

«ContractorName»  
«Address1»  
«Address2»  
«City»  
«County»  
«Postcode»  
«ResidenceCountry»

«Email»

[DATE]

Dear «Forenames» «Surname»,

**«SupplierContractNo» «AssignmentTitle»**

Please find attached your Agreement with ODI, confirming the terms and conditions under which «ContractorName» will provide the Services specified in Schedule A to ODI. For reference, key information is summarised below:

|                             |   |               |                    |
|-----------------------------|---|---------------|--------------------|
| <b>Name of ODI project</b>  | «ProjectTitle»                                |               |                    |
| <b>ODI Project No.</b>      | «ODIRefNo»                                    | <b>Funder</b> | «DirectDonor»      |
| <b>Purchase Order No.</b>   |   |               |                    |
| <b>Value of subcontract</b> | Up to «CurrencyTotal»                         |               | «ContractCurrency» |
| <b>Effective dates</b>      | From «ContractStartDate» to «ContractEndDate» |               |                    |
| <b>ODI Project Leader</b>   | «ProjectLeader»                               |               |                    |

The terms and conditions set out in the Agreement apply to the Parties to the exclusion of any other terms. If you agree to provide the Services in line with the Agreement, please sign and return one copy to ODI, retaining one for your own records.

We look forward to working with you.

Yours sincerely,

The Overseas Development Institute (ODI)

**ODI SubContractor Agreement Number: «SupplierContractNo»**

**This Agreement for Services between the following Parties:**

**PARTIES**

Overseas Development Institute of 203 Blackfriars Road, London SE1 8NJ, United Kingdom (**charity registration number 228248**) (“ODI”)

and

«ContractorName» of «Address1»«Address2», «City», «Postcode», «ResidenceCountry» (“The Subcontractor”)

**(the ‘Agreement’)**

**AGREED TERMS**

**1. Definitions**

1.1. The following definitions will apply in this Agreement:

|   |   |
|---|---|
| <b>Arising IPRs</b>                       | Intellectual Property Rights created in the Deliverables or otherwise created in the course of providing the Services.  |
| <b>Charges</b>                            | Payments set out in Schedule B.   |
| <b>Confidential Information</b>           | Information in any media about the business or affairs of either Party, Head Contractor or Source Funder which is identified as confidential or which the recipient ought to realise is confidential.   |
| <b>Data Controller and Data Processor</b> | Have the meanings defined in the UK Data Protection law.  |
| <b>Deliverables</b>                       | Project outputs or works listed in Schedule A.  |
| <b>Force Majeure Event</b>                | An event which prevent a Party from carrying on its business by acts, circumstances or events beyond its reasonable control including: terrorist act, civil war, war, riot, demonstrations or civil unrest, imposition of sanctions, embargo, or breaking off of diplomatic relations; fire, flood, drought, earthquake or other natural disaster; epidemic or pandemic disease outbreak; withdrawal of a necessary official licence; or a change of law, governmental order or directions. |
| <b>Source Funder</b>                      | Overseas Development Institute  |
| <b>Source Funding Agreement</b>           | Agreement between the Head Contractor and the Source Funder.  |
| <b>Head Contractor</b>                    | «DirectDonor»   |
| <b>Head Agreement</b>                     | Agreement (ref. «DonorRefNo») between [ODI Sales Ltd /Overseas Development Institute] and the Head Contractor (annexed in full or in part in Schedule C).   |
| <b>High Risk</b>                          | Any country or location designated as high risk by Red24 (ODI’s global risk and crisis management assistance company)   |

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|  |   |
|--|---|
| <b>Intellectual Property Rights (“IPRs”)</b> | Any copyright, database right, trade mark, trade name, service mark, design right, patent, domain name, (and equivalent rights in the nature of any such right in any country) whether registerable or not.   |
| <b>Key Personnel</b>                         | Individuals named in Schedule A.  |
| <b>Personal Data</b>                         | Data which identifies a living individual or renders them identifiable.   |
| <b>Pre-existing IPRs</b>                     | IPRs belonging to either Party before the Start Date or developed independently of this Agreement.  |
| <b>Subcontractor Personnel</b>               | The Subcontractor’s employees, officers, agents and its subcontractors that are engaged in relation to the performance of the Services.   |
| <b>Services</b>                              | Supply of the works, products and services listed in Schedule A.  |
| <b>Substitute</b>                            | A substitute engaged by the Subcontractor under the terms of clause 12.2  |
| <b>Travelling/High Risk Personnel</b>        | Subcontractor’s Personnel, who, in the course of the delivery of Services, (whether or not at ODI’s request), travel outside the territory within which they ordinarily perform their functions (including travel to a different High Risk country or a High Risk region of a country) or where Subcontractor Personnel reside and operate in a High Risk country or region |
| <b>UK Data Protection law</b>                | means the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK or any successor legislation to the GDPR or the UK Data Protection Act 2018.   |
| <b>Start Date</b>                            | «ContractStartDate»   |
| <b>End Date</b>                              | «ContractEndDate»   |

1.2 The Schedules to this Agreement are an integral part of this Agreement and reference to this Agreement includes reference to the Schedules.

**2. Term and variation**

2.1. This Agreement will start and end on the Start and End Dates unless terminated earlier by either Party under the terms of this Agreement.

2.2. ODI is under no obligation to offer further agreements or services to the Subcontractor nor is the Subcontractor under any obligation to accept any agreements or services offered. For the avoidance of doubt, both the Subcontractor and ODI agree and intend that this agreement does not create any mutuality of obligation, either during or following the Agreement.

2.3. If either Party wishes to extend the Agreement or vary the Services or Charges, it will notify the other Party in writing and negotiate new contract terms in good faith. Each Party undertakes to give such a request fair consideration and use reasonable endeavours to accommodate the request, provided that the requested changes will not affect ODI’s ability to meet its obligations under the Head Agreement or Source Funding Agreement.

**3. Subcontractor's Obligations**

The Subcontractor shall:

- 3.1. use best endeavours to meet applicable requirements in the Head Agreement listed in Schedule C. Where the Head Agreement imposes all of its terms directly on Subcontractor, the entire Head Agreement excluding any confidential information will be annexed under Schedule C and the Subcontractor will meet all its requirements to the extent that it is able to do so;
- 3.2. follow the applicable policies and the Subcontractor code of conduct annexed in Schedule D or otherwise communicated to the Subcontractor in writing;
- 3.3. meet any research ethics requirements communicated by ODI from time to time;
- 3.4. notify ODI as quickly as possible, and in advance in the case of any planned absence, if Key Personnel become unable to provide the Services;
- 3.5. ensure that Personnel have the requisite skills, experience, qualifications and knowledge necessary to perform the tasks assigned to them and, in doing so, adopt reasonable and proper standards of behaviour;
- 3.6. replace any Personnel engaged in performing the Services when required by the Head Contractor at no cost and without liability to ODI; ODI will endeavour to give the Subcontractor as much notice as possible, but the Subcontractor acknowledges that ODI may be given little or no notice by the Head Contractor;
- 3.7. inform ODI in writing of any potential conflict of interest relating to the Services and steps being taken to resolve or minimise the conflict.

The Subcontractor may not:

- 3.8. engage directly or indirectly in any activities which are or are likely to be in conflict with ODI, the Head Contractor or the Source Funder's (if different) interests in this Agreement or the provision of the Services ;
- 3.9. use ODI's name or logo or make any public statement about ODI without ODI's prior written consent, or do anything which may in any way cause damage or adversely affect the goodwill, name, image or reputation of ODI or bring ODI into disrepute anywhere in the world; or
- 3.10. assume, create or incur any liability or obligation on behalf of ODI without ODI's prior written authorisation.

**4. Performance**

4.1. The Subcontractor shall:

- 4.1.1. co-operate with any reasonable requests of ODI within the scope of the Services and determine how best the Services will be provided and will have autonomy of their working methods;
- 4.1.2. perform the Services by the dates specified in Schedule A with reasonable care, skill, diligence and efficiency, ensuring that Deliverables conform with all descriptions and specifications set out in this Agreement and are fit for any reasonable purpose communicated by ODI and free from defects in workmanship, content, materials and design;
- 4.1.3. allocate sufficient resources to the Services to ensure milestones are achieved and/or Deliverables are submitted by the dates set out in Schedule A; and
- 4.1.4. not knowingly cause ODI to infringe any third party rights

4.2 The Subcontractor shall have the right to provide the Services using a suitably skilled and qualified Substitute with relevant experience.

ODI will continue to pay the Subcontractor's fee as provided under this Agreement and the Subcontractor shall be responsible for the remuneration of (and any expenses incurred by) the Substitute. Subcontractor will not be paid for any period during which neither he/she/it nor any Substitute provides the Services. For the avoidance of doubt, the Subcontractor will continue to be subject to all duties and obligations under this Agreement for the duration of the appointment of the Substitute.

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- 4.3 If a Substitute is appointed, the provisions relating to data processor obligations under clause 16 will apply.
- 4.4 Both Parties agree to inform each other in writing of any circumstances that may delay or reduce the quality of the Services as soon as reasonably practicable.
- 4.5 If, in ODI's reasonable opinion:
- 4.5.1 the Services have not been performed in accordance with the terms of this Agreement;
  - 4.5.2 the Deliverables do not meet the requirements set out in it; and/or
  - 4.5.3 the Head Contractor, or Source Funder (if different), rejects one or more Deliverable,
- ODI may require the Subcontractor to carry out such additional work as is necessary to rectify the defects free of charge and may suspend payment of any outstanding invoice(s) while this is done.
- 4.6 If a remedied Deliverable still does not satisfy ODI, the Source Funder (if different) and/or Head Contractor, or the Parties are not able to agree about how and when the remedial work will take place, ODI may terminate the Agreement for material breach under clause 19.3.1 and:
- 4.6.1 refuse any subsequent performance which the Subcontractor attempts to make;
  - 4.6.2 reduce the Charges to an amount which fairly reflects the value of the Services performed;
  - 4.1.1 recover from the Subcontractor any reasonable costs incurred by ODI in obtaining substitute Services from a third party.
- 4.7 ODI may treat failure to deliver Services by any date specified in Schedule A as a material breach of Agreement.
- 4.8 The Subcontractor must not engage in any activity, practice or conduct which would constitute either a UK or foreign tax evasion facilitation offence or a UK foreign tax evasion offence under the Criminal Finances Act 2017 and applicable IR35 legislation. Failure to do so may result in the immediate termination of this Agreement.

**5 Compliance**

- 5.1 The Subcontractor represents that it has the full capacity and agency and all necessary consents (including, but not limited to, where applicable and where its procedures so require, the consent of its parent company) to enter into and perform this Subcontract Agreement and that this Agreement is executed by a duly authorised representative of the Subcontractor.
- 5.2 The Subcontractor must:
- 5.2.1 comply with all applicable laws, statutes, regulations in force in the UK or equivalent law and regulations in the country in which it is located and where the Services are due to be performed from, including, where relevant:
    - UK Bribery Act 2010;
    - UK Terrorism Act 2000 and regulations pursuant to this Act;
    - UK Data Protection Act 2018
    - UK Modern Slavery Act 2015;
  - 5.2.2 not engage in any activity, practice or conduct which is an offence under sections 1, 2 or 6 of the UK Bribery Act 2010 of bribing someone, being bribed or bribing a foreign public official;
  - 5.2.3 not engage in any practices which involve slavery or human trafficking or knowingly deal with any other organisation or business which is connected in any way with slavery or human trafficking;
  - 5.2.4 ensure that its Personnel comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from in force including the UK Modern Slavery Act 2015;
  - 5.2.5 immediately notify ODI if it becomes aware of any failure by its Personnel to comply with these requirements;

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- 5.2.6 implement and maintain appropriate compliance policies, procedures and Personnel training;
  - 5.2.7 promptly report to ODI any request or demand for any undue financial or other advantage of any kind received in connection with the Services; and
  - 5.2.8 meet any compliance requirements in the Head Agreement as set out in Schedule C which are directly applicable to the Subcontractor.
- 5.3 The Subcontractor warrants that as at the Start Date and while this Agreement continues, none of its Personnel is on the Home Office Proscribed Terrorist Organisations List.
- 5.4 The Subcontractor will carry out such other screening and vetting of its Personnel as ODI requires, including: checks against other proscribed persons lists; UK Disclosure & Barring Service checks (or equivalent checks in the location where the Services are being performed and or where its Personnel is or are resident); and anti-slavery and human trafficking checks.
- 5.5 If ODI requests, the Subcontractor will provide at its own cost a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 5.6 ODI is committed to conducting its business in an ethical, legal and socially responsible manner and confirms it will not carry out any activities that may breach any relevant public procurement regulations. ODI expects its Subcontractors to share this commitment and has therefore established a Code of Conduct which it asks its Subcontractors to comply with.
- 5.7 Any failure by the Subcontractor to meet the obligations in clauses 5.1 and 5.3, breach of the warranty in clause 5.2, or any offence committed by the Subcontractor's Personnel in relation to laws listed in clause 5.1 and/or equivalent law in the country where the Subcontractor or its Personnel are located, will be treated by ODI as a material breach of Agreement.

**6 Intellectual Property Rights**

- 6.1 The Subcontractor hereby assigns the Arising IPRs to ODI, including IPRs in any part-completed Deliverables if this Agreement is ended early, and waives all moral rights in the Arising IPRs in favour of ODI.
- 6.2 Each Party will continue to own their Pre-existing IPRs and grants to the other Party a free, perpetual, irrevocable, worldwide, non-exclusive, licence to use and sublicense these IPRs to the extent necessary to enable the other Party to carry out its obligations under this Agreement and the Head Agreement / Source Funding Agreement.
- 6.3 Unless the Arising IPRs will be assigned to the Head Contractor or Source Funder (as stated in Schedule D) the Subcontractor may use the Deliverables as work examples for research and teaching and may publish them only on the basis set out in clause 7.
- 6.4 Deliverables being released into the public domain will be published under an appropriate Creative Commons license. The licence granted in clause 6.2 will end when the Deliverables are posted.
- 6.5 If either Party becomes aware of any infringement or misuse of the Arising IP and/or the Pre-existing IPR, it shall promptly notify the other Party and provide all details within its knowledge. The Subcontractor shall also provide ODI with all reasonable assistance requested for the purposes of any infringement action ODI may bring. The Subcontractor shall not institute any litigation or other action relative to any such infringement or imitation without ODI's prior written consent.

**7 Publication and Articles**

- 7.1 The Subcontractor must have ODI's prior written consent (not to be unreasonably withheld) to:
- 7.1.1 publish the Deliverables online or elsewhere or use them at public events including academic conferences;
  - 7.1.2 use data collected in the course of delivering the Services, which may include third party and Personal Data, for any purpose other than creation of the Deliverables, and where consent is granted, will observe ODI's reasonable restrictions on use.
- 7.2 The Subcontractor will include an agreed copyright notice when it publishes the Deliverables.
- 7.3 ODI will acknowledge individual authorship by including appropriate attribution notices in the

Deliverables wherever practically possible.

## **8 Payment and invoicing**

- 8.1 Where applicable, payment to the Subcontractor can only be made, where the matching payment has been received by ODI from the Head Contractor.
- 8.2 ODI will pay the Charges set out in Schedule B within 30 days of receipt of a valid invoice from the Subcontractor
- 8.3 The amount payable under this Agreement is limited to the Charges stated in Schedule B. No payments other than those listed in Schedule B shall be made by ODI.
- 8.4 Where payments are due on completion of milestones, payments will be conditional on the Subcontractor achieving the corresponding milestone.
- 8.5 Where fees are based on a daily rate, only those days actually worked (up to the maximum amount allowed) shall be invoiced.
- 8.6 Any benefits or discounts received shall be passed immediately to ODI.
- 8.7 UK payments will be by BACS transfer; overseas payments shall be made by foreign currency transfer.
- 8.8 Invoice requirements are listed in Schedule B. The Subcontractor will re-submit unclear or incomplete invoices within a reasonable timeframe.
  - 8.8.1 The Subcontractor will include any agreed expenses in their invoices, along with copies of receipts or other acceptable evidence of expenditure.
  - 8.8.2 Charges shown are inclusive of all taxes including VAT and any withholding, and/or sales tax applicable in any jurisdiction.
  - 8.8.3 Should ODI dispute an invoice, it will pay any undisputed amount but may withhold the disputed amount until the dispute is resolved, making all reasonable efforts to resolve the dispute as quickly as possible.
  - 8.8.4 Neither Party may deduct or set off any amount owing to it under this Agreement from any other amount due from it or owing to it under any other Agreement between the Parties.

## **9 Record Keeping and Audit**

- 9.1 The Subcontractor will keep appropriate records of the Services for seven years from the End Date and will assist ODI and the Head Contractor in meeting their audit and regulatory obligations by providing access to, and copies of, these records on reasonable notice for ODI, the Head Contractor and Source Funder (if different) and their respective auditors. If a longer retention period is required ODI will notify the Subcontractor.
- 9.2 ODI will bear its own cost for any audit, unless the audit reveals any breach or non-compliance on the part of the Subcontractor, in which case the Subcontractor will bear ODI's reasonable costs.

## **10 Insurance**

- 10.1 It shall be the responsibility of the Subcontractor to determine the amount of the insurance cover with a reputable insurance company that will be adequate to enable the Subcontractor to satisfy any liability in relation to the performance of its obligations under this Agreement.
- 10.2 If applicable, this insurance must include, but is not limited to, travel and evacuation insurance appropriate to the risk-level of any Services undertaken by the Subcontractor, and insurance in respect of any claims that may be made after the termination of the Agreement in relation to any incident, circumstance or event arising during the provision of the Services.
- 10.3 The Subcontractor, if requested by ODI, shall promptly provide proof of insurance to ODI.
- 10.4 If applicable and in exceptional circumstances ODI may, at its sole discretion, agree to provide travel

and evacuation insurance for Travelling/High Risk Personnel on the terms and conditions set out in Schedule F. If this occurs, this does not relieve the Subcontractor of its obligation to hold other insurance policies that is required by clause 10.1.

**11 Travel and Security- where applicable**

- 11.1 The Subcontractor must ensure that Travelling/High Risk Personnel act reasonably and appropriately at all times and avoid exposing themselves to any unnecessary risk.
- 11.2 The Subcontractor must inform ODI as quickly as possible if any Travelling/High Risk Personnel are injured, taken ill or there are any concerns about risks to their health or security.
- 11.3 Before any proposed Travelling/High Risk Personnel travel in the course of the delivery of the Services or commence any work which will take place in a High Risk country or region, the Subcontractor must complete and return to ODI the Travel Security Declaration form annexed as Schedule F. When completing this form, the Subcontractor confirms that:
  - 11.3.1 it and its Travelling/High Risk Personnel understand the type of travel involved and/or any risks of the assignment and/or the relevant region/country;
  - 11.3.2 it will make all reasonable efforts to check publicly accessible information about conditions in the location where its Travelling/High Risk Personnel will be located for the provision of the Services;
  - 11.3.3 it will undertake and keep updated an appropriate risk assessment for all Travelling/High Risk Personnel, providing copies to ODI promptly on request;
  - 11.3.4 it can and will put in place adequate measures or precautions to ensure the safety and wellbeing of Travelling/High Risk Personnel, including: facilitating and/or providing appropriate health precautions; providing appropriate security, health and first-aid training to Travelling/High Risk Personnel; and preparing an emergency/evacuation plan tailored to all relevant assessed risks where appropriate;
  - 11.3.5 it will maintain appropriate insurance for all Travelling/High Risk Personnel, in accordance with clause 10.1; and
  - 11.3.6 it has appropriate policies and/or procedures in place to monitor, respond to and mitigate potential risks, incidents or hazardous conditions which may affect the health and safety of Travelling/High Risk Personnel, in which Travelling/High Risk Personnel have been adequately trained.
- 11.4 ODI will inform the Subcontractor where the country or location where Services will be delivered is High Risk.
- 11.5 Provision of inaccurate information in a Travel Security Declaration form may be treated by ODI as a material breach under clause 19.3.3.
- 11.6 Where the Subcontractor confirms that it can and will comply with all or any of clauses 11.3.1 to 11.3.6, it will be expected to do so at all times, and as such take full responsibility for the security arrangements and welfare of Travelling/High Risk Personnel in relation to those matters.
- 11.7 Where ODI agrees to provide travel security support, training or information, this will be set out in Schedule F.
- 11.8 In the event that the Subcontractor is not able to confirm any of the matters outlined in clauses 11.3.1 to 11.3.6 and ODI does not exercise its discretion pursuant to clause 11.6, ODI may by written notice require the Subcontractor not to engage Travelling/High Risk Personnel to travel to the relevant country or region in the course of delivery of the Services; or to engage Travelling/High Risk Personnel who reside in a High Risk country or region. In the event that the Subcontractor is unable to provide the Services in accordance with this Agreement due to the exercise by ODI of its rights pursuant to this clause 11.7, ODI may terminate the Agreement in accordance with clause 19.1.
- 11.9 Neither positive evaluation by ODI of the Subcontractor's arrangements for safeguarding the health, safety, security of life, property and wellbeing of Personnel in relation to the Subcontractor's delivery of Services, nor the provision by ODI to the Subcontractor or its Personnel of security support, insurance, policies, training or other information about travel security and health and safety, whether or not incorporated into this Agreement, will relieve or discharge the Subcontractor from its



responsibilities under clauses 11.1 to 11.5.

**12 Assignment and Subcontracting**

The Subcontractor shall be entitled to assign the Agreement or subcontract elements of the Services to third-party contractors provided that ODI and Subcontractor are satisfied that the third -party contractors possesses the necessary skills, expertise and resources to perform those elements of the Services and the Subcontractor keeps ODI fully and effectively indemnified against any reasonable costs, claims or expenses that may be incurred by ODI as a result of the use of such third party -contractors including the reasonable cost of all instruction (necessitated by the subcontracting) for the Subcontractor.

**13 Liability**

13.1 Except as set out in clauses 13.2 and 13.4, each Party's liability under or in connection with this agreement shall be limited to three times the total charges set out in Schedule B for each and every claim arising out of the same originating cause or source. This limit will apply however that liability arises including a liability arising by breach of contract, tort (including negligence) or breach of statutory duty.

13.2 Except as stated in clause 13.3, neither Party will be liable to the other whether in contract or in tort for: loss of profits or revenue; loss of sales or business; or indirect or consequential loss or damage of any nature.

13.3 The limitations of liability in clauses 13.1 and 13.2 will not apply to liability arising out of or in connection with the Subcontractor's breach of clauses 5 (Compliance) or 16 (Data Protection).

13.4 Nothing in this Agreement excludes or limits either Party's direct or indirect liability for death or personal injury resulting from negligence or fraud, or from any other liability which may not be limited or excluded by applicable law.

13.5 This clause 13 will survive termination or expiry of this Agreement.

**14 Indemnity**

14.1 The Subcontractor will indemnify ODI up to the limit in clause 13.1 against all liabilities, losses, claims, regulatory penalties, costs and expenses suffered or incurred by ODI not covered in clause 13.3 and arising out of or in connection with any:

14.1.1 breach of this Agreement;

14.1.2 claim made against ODI by an ODI employee or other third party arising out of, or in connection with, the supply of the Services caused by the Subcontractor's negligence or that of its Personnel or its Substitute;

14.1.3 claim made against ODI for infringement of a third party's intellectual property rights arising out of or in connection with use of the Deliverables;

14.1.4 damage to ODI's property or premises caused by the Subcontractor's Personnel.

14.2 ODI will use reasonable efforts to mitigate its losses from any event that gives rise to a claim under this indemnity.

14.3 ODI may satisfy any indemnity in this Agreement by way of deduction from payments due to the Subcontractor.

14.4 This clause 14 will survive termination or expiry of this Agreement.

**15 Confidentiality**

- 15.1 Except where disclosure is required by law, during and for a year after the Agreement ends, the Parties will treat each other's Confidential Information with the strictest confidence. The recipient ( including any Substitute) will not disclose Confidential Information to any third party without the information owner's prior written consent, nor use it for any purpose unconnected with the Services (except where it enters the public domain independently of their relationship, is disclosed by a third party who is free to disclose it, or is independently developed by the recipient).

**16 Data Protection and Processing**

- 16.1 ODI will be the Data Controller and the Subcontractor will act as a Data Processor under ODI's instructions.

- 16.2 Where the Subcontractor collects, stores, uses or otherwise processes Personal Data from research subjects (or from any other individuals) while performing the Services, the Subcontractor will:

16.2.1 make sure it is aware of its responsibilities under, and comply with, UK data protection law if applicable to the Subcontractor, and equivalent laws in the country or countries where it is collecting this data;

16.2.2 use, store and export this data from the country where it is collected, including uploading data onto the ODI website or any other website controlled by ODI:

(a) only in line with data subject consent;

(b) only for the purpose of performing the Services; and

(c) in accordance with ODI's Data Security Guidelines annexed in schedule D and any other reasonable ODI directions;

16.2.3 take appropriate security measures against unauthorised or unlawful processing and/or accidental loss, destruction or damage to or of it;

16.2.4 take adequate steps to make sure that data subjects have enforceable rights and effective legal remedies, including providing copies of their Personal Data on request in accordance with legal time limits;

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

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

16.2.7 make sure that all Personnel who have access to Personal Data collected, sorted and processed for ODI are made aware of the Subcontractor's obligations under this Agreement relating to Data Protection and are informed of the confidential nature of the Personal Data;

16.2.8 notify ODI within 48 hours if any Personal Data is lost or stolen;

16.2.9 notify ODI promptly of any request from an interviewee or other data subject for copies of their Personal Data;

16.2.10 promptly assist ODI in responding to any request from a data subject and in providing information to regulatory authorities; and

16.2.11 maintain complete and accurate records and information to demonstrate compliance with this clause.

16.2.12 At the written request of ODI, delete or return Personal Data and any copies thereof to ODI on termination of the Services or the Agreement unless required by the data protection legislation to store the Personal Data.

- 16.3 The Subcontractor shall ensure that he/she/it has in place appropriate technical or organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature

of the data to be protected, having regard to the state of technological development and the cost of implementing any measures. Such measures may include, where appropriate:

- (a) pseudonymising and encrypting Personal Data.
- (b) ensuring confidentiality, integrity, availability and resilience of its systems and services
- (c) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident
- (d) regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it.

16.4 The Parties agree that any Substitute appointed under clause 4.2 is a third-party processor of Personal Data under this Agreement. The Subcontractor confirms that it will enter into a written agreement, which incorporates terms which are substantially similar to those set out in this clause 16, with the Substitute.

16.5 The Subcontractor will be liable for all acts or omissions of any contractor, Substitute or third-party processor which collects and processes data for it.

## **17 Force Majeure**

17.1 If the Subcontractor is unable to perform the Services because of a Force Majeure Event, the Subcontractor will promptly notify ODI and indicate, if possible, when it anticipates being able to start providing the Services again.

17.1 Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event. In such circumstances ODI will grant the Subcontractor a reasonable extension of the time for performing its obligations and the Parties will work together in good faith to identify ways of restarting the Services.

17.2 If the period of delay or non-performance continues for 30 days, the Party not affected may terminate this Agreement by giving reasonable written notice (which may be immediate if the circumstances justify it).

17.3 ODI will be entitled to take into account the Head Contractor's requirements and any deadlines stated in the Head Agreement when deciding what constitutes a reasonable extension of time for the purposes of clause 17.2.

## **18 Dispute Resolution**

18.1 The Parties will endeavour to settle any dispute equitably and in good faith.

18.2 If the Subcontractor is UK based, neither Party may issue Court proceedings until the Parties have attempted to settle the dispute by mediation, unless the dispute is not resolved by mediation within 90 days of the date on which the Party in dispute notified the other Party.

18.3 If the Subcontractor is not UK based, the Parties may elect to resolve any dispute which cannot be amicably resolved by international mediation, with such mediation to take place in London, UK.

18.4 The Sub-Contractor acknowledges and agrees that damages alone may not be an adequate remedy for any breach of the Contract by the Sub-Contractor and so ODI shall be entitled to seek the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of the Agreement.

## **19 Termination**

19.1 Either Party may terminate the Agreement by giving written notice with immediate effect if the other Party commits any material or repeated breach and fails to remedy that breach within 14 days of being notified in writing.

19.2 Either Party may terminate the Agreement by giving written notice of 30 days to the other Party at any time.

- 19.3 ODI may terminate this Agreement with immediate effect if:
- 19.3.1 the Head Contractor terminates the Head Agreement by giving notice with immediate effect;
  - 19.3.2 it is entitled to do so under clauses 4 (Performance), 5 (Compliance), 11.4 and 11.6 (Travel Security) or 16 (Data Protection);
  - 19.3.3 the Subcontractor does anything which in ODI's reasonable opinion will, or is likely to, damage ODI's name or public reputation;
  - 19.3.4 the Subcontractor is wound up, goes into liquidation, dissolves its partnership, has an administrator or receiver appointed over all or part of its assets, enters into an arrangement with its creditors, suspend or threatens to suspend payment of its debts or is unable to pay its debts as they fall due, or ceases to carry on its business or any analogous event occurs in any jurisdiction in which it is located.
- 19.4 ODI may terminate this Agreement by giving reasonable written notice (which may be immediate if the circumstances justify it) if:
- 19.4.1 the Head Contractor terminates the Head Agreement by giving a period of notice (notice to the Subcontractor not to be significantly less than the notice period given to ODI under the Head Agreement);
  - 19.4.2 it is entitled to under clause 17.3 (force majeure);
  - 19.4.3 the Subcontractor engages directly or indirectly in any activities which, in ODI's reasonable opinion, are, or are likely to be, in conflict with ODI's interests in this Agreement or where such activities may adversely affect the performance of the Services and will not give up these activities on ODI's written request;
  - 19.4.4 the Subcontractor undergoes a change of control as defined in section 1124 of the Corporation Tax Act 2010.

## **20 Consequences of Termination**

- 20.1 Each Party (including any Substitute) will on request promptly return or destroy (to the extent practically possible) any Confidential Information and Personal Data supplied by ODI.
- 20.2 The Subcontractor will:
- 20.2.1 bring the Services to a close in a cost effective, timely and orderly manner; and
  - 20.2.2 promptly deliver to ODI any part completed and completed Deliverables which have not already been delivered.
- 20.3 Where ODI terminates under clause 19.4.1 and the Head Contractor exercises a right to require ODI to stop working during ODI's own period of notice, ODI will be entitled to require the Subcontractor to stop work during the notice period due under this clause. ODI will use all reasonable endeavours to negotiate with the Head Contractor to allow as much work as possible to be completed during their respective notice periods.
- 20.4 If ODI terminates under clauses 19.1, 19.2, 19.3.1, 19.4.1 or 19.4.2, or the Subcontractor terminates under 19.3.1, ODI will pay the Charges for Deliverables completed or part completed by the effective termination date and any expenses which the Subcontractor cannot reasonably avoid.
- 20.5 If ODI terminates the Agreement for any other reason, ODI will pay only an amount which fairly and reasonably reflects the value to ODI of the Services performed up to the effective date of termination and any expenses which the Subcontractor cannot reasonably avoid.
- 20.6 Termination of this Agreement will not affect any rights or obligations that either Party may have accrued at that date.
- 20.7 Any clauses which expressly or by implication continue after the contract ends will survive termination.

## **21 Status and anti-terrorism**

- 21.1 The Subcontractor confirms that he/she/it is an independent contractor and nothing in this

**ODI SUBCONTRACTOR AGREEMENT**  
**Terms and Conditions**

Agreement shall render him/her/it an employee, worker, agent or partner of ODI and he/she/it shall not hold out as such.

- 21.2 The Subcontractor shall be fully responsible for and indemnify ODI against any liability, assessment or claim for:
- (a) taxation whatsoever arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law; and
  - (b) any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Subcontractor or any substitute against ODI arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the ODI.

Nothing in this clause will exclude ODI's liability for its pre-existing tax responsibilities.

- 21.3 ODI may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to the Subcontractor.
- 21.4 The Subcontractor must take appropriate steps to ensure that it enters into business and maintains such business relations only with such third parties to whom no statutory or regulatory ban on entering into business applies. In particular, it will ensure that the funds provided are neither directly nor indirectly made available to third parties that are listed on a Home Office, EU or US Terrorist Organisations List or contravene the provisions of those and any subsequent applicable terrorism legislation, including the Terrorism Act 2000.

The Subcontractor will inform ODI, promptly and in writing, of the occurrence of any breach of this clause. Where an offence has been committed under the Terrorism Act 2000 by the Subcontractor in relation to this Agreement, ODI, may terminate the Agreement with immediate effect by written notice to Subcontractor and recover from Subcontractor the amount of any loss resulting from the termination.

## **22 General**

- 22.1 The schedules form part of the Agreement.
- 22.2 This Agreement is the entire agreement between the Parties relating to the Services.
- 22.3 In the event of any conflict or difference between these agreed terms and the schedules, these agreed terms will prevail, followed by schedules in the order in which they appear.
- 22.4 No waiver of any right or remedy under this Agreement will be effective unless it is in writing and signed by both Parties.
- 22.5 Variations to this Agreement will be valid only if recorded in writing and signed by both Parties.
- 22.6 Any headings will not affect the interpretation of this Agreement.
- 22.7 The terms "including" and "include" or any similar expression will be construed as illustrative and will not limit the sense of the words following those terms.
- 22.8 Any consent, permission, approval or directions to be given in writing may be given by email.
- 22.9 Notices under this Agreement may be given by email, hand delivered or posted by first class post to the addresses given on page 1 of this Agreement. Any notice will be treated as served on the day on which it is emailed, or left at the relevant address or, if served by post, two days after posting if sent from a UK location or when it is received if sent from outside the UK.
- 22.10 Nothing in this Agreement is intended to, or shall operate to, create a legal partnership between the Parties.
- 22.11 No third parties will have any rights under this Agreement other than the Source Funder or Head Contractor, which will have the rights set out in the agreed terms and Schedule C.
- 22.12 This Agreement will be governed by English law and the Courts of England and Wales will have

jurisdiction to settle any disputes which may arise in connection with it.

**SIGNED**

.....

.....

For Overseas Development Institute

For «ContractorName»

**Name:**

**Name:** «SupplierSignatoryName»

**Job Title:**

**Job Title:** «SupplierSignatoryPosition»

**Date:**

**Date:**

This Agreement provides for the Subcontractor to complete the Services as set out in the below schedule:

«TOR»

Any change to these terms of reference must be agreed in writing.

**Personnel**

Note that the below can only be changed with the written agreement of ODI.

| <i>Name</i>                                       | <i>No. Days</i> | <i>Fee rate / Honorarium</i> |
|---|-----------------|------------------------------|
| «Person1»   | «P1PlannedDays» | «P1DailyRate»                |
| «Person2»   | «P2PlannedDays» | «P2DailyRate»                |
| «Person3»   | «P3PlannedDays» | «P3DailyRate»                |
| «Person4»   | «P4PlannedDays» | «P4DailyRate»                |
| «Person5»   | «P5PlannedDays» | «P5DailyRate»                |
| <i>ODI require timesheets from the personnel?</i> |                 |                              |

**Schedule of Milestones and / or Deliverables**

| <i>Output</i> |            | <i>Due Date</i> |
|---------------|------------|-----------------|
| 1             | «Output1»  | «O1DueDate»     |
| 2             | «Output2»  | «O2DueDate»     |
| 3             | «Output3»  | «O3DueDate»     |
| 4             | «Output4»  | «O4DueDate»     |
| 5             | «Output5»  | «O5DueDate»     |
| 6             | «Output6»  | «O6DueDate»     |
| 7             | «Output7»  | «O7DueDate»     |
| 8             | «Output8»  | «O8DueDate»     |
| 9             | «Output9»  | «O9DueDate»     |
| 10            | «Output10» | «O10DueDate»    |

**ODI Support**

The support provided by ODI will be as follows:

«ODISupport»

Subject to the satisfactory completion of the work payment will be as set out below:

|   |   |
|---|---|
| <b>Currency:</b>  | «ContractCurrency»  |
| <b>Total Personnel Days (if applicable):</b>  | «TotalPlannedDays»  |
| <b>Total Personnel Fees (if applicable):</b>  | Up to «TotalPersonnelFees»  |
| <b>Total Lump Sum Fees:</b>   | «LumpSumFee»  |
| <b>Total Fees:</b>  | <b>«TotalFees»</b>  |
| <b>The following reimbursable expenses may be retrospectively claimed at the same time as the below invoices:</b> | Travel (up to): «Travel»<br>Accommodation (up to): «Accommodation»<br>Subsistence (up to): «Subsistence»<br>Communication (up to): «Communication»<br>Other (up to): «OtherCharges» |
| <b>Total Expenses:</b>  | <b>Up to «TotalExpenses»</b>  |
| <b>Deadline for submitting expense claims with valid receipts</b>   |   |
| <b>Subcontractor VAT No (if applicable):</b>  | «VATNo»   |
| <b>VAT and other applicable taxes:</b>  | «VAT»   |
| <b>Total Max SubContract Value:</b>   | <b>Up to «ContractCurrency» «CurrencyTotal»</b>   |

#### Invoice Schedule

| <b>Invoice No.</b> | <b>Details</b>     | <b>Amount<br/>(«ContractCurrency»)</b> |
|--------------------|--------------------|--|
| <b>1</b>           | «InvoiceDetails1»  | «InvoiceAmount1»                       |
| <b>2</b>           | «InvoiceDetails2»  | «InvoiceAmount2»                       |
| <b>3</b>           | «InvoiceDetails3»  | «InvoiceAmount3»                       |
| <b>4</b>           | «InvoiceDetails4»  | «InvoiceAmount4»                       |
| <b>5</b>           | «InvoiceDetails5»  | «InvoiceAmount5»                       |
| <b>6</b>           | «InvoiceDetails6»  | «InvoiceAmount6»                       |
| <b>7</b>           | «InvoiceDetails7»  | «InvoiceAmount7»                       |
| <b>8</b>           | «InvoiceDetails8»  | «InvoiceAmount8»                       |
| <b>9</b>           | «InvoiceDetails9»  | «InvoiceAmount9»                       |
| <b>10</b>          | «InvoiceDetails10» | «InvoiceAmount10»                      |

#### Invoicing and bank detail requirements:

- The word "Invoice", the date and unique invoice number must be clearly shown (e.g. in bold, large letters at the top of the document).
- The invoice must contain the Subcontractor's name, company/registration number (if applicable), address and contact information
- The invoice must include ODI's name and address
- The invoice must include a clear description of what is being invoiced (e.g. types of services/expenses) along with the date the Services were rendered/expenses were incurred and cost (ref. Payment Schedule).
- If the Subcontractor is registered for VAT, a VAT registration number must be included, along with the amount of VAT being charged, and the VAT rate that has been applied.
- Bank details should appear on all invoices. Bank account details for new subcontractors should be provided to ODI using the form found in Schedule E.



**Schedule B**  
**Payment Schedule**

- Should a Subcontractor's bank details change, ODI must be informed in writing. ODI will only amend a Subcontractor's details on receipt of a hard copy request for change, printed on official letterhead and signed by an authorised representative.

**All other conditions of payment can be found in Clause 8 of the main Subcontractor Agreement.**

*Delete as Appropriate:*

There are no Head Agreement terms applicable to this Agreement.

OR

Attach a complete copy of the Head Agreement here.

OR

A copy of the Funding Agreement will be emailed separately.

The Subcontractor will follow these ODI policies and guidelines, sent in pdf form with the Agreement:

- Code of conduct
- Subcontractor Guidelines June 2020
- Research Ethics policy
- EdTech Hub Conflict of Interest policy
- Safeguarding policy
- Whistleblowing policy
- Expenses policy
- Data Security guidelines
- Travel Security guidelines
- EdTech Hub Ethical Guidelines – version updated June 2020



**TRAVEL SECURITY DECLARATION: ORGANISATIONS**

ODI requires that all subcontractors accept responsibility for the health, safety and welfare of their employees while engaged on ODI projects. To ensure that this responsibility is fully understood, we ask every subcontractor whose employees will be travelling outside their country of residence, or beyond their normal place of work when in a high or extreme risk location, to complete the following questionnaire.

Please give honest answers and speak to us if you are not sure how to respond. Once the form is returned, we will work with you to better understand your needs and assist as far as we are able. However, if, having done this, we feel that the proposed travel presents an unacceptable level of risk to your organisation, your employees or ODI, we reserve the right to withdraw your engagement offer.

The safety and wellbeing of all individuals working on our projects is paramount and we would never seek to penalise subcontractors for taking reasonable steps (including relocation or evacuation) to protect their employees, provided you keep us adequately informed of the situation as it unfolds. Please refer to your Agreement with ODI for further information about expected procedure in the event of incidents and delivery delays.

**If you are unclear about any of the questions below or require further information before answering, please contact your ODI programme officer or manager.**

Additional information and assistance (provided by ODI on request):

- Risk assessment template
- List of practical steps travellers can take to protect themselves
- Guidance on finding providers of Hostile Environment Awareness Training and other travel training programmes
- Guidance on finding specialist travel insurers

| <b>We confirm that:</b>   | <b>Yes, No or N/A</b> | <b>Comments</b> |
|---|-----------------------|-----------------|
| We have read the Terms of Reference for this Agreement, and understand the risks of the assignment  |                       |                 |
| We have checked, or will check, the latest advisories for travel to locations agreed with ODI (we recommend the travel advisory service provided by your national government - e.g. the FCDO in the UK).  |                       |                 |
| We will work with each traveller to complete a written risk assessment before undertaking the travel concerned, including an assessment of any personal vulnerabilities in the environment where services will be provided to ODI, which we will copy to ODI on request |                       |                 |

|   |  |  |
|---|--|--|
| We can put in place adequate measures to ensure our employee's safety while travelling  |  |  |
| Our employees have experience of delivering services in the location(s) agreed with ODI and/or they have undertaken, or will undertake before travel, suitable training for the environment in which they will be travelling                    |  |  |
| We have adequate and appropriate insurance to cover all employees travelling outside their country of residence   |  |  |
| We will ensure all employees undertake any and all health precautions advised (such as vaccinations and prophylactic treatment), and these will be organised before travel  |  |  |
| We are able to monitor potential incidents such as natural disasters, terrorist attack, political/military unrest, outbreak of disease and other high risk incidents in the locality where the Services will be delivered and surrounding areas |  |  |
| We have, or will develop before travel starts, an emergency plan of action.   |  |  |

Signed .....

Print name: .....

Job title: .....

Date: .....

*On behalf of:*

Organisation name .....

*For internal use:*

|  |                 |
|--|-----------------|
| <i>Subcontractor Agreement NO:</i>       |                 |
| <i>ODI to provide security support?:</i> | <i>Yes / No</i> |