

Draft Terms of Reference

Region: East África - Kenya, Tanzania, Uganda, Rwanda & Burundi

Title: Regional East Africa Integration Programme - Service Provider contract to establish TradeMark East Africa

Note:

The Service Provider will supply the services described below in Part A of the contract to DFID on behalf of TradeMark East Africa (TMEA), which will be established as a not-for-profit company or a trust in Kenya with offices in other countries of the East African Community (EAC).

In Part B of the contract, the Service Provider will provide the specified fiduciary services to TMEA. Draft constitutional documents for TMEA and a full set of tender documents are being prepared by, or on behalf of, DFID and will be made available to short listed applicants at the full tender stage. Following the establishment of TMEA and on the satisfactory performance by the Service Provider of the services described below in Part A of the contract, it is DFID's intention to apply the bulk of its £30m committed funding for the Regional East Africa Integration Programme to fund the activities of TMEA.

1. Objectives

1.1 The overall Goal of DFID's Regional East African Integration Programme (REAP) that will establish TradeMark East Africa (TMEA) is "*Increased growth and poverty reduction in East Africa*". The Purpose of the programme is "*Greater regional integration and trade competitiveness in East Africa*". The bulk of funds will be spent of delivering the programme's five major Outputs as follows:

- i. Increased efficiency and safety of regional transport corridors and trade facilitation.
- ii. Improved efficiency & effectiveness of the EAC regional institutions, policies and programmes.
- iii. Strengthened national capacity for policymaking, negotiating, and implementation for EAC regional integration (RI) reforms.
- iv. Strengthened civil society & private sector inputs, analysis and monitoring of East African regional integration.
- v. Improved monitoring and evaluation systems and knowledge management for regional trade and integration.

2. Recipients

2.1. In Part A of the services, the direct recipient of the services provided by the Service Provider will be DFID. In Part B of the services, the direct recipient of the services provided by the Service Provider will be TradeMark East Africa (to be established as a not-for-profit company (such as a company limited by guarantee) or as a trust). The indirect recipients of the services provided by the Service Provider will be TradeMark East Africa's investors and partners.

3. Scope of Work

3.1 The scope of work for the Service Provider will be divided into two phases. The second phase (Part B) will only commence following the satisfactory completion of the first phase (Part A) to DFID's and TMEA's requirements and through separate written instruction from the Contract Officer in DFID Kenya & Somalia.

Part A – Services to DFID for establishment and start up of TMEA

3.2 The scope of work for the Service Provider in the first phase (Part A) will be establishing the operating systems for TMEA and carrying out start-up activities for a period of up to 3 months, commencing in mid 2009. Specifically, this will involve the following tasks:

- i. Identifying and provisionally securing office premises and administrative service providers for TMEA in Nairobi, Kenya; Arusha, Tanzania; Dar es Salaam, Tanzania; Kampala, Uganda; Kigali, Rwanda; and Bujumbura, Burundi.
- ii. Defining human resource management systems and procedures for TMEA and, to the extent required by DFID, participating in the recruitment of TMEA's technical and administrative staff. A training programme for induction of new staff should also be designed.
- iii. Preparing a full set of business process systems, procedures, approval ceilings, manuals and pro-formas for procurement administration of goods and services by TMEA.
- iv. Designing financial management, accounting, control and internal audit systems and procedures for TMEA compatible with Kenyan accounting principles and standards, including acquisition and installation of a suitable accounting software package.¹
- v. Designing a project cycle management system, manuals, and pro-formas for TMEA's technical co-operation activities and grants to beneficiary organisations in East Africa.
- vi. Specifying and procuring high quality information and communications technology platforms, software and equipment to support TMEA's operations efficiently and effectively.

¹ TMEA's financial management systems and reporting will also need to be compatible with requirements of funders of TMEA, and should be designed to avoid unintended liabilities on funders and situations where TMEA holds excessive credit balances of invested funds for long periods of time.

- vii. Designing and developing a high quality website and set of publicity materials for TMEA. This task will include securing an internet service provider for TMEA and registration of domain name and email accounts.
- viii. Developing policies and procedures on managing fiduciary risk in the TMEA's grant portfolio and, as required by DFID, commissioning a limited number of fiduciary risk assessments (FRAs) of potential beneficiaries of fast track grants under REAP and/or TMEA. The FRAs should be undertaken by suitably qualified financial management and fiduciary risk experts.
- ix. Liaising with DFID Kenya & Somalia to develop a detailed budget and cash flow forecast for the first 12 months of TMEA's operations, including a draft request letter and projected cash requirement for the first tranche of funding from DFID on establishment of the TMEA entity.
- x. Assisting DFID Kenya & Somalia and other DFID EAC Country Offices to negotiate and document tax and work permit exemptions for TMEA.
- xi. Agreeing with the Programme Implementation Committee of the funders of TMEA (**PIC**), and at all times observing, robust conflict of interest policies and procedures applicable in respect of the activities of the Service Provider and TMEA.
- xii. Developing a 12 month forward work plan for TMEA from 3rd quarter 2009, based on the TMEA medium term strategic plan, including detailed activities and progress milestones for achieving objectives in each of the major workstream areas.
- xiii. Finalising the draft scope of work and preparing detailed full terms of reference for fiduciary services to be provided to TMEA following the establishment of the TMEA legal entity (Part B – see below).

3.3 In establishing TMEA's business operating systems and procedures, the Service Provider will ensure that these are designed in a non-proprietary manner and could be operated by a separate Service Provider acting in the role of director and member or trustee (as the case may be) for TMEA in the future.

3.4 To ensure that the business operating systems and procedures prepared for TMEA are fully fit for purpose, the Service Provider will pilot test, process and document a number of "*dummy transactions*". DFID and TMEA will commission a systems audit by a suitable independent third party before confirming their acceptance that these services have been performed satisfactorily.

Part B – Draft scope of work for fiduciary services to TMEA

3.5 Following the establishment of the TMEA entity, the Service Provider will provide fiduciary services to TMEA covering financial management, human resource management and procurement administration, as well as administrative/logistical support to ensure that TMEA achieves the objectives set out in the REAP programme memorandum (attached at Annex A) and TMEA's own Medium Term Strategic Plan.

3.6 The role of the Service Provider will be set down and confirmed either in the services contract between TMEA and the Service Provider (if TMEA is established as a company) or in the draft trust deed (if TMEA is established as a trust). The exact

scope of the role will be agreed between DFID, TMEA and the Service Provider towards the end of Part A but is expected to cover the following specific responsibilities and tasks:

- i. Establishing the TMEA and entry into the relevant services contract or trust deed with TMEA.
- ii. Convening all necessary meetings, keeping minutes and maintaining regular communications with the PIC. A priority first task will be securing the formal no-objection of the PIC to the financial, procurement, human resources and project cycle management procedures prepared for TMEA.
- iii. Prudent management and investment of the financial assets and funds of TMEA, including control of TMEA's bank account(s), and timely liaison with its funders on funding disbursements and receipts.
- iv. Engagement of the Programmes Director, Technical Specialists and Country Managers, as well as administrative staff, for the effective implementation of TMEA's work programmes and Medium Term Strategic Plan.
- v. Oversight of TMEA's grant making and procurement of services and supplies contracts to ensure these comply with its procurement and fiduciary risk management guidelines, and deliver value for money.
- vi. Carrying out of specific fiduciary risk assessments as required of key partners, or oversight of contracting out of these activities;
- vii. Securing fully serviced office accommodation, office equipment, network hosting, administrative support and logistics services for TMEA in Nairobi, Kenya; Arusha, Tanzania; Dar es Salaam, Tanzania; Kampala, Uganda; Kigali, Rwanda; and Bujumbura, Burundi;
- viii. Oversight of regular financial and progress monitoring reporting of TMEA's activities through quarterly and annual reports. Internal and external audit reports should be submitted to the PIC for information.
- ix. Completion and submission of all notices and returns required by a trustee or director under relevant laws of Kenya.

3.7 The Service Provider will provide a full time Finance, Procurement & Human Resources Director as well as fiduciary oversight of the TMEA entity, and will recruit other fixed-term technical and administrative staff and consultants on behalf of TMEA. The Finance, Procurement & Human Resources Director will be required to direct the day to day financial management, procurement and administration of TMEA, reporting directly to the Service Provider.

3.8 The Finance, Procurement & Human Resources Director functions will be formally separated from those of TMEA's Programmes Manager responsible for programming of TMEA's development activities. The Finance, Procurement & Human Resources Director will work alongside the Programme Manager but will be directly accountable to the Service Provider. A full-time presence is required in TMEA's HQ office in Nairobi, Kenya to ensure close day-to-day co-ordination with the Programmes Manager.

4. Method

4.1. The implementation of this will involve carrying out fiduciary and establishment services on a broad range of fronts in Part A, including IT, audit, financial management and fiduciary assessment, with establishment of offices across East Africa. Part B will also involve working with a network of offices and will imply limited travel to ensure efficient management of fiduciary risk, and optimal delivery.

5. Outputs & Reporting

5.1 The principle outputs and delivery schedule for Part A of the services will be as follows:

- i. An Inception Report within 3 weeks of commencement of the services, setting out progress to date with identifying office premises, initiating recruitment for TMEA staff and establishing operating systems and procedures, as well as the work plan for completing the remaining activities in the scope of work.
- ii. Draft project cycle management system, procurement manuals, and pro-formas for TMEA's technical co-operation activities and grants to beneficiary organisations in East Africa within 5 weeks of commencement of the services.
- iii. Draft set of policies and procedures on managing fiduciary risk in the TMEA's grant portfolio within 5 weeks of commencement of the services.
- iv. Securing of office premises in the region and launch of recruitment for TMEA staff positions within 7 weeks of commencement of the services.
- v. Fully operational (tested through dummy transactions) conflict policies and procedures, information systems, website, business processes, procurement, financial management, internal audit, and human resources management systems for TMEA within 8 weeks of commencement of the services.
- vi. Draft 12 month forward workplan for TMEA from 3rd quarter of 2009 and a detailed budget and cash flow forecast for the first 12 months of TMEA's operations, including a draft request letter and projected cash requirement for the first tranche of funding from DFID on establishment of the TMEA entity, within 10 weeks of commencement of the services.
- vii. Scope of work and detailed full terms of reference for fiduciary services to be provided to TMEA following the establishment of the trust or other form of not-for-profit legal entity under Part B, within 11 weeks of commencement.
- viii. A Final Report within 12 weeks of commencement of the services, recording work undertaken for the completion of the all the activities set out in the scope of work.

5.2 In each case, the draft outputs detailed above should be finalised by the Service Provider taking account of comments and feedback provided by DFID as soon as practicable following receipt thereof. Separate reporting arrangements will be agreed by the Service Provider and DFID for any fiduciary risk assessments to be undertaken by the Service Provider of potential beneficiaries of fast track grants under REAP and/or TMEA under Part A of the services.

5.3 For Part B of the contract, the key outputs and reporting deliverables will be specified in the finalized scope of work and terms of reference for the TMEA Service Provider to be developed during Part A and agreed with DFID and with TMEA before

the commencement of Part B. REAP will invest considerable resources and effort in developing an integrated and comprehensive monitoring and reporting system through TMEA, in partnership with the World Bank. TMEA will be expected to elaborate a results-based methodology for impact assessment; collate/validate baseline information where available and commission baseline studies where necessary for all Outputs and workstreams in the Medium Term Strategic Plan. Progress reports and financial statements will be prepared on a quarterly basis by the TMEA entity, and will be supplemented by Annual Reports which will take a more analytical perspective of progress against TMEA's goals, objectives and outputs.

5.4 It is expected that a full-time monitoring and evaluation specialist will be recruited for TMEA. In order to promote a harmonised approach, TMEA is expected to carry out monitoring and reporting jointly with the EAC Secretariat, partner governments and non-governmental organisations, and other donors ideally building on partner's own assessments. Where possible, targets and milestones will be defined and agreed with reference to the EAC's own regional integration and regional trade-related infrastructure development programmes.

5.5 The Service Provider will have the ultimate responsibility for ensuring it meets its reporting requirements of the PIC, as specified in the draft constitutional documents of TMEA.

6. Timeframe & Funding

6.1 A provisional 5 year target budget for TMEA as a whole was set at £30m, including contributions from all donors. DFID has committed funding for REAP of £20m over an initial period of five years from November 2008, the bulk of which will be invested directly into the TMEA entity. Other donors have firm plans to co-invest at least an additional £10-20m over the initial five year period.²

6.2 Further phases of DFID funding under REAP, and financial and in-kind contributions from other donors to TMEA are anticipated, but will be dependent upon satisfactory performance and demand from partners and stakeholders. Although a fixed overall figure cannot be provided at this point, it is possible that the total funds committed to TMEA over its first 5 years may be in the range of £20m to £100m.

7. Background

Summary

7.1 DFID Kenya & Somalia wishes to recruit a Service Provider to establish and administer TMEA in Nairobi, Kenya and support the implementation of its new Regional East Africa Integration Programme (REAP). The TMEA entity will have its HQ in Nairobi, Kenya, but with sub-offices in each of the other four EAC States and an EAC Secretariat liaison office in Arusha, Tanzania (actual locations will be confirmed during the start-up phase).

7.2 Preliminary work and due diligence for establishing the TMEA entity and other start-up activities commenced following DFID-REAP programme approval in November 2008, with a view to the TMEA entity being established in 3rd quarter of 2009. Funding will be provided to TMEA from DFID as the founder, as well as from a

² To date, Holland, Belgium, Canada, Denmark, and the African Development Bank have expressed interest in investing in TMEA. Other donors more are expected to follow.

number of other donors for an initial period of five years with the possibility of extension and further phases of funding.

7.3 The Service Provider will act as professional director and nominee member if TMEA is established as a not-for-profit company, or as trustee if TMEA is established as a trust and will provide financial management, procurement and fiduciary services, as well as administrative/logistical support to establish and run the TMEA entity and ensure it achieves the objectives set out in the REAP programme memorandum (attached at Annex A) and the entity's own Medium Term Strategic Plan³.

Background

7.4. If East Africa is to flourish, then integrating its small markets, removing trade barriers, reducing the region's high transport costs, and mitigating the effects of climate change are essential to sustain growth rates, increase incomes and employment, and reduce poverty. After re-establishment of the EAC in 1999, the pace of regional integration in East Africa has accelerated. Rwanda and Burundi have joined Kenya, Tanzania and Uganda as the five Partner States and political backing at the highest level is substantial.

7.5. REAP is the result of a two year consultation and appraisal process with a wide range of partners and stakeholders in East Africa. The programme has been designed to provide a platform for delivering significant strategic support to the EAC's regional integration process and the objectives set out in the EAC's *Development Strategy 2006-2010*⁴. This is consistent with the Africa Union's vision of working towards an African Economic Community.

7.6. REAP seeks to maximise impacts from regional integration in East Africa, driven by the needs of key stakeholders in EAC Partner States, and potential synergies with other Development Partner programmes such as the EC, World Bank, Germany, AfDB, Japan, France, USAID, SIDA and the Infrastructure Consortium for Africa. The priority result areas for engagement will be (i) reducing costs and delays at bottlenecks along the main Northern and Central Corridors; (ii) ensuring a full and successful implementation of the EAC customs union; (iii) building capacity of the tripartite institutional framework of the EAC Secretariat, Partner States, and the private sector and civil society; (iv) completing negotiations for a full regional Economic Partnership Agreement; and (v) agreeing a common market protocol for the EAC.

7.7. Using a blend of instruments, REAP will build capacity and support regional institutions, national governments, the private sector and civil society to amplify impact and benefits from implementation of the EAC's Development Strategy. A multi-donor vehicle, TMEA will be established to provide a durable, cost-effective programme implementation mechanism. The TMEA vehicle will provide a platform for scaling-up of Aid For Trade (AFT) in trade-related infrastructure, regional investment climate harmonisation, export development, trade facilitation and coping with the social and environmental adjustment costs of deeper integration and rapid export-led growth.

³ This is currently being prepared by DFID and will be included in the set of tender documents along with the draft constitutional documents for shortlisted applicants.

⁴ The key outputs of the strategy are a deepening of the customs union, negotiation of an Economic Partnership Agreement (EPA), establishment of a common market, establishment of a development fund, and preparations for monetary union.

7.8. REAP will be implemented closely with the proposed new DFID-funded TradeMark Southern Africa programme planned to commence in mid 2009. This approach offers benefits for greater impact and unlocking the potential of East and Southern Africa's economic space. Design of the two programmes has been synchronised and strong synergies can be achieved on transport corridors and harmonising regional integration systems across the overlapping Regional Economic Community groupings.

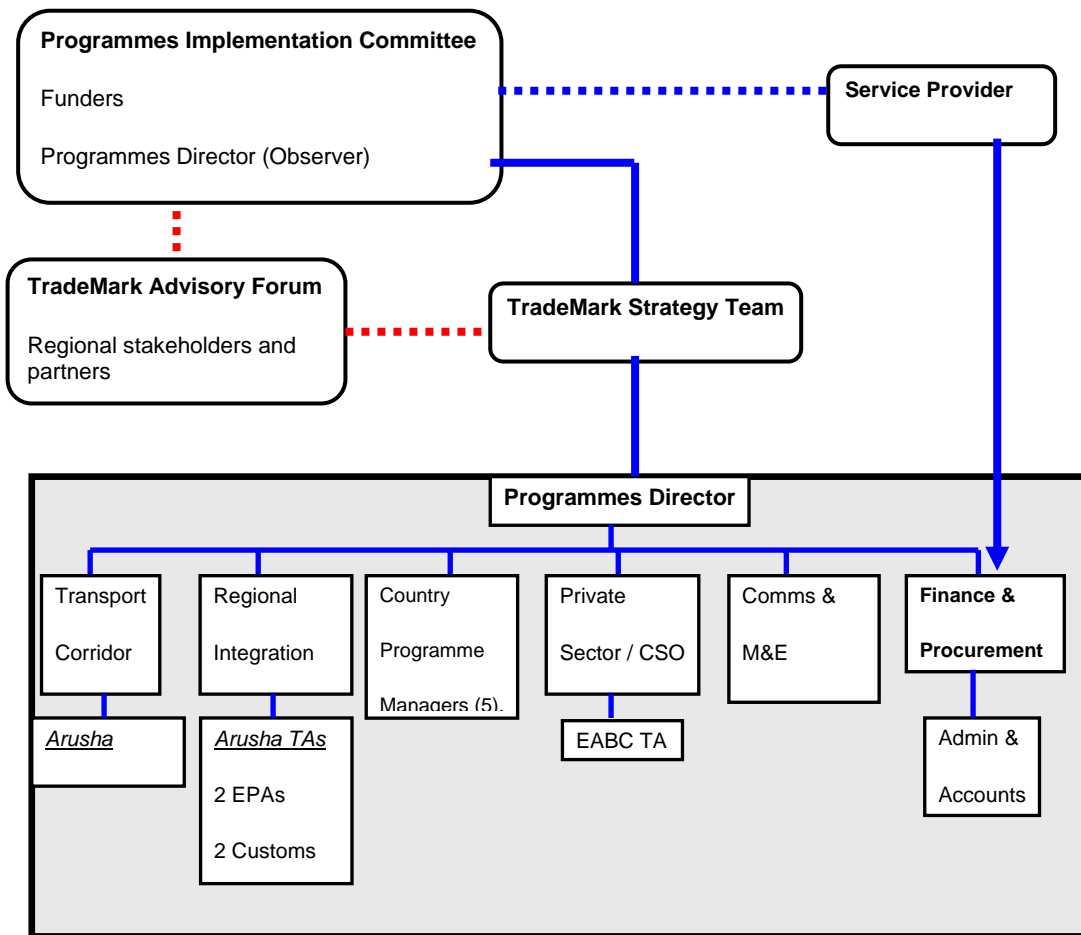
Governance of TMEA

7.9 TMEA's operations will be overseen by a PIC and it will share with the proposed DFID TradeMark Southern Africa programme input and direction from an overarching TradeMark Advisory Group and Strategy Unit. TMEA is expected to be staffed by a Programmes Director, five Country Managers, and a complement of technical specialists and support staff.⁵ The Finance, Procurement & Human Resources Director for TMEA will be engaged directly by the Service Provider. A draft organizational diagram of TMEA is at Figure 1 overleaf.

7.10 The draft TMEA constitutional documents will set out procurement, contracting, accounting, reporting, audit, and grant making principles in line with international good practice and applicable EU procurement directives. Procurement by TMEA will be fully untied. Upon appointment, the Service Provider will develop a detailed set of guidelines for contracting, procurement, accounting, audit, and grant making for no objection by the PIC, in line with the policies set out in the constitutional documents. Staff engaged will be appointed by TMEA, with the no-objection of the PIC, either on consultancy contracts or fixed term employment contracts.

⁵ It is anticipated that TMEA will recruit Technical Specialists on either a full time or part time basis in the core operations areas of Trade Infrastructure; Regional Trade & Integration; Private Sector Development & PSOs; Social Development/Governance & CSOs; and Monitoring & Evaluation.

Figure 1: Draft Organizational Structure for Trademark East Africa



8. Additional Documentation

8.1 An abridged version of DFID's REAP Programme Memorandum is provided.