

Section 2 - GENERAL CONDITIONS

CONTENTS

<u>Clause</u>	<u>Title</u>	<u>Page</u>
1.	Definitions	2
2.	Interpretation	2
3.	Obligations	2
4.	Personnel	2
5.	Sub Contractors	3
6.	Disclosure of Information	3
7.	Intellectual Property Rights	3
8.	Official Secrets Acts	3
9.	Access and Audit	3
10.	Corruption, Commission and Discounts	4
11.	Conflict of Interest	4
12.	Insurances	4
13.	Indemnity	4
14.	Procurement	4
15.	Use of and Responsibility for Equipment	5
16.	Applicable Provisions and Financial Limit	5
17.	Fees	5
18.	Expenses	5
19.	Invoicing Instructions	5
20.	Payments	6
21.	Force Majeure	6
22.	Suspension or Termination without Default of the Consultant	6
23.	Suspension or termination with Default of the Consultant	7
24.	Variations	7
25.	Assignment	7
26.	Limit of Liability	8
27.	Retention of Rights	8
28.	Law and Jurisdiction	8
29.	Amicable Settlement	8

DEFINITIONS AND INTERPRETATION

1. Definitions

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

"the Consultant's Personnel" means any person instructed pursuant to this Contract to undertake any of the Consultant's obligations under this Contract, including the Consultant's employees, agents and sub-contractors.

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

"the Financial Limit" means the amount specified in Section 1 and is the maximum amount payable by DFID under this Contract.

"the Services" means the services set out in the Terms of Reference (Section 3).

"the 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.

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

"the Administration Officer" means the person named in Section 4 to whom invoices should be sent.

2. Interpretation

2.1 In the event of any inconsistency between the Form of Contract (Section 1), these General Conditions (Section 2) and the Special Conditions (Section 4), the Special Conditions shall prevail.

2.2 Except as expressly provided in Clause 14 the Consultant is not the agent of DFID and has no authority to represent and shall not purport to represent or enter into any commitments on behalf of DFID in any respect.

2.3 Nothing in this Contract is intended to make nor shall it make DFID the employer of the Consultant or any of the Consultant's Personnel.

2.4 All communications by the Consultant relating to notifications or applications for consents or instructions must be addressed to the DFID Contract Officer whose name and address are given in Section 4.

OBLIGATIONS OF THE CONSULTANT

3. Obligations

3.1 The Consultant shall perform all its obligations under this Contract (including the provision of the Services) with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts.

3.2 If the Consultant is a joint venture then each of the joint venture parties shall have joint and several liability in respect of the Consultant's obligations under this Contract.

4. Personnel

4.1 All members of the Consultant's Personnel shall be appropriately qualified, experienced and in a suitable physical condition so as to ensure that the Consultant complies with all the Consultant's obligations under this Contract.

4.2 No changes or substitutions may be made to members of the Consultant's Personnel identified as key personnel in Section 4 of this Contract without DFID's prior written consent.

4.3 If DFID considers any member of the Consultant's Personnel unsuitable, the Consultant shall substitute such member as quickly as reasonably possible without direct or indirect charge to DFID with a replacement acceptable to DFID.

4.4 The Consultant is responsible for all acts and omissions of the Consultant's Personnel and for the health, safety and security of such persons and their property.

5. Sub contractors

5.1 The Consultant shall not sub-contract any of its obligations under this Contract without the prior written consent of DFID.

5.2 If, having obtained DFID's consent, the Consultant sub-contracts any of its obligations, the sub-contract shall:-

(a) provide that payments due to the sub-contractor shall be made not more than 30 days after provision to the Consultant of a valid invoice; and

(b) include rights for the Consultant and obligations on the sub-contractor to ensure that DFID's rights to require replacement of personnel (as set out in Clause 4.3) and DFID's rights and the Consultant's obligations as set out in Clauses 6 to 11 (inclusive) can be enforced against the sub-contractor.

6. Disclosure of Information

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

7. Intellectual Property Rights

7.1 All intellectual property rights in all material (including but not limited to reports, data, designs whether or not electronically stored) produced by the Consultant or the Consultant's Personnel pursuant to the performance of the Services ("the Material") shall be the property of the Consultant.

7.2 The Consultant hereby grants to DFID a world-wide, non-exclusive, irrevocable, royalty-free licence to use all the Material.

7.3 For the purpose of Clause 7.2, "use" shall mean, without limitation, the reproduction, publication and sub-licence of all the Material and the intellectual property rights therein, including the reproduction and sale of the Material and products incorporating the same for use by any person or for sale or other dealing anywhere in the world.

8. Official Secrets Acts

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

9. Access and Audit

9.1 The Consultant shall keep accurate and systematic accounts, files and records ("the Records"). The Records shall clearly identify, among other things, the basis upon which invoices have been calculated and the Consultant shall keep the Records throughout the duration of this Contract and for six years following its termination.

9.2 The Consultant shall upon request provide DFID or its representatives including the National Audit Office, unrestricted access to the Records in order that the Records may be inspected and copied. The Consultant shall cooperate fully in providing to DFID or its representatives answers to such enquiries as may be made about the Records.

9.3 Where it is found by DFID that any overpayment has been made to the Consultant the Consultant shall reimburse DFID such amount within 28 days of the date of DFID's written demand.

10. Corruption, Commission and Discounts

- 10.1 The Consultant warrants and represents to DFID that neither the Consultant nor any of the Consultant's Personnel:
- (a) has given, offered or agreed to give or accepted, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of any contract or for showing or forbearing to show favour or disfavour to any person or entity in relation to any contract; or
 - (b) has entered into any contract in connection with which commission has been paid or agreed to be paid by or to the Consultant or Consultant's Personnel or on their behalf or to their knowledge unless, before such contract was made, particulars of any such commission and of the terms of any agreement for the payment of such commission were disclosed in writing to DFID, whose written consent was subsequently given to such payment.
- 10.2 Neither the Consultant nor any of the Consultant's Personnel shall accept for or on their own benefit any trade commission, discount or similar payment or benefit in connection with this Contract.

11. Conflict of Interest

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

12. Insurances

- 12.1 The Consultant shall maintain professional indemnity insurance cover of an amount not less than the Financial Limit.
- 12.2 At the request of DFID, or its representatives, the Consultant shall provide evidence showing that such insurance has been taken out and maintained and that current premiums have been paid.

13. Indemnity

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

PROCUREMENT AND EQUIPMENT

14. Procurement

- 14.1 Subject to Clause 14.4 all Equipment to be procured pursuant to this Contract and paid for by DFID shall be procured by a DFID registered procurement agent, acting as agent of DFID ("the Procurement Agent").
- 14.2 For the purpose of the appointment of a Procurement Agent and for this purpose only, the Consultant shall act as an agent of DFID.
- 14.3 The Consultant shall provide the Procurement Agent with sufficient details for the satisfactory procurement and delivery of Equipment and shall manage the Procurement Agent on DFID's behalf.
- 14.4 Where the total value of the Equipment is less than 50% of the Financial Limit or £100,000, whichever is less the Consultant may, subject to DFID's prior written consent, procure such Equipment.
- 14.5 All procurement of Equipment shall
- (a) be undertaken in accordance with DFID Guidance on Procurement of Goods or such other procedures as may be agreed in writing by DFID;

- (b) achieve "Value for Money" and be conducted in a fully transparent manner;
- (c) be on the basis that the ownership in Equipment shall vest in DFID, and shall be so marked.

14.6 "Value for Money" shall mean procuring at the optimum combination of whole-life cost and quality to meet requirements.

15. Use of and Responsibility for Equipment

15.1 Equipment may only be used in providing the Services and shall be safely kept and maintained. Personal use of Equipment by the Consultant is not permitted unless DFID gives prior written consent.

15.2 The Consultant shall keep an up to date inventory of the Equipment its condition and location and make such inventory available to DFID immediately on request.

15.3 Subject to Clause 15.4 the Consultant shall be responsible for all loss or damage to Equipment other than that caused by fair wear and tear. The Consultant shall notify DFID immediately the Consultant becomes aware of any loss of or damage to Equipment.

15.4 Except as required by law, the Consultant 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 Consultant's negligence and provided the Consultant obtains and pays to DFID such proper compensation as may be due from others.

15.5 The Consultant shall obtain DFID's instructions on the disposal of Equipment and comply with such instructions.

PRICE AND PAYMENT

16. Applicable Provisions and Financial Limit

16.1 Unless different provisions are substituted in Section 4, Clauses 16 to 20 inclusive shall apply in relation to price and payment.

16.2 The components which comprise the Financial Limit are set out in the Schedule of Prices, Section 5. No expenditure may be incurred in excess of the Financial Limit and no variations between components shown in the schedule of prices in Section 5 are permitted without the prior written authority of the Contract Officer.

17. Fees

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

18. Expenses

18.1 Whenever travel and living expenses for Consultant's personnel are incurred they will be paid at a rate consistent with that payable to DFID staff in comparable situations.

19. Invoicing Instructions

19.1 Unless otherwise expressly provided in Section 4 or Section 5, invoices should be submitted monthly in arrears in duplicate and in accordance with the remainder of clause 19.

19.2 DFID shall unless otherwise expressly provided in Section 4 make payments due by direct credit through the UK Bank Clearing Systems (BACS). All invoices must contain details of the UK bank account to which payments are to be made.

19.3 Invoices should include a form of letterhead, the contract reference number and bear an original signature. They should be numbered sequentially and dated, and marked "For the attention of the Administration Officer" named in Section 4. The final invoice presented in connection with this Contract should be endorsed "Final Invoice".

- 19.4 Unless this Contract is on a milestone payment basis, all invoices should contain details of expenditure in accordance with Section 5 of this Contract.
- 19.5 DFID may request proof of payment in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.
- 19.6 Any invoice not presented in accordance with the above may be rejected and in any event shall be liable to query and delay in payment. DFID reserves the right not to pay any amount due in respect of an invoice received by DFID more than 90 days after the day of the Consultant becoming entitled to invoice for the payment to which it relates.

20. Payments

- 20.1 Subject to DFID being satisfied that the Consultant is or has been carrying out their duties, obligations and responsibilities under this Contract, sums duly approved shall be paid within 30 days of receipt of a valid invoice.
- 20.2 Payment shall be made in sterling in the UK. Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in the London Financial Times "Guide to World Currencies" on the Friday immediately preceding the date on which the purchase was made or services acquired by the Consultant or, if this took place on a Friday, at the rate so stated on that day.
- 20.3 If for any reason DFID is dissatisfied with performance of this Contract, an appropriate sum may be withheld from any payment otherwise due. In such event DFID shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction, and payment of the amount outstanding will be made upon remedy of any unsatisfactory work or resolution of outstanding queries.
- 20.4 Should DFID determine after paying for a particular service that the service has not been completed satisfactorily, DFID may recover, or withhold from further payments, an amount not exceeding that previously charged for that service until the unsatisfactory service is remedied to its satisfaction.

FORCE MAJEURE AND TERMINATION

21. Force Majeure

- 21.1 Where the performance by the Consultant of their obligations under this Contract is delayed, hindered or prevented by an event or events beyond the reasonable control of the Consultant and against which an experienced consultant could not reasonably have been expected to take precautions, the Consultant shall promptly notify DFID in writing, specifying the nature of the force majeure event and stating the anticipated delay in the performance of this Contract.
- 21.2 From the date of receipt of notice given in accordance with Clause 21.1, DFID may, at its sole discretion, either suspend this Contract for up to a period of 6 months ("the Suspension Period") or terminate this Contract forthwith.
- 21.3 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.

22. Suspension or Termination without Default of the Consultant

- 22.1 DFID may, at its sole discretion, suspend or terminate this Contract at any time by so notifying the Consultant and giving the reason(s) for such suspension or termination.
- 22.2 Where this Contract has been suspended or terminated pursuant to Clause 22.1, the Consultant shall:
- (a) take such steps as are necessary to terminate the provision of the Services, (including suspending or terminating any Sub-Contracts) in a cost-effective, timely and orderly manner; and
 - (b) provide to DFID, not more than 60 days after DFID notifies the Consultant of the suspension or termination of this Contract an account in writing, stating:
 - (i) any costs, if any, due before the date of suspension or termination;

- (ii) any costs to be expended after the date of suspension or termination which the Consultant necessarily incurred in the proper performance of this Contract and which it cannot reasonably be expected to avoid or recover.
- 22.3 Subject to DFID's approval DFID shall pay such amount to the Consultant within 30 days after receipt from the Consultant of an Invoice in respect of the amount due.
- 23. Suspension or Termination with Default of the Consultant**
- 23.1 DFID may notify the Consultant of the suspension or termination of this Contract where the Services or any part of them are not provided to the satisfaction of DFID, giving the reasons for such dissatisfaction and, in the case of suspension, the action required by the Consultant to remedy that dissatisfaction and the time within which it must be completed.
- 23.2 Where this Contract is suspended under Clause 23.1 and the Consultant subsequently fails to remedy the dissatisfaction DFID may terminate this Contract forthwith.
- 23.3 DFID may, without prejudice to its other rights, including but not limited to the right to claim for costs and losses incurred, terminate this Contract forthwith where:
 - (a) the Consultant or any member of the Consultant's Personnel, either directly or through their servants or agents, breaches any of their obligations under this Contract; or
 - (b) the Consultant or any member of the Consultant's Personnel has committed an offence under the Prevention of Corruption Acts 1889 to 1916 or the Anti-Terrorism Crime and Security Act 2001 or in breach of Clause 10 of this Contract; or
 - (c) the Consultant is an individual or a partnership and at any time:
 - (i) becomes bankrupt; or
 - (ii) is the subject of a receiving order or administration order; or
 - (iii) makes any composition or arrangement with or for the benefit of the Consultant's creditors; or
 - (iv) makes any conveyance or assignment for the benefit of the Consultant's creditors; or
 - (d) the Consultant is a company and:
 - (i) an order is made or a resolution is passed for the winding up of the Consultant; or
 - (ii) a receiver or administrator is appointed in respect of the whole or any part of the undertaking of the Consultant.
 - (e) the Consultant is a partnership or a company and there is a Change in Control. "Change in Control" means that the person(s) (including corporate bodies) directly or indirectly in Control of the Consultant at the time this Contract is entered into cease to be in Control. "Control" means the power of a person to secure that the affairs of the Consultant are conducted in accordance with the wishes of that person.
- 23.4 Where this Contract is terminated in accordance with this Clause, the Consultant shall without prejudice to DFID's other remedies, take any steps necessary to terminate the provision of the Services in a timely and orderly manner but shall not be entitled to any further payment in relation to this Contract.
- 23.5 Where this Contract is terminated pursuant to Clause 23.3(b) the Consultant shall pay DFID within 10 days of notification such amount as DFID shall have determined as the amount of any loss to DFID resulting from such termination together with the amount or value of any gift, consideration or commission concerned.

GENERAL PROVISIONS

24. Variations

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

25. Assignment

25.1 The Consultant shall not, without the prior written consent of DFID, assign or transfer or cause to be assigned or transferred, whether actually or as the result of takeover, merger or other change of identity or character of the Consultant, any of its rights or obligations under this Contract or any part, share or interest therein.

26. Limit of Liability

Except where there has been misconduct, gross negligence, dishonesty or fraud on behalf of the Consultant or the Consultant's Personnel the Consultant's liability under this Contract shall be limited to the amount of the Financial Limit.

27. Retention of Rights

27.1 Clauses 6, 7, 8, 9, 13, 28 and 29 of this Section 2 and any relevant clauses listed under Section 4 shall continue in force following the termination of this Contract.

28. Law and Jurisdiction

28.1 This Contract shall be governed by the laws of England and Wales.

29. Amicable Settlement

29.1 The parties will attempt in good faith to negotiate a settlement to any claim or dispute between them arising out of or in connection with this Contract. If the matter is not resolved by negotiation the parties will refer the dispute to mediation in accordance with CEDR (Centre for Effective Dispute Resolution in London, UK) procedures. If the parties fail to agree terms of settlement within 90 days of the initiation of the procedure the dispute may be referred to an arbitrator as agreed between the parties or failing such agreement as may be nominated by the President of the Law Society of England and Wales upon application of any party. The initiation of the procedure is defined as the written request to CEDR by any party for a mediation provided that such request is copied to the other party (ies).

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

29.3 The place of arbitration shall be London.