will be to advance understanding of the sector and options for intervention.

4.3 Build and transfer of the LVD and LLD

4.3.1 Legality Verification Department

Substantial progress has been made with building, operating and transferring LVD. FDA staff carry out the majority of operations and are equipped and trained. The handover of regional-level operations is being achieved in 3 out of 4 regions. The LiberTrace system is effective for verifying the traceability and financial compliance of logs exported from concessions, however it only marginally works on its functions of legality verification. The main tasks that are likely to persist into 2019 are:

- *Financing:* The current financial model for LVD of GoL plus Donor Support needs to evolve to one that is fully funded by GoL from forestry revenues. Before that, an immediate resolution to the funding shortfall from FDA needs to be found.
- *Administration:* The administrative and management procedures for LVD are from SGS or are specific to LVD. These need to be integrated into FDA's procedures. This will require strengthening of FDA's "back-office" services. Some staffing and training shortfalls also remain and will need to be addressed.
- *LiberTrace:* A transition is required from the current position where SGS is fully responsible for maintaining, hosting and developing LiberTrace to a position in which control is held by GoL, directly or through IT service providers.

4.3.2 Liberia Licensing Department

Practical work to develop the LLD has not begun and so a "build and operate" phase is required. A detailed plan is required on how LLD will be established as part of the post-2018 EU project. There is also a need to review the institutional arrangements for locating LLD in GoL, to check whether the original design in the VPA is the best for protecting integrity.

The current licensing system of Export Permits and Certificates of Origin needs to evolve into FLEGT Licensing. This is linked to completion and implementation of the full legality matrix and building of the LLD. It involves a transition from the "current regime" of verifiers to the full set as specified in the VPA.

4.4 Capacity-building of FDA and stakeholders

4.4.1 FDA

The VPA-SU project has worked to build the capacity of FDA to host LVD and LLD, to carry out its routine inspection and enforcement duties, and to help VPA stakeholders to play their role (Operators, other government bodies and civil society). Progress has been severely constrained by the underfunding of FDA, as well as other factors. This has prevented the recruitment of skilled staff and the conduct of field operations. As the financial and other limitations of FDA have become more evident, the support needs identified by VPA-SU have expanded to include solving FDAs underlying financial

³⁷ See for example the latest work is the 2017 Building Markets/CIFOR study *Liberia Domestic Timber Value Chain Analysis*, January 2017.

³⁸ Citing Building Markets/CIFOR (2018) *Liberia: Domestic Timber Value Chain Analysis*

³⁹ For example, the EU-DFID scoping mission in May 2017 identified the need for a pilot in a Community Forest to see how chainsaw milled timber could be integrated into the legal supply chain.

position, fundamental staffing reforms (e.g. replacing retirees with younger and trainable technical staff and reducing non-technical staff.⁴⁰) and the upgrading of its basic corporate systems.

4.4.2 Operators, MACs and CSOs

As with FDA, progress with improving the capacity of timber companies, other government departments and civil society has been limited by greater-than-expected weaknesses in these institutions:

- A few of the larger companies have the capability of operating to VPA standards but most are not regarded as “serious” or “professional” timber operating companies. Basic requirements such as forest management plans are not in place and most companies require further training to operate LiberTrace⁴¹.
- Some government agencies are not yet fully engaged with VPA (e.g. Ministry of Labour) and all lack the resources or organisation required to carry out the inspection, information management and enforcement required.
- CSOs play an active and very effective role as “outsiders” exposing mal-practice in the forestry sector, but capacity building support to enable CSOs to engage collectively in VPA governance, for example through the NGO Coalition, has proven difficult. CSOs express frustration at the inability of FDA and others to hear and respond to their recommendations⁴².

4.5 Compliance, enforcement and revenue collection

Implementation of VPA depends upon effective compliance. VPA-SU and SGS projects have concentrated so far on establishing the infrastructure of the legality assurance system, LiberTrace and institutions. A Compliance and Enforcement handbook has been produced and an enforcement plan is one of the VPA-SU deliverables⁴³. But in practice, compliance and enforcement remains very limited, e.g.:

- FDA and MACs do not, on the whole, conduct routine inspection and enforcement activities.
- Since 2006, few formal fines have been imposed on license holders, despite the recognition that non-compliances are frequent in the forestry sector⁴⁴.
- Corrective actions arising from non-compliances identified by LVD are not followed up.
- Pre-qualification and operating requirements on operators are not enforced.
- Payment of the full amount of stumpage fee is not enforced (only stumpage on the timber being exported).
- There is little or no enforcement of the 2012 Chainsaw Milling Regulation.
- Only 14% of forest revenue collected is from domestic timber⁴⁵ (approximately 75% is from timber harvested in FMCs for export). This is despite the volume of domestic timber production being estimated as 3-4 times higher⁴⁶. Revenue collection from non-timber forest products, is minimal (estimated at 1%) of which most is from charcoal supplied to Monrovia⁴⁷.

The lack of enforcement has reduced the revenue to GoL and hence the funding available for community benefit sharing and for resourcing FDA and LVD:

⁴⁰ Priorities for future support identified by VPA-SU. In this it is noted that from a total of about 600 staff in December 2017, less than 150 employees are technical. So FDAs funding is almost entirely consumed by salaries, leaving little for operations.

⁴¹ VPA-SU reports an the Forward Planner identify the absence of annual, 5 year or 25 year forest management plans. SGS state that around 75% of companies need more training in LiberTrace.

⁴² CSO have produced a series of IFM briefings. The FLEGT Liberia Progress Report – Q 15, notes that there is typically little action taken based on recommendations made in these IFM briefs. It anticipates that the EU Non State Actor support (TROPENBOS) will help solve this problem.

⁴³ FDA (2017) Liberian Forest Sector Compliance and Enforcement Handbook. First Edition, August 2017.

⁴⁴ VPA-SU Lesson Learning, 25 November 2017.

⁴⁵ FDA (2018) Strategic Plan: Vision 2030. Final Draft, March 2018.

⁴⁶ Building Markets (2017) Liberia: Domestic timber value chain analysis. January 2017.

⁴⁷ FDA (2018) Strategic Plan: Vision 2030. Final Draft, March 2018.

- Arrears of land rental fees were at USD 10.4 million by December 2017 (affected communities and Counties should receive 30% of this)⁴⁸.
- The total debt written off by GoL is put at around USD 20 million⁴⁹.
- FDA collects an estimated USD 1.45 million out of a potential USD 30 million from domestic lumber supply⁵⁰.

Article 4(b) of the LEITI Act of 2009 requires that all extractive companies disclose, at least once every year, the data of all payments made and revenues received in respect of the extraction of Liberia's forest and mineral resources. Of the 12 "delinquent" companies who didn't disclose payment data for year 2015/16, 6 were forestry companies⁵¹.

Non-compliance and a lack of enforcement creates a negative cycle: revenues generated from forestry are lower than they should be; which limits the importance and funding that government is willing to give to the sector; forest administration is consequently less effective and illegal practices flourish.

The taxes and fees imposed on companies in Liberia are high by regional standards, as are operating costs; due to poor transportation system, high cost of fuel, limited management and operational capacity at company level and the overall cost of transacting business with the government, and forest communities⁵². Generally speaking, the combination of high taxes and high costs tends to discourage production, or encourage exploitative over-production and illegal practices.

4.6 Effective Benefit Sharing

The National Benefit Sharing Trust was inactive until 2015 and large arrears of money owed to communities from logging revenues (land rental fees) were held by central government. In 2015, the first USD 1 million was released, to be distributed to affected communities through the NBST and Community Forestry Development Committees (CFDCs)⁵³.

In total the NBST received USD 1,936,000 by June 2017. From these funds, USD 1 million had been allocated in 2016 to community projects and the balance of about USD 900,000 were still in the NBST account. Around 23 projects benefitted from payments and most of these were implemented effectively. A lack of financial reports and closure of projects from the first round of funding has prevented further pay-outs. The NBSTB continues to have difficulties in fulfilling its role, e.g. submitting audited accounts and keeping its administrative costs within budget⁵⁴. This is currently being rectified with VPA-SU support to prepare proper accounts.

It is worth noting that the benefits to communities from formal logging appear to compare very unfavourably with chainsaw milling. It is estimated that half of the profits from chainsaw milling go to rural populations, around USD 15 to 20 million annually. Around 5% goes to Government. An estimated 15 to 20 thousand people are employed, predominantly in rural areas⁵⁵. From formal logging, the profit-sharing has been less than 2% to communities and over 98% to Government⁵⁶.

The failure to compensate communities through the NBST is a breach of national law and it encourages hostile acts against companies; for example roadblocks and damage to equipment. Companies respond with direct payments to communities. In this way, a cycle of illegality and broken social agreements is perpetuated.

⁴⁸ From VPA-SU

⁴⁹ FDA (2018) Strategic Plan: Vision 2030. Final Draft, March 2018.

⁵⁰ FDA (2018) Strategic Plan: Vision 2030. Final Draft, March 2018.

⁵¹ IBI International (2013) Forest concessions – Commercial forest fiscal pricing and terms and revenue projection model. Report to USAID-GEMS

⁵² IBI International (2013) Forest concessions – Commercial forest fiscal pricing and terms and revenue projection model. Report to USAID-GEMS

⁵³ VPA Lesson Learning, November 2018

⁵⁴ Narrative Progress Report, August 2017

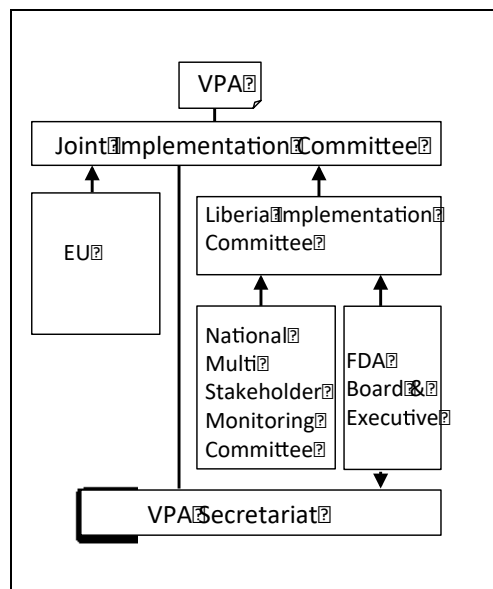
⁵⁵ Figures from Building Markets/CIFOR (2017) Liberia: Domestic timber value chain analysis.

⁵⁶ This is an estimate, based on average forest revenues of USD 6 million since 2008 and NBST grants to communities of USD 1 million to-date.

4.7 VPA Governance arrangements

4.7.1 Governance structures

The Joint Implementation Committee (JIC) is a governance structure required under the VPA and meets periodically. Ensuring proper representation by senior staff of other government bodies is a permanent concern. It has been supported in recent years by the addition of a 'Technical JIC' to deal with less strategic matters. The Liberian Implementation Committee (LIC) only meets ahead of the JIC meetings⁵⁷. Similarly, there is very little information available on the Inter Agency Coordination Committee (IACC) group. The national Multi-stakeholder Monitoring Committee is a successful forum, after a rocky patch around 2013-15 when it stopped meeting and the private sector withdrew. It meets monthly and represents a dedicated space for national dialogue around VPA implementation and forest governance between government, civil society, private sector and communities.



4.7.2 VPA Secretariat

The previous projects gave strong support to coordination; through the FLEGT Facilitator funded by DFID, the EU FLEGT Facility and the set-up of VPA Secretariat in FDA. The VPA secretariat is now housed and staffed by FDA but continues to rely on substantial guidance and material support from the VPA-SU project and the FLEGT Facilitator. The Secretariat's main functions today are to organise the JIC, NMSMC, LIC and Technical JIC (agenda, invitations, logistics, etc.) and interact with EU Delegation. The intention is that FDA will become responsible for the Forward Planner, through the VPA secretariat.

The VPA Secretariat is a permanent arrangement and it is meant to take on full responsibility for supporting VPA implementation in Liberia, after the donor-funded support has ended. The scope of its functions at this point are likely to include:

- i. Supporting active engagement of Liberian stakeholders in the VPA process; convening meetings and preparing minutes and reports.
- ii. Serve as point of contact for the provision of information on VPA to stakeholders, public and "owner" of the Forward Planner.
- iii. Coordinate and assist the activities necessary for effective VPA implementation in Liberia, which may include guiding the actions of role-playing government, private sector and CSO organisations.
- iv. Coordinate and prepare annual reports.
- v. (Potentially) Act as FLEGT Focal Point in Liberia, supporting Liberia-EU Communications on VPA. (NB: the role of FLEGT Focal Point was previously held by the Technical Manager of the Law Enforcement Division but this arrangements has lapsed and needs to be re-defined).
- vi. (Potentially) Fund-raise from international donors or other sources to support ongoing VPA implementation activities.

The Secretariat currently has two staff; a Coordinator and administrative assistant, on FDA salaries. It is intended that the FDA should meet the costs of the Secretariat, budgeted at USD 82,000 for 2018-19⁵⁸.

⁵⁷ VPA-SU Lesson Learning, November 2017

⁵⁸ DAI (2018) VPA Secretariat: Proposed Operational Plan 2018-2019.

There is a need to plan and agree the final location, responsibilities, staffing requirements and financing of the VPA Secretariat, in anticipation of the end of donor support in 2021. Key questions are whether it should be a small administrative unit, or a stronger implementation unit capable of driving and coordinating VPA implementation, and whether it should operate as a stand-alone unit in FDA or if it should fall under another unit of department (e.g. the Strategic Planning Unit or Law Enforcement Division).

The SPU (Strategic Planning Unit) in FDA is not yet effective and, unlike other Ministries such as Agriculture, the FDA does not have a project management unit⁵⁹. The RIU (REDD+ Implementation Unit) is the closest thing that FDA has to a project management unit so a close alliance between VPA Secretariat and RIU could be a useful approach.

5. PRIORITIES FOR FUTURE EU SUPPORT

The EU project needs to consolidate the achievements of the VPA-SU and LVD projects but also respond to the lessons learned from the previous phase. “More of the same” won’t do, because obstacles to progress encountered in the last phase need to be addressed and the next phase of support is relatively short. The following points identifies some key challenges and potential changes of emphasis:

- *Scope*: Keeping the scope of the project realistic, whilst extending VPA to domestic markets.
- *Commitment*: Securing financial and political support for VPA.
- *Handover*: Supporting the handover of responsibilities to FDA.
- *Integrity*: Strengthening the internal checks, balances and integrity of verification and licensing arrangements.

5.1 Consolidating achievements and focussing on VPA essentials

As the VPA-SU and LVD projects progressed their scope has become broader rather than narrower, because underlying weaknesses in the forestry sector have become more evident. The scope of VPA activities and the range of suggested forward priorities is now very broad, e.g. the issues and priorities identified in VPA project documents include reforming FDA’s staff structure, developing an overall forestry strategy and as well as policies for community forestry, chainsaw milling and charcoal, and developing regulations to encourage domestic processing⁶⁰.

It is unrealistic to address all this and complete essential components of the VPA within three years. The approach proposed here is that the EU project focuses on the essentials for VPA implementation and FLEGT Licensing; the Legality Matrix, LLD and LVD, establishing effective inspection and enforcement, revenue raising and FDA/LVD financing. The main priority is to establish effective legality for exported logs in the next three years.

The objective of incorporating domestic timber, charcoal and other forest products into the VPA is important because this is where most production occurs and threats to forests are greatest. Moreover, while VPA implementation has mostly focused on export markets until today, the scope of the timber legality assurance system does cover both international and domestic markets. Furthermore, tighter regulation can only be introduced slowly and carefully, because these industries play a vital social and economic role. Their integration into an effective legality system is a long-term project. The objectives for incorporating domestic timber industries that can realistically be set are therefore about research and policy development work, and improving FDAs engagement with the main actors.

⁵⁹ The FDA Strategic Plan - VISION 2030, proposes a management committee of MD, DMD and TMs to provide coordination.

⁶⁰ Several internal notes have been produced on future needs/priorities: VPA-SU “*some basic needs to address for improving governance and sustainable forestry in Liberia*”, July 2017; VPA-SU *Review of capacity of stakeholders and lessons learned through VPA-SU activities*, 25 November 2017; VPA-SU/DAI *Lessons Learning Report*, January 2018; DFID *Expected Results by September 2018*; EU-DFID *Liberian priorities identified at scoping mission in May 2017*; SGS LVD *Handover Progress assessment*, Feb 2018; EU *Discussion points* EU Del 2 March 2018

5.2 A “new deal” to secure political and financial support for VPA

The FDA and GoL have made major contributions to VPA implementation. It has put a substantial proportion of logging revenue into funding the Chain of Custody system and export licensing/certification through a service agreement with SGS. It has staffed a large new department (LVD) and absorbed it into the FDA and it has entered into international commitments on REDD+, Biodiversity Conservation and other reforms that strengthen forest governance.

On the other hand, GoL has consistently under-funded the operating costs of the FDA which has severely constrained its ability to implement VPA in full. For example, the FDA has been able to conduct very few routine field inspections and enforcement activities. It has only been able to employ 46 out of the planned 70 staff for LVD, and nearly all of these are internal transfers within FDA, because the FDA has had no funds for recruitment.

Thus the FDA does not receive the funding it requires from central government, but nor does the forestry sector contribute what it should to national revenue. The Government has been tolerant with logging companies who have failed to pay taxes or have otherwise broken forest laws, and hence there are substantial tax arrears and under-collection of taxes and fees.

In part, this may reflect the challenging business environment in Liberia. It may also reflect an attitude amongst legislators and top-government officials that forestry is for revenue generation and is very low amongst priorities for the receipt of public spending. This creates a negative cycle in that the FDA is under-funded and is consequently less able to regulate and collect revenues from the sector. It is also possible that powerful interests benefit from the informality of the current forestry regime and are therefore opposed to the legality controls that an effective FDA and VPA would bring.

The issue of top-level support for FDA and VPA needs to be addressed more directly in the next phase of VPA support. There are several practical measures that can be supported by the EU project, in unison with DFID and other projects:

- a) Inspection and enforcement of commercial forestry laws and taxation by FDA is a priority for the EU project and for coordinated action with other projects. This can be organised around LVD controls and the pursuit of corrective actions. The FDA needs to raise its game with respect to revenue collection, before it can make a credible request to government for more funding.
- b) A more accurate and up-to-date picture of the forestry economy can be produced to clarify actual and potential revenues. This would make it possible to establish and articulate the benefits (and costs) of a functioning VPA, compared to a “business as usual” scenario.
- c) FDA, EU-Delegation, Norway, DFID and others can be given a more accurate and compelling business case for VPA to present to GoL decision-makers.
- d) FDA action to advance the Benefit Sharing Mechanism could be a priority so that more visible benefits flow to communities and there is the basis for some popular support for VPA.

The FDA cannot by itself provide the political commitment, resources and systems required to run VPA sustainably. So the approach should be to help it strengthen ties between FDA and other government ministries. The DFID project does this in terms of other government departments holding FDA to account. The EU project can support the FDA in reaching out. E.g.:

- Working with LRA on the integration of LiberTrace with national accounting systems and to benefit from LRA financial management systems and knowledge.
- Working with MoJ, LEITI and NBC on legality verification and enforcement (There is the precedent of how FDA has worked successfully with MoJ and others to manage mining encroachment into Sapo NP).
- Working with MoFDP on revenue collection and the financial case for FDA and VPA.

5.3 Capacity building, ownership and project 'exit strategies'.

5.3.1 Focussing capacity building on corrective actions

Reading across the experience of the previous phase of VPA projects, and considering the slow progress made by LFSP, REDD+ and other capacity building initiatives, there are several general lessons to be drawn:

- Capacity building does not 'stick' unless it is focussed on solving practical problems and is immediately applicable.
- The transfer of responsibility for new systems, procedures or equipment is extremely difficult, which leaves projects without an effective exit strategy.

A substantial amount of capacity building needs to be achieved within the 3 year EU project. It therefore needs to be tightly focussed on the obstacles to VPA implementation and readily applicable by the FDA and other stakeholders. To give this focus, support can be driven by the capacities required to correct non-compliance identified by the LVD controls and Quality Management system.

Whilst we are in the current system of EP and CoO, with a limited "current regime" of verifiers, there is an opportunity to identify and address non-compliances with the full legality matrix, without holding up exports. I.e. exports are granted as at present on the basis of CoC and Finance requirements, but a full audit is done and Corrective Action Requests are issued and actively followed up. This work can be integrated into the Forward Planner.

5.3.2 Handover of project functions to FDA

Handover has been limited and very difficult to achieve in both VPA-SU and LVD projects. It remains the goal and the exit strategy for future support and so there is a need to emphasise the involvement of Liberian institutions in the next round of support, at the same time as doing more to address the underlying reasons for why handover has been so difficult.

A key challenge in the VPA process is how to hand over responsibility for legality verification and licensing without risking the reputation of Liberia's embryonic VPA and LVD. The stakes are high because if the VPA is discredited by illegal activity then GoL will not benefit from value-added timber exports and a crucial benefit of the VPA is lost. This has posed a dilemma for all concerned, hence in the LVD project for example SGS still retained control over final compliance checks and licensing. How then do we achieve the Framework Document principle of "*Ensuring that actions are locally driven and determined by local implementation structures*"?

Currently, full control by FDA is seen as the alternative to control by service providers/donors. Another way is an outsourcing model whereby FDA controls but contracts out specialist functions. The Service agreement with SGS is an example. This is likely to be a debate taking place at the early stages of the EU project.

5.4 Institutional arrangements within FDA for integrity and effectiveness

5.4.1 Internal checks and balances in the LVD

A recent assessment of the readiness of LVD for handover highlights a number of ways in which the current arrangements differ from those proposed in the original VPA/LAS design⁶¹.

- The routine inspection and enforcement activities of FDA and MACs are mostly absent.
- LLD has not been established as a separate body yet, which means that LVD is set to de facto take-on the licensing function by default (as long as LLD is not in place and capacitated), thus blurring the different levels of scrutiny.

⁶¹ SGS (2018) Handover Progress Report, February, 2018

- The LVD reports to the Deputy Managing Director for Operations, not directly to the Managing Director as intended.

This assessment therefore recommends a review of the organizational arrangements for LVD, to check whether they provide the necessary internal checks and balances.

5.4.2 *The LLD and Licensing function*

The design of the VPA includes a separate LLD to handle the licensing function. According to the original VPA timetable, a fully staffed, equipped and operational LLD was meant to be in place by 2013, embedded in FDA but separate to LVD. In the same year Certificates of Origin were to be phased out and replaced by the LLD licensing system, followed by FLEGT licenses issued in 2014⁶².

Substantial delays in the VPA process has meant that development of the LLD has not progressed. Currently, SGS handles the licensing function under its Service Agreement with FDA. As there is no LLD to hand this to, the plan is to transfer responsibility for licensing to FDA, as part of the LVD handover in 2018⁶³ (now expected October 2019, still to be confirmed).

This has implications for the integrity of the Legality Assurance System. The lack of a separate licensing body reduces the layers of scrutiny that are integral to the design and integrity of the LAS. Already, LVD is effectively substituting for much of the routine inspection of logging operations (levels 1 and 2 of the LAS) because other FDA divisions and MACs are not operating effectively. The addition of licensing (that was meant to be done separately in LLD) is a further compromise to the checks and balances.

It may therefore be desirable to maintain the separation between licensing and verification beyond 2018/19. This would enable FDA to consolidate its experience of managing the core LVD functions of inspection, audit and invoicing, based on the “current regime” of legality verifiers, which are predominantly chain of custody and revenue. This is also why it will be key for the EU project to work with the JIC parties on the review, development and establishment of the LLD.

Separation of Licensing helps to restore the checks and balances within the LVD and VPA, by creating a buffer between LVDs inspection/audit function and the final decision on legality that triggers the acceptance or rejection of an export license. It separates responsibility for the Chain of Custody function (which FDA is ready to take on) and the legality verification and licensing functions that need to be completed and protected from risks-to-reputation until integrity safeguards are fully in place.

Table 7: Division of LVD and LLD functions	
<i>LVD functions</i>	<i>Licensing and completion of LLD functions</i>

⁶² Liberia VPA. Annex VII Implementation Schedule.

⁶³ Stated in SGS detailed handover plan for HO

<ul style="list-style-type: none"> • Inspections in all 4 regions • Audit of “current regime” of traceability and financial verifiers, as well as additional verifiers/indicators when deemed applicable • Invoicing • Management of operations at HO level: including financial management, logistics, staff management, monitoring and reporting of results. • Quality Management: Application of QM systems and extension of this to FDA staff involved in routine inspection & enforcement • Stakeholder Engagement, based on corrective actions arising from LVD audits and the QM process. • Integration and development of LVD and FDA administrative systems and procedures. 	<ul style="list-style-type: none"> • Issue EPs and CoOs using LiberTrace to give a final, independent check of compliance. • Host, maintain and transfer LiberTrace software and servers. • Complete verifiers in Legality Matrix • Training LVD, MACs and operators on “new regime” legality verifiers and LLD requirements. • Develop institutional arrangements for LLD • Develop FLEGT Licensing systems and procedures and manage transition from EPs to FLEGT licensing.
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6. EU PROJECT DESCRIPTION

6.1 Project Description

The EU project will provide support for implementation of the FLEGT VPA, ratified by Liberia and the EU in 2013. It builds on a first phase of support that established systems, institutions and capacity for VPA from 2013-2018. The achievements and lessons from this earlier work make it possible to focus, in this next phase, on applying these new processes and further transferring the responsibility for VPA from donors to the Government of Liberia.

The VPA entails comprehensive development of forest governance and depends for success on the combined efforts and resources of the Liberian and international partners involved in its implementation. As a bilateral agreement between the EU and Liberia, the VPA brings up a number of international support for different stakeholders through EU, UK (DFID) as well as Norway and other partners. It is expected that the team recruited through these ToR will also support FDA in coordination and cooperation between the various funders and support projects.

Liberia and the EU developed a joint planning tool, the “Forward Planner”, which details the actions required to raise capacity and achieve compliance with each of the 11 principles in the VPA Legality Definition. It is regularly updated and endorsed at LIC and JIC level. The project is expected to support the continued use, and development, of the Forward Planner as the principal means of coordination and management of VPA implementation, in close conjunction with the VPA Secretariat.

The project is described further below in terms of its five expected results:

6.2 Expected Results

Result 1: The FDA and Government of Liberia, as well as the main VPA stakeholders have the capacity to implement the VPA in accordance with national laws framed in the VPA.

The project will primarily support FDA in its role as **Lead Agency**. The FDA is the statutory body for forest management so is chiefly responsible for implementing VPA and for coordinating the actions of other government departments, as well as donors and other VPA stakeholders; private sector and civil society.

The scope of capacity building support will be defined at the start of the new phase by the workplan of the VPA-SU and unfinished work after September 2018. Some continuity and consolidation of achievements will be required and, as there will be a gap between the end of the old and the start of the

new phase, the incoming Provider will need to pick up vital activities as quickly as possible. Capacity building support should also follow-on from the current LVD project, although not until November 2019 (as there has been a 1 year extension for the LVD project, still to be confirmed).

In general, progress with improving the capacity of FDA and other government departments, timber companies and civil society has been limited by greater-than-expected challenges in these institutions. Some government agencies are not yet sufficiently engaged with VPA, or don't have the capacity to uphold the legal requirements in the Legality Definition that fall within their remit.

The under-funding of FDA (and other government agencies) is the main obstacle. In effect, FDA is able to cover staff salaries and contracts with external suppliers, but they have little funding for operational costs. This has meant, for example, that the VPA-SU project has covered the costs of sending FDA and staff from other ministries out into the field to conduct routine inspections of logging operations. This will likely have to continue in the short term but the project must support FDA/GoL to develop a sustainable financial model for VPA implementation.

Capacity needs are extensive, so there is a need to focus. Two ways to do this are proposed: The first is to focus capacity building on resolving compliance problems identified by LVD (or the VPA Independent Auditor). Currently, there is a good system for identifying non-compliances but these are not actively followed up. Secondly, capacity building should be focussed on practical operations at site and regional level by all relevant government agencies. This has been a successful approach in the current phase.

Above all, capacity building support from the new project must accelerate and complete the take-over of responsibility for VPA implementation by FDA/GoL. This is needed so that FDA and GoL can fully take the lead and so that there is an effective exit strategy for donors by 2021.

Additional support is needed to keep the governance and consultative structures of the VPA: The effectiveness of the National Multi Stakeholder Forum, where the presence of the Civil Society is paramount, needs to be ensured. The NGO coalition will also need further strengthening.

Additionally, there is still a gap in the capacity of CSOs to monitor Social Agreements compliance, and payment to affected communities (from land rental fees and cubic meter fees).

Finally, the provider should support FDA and GoL to reinforce the VPA's contribution to meeting national commitments to SDGs, by leveraging synergies and combining forces with climate change (REDD+) and biodiversity related programs.

Result 2: The legality matrix that underpins the VPA is complete so that it encompasses the full legal framework for commercial logging, with workable verifiers and verification procedures, and it is enforced, so that FLEGT licenses can be issued to companies or communities by end of 2021. Milestone: The Legality Matrix will be complete by year 2 of the project (September 2020).

The legality matrix has 11 principles and 132 verifiers. Currently, legality verification is limited to a "current regime" of verifiers that is smaller than the full set required for FLEGT licenses. Less than a third (43 out of 132) of the verifiers have the necessary evidence for a full compliance check. Export Permits and Certificates of Origin are currently issued on the basis of traceability and fiscal compliance only.

Completion of the Legality Matrix requires considerable effort to gather missing legality documents and to improve the ability of government stakeholders such as Environmental Protection Agency and Ministry of Labour to inspect and provide documentation. At the level of Principles, none of the 11 have yet reached "green" status, meaning that further capacity building and technical assistance is required before the relevant staff in these and the other responsible organizations are able to check verifiers and keep records.

During VPA implementation, stakeholders identified the need to review and possibly revise the legality matrix due to inconsistencies or gaps in the legal framework. The current target is to complete the legality matrix by 2020. This is an ambitious target, but there may be scope for simplification of the

verifications procedures, and verifiers, within the existing law (and bearing in mind the need to protect the credibility of Liberian timber amongst international buyers).

The project is also expected to support improvements on enforcement. VPA-SU and LVD projects have concentrated so far on establishing the infrastructure of Legality Matrix, LiberTrace and institutions. But in practice, compliance and enforcement remains very limited. Support for enforcement can be focussed on resolving non-compliances identified by LVD's verification process, using the same approach as for capacity building generally.

Result 3: By June 2021 VPA implementation is extended to community forestry and informal timber operations (including domestic markets) so that good governance and revenue collection is applied equally across commercial forestry.

The principal VPA support need with respect to community forests is to ensure that commercial timber, for export, from CFMAs complies with Liberia's existing laws and regulations and hence the VPA legality assurance system. Some of the main challenges in this are to verify the approval process (e.g. the CFMA has been properly constituted according to the '9-steps' process); to introduce proper management plans and to reconcile felling cycles currently applied in CFMAs (currently 15 years) and those in FMCs and national regulation (25 years).

The new DFID VPA support project will address both commercial timber from CFMAs and improved regulation of chainsaw milling. These topics are also addressed through other projects such as LFSP, FIFES and FAO-funded initiatives. The support from the EU project will focus on supporting FDA's role; particularly to help FDA and other government agencies to prevent illegal exports (enforcement of existing laws) and to developing regulations and procedures for the legality matrix so it is ready for domestic timber, for when the GoL chooses to apply it thus.

The objective of incorporating chainsaw-milled timber, charcoal and other forest products into the VPA is written into the VPA and is under the scope of the legality assurance system. This is because these forest-uses are thought to account for most felling/extraction and to pose the greatest threat to sustainable forest management. They are also a key livelihood and economic activity for many Liberians, hence the Liberia VPA reflects the particular emphasis in Liberian forestry law on the rights of communities, as well as national and international commitments to forest conservation. It reflects the aim of balancing the 3 'C's; Commercial, Community, Conservation, which is central to national forestry policy and the mandate of the FDA. So for the domestic sector in particular, implementation of the VPA requires a holistic and integrated approach to forest management.

A key challenge however, is that chainsaw-milled timber is (mostly) not exported and so FLEGT licensing offers no incentive to operators to meet legality standards. Regulations exist but need to be developed and enforced carefully. A sudden clampdown on the industry is not desirable because it is an important source of rural employment and income. Nor is it achievable with the Government's limited capacity for enforcement. Instead, the options for regulation and the costs and benefits need careful appraisal. In conjunction with other projects addressing domestic timber (in particular DFID's), the project could also support research and policy development work, and FDA's engagement with the main actors. There are a large number of chainsaw millers and a much greater number of people involved in charcoal production, so engagement will be mainly through FDA's relations with the relevant national unions.

Result 4: The Legality Verification Department and the Liberian Licencing Department, complete with systems and procedures, are established and operating effectively within GoL by January 2021

The support needs with respect to the LVD and the LLD are different.

For LVD, this project is expected to support FDA in completing the takeover of responsibility for LVD and the legality assurance system when the current LVD contract ends (October 2019); to strengthen FDAs delivery of LVD functions and to address technical assistance gaps that might arise.

Substantial progress has been made with building, operating and transferring LVD to FDA. FDA staff carry out the majority of operations and are well equipped and trained. The handover of regional-level operations is being achieved in 3 out of 4 regions. The LiberTrace system is effective for verifying the traceability and financial compliance of logs exported from concessions. The main tasks that are likely to persist into 2019 are auditing the verifiers that are not currently “switched on” and applied, agreement on a model for sustainable financing and the integration of LVD procedures and the LiberTrace technology into FDA/GoL administrative systems.

For LLD, its establishment was an intended result of the current VPA-SU contract, but delays in completing the legality assurance system has meant that a FLEGT licensing department is not yet required. Practical work to establish LLD has not begun, so a detailed plan is required on how this new department will be built and how the current Export Permit and CoO will evolve into FLEGT Licensing between 2019 and 2021. There is also a need to review the institutional arrangements for LLD, to check whether the original design in the VPA is suited to the organisational arrangements that now prevail in FDA and provides the necessary checks and balances for a credible FLEGT licensing system.

Result 5: By September 2021 VPA governance arrangements and the monitoring and reporting of results are effective, inclusive and transparent.

A VPA secretariat has been established. This is hosted and staffed by FDA, and is guided by the Liberian Implementation Committee (LIC) and National multi-stakeholder Monitoring Committee (NMSMC). Currently the secretariat organises meetings of these bodies and the JIC, with considerable support from VPA-SU and the FLEGT Facilitator.

By September 2021, the secretariat needs to be able to take over its function in full. In addition, there will be coordination and project management functions; because the implementation of VPA will not have been fully completed (e.g. ongoing work to extend FLEGT to community forest and domestic timber is likely). Plus it needs to be able to engage effectively, and at the highest levels, with other government bodies and VPA stakeholders. To date, engagement of ministers or senior officials from non-FDA government bodies has been variable, whereas in the next phase it is vital that VPA becomes owned by GoL, not just FDA.

It therefore seems unlikely that VPA could be sustained post 2019 with a ‘light-touch’ Secretariat that only organises meetings and acts as the focal point for Liberia-EU communications (e.g. Cameroon, Ghana). It is more likely that the FDA/GoL will need a substantial VPA implementation unit to coordinate and drive implementation (E.g. Central African Republic).

Thus the scope of the new EU project includes helping FDA and stakeholders to envisage the type of secretariat arrangement it will require by 2021 and take the steps necessary to achieve this. The Contractor should facilitate both the practical planning/implementation work and the necessary strategic discussion at LIC/JIC level. In this it should be prepared to think imaginatively about location, staffing and accountability for the Liberia secretariat, looking at examples from other FLEGT countries.

Another key task will be to help FDA/Secretariat to become the owner and an effective user of the VPA Forward Planner. This has become the principal tool for establishing agreed targets and tasks, and monitoring progress. In this next phase, it is expected that the Forward Planner will be improved further and broadened to include the full range of tasks necessary for VPA implementation (including contributions from other projects).

Finally, transparency and information sharing is written into Principle 11 and Annexe IX of the VPA. It is also part of the GoL’s service standards and freedom of information commitments. The Contractor will be expected to identify cost-effective ways of helping FDA to improve access to VPA information, enabling DFID and other projects to complement the support to CSOs. This is crucial for CSOs wishing to carry out their role as independent monitors and for other partners implementing projects in the sector. CSOs play an active and effective role as “outsiders” exposing malpractice in the forestry sector but are not always strongly represented in VPA governance.

Appendix 1: List of projects relevant to VPA

**Relevance of project is indicated by its contribution to specific components of VPA support:*

1. Further capacity building in FDA, GoL and other VPA stakeholders.
2. Completion and enforcement of laws and regulations for Legality Assurance System.
3. VPA extended to community forestry and informal timber operations.
4. LVD and LLD fully operational and transferred to FDA/GoL.
5. Governance, independent monitoring and reporting strengthened and facilitated by FDA.

Projects that are relevant but recently completed are included in gray.

Lead Funder	Implementing Body	Title/Purpose	Timing	Budget (EUR)	Relevance*					Notes
					1	2	3	4	5	
EU – DFID Co-Financing (2012-2018)										
EU-DFID (co-financed)	DFID/DAI	VPA Support Unit	2012-Oct 2018	14,800,000	✓	✓	✓		✓	https://ec.europa.eu/europeaid/projects/support-voluntary-partnership-agreement-vpa-liberia_en Earlier phase of project supporting LVD and VPA-SU, co-financed with DFID. For both projects - EU Contribution EUR 5+3 million. DFID Contribution GBP 6 million (EUR 6.8).
EU-DFID	DFID/SGS	Build and Transfer of LVD and LiberTrace	2012-Sept 2018		✓			✓		
EU-DFID	DFID/Palladium	EU FLEGT Facilitation	2013-Dec 2017	1,400,000	✓				✓	DFID funding of £1.2 (EUR 1.4) million up to Dec. 2017.
EU – 11 th European Development Fund										
EU (co-financed)	DFID/DAI	Support to the Voluntary Partnership Agreement (VPA) in Liberia	2012-Sept 2017	EUR 5,000,000	✓	✓	✓		✓	https://ec.europa.eu/europeaid/projects/support-voluntary-partnership-agreement-vpa-liberia_en See EU-DFID co-financing above. Earlier phase of project supporting LVD and VPA-SU, co-financed with DFID. EU Contribution EUR 5 million.
EU (co-financed)	DFID/DAI	Support to the Voluntary Partnership Agreement	2013 – October	EUR 3,000,000	✓	✓	✓	✓	✓	https://ec.europa.eu/europeaid/projects/support-voluntary-partnership-agreement-vpa-liberia-2_en

Lead Funder	Implementing Body	Title/Purpose	Timing	Budget (EUR)	Relevance*					Notes
					1	2	3	4	5	
		(VPA) in Liberia	2018							See EU-DFID co-financing above. Further support to the implementation of the Voluntary Partnership Agreement for the forestry sector in Liberia.
EU (GPGC)	Stichting TROPENBOS International/VOSIEDA (Liberia, Ghana, Côte d'Ivoire)	Strengthening the capacity of non-state actors to improve FLEGT-VPA and REDD+ processes in Western Africa	2017-2021 (48 months)	3,333,536					✓	https://ec.europa.eu/europeaid/projects/strengthening-capacity-non-state-actors-improve-flegt-vpa-and-redd-processes-western-africa_en Aims to Develop the capacity of NSAs to understand and engage in VPA and REDD+. Actions and targeted beneficiaries match closely with DFID project.
EU (DCI – Env)	RSPB /SNCL	Securing Liberian forest connectivity through community forest management and innovative financing	2013-Dec. 2018	2,386,316	✓		✓			https://ec.europa.eu/europeaid/projects/securing-liberian-forest-connectivity-through-community-forest-management-and-innovative-0_en The GolaMA Project is a partnership between forest communities, the Government of Liberia and Birdlife International to conserve and manage the Gola Forest that lies outside of protected areas.
EU (DCI)	Sustainable Development Institute	Supporting communities self-determination and land rights in Liberia	2017-2020	1,064,542					✓	https://ec.europa.eu/europeaid/projects/supporting-communities-self-determination-and-land-rights-liberia_en The project focuses on advocacy efforts to encourage the passing of the Land Rights Act, through awareness raising at national, county and community level and by improving the advocacy and organisational capacities of CSOs, with a special focus on the CSO Working Group on Land Rights.
EU (DCI)	Catholic Agency For Overseas Development	Land Rights in Liberia: equitable access to land for the poor and marginalised in Nimba, Lofa, Bong and Margibi counties	2017-2021	1,323,141					✓	https://ec.europa.eu/europeaid/projects/land-rights-liberia-equitable-access-land-poor-and-marginalised-nimba-lofa-bong-and-margibi_en as above

Lead Funder	Implementing Body	Title/Purpose	Timing	Budget (EUR)	Relevance*					Notes
					1	2	3	4	5	
EU (DCI)	Deutsche Welthungerhilfe Ev	Civil society action on land rights to stabilise Liberian democracy	2017-2019	1,333,330					✓	https://ec.europa.eu/europeaid/projects/civil-society-action-land-rights-stabilise-liberian-democracy_en as above
EU (EDF)	ECORYS UK Ltd.	Long Term Technical Assistance to the Customs Department of the Liberia Revenue Authority (LRA)	2016-2019	2,100,500	✓					https://ec.europa.eu/europeaid/projects/long-term-technical-assistance-customs-department-liberia-revenue-authority-lra_en Relevant components: - To facilitate international and regional trade, to increase revenue from customs operations; and - To increasing revenue collection nationally, including the establishment of a "Centre for Excellence" and pilot upgrade of selected key border posts; - Reduce smuggling and fraud through strengthened capacity for anti-smuggling, intelligence & investigation and enforcement; - Increased efficiency and enhanced trade facilitation, ..., through strengthened capacity for management control and for consistent application of laws, regulations & procedures....
EU (DCI-Env)	STICHTING FERN	Tackling deforestation by linking REDD+ and FLEGT.	Ended March 2017	2,340,502						https://ec.europa.eu/europeaid/projects/tackling-deforestation-linking-redd-and-flegt_en
EU (EDF)	Rural & Renewable Energy Agency	Developing and demonstrating a rural energy strategy and master plan for Liberia	Ended May 2016	1,975,000						https://ec.europa.eu/europeaid/projects/developing-and-demonstrating-rural-energy-strategy-and-master-plan-liberia_en

Lead Funder	Implementing Body	Title/Purpose	Timing	Budget (EUR)	Relevance*					Notes
					1	2	3	4	5	
EU (EDF)	BDI LLP	Long term technical assistance to the General Auditing Commission	2012-2016	2,151,000						https://ec.europa.eu/europeaid/projects/long-term-technical-assistance-general-auditing-commission-gac-0_en To increase the productivity and effectiveness of the General Auditing Commission (GAC) in a sustainable manner so that it can contribute more significantly in its role as the external audit function.
EU (EDF)	GoL	State Building contract	2015-May 2018	65,000,000						https://ec.europa.eu/europeaid/projects/state-building-contract-liberia_en EUR 62 million for general budget support (front-led in response to Ebola). 2.7 million for Integrated Public Financial Management Programme (WB implemented) and 0.3 million to build capacity in MoFinance (ODI).
NORWAY										
NORAD (NICFI)	DFID	Support to VPA-SU	2018	800,000	✓	✓	✓		✓	NOK 8 million for extension of VPA-SU to October 2018
NICFI-EU	EU	Support to VPA (phase 2)	2019-2021	1,500,000	✓	✓	✓	✓	✓	Co-financing of EU VPA phase 2 support projects NOK 5 Million/year for 3 years,
NORAD (NICFI)	World Bank and multiple contractors	Liberia Forest Sector Project	2016-2020	(USD 37.5 million)	✓	✓	✓		✓	Program of projects to achieve REDD+ results through support for forest conservation, community forestry and capacity building (See WB Project Appraisal Document)
NORAD (NICFI)	IDH	Green Growth: Achieving forest conservation in commercially productive landscapes in Indonesia, Liberia, and Brazil.	2016-2021	5,300,000	✓					Aims to create deforestation-free supply chains at scale by forging committed Public Private Partnerships for jurisdictional and landscape approaches. Liberia: three targeted landscapes.
	FFI	REDD+ and community forest management in Liberia and Myanmar	2016-Dec 2020	4,600,000 (NOK 45 million)	✓					In Liberia, work focuses on developing a REDD+ policy framework in conjunction with community conservation enterprises in Wonegizi Proposed Protected Area. Previous phase in 2010-2013 (USD 4.5 million) for Piloting the implementation of a REDD+ programme in Wonegizi.

Lead Funder	Implementing Body	Title/Purpose	Timing	Budget (EUR)	Relevance*					Notes
					1	2	3	4	5	
										https://api.fauna-flora.org/wp-content/uploads/2017/12/FFI_2016_Norad-grant-agreement_Redacted.pdf
DFID										
DFID	(pre-tender stage)	Multi-stakeholder Governance Accountability (MFGAP), Liberia	Forest and Project	2018-2021	6,800,000 (GBP 6 million)	✓			✓	New phase of support to follow on from previous phase of VPA support, with a focus on support to non-FDA stakeholders and on VA checks & balances and accountability.
DFID	(tendering)	FLEGT Facility		2019-2021	1.4	✓			✓	Continuation of FLEGT Facility service currently provided by Palladium. (GBP 1.2M)
DFID	KPMG managed	Grants for Independent Forest Monitoring		2019-2021	2.2				✓	Continuation of garnt scheme to CSOs for IFM (£1.9M)
DFID (IFSLU)	Palladium - McKinsey consortium	Partnerships for Forests (P4F)		2016-2020	EUR (GBP 60 million for 10 countries)	✓				Programme of support to Tropical Forest Alliance (TFA) for a series of public-private partnerships that demonstrate how companies, communities, smallholders and governments can work collaboratively to reduce deforestation. West & Central Africa focus is on palm oil. Support is mainly for global networking. https://devtracker.dfid.gov.uk/projects/GB-1-202745/documents
DFID	World Resources Institute	Scaling up Forest Transparency		2015-March 2018	EUR 430,000					Provision of information for forest monitoring (Global Forest Watch) and capacity support for users.
	FERN/SDI	Improving Governance	Forest	2015-March 2018	EUR 400,000					Supporting CSO and community engagement in FLEGT process.
	ClientEarth	Community & CSO Legal capacity		2015-March 2018	EUR 380,000					Building legal capacity in CSOs and community representatives.

Lead Funder	Implementing Body	Title/Purpose	Timing	Budget (EUR)	Relevance*					Notes
					1	2	3	4	5	
	Global Witness	Independent Forest Monitoring	2015-March 2018	EUR 284,000						Building capacity of civil society for IFM
	RRI/local NGO partners		2015-March 2018	EUR 50,000						Promoting community right with respect to forestry.
	PROFOREST	Deforestation free commodity supply chains	2015-March 2018	EUR 575,000						Private sector support, incl. SMEs, in implementation zero-deforestation commitments (using legal compliance); Support to the national Tropical Forest Alliance (TFA) platform.
DFID (Darwin Initiative)	FFI	Series of conservation projects implemented by FFI	2000-2015	GBP 769,000 total						Establishing Community-based forest biodiversity management around Sapo National Park (2004-2007, GBP 126,000) Developing cross-sectoral environmental governance platform for Mount Nimba (2009-12, GBP 248,000) Building capacity of the next generation of Liberian conservation professional (2010-15, GBP 302,000) Renewing management of Sapo National Park and creation of the Liberian protected areas system (2000-2002, GBP 93,000)
FAO-EU FLEGT and FAO										
FAO-EU FLEGT	NUCFDC	Tracking Progress: strengthening community capacity to monitor benefits from commercial logging in Liberia	2018 - 2019	USD\$ 80,000					✓	
FAO-EU FLEGT	SDI	Strengthening community forestry structures and their governance	2018 - 2019	USD 100,000					✓	

Lead Funder	Implementing Body	Title/Purpose	Timing	Budget (EUR)	Relevance*					Notes
					1	2	3	4	5	
FAO-EU FLEGT	NBSTB	Increasing the capacity of the National Benefit Sharing Trust Board (NBSTB) for self-sustainability	2018 - 2019	USD 25,000	✓				✓	
FAO	(pre-tender)	National Forest Inventory	?	USD 1.2 million	✓					Support for conducting Liberia's first comprehensive forest inventory in over 50 years. The inventory is expected to provide up to date information on wood species and current biodiversity.
FAO	Farmers Union Network (FUN)	Forest and Farm Facility	2017 -?	USD 98,000			✓			Provides small grants to strengthen the capacity of Forest and Farm Producers Organizations (FFPOs) in Liberia. Targeting three counties, including River Cess, Gbarpolu and Margibi. A previous agreement supported Lofa, Cape Mount and Nimba counties.
FAO-EU FLEGT	Consultant	Institutional Strengthening Consultant for LICSATDUN and NACUL	Dec. 2017- June 2018	USD 19,528						
FAO-EU FLEGT	Consultants at Heritage Partners Association	Support to the FDA to revise the Liberian Chainsaw milling Regulation 115-11 for its effective implementation	2016- June 2018	USD 34,250						
FAO-EU FLEGT	Action Aid Liberia	Promoting Women and Community Rights in Forest Governance and Management in Liberia	2016- June 2018	USD 289,607						
FAO-EU FLEGT	Foundation for Community Initiatives	Promoting participatory forest management and the	2017- June	USD 51,360						

Lead Funder	Implementing Body	Title/Purpose	Timing	Budget (EUR)	Relevance*					Notes
					1	2	3	4	5	
	(FCI)	implementation of FLEGT/VPA in Liberia through knowledge and capacity development of Community Forestry governance structures.	2018							
FAO-EU FLEGT	Association of Community Rights Defenders (ACORD)	Strengthening community governance structures to contribute to independent forest monitoring and oversight of forest operations.	2017-June 2018	USD 77,381						
The World Bank										
WB (FCPF)	FDA	Forest Carbon Partnership Facility: REDD+ Readiness Preparation Support Project (P124073)	2012-2018	USD 8.6 million	✓				✓	Package of support for REDD+ Readiness preparations. USD 3.6 + 5 million. The FCPF, administered by the World Bank, is supporting the GoL, through the FDA, to reach REDD+ readiness. Liberia has completed the preparation of the roadmap for REDD readiness, endorsed by the governing body of the FCPF. The GoL received an initial grant of US 3.6 million in 2012 and additional funding of US 5.0 million to implement outstanding activities required to get Liberia ready for REDD+ implementation. The REDD+ Implementation Unit (RIU) of the FDA is responsible for project management.
WB (IDA)	Liberia Land Authority	Liberia Land Administration Project (LLAP)	2017-Oct. 2022	USD 7 million	✓					To strengthen the institutional capacity of the Liberian Land Authority and establish a land administrative system. Includes an inventory and analysis of tribal land certificates. http://projects.worldbank.org/P162893?lang=en
	Civil Service Agency	Public Sector Modernization Project (P143064)	2014-2014-Sept.	USD 2 million	✓					To improve pay and performance management in participating ministries and strengthen payroll management in the Civil Service in Liberia. Does not include FDA but

Lead Funder	Implementing Body	Title/Purpose	Timing	Budget (EUR)	Relevance*					Notes
					1	2	3	4	5	
			2019	Total project USD 10.7 million)						systems. Practices developed may be transferrable (MOJ, MOE, MFA, MIA, MICAT and MOH). http://projects.worldbank.org/P143064?lang=en
USAID										
USAID	ACDI/VOCA	FIFES - Forest Incomes For Environmental Sustainability.	2015-2020	(USD 22 million)	✓		✓		✓	Develop key rural forest-based enterprises, which provide inclusive, sustainable economic opportunities for smallholders and communities that combat drivers of deforestation and biodiversity loss. Targets 11 CFMBs in Nimba and Grand Bassa.
USAID	Tetra Tech ARD	West Africa Biodiversity and Climate Change (WA-BiCC)	2015-May 2020	(USD 4.5 million)	✓					Two grants, worth USD1.8 million and USD 2.7 million respectively, will facilitate the implementation of a three-year project in the Gola trans-boundary forest landscape between Liberia and Sierra Leone and the Tai-Grebo-Krahn-Sapo Trans-boundary forest landscape between Liberia and Cote d'Ivoire. The projects will be carried out by SCNL and RSPB in Gola and WCF and FFI in Tai-Grebo-Krahn-Sapo.
	ARD TetraTech	PROSPER	2012-2017	USD 9 million						Supported the establishment of 7 community forests, the 'nine-step' approval process, legal/policy reforms and capacity building in FDA and Community/voluntary bodies.
USAID/ Humanity United.	Building Markets	Sustainable Marketplace Initiative Liberia (SMI-L)	2011-2017	?						Contracted CIFOR to carry out 2017 study of domestic timber value chain analysis. Supports local SMEs through verification and market research, training and technical assistance, and connecting businesses to new opportunities.
Government of Liberia										
FDA	SGS	"Side Agreement" to operate CoC and Export Licensing	2013 - Sept. 2018	?						Service agreement funded by GoL from forest revenues.

Lead Funder	Implementing Body	Title/Purpose	Timing	Budget (EUR)	Relevance*					Notes
					1	2	3	4	5	
	Govt. appointed panel	Review of Concessions	2018	?						Presidential-ordered enquiry into all concession agreements signed by former (Sirleaf) administration. Announced amidst allegations of corruption.
German Development Cooperation										
KfW	?	Protection of Biodiversity in Tai-Sapo-Forest Corridor (FC module)		EUR 6,000,000	✓		✓		✓	Kreditanstalt für Wiederaufbau is a German government-owned development bank.
GIZ	FDA/WCF	Strengthening forest ecosystem connectivity in the Tai-Grebo-Sapo region in Côte d'Ivoire and Liberia	2015-2020	EUR 3,000,000 [additional to that above?]	✓		✓		✓	Operating in partnership with USAID/WA-BiCC support
BMZ/EU (Kimberley Process)	GIZ/Australia Aid/MLME	Regional Resource Governance Project	20-15-2018 2016				✓			Initiatives to regulate artisanal mining may be relevant to attempts to formalise chainsaw logging and charcoal production. RRGP Funded production of the Regulatory roadmap for the artisanal mining sector in Liberia, July 2016. 3 rd phase of a program started in 2009.
USADSI (WA-BiCC)	FFI	Implementing effective management of the Wonegizi landscape			✓		✓		✓	Transboundary project incorporates the Ziaman and Biosphere Reserve in Guinea and the Wonegizi proposed protected area (PPA) and surrounding landscape in Liberia. https://www.fauna-flora.org/projects/implementing-effective-management-wonegizi-landscape

Appendix 2: DFID MFGAP Project: Objective, expected outputs and indicative actions

DFID - Multi-stakeholder Forest Governance and Accountability Project (MFGAP), Liberia	
<i>Timescale: October 2018 – September 2021</i>	<i>Budget : £6million</i>
Objective: Strengthening the effectiveness and sustainability of forest governance reforms enshrined in the VPA in Liberia by building checks and balances and building accountability through state and non-state actors.	
Output 1: <u>Other government services and agencies can rely on effective FDA regulation and hold FDA to account on VPA implementation.</u> Non-forestry government departments and agencies responsible for forest sector regulation and providing checks and balances on FDA operations agree on VPA implementation priorities and related policy orientation based on their areas of common interest. Joint action plans are agreed and are being implemented and as a result, FDA is better positioned to support other GoL agencies in achieving their objectives. Parliamentarians are supportive of forest governance reforms and actively holding FDA to account.	
Output 2: <u>Increased capacity and engagement of civil society and community actors to monitor the forest sector and hold government to account.</u> Communities and civil society actors have increased voice and are able to demand accountability from government, community forestry bodies and private sector in support of reforms across the forest sector. Communities and civil society organisations are working together to work on coherent strategic plan for advocacy and related actions.	
Output 3: <u>Independent media holds government, civil society, communities and private sector to account on VPA implementation and progress:</u> Independent journalists are reporting in printed, radio, TV and social media on implementation, progress and reporting on sector reforms as enshrined in the VPA.	
Output 4: <u>Private sector actors comply with regulations framed within the VPA and provide evidence to inform compliance checks, while holding government to account on agreed policies and actions:</u> Different private sector interests have the capacity and incentives to comply with regulations and are able to provide evidence substantiating their compliance. Innovative models, incentives and partnerships identified, tested and communicated that support forest users (including community forestry groups), informal sector, small, medium and large forest enterprises to comply with regulatory reforms. These models will be scalable and attract external financing. Private sector (including informal sector) voices are better represented in VPA discussions.	

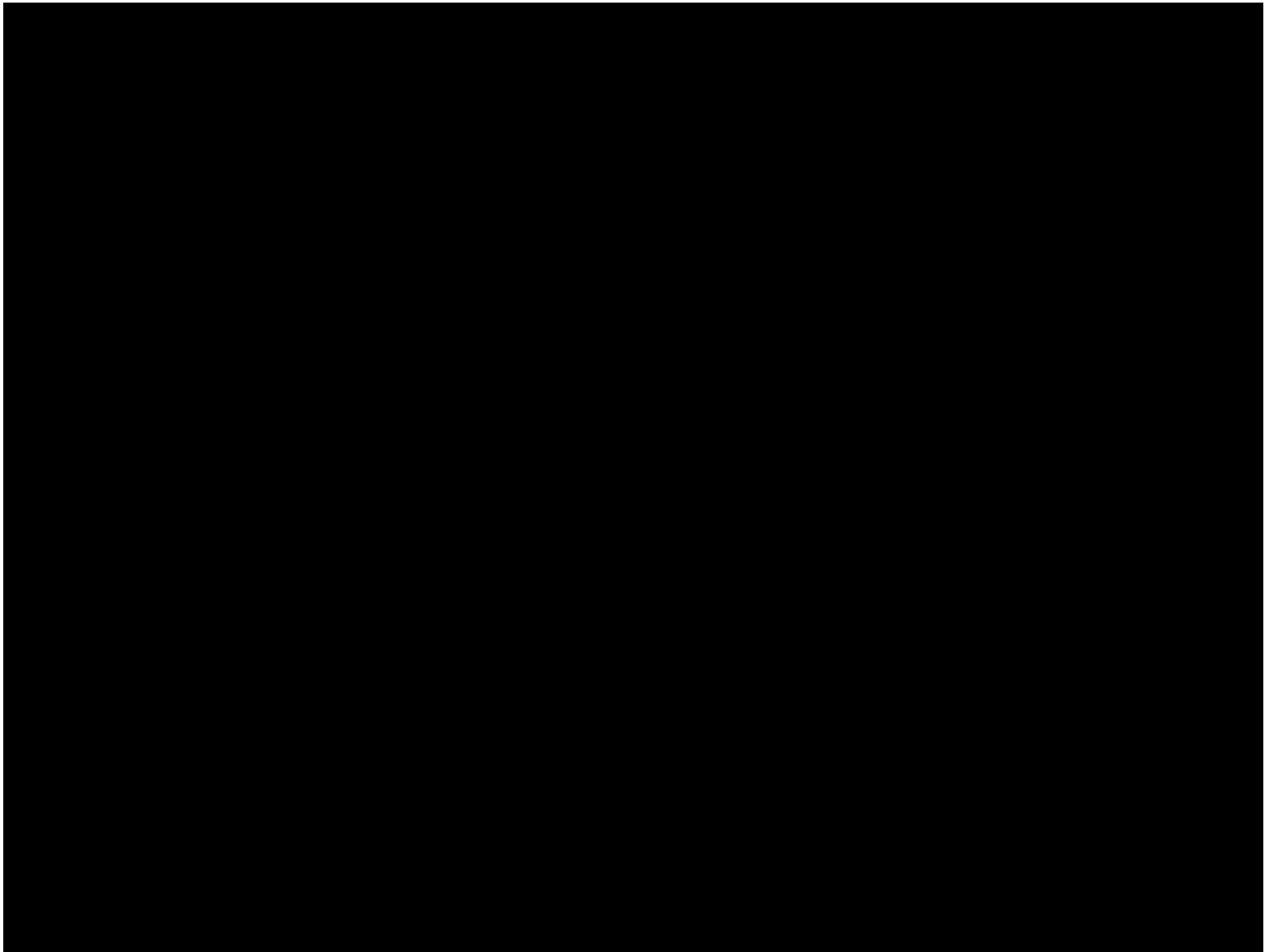
Indicative actions from DFIF MFGAP ToRs		
<i>With other government agencies:</i>	<i>With communities and civil society:</i>	<i>With private operators:</i>
<ul style="list-style-type: none"> • Supporting routine inspection and enforcement to ensure compliance with the LAS. • Joint action plans with FDA. • Improving information & financial management systems so they can link to the LAS (e.g. financial systems at LRA is made compatible with LiberTrace). • Supporting participation on inter-governmental VPA governance structures (e.g. Technical JIC). 	<ul style="list-style-type: none"> • Supporting monitoring of forestry impacts and adherence to social agreements, environmental standards and other contractual obligations of operators. • Engaging with the National Benefit Sharing Trust to share benefits and hold it to account. • Linking independent Forest Monitors with VPA governance structures (e.g. NMSMC, JIC). • Informing and supporting the organisation of independent news media so it can link to VPA issues and assist with scrutiny and public awareness. 	<ul style="list-style-type: none"> • Supporting large and small timber businesses to comply with laws/regulations and contribute evidence for VPA verification and monitoring. • Supporting the organisation of community forestry groups, chainsaw millers and other sectors so they can raise standards and engage better with FDA and VPA.

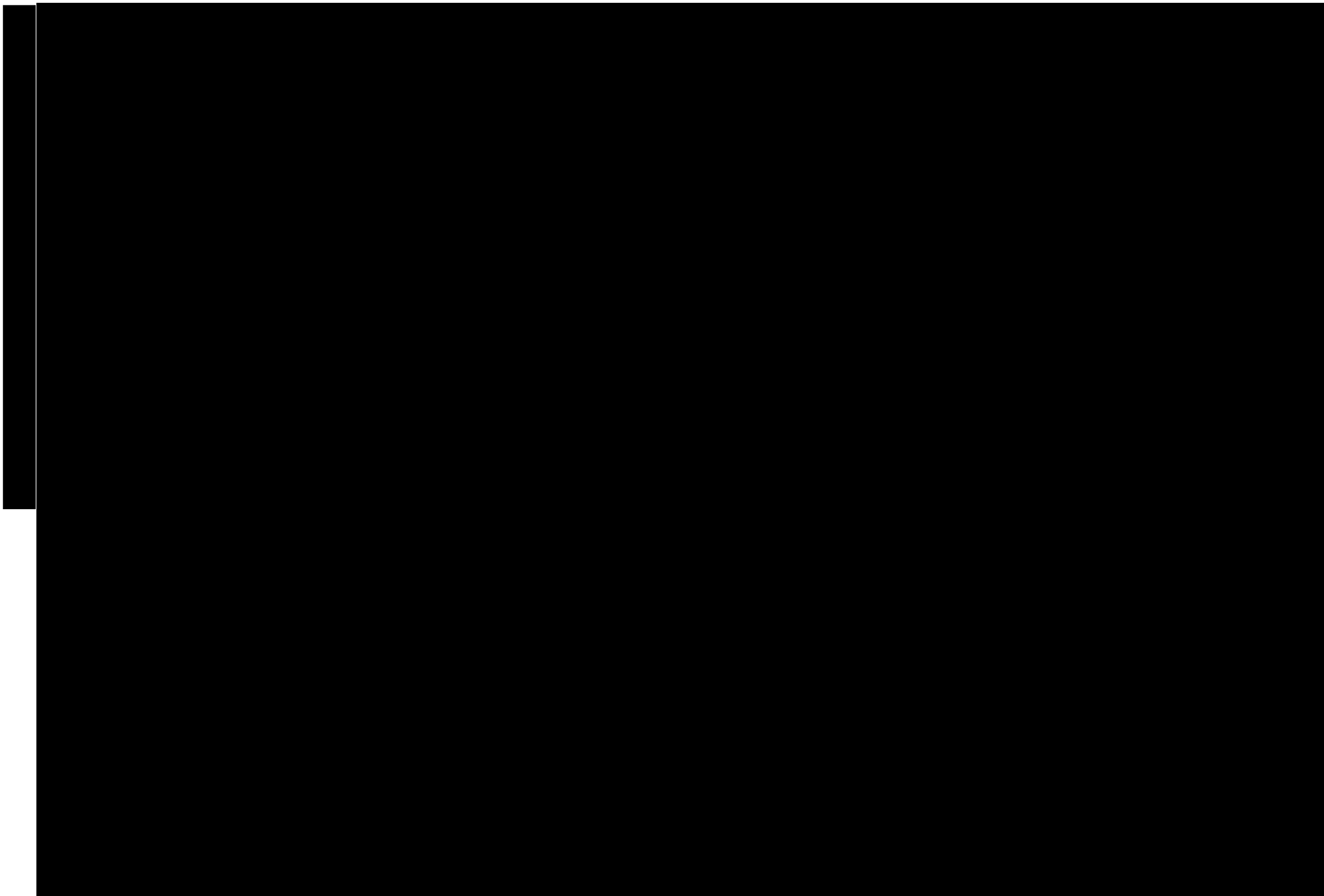
Source: DFID MFGAP ToRs

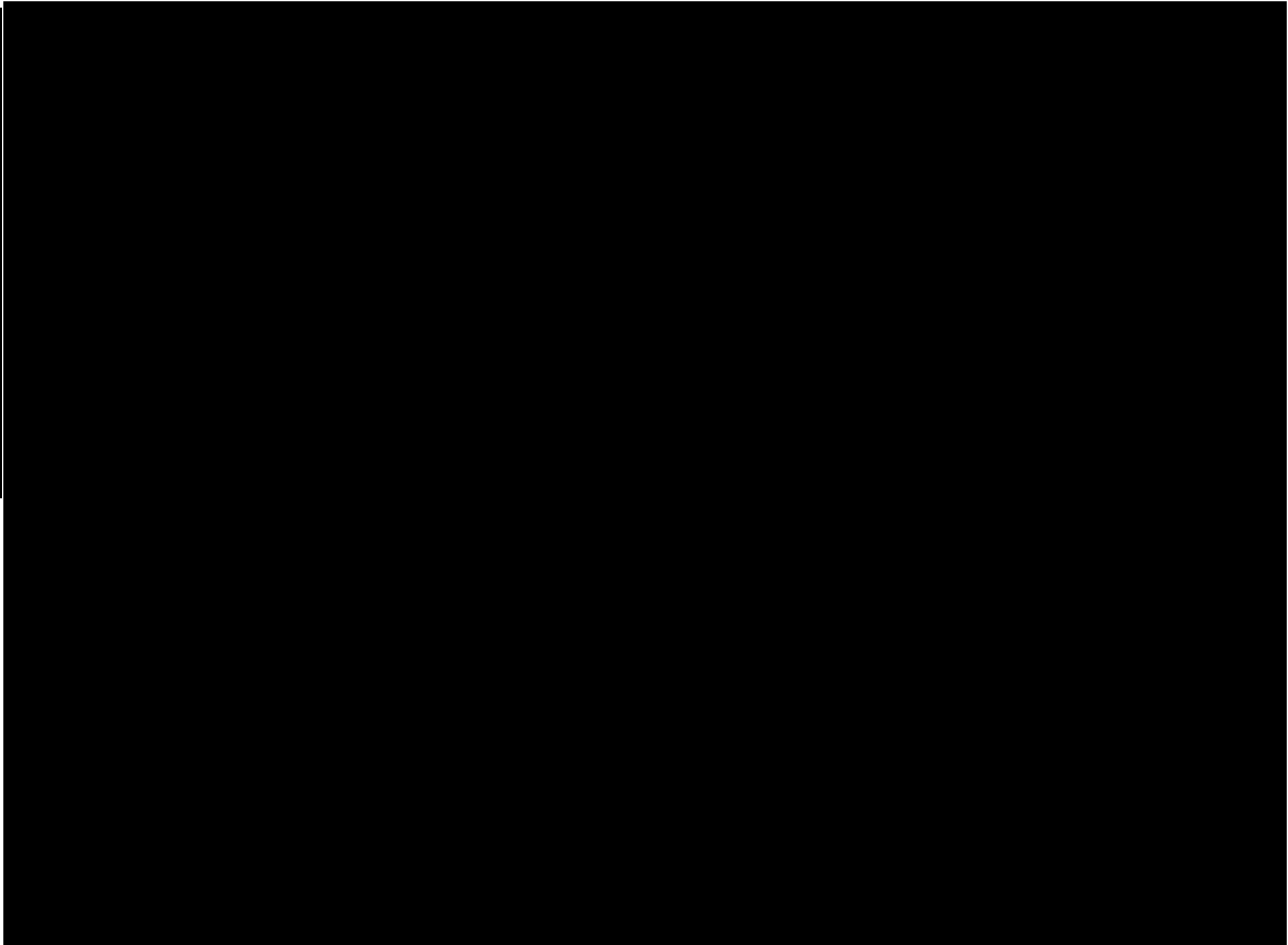
Annex 5 Theory of Change for VPA implementation in Liberia (EFI)

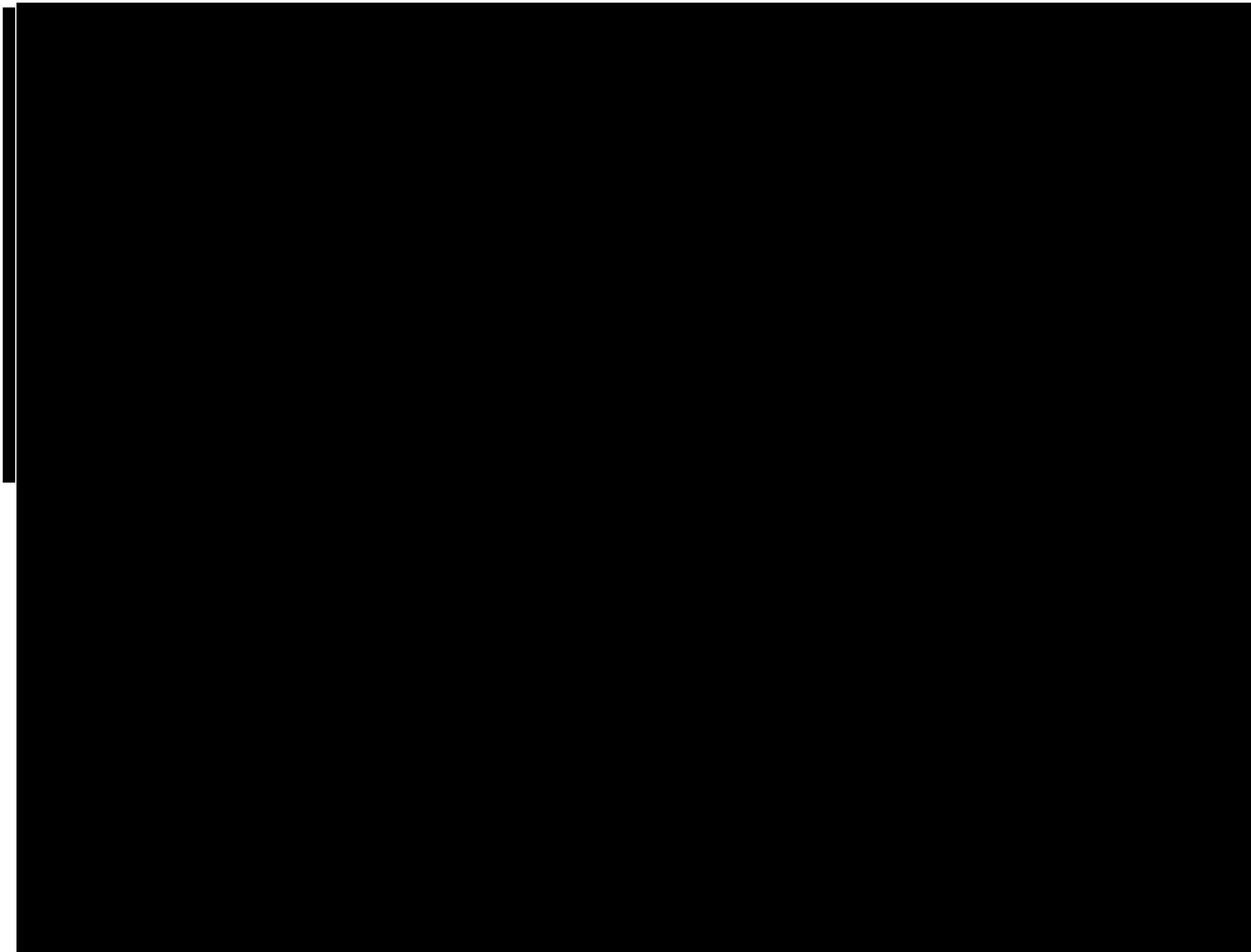


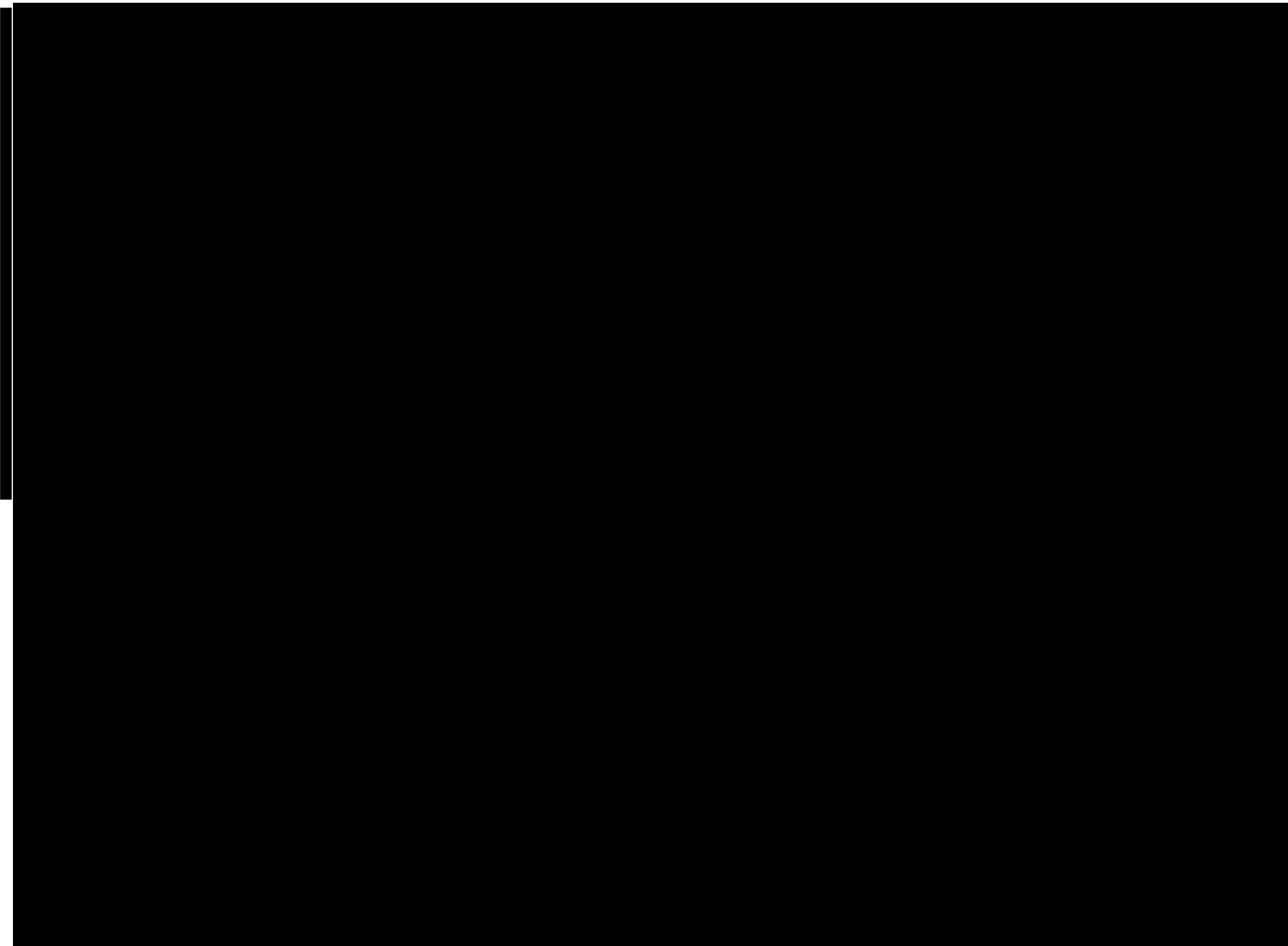
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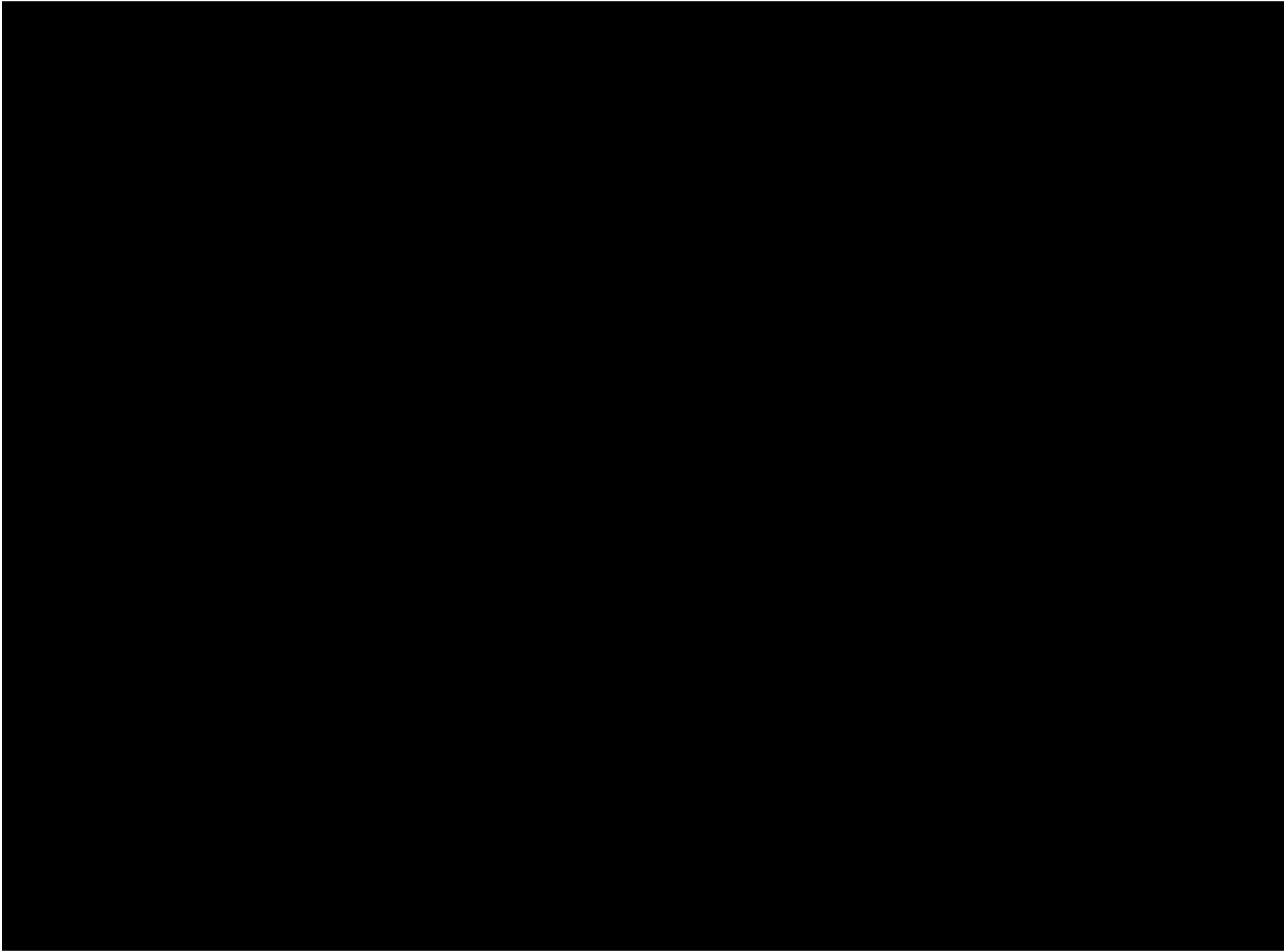


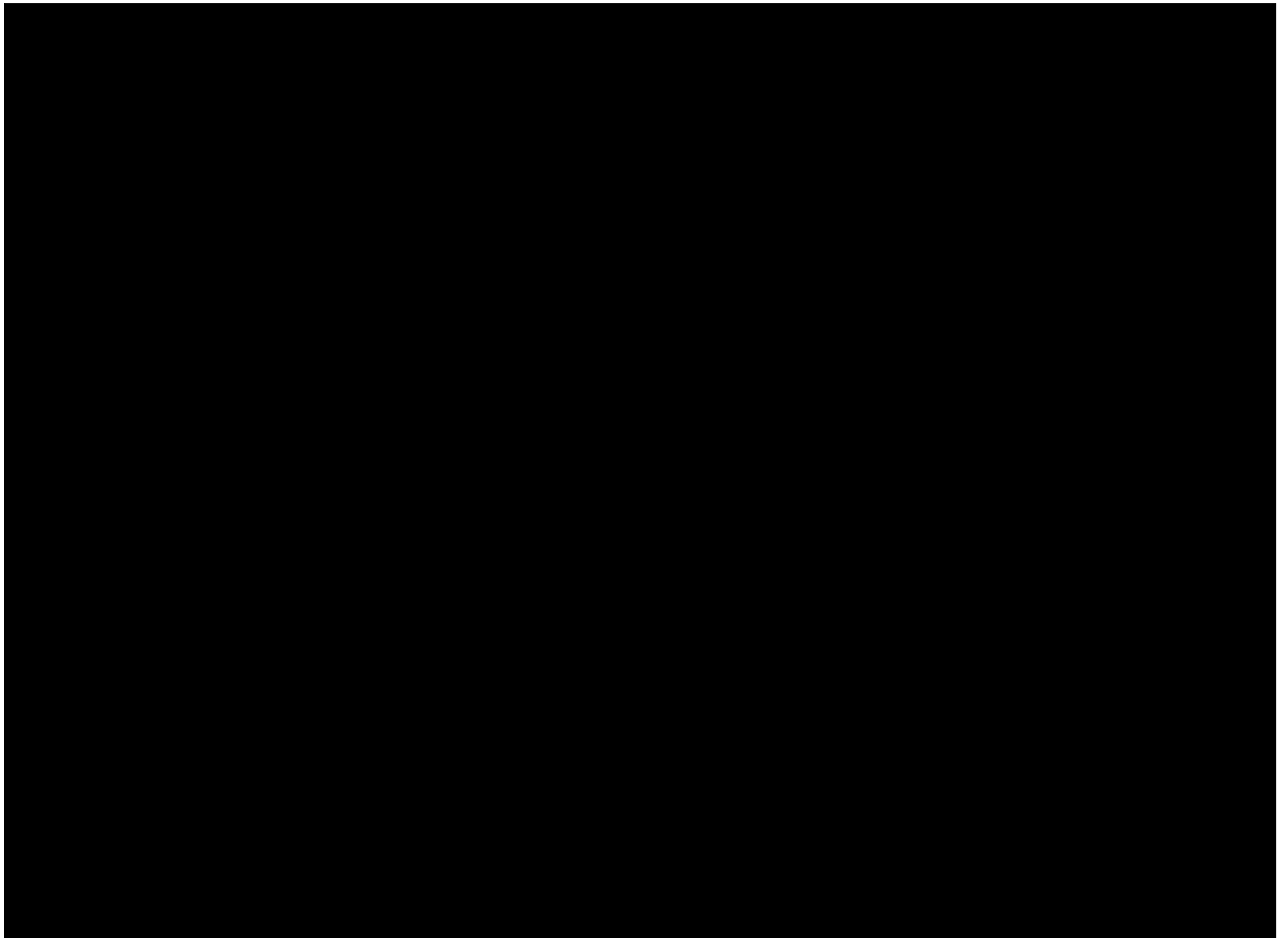


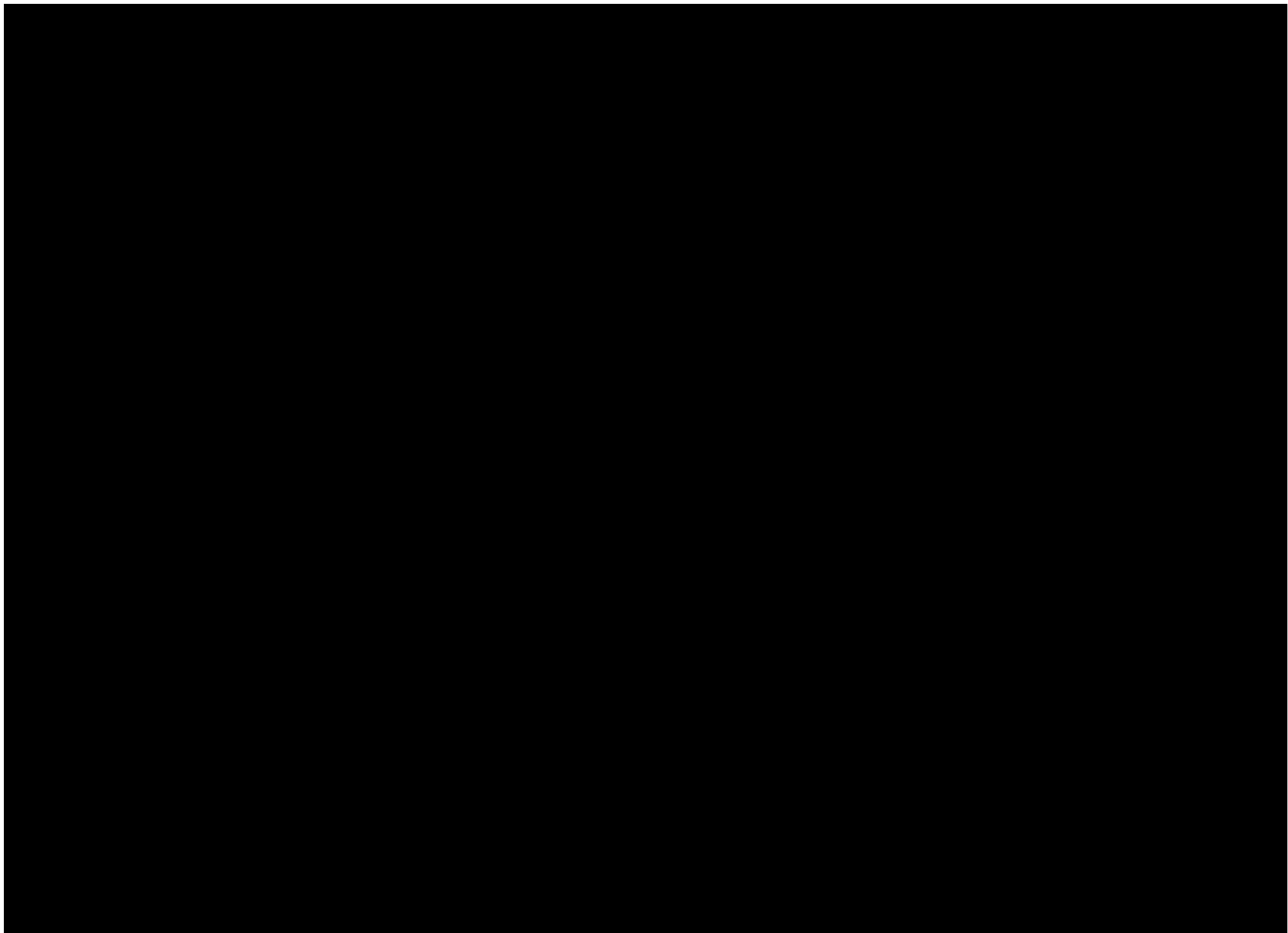


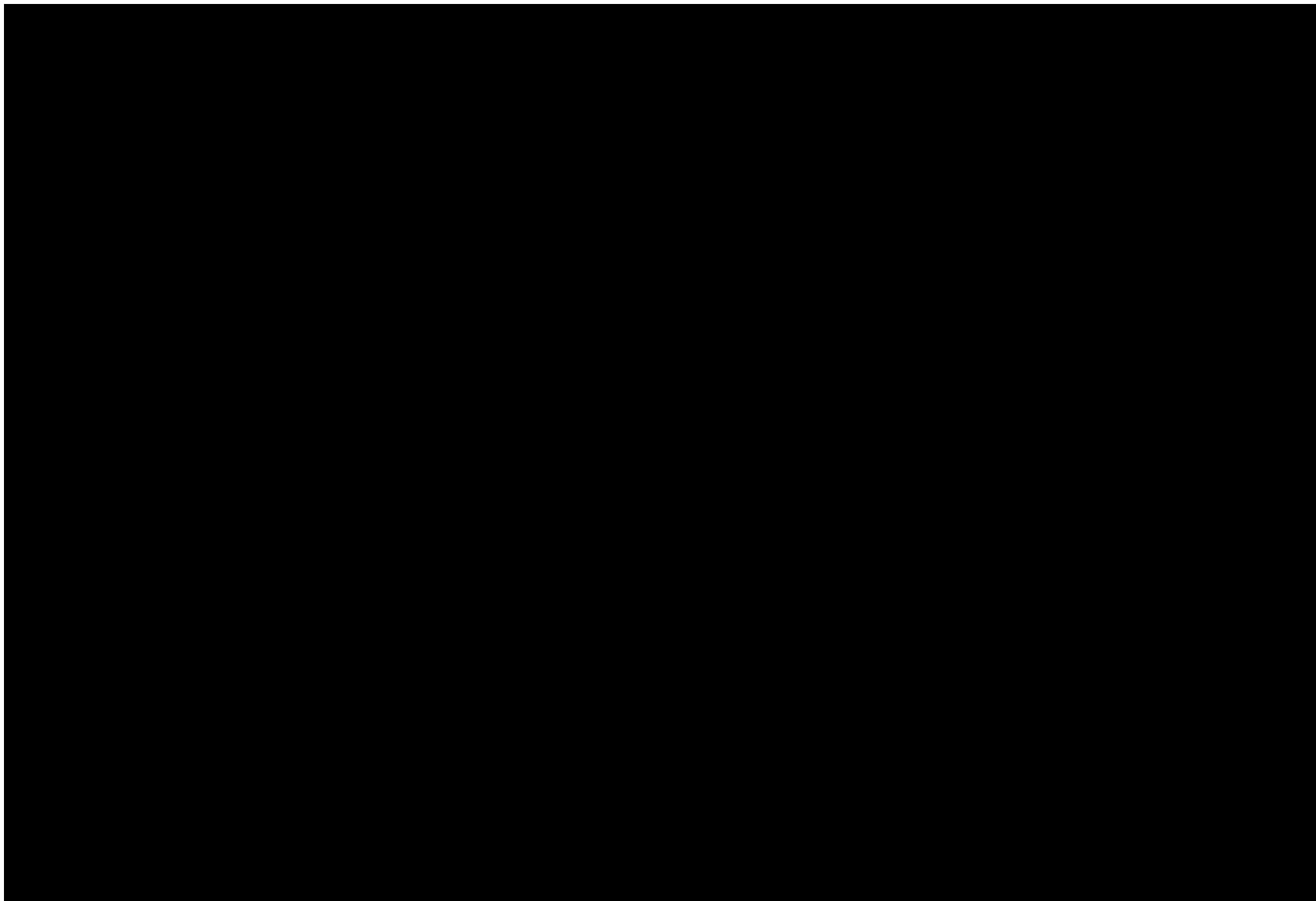
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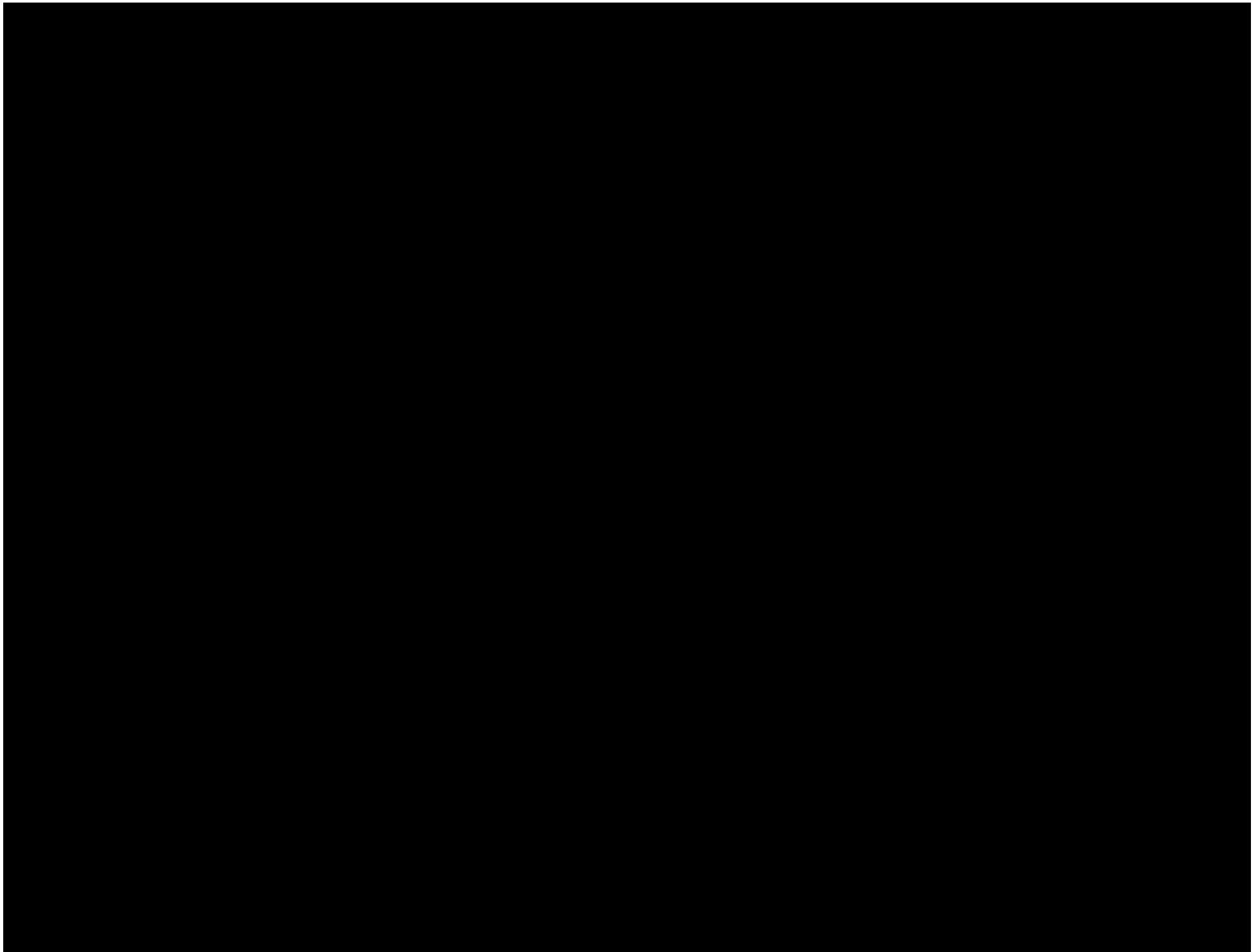
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Annex 6: FGMC monitoring and reporting framework

The Forest Governance, Markets and Climate (FGMC) programme is a global programme of DFID with the broad aim of bringing about governance and market reforms that reduce the illegal use of forest resources and benefit poor people who depend on forests for their livelihoods. As part of global efforts to improve forest management and tackle deforestation, FGMC supports international policy processes which tackle illegal logging in timber-producing developing countries and the trade in illegally-produced timber products, in particular, the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan.

The results and outputs of the FGMC programme are set out in detail in the [FGMC Logframe^k](#):

- Impact:** Improved management of forests for poverty reduction, biodiversity, conservation and climate protection
- Outcome:** Governance and market reforms that reduce the illegal use of forest resources and benefit poor people
- Outputs:**
- **Producer and processing countries:** Legal legitimate and credible mechanisms of forest sector governance and management in place in producer countries
 - **Consumer actions:** Public policies and private business standards that tackle trade in illegal timber
 - **Communities of practice:** Increased knowledge and momentum for change
 - **Related processes:** Coherence between programmes on forests and tackling deforestation at national and international levels

FGMC is delivered through a range of funded entities, supported or managed through a central team consisting of:

- **DFID FGMC Team** – The DFID Team in Climate and Environment Department (CED) are responsible for a) oversight of the FGMC programme, and b) policy engagement and advocacy work (see below).
- **Programme Management Support Team (PMST)** – The PMST is an independent, self-contained team working with, and as an extension of DFID, to implement and support FGMC activities. The PMST is responsible for managing the FGMC-funded accountable grants and overseeing implementation of facilities and projects. The PMST is housed in KPMG LLP (KPMG).
- **Independent Review Team (IRT)** – The IRT provides independent monitoring of programme outcomes, and tracks progress against the FGMC Logframe. The IRT will work closely with the PMST and DFID.

The FGMC Logframe covers activities funded through accountable grants, service contracts, MOUs, and other mechanisms. The FGMC monitoring and evaluation arrangements cover all levels of the FGMC Logframe and all activities funded under the programme, and are addressed as follows (see diagram):

^k http://iati.dfid.gov.uk/iati_documents/4445967.xlsx

- **FGMC Impacts** – Separate arrangements have been put in place to monitor impacts based on the set of ICF Key Performance Indicators.
- **FGMC Outcomes** – The PMST is responsible for tracking outcomes across FGMC based on field visits, interviews with key informants and reports. The Independent Review Team (IRT) will provide in depth, periodic, independent assessment of outcomes in specific countries and arenas and are responsible for carrying out the FGMC Mid-Term Review (MTR).
- **FGMC Outputs and Activities** – The PMST is responsible for tracking progress across the FGMC programme at output and activity levels, including results of activities undertaken by Grantees and service providers, and under MOUs. Gender, Value for money and innovation could be included as specific themes to be reported against.

All partners and contributors to the FGMC results agenda are required to report their activities and results and to facilitate the preparation of consolidated reports by mapping these onto the FGMC Logframe outputs and outcome.

FGMC Reporting Schedule

Report	Reporting period	Due date
Quarterly Reports	■ Quarterly	3 weeks following the quarter end
Annual Reports: - Annual Programme Report (APR) - Annual Financial Report (AFR)	■ Yearly: April - March (12 months)	1 calendar month <u>after</u> the end of the annual reporting period
Project Completion Report	■ Entire FGMC funding period	1 calendar month <u>before</u> the end of the grant period

Annex 7: Duty of Care Liberia risk assessment (DFID)

Theme	Liberia
OVERALL RATING	3
FCO travel advice	3
Host nation travel advice	Not available
Transportation	3
Security	3
Civil unrest	3
Violence/crime	4
Terrorism	1
War	2
Hurricane	1
Earthquake	1
Flood	2
Medical Services	4
Nature of Project	2

key for scoring:

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

Annex 8

Appendix A: of Contract Section 3 (Terms of Reference) Schedule of Processing, Personal Data and Data Subjects

This schedule must be completed by the Parties in collaboration with each-other before the processing of Personal Data under the Contract.

The completed schedule must be agreed formally as part of the contract with DFID and any changes to the content of this schedule must be agreed formally with DFID under a Contract Variation.

Description	Details
Identity of the Controller and Processor for each Category of Data Subject	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the following status will apply to personal data under this contract</p> <p>1) The Parties acknowledge that Clause 33.2 and 33.4 (Section 2 of the contract) shall not apply for the purposes of the Data Protection Legislation as the Parties are independent Controllers in accordance with Clause 33.3 in respect of the following Personal Data:</p> <ul style="list-style-type: none"> Any personal data deemed necessary to collect from third party stakeholders and retain for the duration of the services, for purposes such as workshops, training and other events, communications and surveys.