

## **SUBCONTRACTOR SERVICES AGREEMENT**

**between**

**ROYAL COMMONWEALTH SOCIETY FOR THE BLIND  
(T/A SIGHTSAVERS)**

**and**

**[TO COMPLETE]**

**Dated: [Insert]**



**Bates Wells Braithwaite**

10 Queen Street Place, London EC4R 1BE

[www.bwbllp.com](http://www.bwbllp.com)

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**THIS AGREEMENT** is made on [date] between:

(1) **ROYAL COMMONWEALTH SOCIETY FOR THE BLIND**, a charitable company incorporated by Royal Charter dated 1990 (as amended on 8 July 2009 and from time to time) with registered company number RC000706 and registered charity number 207544 (in England and Wales) and SC038110 (in Scotland), with its registered office at 35 Perrymount Road, Haywards Heath, West Sussex, RH16 4BX, UK ("**Sightsavers**"); and

(2) **[TO COMPLETE]**, a[n] [insert legal form] incorporated and registered under the laws of [•] under registration number [•] whose registered office is at [•] (the "**Subcontractor**"),

each a "**Party**" and together the "**Parties**".

#### **BACKGROUND:**

(A) Sightsavers has received funding from the UK Department for International Development ("**DFID**") as a lead body in the Programme (as defined below).

(B) The recipient of the Services [is]/[are] [•]<sup>1</sup>.

(C) Sightsavers intends to appoint various subcontractors (including the Subcontractor) to deliver the Programme, in accordance with the DFID Contract (as defined below).

(D) The Parties have agreed that Sightsavers shall pay the Subcontractor the Payment and the Subcontractor shall provide the Services on and subject to the terms and conditions set out in this Agreement.

#### **NOW IT IS AGREED:**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following words and phrases have the following meanings:

<b>"Affiliate"</b>	In relation to a body corporate, means any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
<b>"Agreement"</b>	this Agreement including its <b>Appendices 1 to 8</b> ;
<b>"Appropriate Authorities"</b>	means any and/or all of (as may be relevant under the circumstances) the UK government bodies and/or government bodies/agencies in the territory where Serious Misconduct may have or is suspected of having taken place, which have responsibility for safeguarding, recording, investigating, enforcing and/or determining allegations of Serious Misconduct and which may include (but shall not be limited to), DFID, the National Crime Agency, UK Police force,

<sup>1</sup> **Drafting Note:** please insert the relevant national ministr(y)/(ies) and/or government(s) which are recipients for the Services being provided by this Subcontractor. We note that the geographical focus of this ASCEND Programme lot is Western and Central Africa, particularly in the following countries: Burkina Faso, Chad, Cote d'Ivoire, Democratic Republic of Congo (DRC), Ghana, Guinea, Guinea-Bissau, Liberia, Niger, Nigeria, Central African Republic (CAR), Benin, Sierra Leone.

local territory police forces, the Charity Commission and local authority social services departments;

**“Approval”** means the prior written consent of Sightsavers and “Approve” and “Approved” shall be construed accordingly;

**“Budget”** means the budget set out in **Appendix 2**;

**"Change of Control"** means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

**"Confidential Information"** (a) DFID Data, (b) Sightsavers Data and (c) all other information whether conveyed orally, in writing, in machine readable form or otherwise which relates to a Party’s business, products, developments, trade secrets, know-how, processes, methodologies, personnel, suppliers and customers (whether or not designated as "**confidential information**" by the disclosing party) together with all information derived from the above and all information designated confidential or which ought reasonably to be considered confidential;

**“Contracts Finder”** means the Government’s publishing portal for public sector procurement opportunities;

**“Control”** Means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and “Controlled” shall be construed accordingly;

**“Controller”** shall have the same meaning as under the GDPR;

**"Compliance Declaration Supporting Documents"** the documents and supporting materials set out in **Appendix 5** required to confirm and evidence the Subcontractor’s compliance with certain requirements of the DFID Supply Partner Code of Conduct;

**"Data Protection Regulations"** means, as applicable:  
(a) the General Data Protection Regulation (EU) 2016/679 (“**GDPR**”) and any related legislation which applies in the UK, including, without limitation, the Data Protection Act 2018;  
(b) the Privacy and Electronic Communications (EC Directive) Regulations (2003) and any successor or related legislation; and/or  
(c) all other applicable laws and regulations relating to the processing of Personal Data and/or governing individuals’ rights to data privacy;

**“Data Subject”** shall have the same meaning as under the GDPR;

**"Default"** means any breach of the obligations of the Subcontractor (including but not limited to including abandonment of this Agreement in breach of its terms) or any other default (including material Default),

act, omission, negligence or statement of the Subcontractor, of the Subcontractor Personnel howsoever arising in connection with or in relation to the subject-matter of this Agreement and in respect of which the Subcontractor is liable to Sightsavers;

- "DFID Contract"** the agreement between DFID and Sightsavers relating to the Programme in the form set out at **Appendix 8** (and as may be amended or restated from time to time);
- "DFID Data"** means (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to Sightsavers by or on behalf of DFID; or (ii) which Sightsavers is required to generate, process, store or transmit pursuant the DFID Contract; and/or (b) any Personal Data for which DFID is the Data Controller;
- "DFID Supply Partner Code of Conduct"** means DFID's supply partner code of conduct in the form set out in DFID Contract (as may be amended from time to time);
- "Dispute Resolution Procedure"** means the dispute resolution procedure set out in Clause 34;
- "EC"** means European Commission;
- "EEA"** means European Economic Area;
- "Effective Date"** the effective date is [to complete].
- "Ethical Walls"** means a process for avoiding conflicts of interest by limiting disclosure of information to certain individuals within an organisation, thereby building a metaphorical wall between the holders of information and colleagues who represent interests or hold opinions which conflict;
- "Equipment"** means any equipment, computer hardware or software, materials, goods, vehicles, and associated services necessarily required for the implementation of the Services, which the Subcontractor cannot reasonably be expected to provide, which are financed or provided by Sightsavers (and/or DFID) for use by the Subcontractor;
- "Extension Period"** means such period or periods up to a maximum of the number of years in total as may be specified by DFID, pursuant to clause 4.2 of Section 2 (General Conditions of Contract) and Section 4 (*Special Conditions*), in each case of the DFID Contract;
- "FOIA"** means the Freedom of Information Act 2000, and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information

Commissioner or relevant government department in relation to such legislation; and "**Information**" and "**Request for Information**" shall have the meanings given to them under FOIA;

**"Force Majeure Event"**

any cause affecting the performance by a Party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding:

- (a) any industrial dispute relating to the Subcontractor and/or its personnel;
- (b) any other failure in the Subcontractor's supply chain (except for a failure of a contractor or supplier in a supply chain caused by an equivalent force majeure event of that contractor or supplier); or
- (c) an event which a Party could have prevented or mitigated by contingency planning;

**"Good Distribution Practice Checklist"**

means the good distribution practice checklist set out at **Appendix 6** of this Agreement;

**"Good Industry Practice"**

at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like Sightsavers, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

**"ICO"**

means the Information Commissioner's Office, the UK data protection authority;

**"Initial Period End Date"**

**is 31 March 2022;**

**"Inception Phase"**

**means the period from 15 April 2019 to 15 July 2019;**

**"Intellectual Property Rights"**

means (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction, and all other rights having equivalent or similar effect to (a) or (b) in any country or jurisdiction;

<b>"Law"</b>	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
<b>"Losses"</b>	means all losses, liabilities, damages, costs (including costs of investigation), expenses (including legal Payments), disbursements, , litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;
<b>"Material Variation"</b>	means a properly executed variation to the Agreement in compliance with Clause 24;
<b>"Medical Supplies"</b>	means drugs (whether donated or procured), medicines and consumables, acquired for use in delivery of the Services;
<b>"Medical Equipment"</b>	means medical equipment (including but not limited to diagnostic, laboratory supplies and surgical tools);
<b>"Payment"</b>	means the amounts due and payable to the Subcontractor in relation to the Programme, as detailed in Clause 14 and <b>Appendix 2</b> of this Agreement;
<b>"Partner Compliance Declaration"</b>	means a declaration, in the form set out in <b>Appendix 4</b> , by the Subcontractor of its ability to comply with Annex 1b of the DFID Supply Partner Code of Conduct;
<b>"Personal Data"</b>	shall have the same meaning as under the GDPR;
<b>"Personal Data Breach"</b>	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed. This includes breaches that are the result of both accidental and deliberate causes;
<b>"Processor"</b>	shall have the same meaning as under the GDPR;
<b>"process" / "processing" / "processed"</b>	shall have the same meanings as under the GDPR;
<b>"Programme Director"</b>	Ron Bannerman: <a href="mailto:rbannerman@sightsavers.org">rbannerman@sightsavers.org</a> (as may be replaced from time to time by Sightsavers by giving notice to the Subcontractor).
<b>"Programme Security Manager"</b>	Tim Hart <a href="mailto:thart@sightsavers.org">thart@sightsavers.org</a> (as may be replaced from time to time by Sightsavers by giving notice to the Subcontractor).



<b>"Programme"</b>	means the integrated programme for accelerating the sustainable control and elimination of neglected tropical diseases (" <b>NTDs</b> ") (ASCEND) in Western and Central Africa, on the terms of the DFID Contract;
<b>"Projected Profit Margin"</b>	means the profit the Subcontractor expects to achieve over the Term [as set out in the Budget];
<b>"Prohibited Act"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by Sightsavers and/or DFID a financial or other advantage to: <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement of a reward for improper performance of a relevant function or activity in connection with this Agreement;</li> <li>(c) an offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);</li> <li>(ii) under legislation or common law concerning fraudulent acts; or</li> <li>(iii) defrauding, attempting to defraud or conspiring to defraud Sightsavers and/or DFID; or</li> </ul> </li> <li>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</li> </ul>
<b>"Rectification Plan Process"</b>	means the rectification plan process set out in Clause 26;
<b>"Regulations"</b>	<ul style="list-style-type: none"> <li>(a) any Law, enactment or regulation, any regulatory policy, guideline, order, direction, requirement or industry code of any governmental, regulatory, supervisory or other competent authority ("<b>Regulatory Authority</b>"), including good practice codes (including but not limited to the DFID Supply Partner Code of Conduct), applicable to any part of the Services or the Subcontractor, DFID or Sightsavers; and</li> <li>(b) any quality standards published by the British Standards Institute, the International Organisation for Standardisation or other reputable body that a leading organisation within</li> </ul>

the Subcontractor's relevant industry or business sector would be expected to comply with;

<b>"Regulatory Bodies"</b>	means those government departments, regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in this Agreement or any other affairs of Sightsavers and <b>"Regulatory Body"</b> shall be construed accordingly;
<b>"Relevant Requirements"</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>"Replacement Services"</b>	any services which are the same or substantially similar to any of the Services and which Sightsavers receives in substitution for any of the Services following Default, expiry or termination or partial termination of this Agreement, whether those services are provided by Sightsavers internally and/or by any third party;
<b>"Requests for Information"</b>	means a request for information or an apparent request under the FOIA, the Environmental Information Regulations and associated codes of practice;
<b>"Reports"</b>	means the reports to be provided by the Subcontractor to Sightsavers substantially in the form specified in <b>Appendix 3 (Reports)</b> , and any other reports requested by Sightsavers from the Subcontractor from time to time;
<b>"Security Policy"</b>	means HMG's security policy, as updated periodically by the Cabinet Office, which can be accessed at <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780851/Security-Policy-Contractors-Consultants-Suppliers-feb19.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780851/Security-Policy-Contractors-Consultants-Suppliers-feb19.pdf</a> or as notified to the Subcontractor from time to time;
<b>"Serious Incident"</b>	is an adverse event, whether actual or alleged, which results in or risks significant harm to the Subcontractor or its beneficiaries, staff, volunteers or others who come into contact with the Subcontractor through its work, loss of the Subcontractor's money or assets, damage to the Subcontractor's property, and/or harm to the Subcontractor's work or reputation (with <b>"significant"</b> in this context meaning significant in the context of the Subcontractor, taking account of its staff, operations, finances and/or reputation). For the avoidance of doubt a serious incident shall include the loss or theft of a device containing data associated with the Programme, including (but not limited to) a laptop, mobile phone or removable storage device;
<b>"Serious Misconduct"</b>	has the meaning given to that term in Clause 31.3;

<b>"Services"</b>	the services set out in <b>Appendix 1</b> and other services or supplies to be supplied by the Subcontractor under this Agreement;
<b>"Sexual Abuse"</b>	means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions, and all sexual activity with someone under the age of 18, regardless of local age of majority or consent under the laws of the territory in which it takes place and regardless of any mistaken belief (by the relevant individual) as to the age of a child;
<b>"Sexual Exploitation"</b>	means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, which includes profiting monetarily, socially, or politically from sexual exploitation of another;
<b>"Sexual Harassment"</b>	means unwelcome sexual advances (also but not exclusively without touching). It includes requests for sexual favours, or other verbal or physical behaviour of a sexual nature, which may create a hostile or offensive environment;
<b>"Sightsavers Data"</b>	any information, data, documents, text, drawings, diagrams, images or sound in any media (other than DFID Data) that are supplied to or made available to the Subcontractor or which the Subcontractor is required to generate, develop, produce, process, store or transmit pursuant to this Agreement;
<b>"Sightsavers' Safeguarding Policy"</b>	Sightsavers' safeguarding policy, included at <b>Appendix 7</b> and which can be accessed on Sightsavers' website, as may be updated from time to time;
<b>"Sightsavers' Code of Conduct"</b>	Sightsavers' code of conduct, which is included at Annex 3 of Sightsavers' Safeguarding Policy;
<b>"Sightsavers Contract Officer"</b>	means Laura Graham, whose contact details are <a href="mailto:lgraham@sightsavers.org">lgraham@sightsavers.org</a> or such other person as Sightsavers may notify to the Subcontractor in writing;
<b>"Sightsavers' Financial Management Guidelines"</b>	means Sightsavers' financial management guidelines set out for ASCEND Lot 2, as updated from time to time;
<b>"Staff Vetting Procedures"</b>	means HMG's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;
<b>"Sub-Contract"</b>	means any contract or agreement (or proposed contract or agreement) under which a third party: <ul style="list-style-type: none"> <li>(a) provides the Services (or any part of them);</li> </ul>

- (b) provides facilities or goods and services necessary for the provision of the Services (or any part of them); and/or
- (c) is responsible for the management, direction or control of the provision of the Services (or any part of them);

**"Subcontractor Contract Officer"** means [•], whose contact details are [•] or such other person as the Subcontractor may notify to Sightsavers in writing;

**"Subcontractor Personnel"** any persons (which for the avoidance of doubt includes individuals and legal entities) instructed by or on behalf of the Subcontractor in providing the Services from time to time, including the Subcontractor's employees, agents and Third-Party Subcontractors;

**"Term"** has the meaning given in Clause 2.1;

**Termination Notice"** means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date (which for the avoidance of doubt, can at the discretion of the party giving notice, be immediately upon service of the notice) and setting out the grounds for termination;

**"Third Party Subcontractor"** means any third party appointed by the Subcontractor to:

- a) provide the Services (or any part of them);
- b) provide facilities or goods and services necessary for the provision of the Services (or any part of them); and/or
- c) be responsible for the management, direction or control of the provision of the Services (or any part of them),

together with the agents and/or representatives from such third parties, from time to time;

**"Transfer Regulations"** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (including the Transfer of Employment (Pension Protection) Regulations 2005) and any other Regulations related to employment, including duties to inform and consult;

**"VAT"** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax levied (whether in the UK or any other jurisdiction); and

**"Working Day"** means any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 Except as set out in this Agreement, any reference, express or implied, to any Regulations are to be construed as references to those Regulations as are from time to time in force or to any Regulations from time to time replacing, extending, consolidating or amending the same or any similar Regulations.

1.3 Unless the contrary intention appears, in this Agreement:

- 1.3.1 references to a person include an individual, a body corporate, partnership, state and an unincorporated association of persons;
- 1.3.2 references to a Party to this Agreement include references to the successors, assigns or transferees (immediate or otherwise) of that Party;
- 1.3.3 use of the words, "**includes**" or "**including**" or similar words or phrases means without limitation and the use of these or similar words or phrases shall not limit the meaning of the general words;
- 1.3.4 words denoting the singular shall include the plural and vice versa and references to any gender shall include all other genders;
- 1.3.5 each reference to a document is a reference to that document as amended from time to time; and
- 1.3.6 a reference to "**writing**" or "**written**" shall include e-mails.
- 1.4 The headings in this Agreement do not affect its interpretation.
- 1.5 Subject to Clause 1.6 below, if there is any conflict or inconsistency between a term in the main part of this Agreement and a term in any of the Appendices or other documents attached to, incorporated or otherwise referred to in this Agreement, the term in the main part of this Agreement shall take precedence, unless the Schedule or other document is expressly stated to take precedence over the main part of this Agreement.
- 1.6 In the event of any conflict or inconsistency between a term in this Agreement and the DFID Contract, the terms of the DFID Contract shall prevail.

## 2. **TERM**

- 2.1 Subject to earlier termination of this Agreement pursuant to Clause 27 or Clause 28, this Agreement shall commence on the Effective Date and shall continue until the Initial Period End Date or, if exercised, the end date of an Extension Period (the "**Term**").
- 2.2 Where the Subcontractor has undertaken activities in connection with this Agreement prior to its agreement and execution (which the Subcontractor has disclosed to Sightsavers in writing in reasonable detail) and, save as otherwise expressly agreed in writing, the terms and conditions of this Agreement (save for provisions relating to the timing of the payment of the Payments) shall be deemed to apply to such activities prior to execution of this Agreement.

## 3. **DFID CONTRACT**

In so far as is applicable to the Services the Subcontractor agrees to be bound by and undertakes to Sightsavers to comply with the terms of the DFID Contract and will not do or omit to do anything which will put Sightsavers in breach of the DFID Contract.

## 4. **REPRESENTATION AND WARRANTIES**

- 4.1 The Subcontractor represents and warrants that:

- 4.1.1 it is validly incorporated, organised and subsisting in accordance with the Law of its place of incorporation;
- 4.1.2 it has full capacity and authority to enter into and perform this Agreement;
- 4.1.3 this Agreement is executed by its duly authorised representative;
- 4.1.4 it has all necessary consents and regulatory approvals, including in the country of performance, to enter into this Agreement;
- 4.1.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- 4.1.6 its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 4.1.7 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject , as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 4.1.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement; and
- 4.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Subcontractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Subcontractor's assets or revenue.
- 4.2 If at any time the Subcontractor becomes aware that a representation or warranty given by it under this Clause 4 has been breached, is untrue or misleading, it shall immediately notify Sightsavers of the relevant occurrence in sufficient detail to enable Sightsavers to make an accurate assessment of the situation.

## 5. **SUPPLY OF SERVICES**

- 5.1 The Subcontractor undertakes to:
  - 5.1.1 provide the Services and perform all other obligations under this Agreement in accordance with the DFID Supply Partner Code of Conduct;
  - 5.1.2 immediately upon signing this Agreement, provide to Sightsavers: (i) a signed copy of the Partner Compliance Declaration; and (ii) the Compliance Declaration Supporting Documents;
  - 5.1.3 comply with all reasonable requirements of DFID and/or Sightsavers provided that any requirements which involve a change in the nature or specification of the Services which has a material impact on the cost of providing the Services shall require the consent of the Subcontractor (such consent not to be unreasonably withheld or delayed);

- 5.1.4 provide the Services in accordance with Good Industry Practice;
- 5.1.5 provide the Services in compliance with all Regulations and in a manner, which enables DFID and/or Sightsavers to comply with all Regulations;
- 5.1.6 operate in accordance with the highest standards and not to do anything that could bring Sightsavers, its name, or reputation, or the Intellectual Property Rights into disrepute; and
- 5.1.7 respond promptly to all correspondence from Sightsavers and deal promptly with all requests from Sightsavers.
- 5.2 Time for performance of the Services shall be of the essence.
- 5.3 The Subcontractor shall promptly notify Sightsavers as soon as it becomes aware of any event or circumstance which has or may have a material adverse impact upon the Subcontractor's performance of the Services or compliance with its obligations under this Agreement. The Subcontractor shall promptly provide all information and co-operation reasonably required by Sightsavers in relation to such event or circumstance.
- 5.4 The Subcontractor shall not obtain, receive or otherwise procure or attempt to obtain, receive or otherwise procure any Payment, commission or other financial benefit from any third party in connection with the Services or otherwise.
- 5.5 The Subcontractor and the Subcontractor Personnel shall notify Sightsavers immediately of any actual or potential conflict of interest in relation to any of their obligations in relation to this Agreement or the DFID Contract together with recommendations as to how the conflict can be avoided.
- 5.6 In performing its obligations under the Agreement, the Sub-Contractor shall:
  - 5.6.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
  - 5.6.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
  - 5.6.3 include in contracts with Third-Party sub-contractors and suppliers' provisions which are at least as onerous as those set out in this Clause 5;
  - 5.6.4 notify Sightsavers as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Agreement;
  - 5.6.5 maintain a complete set of records to trace the supply chain of all services provided to Sightsavers in connection with the Agreement; and
  - 5.6.6 permit Sightsavers and its third-party representatives to inspect the Sub-Contractor's premises, records, and to meet the Sub-Contractor Personnel to audit the Sub-Contractor's compliance with its obligations under this Clause 5.
- 5.7 The Sub-Contractor represents and warrants that it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation,

inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

5.8 Sightsavers may terminate the Agreement with immediate effect by giving written notice to the Sub-Contractor if the Sub-Contractor commits a breach of this Clause 5.

## 6. **PERSONNEL**

6.1 The Subcontractor shall ensure that all Subcontractor Personnel:

6.1.1 are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

6.1.2 are vetted in accordance with Good Industry Practice and in compliance with the Staff Vetting Procedure;

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/780851/Security-Policy-Contractors-Consultants-Suppliers-feb19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780851/Security-Policy-Contractors-Consultants-Suppliers-feb19.pdf)

6.1.3 shall be subject to pre-employment checks that include, as a minimum, employment history for the last three years, identity checks, unspent criminal convictions and right to work (including nationality and immigration status);

6.1.4 obey all lawful instructions and reasonable directions of DFID and/or Sightsavers and provide the Services to the reasonable satisfaction of Sightsavers; and

6.1.5 comply with:

(a) all reasonable requirements of Sightsavers concerning conduct at any sites in any way connected with the provision or conduct of the Services, including any security requirements; and

(b) any DFID and/or Sightsavers policies, provided to the Subcontractor or Subcontractor Personnel from time to time, where relevant and reasonable to meet the obligations under this agreement.

## 7. **DUTY OF CARE**

7.1 The Subcontractor owes a duty of care to the Subcontractor Personnel and is responsible for the health, safety, security of life and property and general wellbeing of such persons and their property, including during their delivery of the Services.

7.2 The Subcontractor warrants that it has and will throughout the Term:

7.2.1 carry out the appropriate risk assessment with regard to its delivery of the Services;

7.2.2 have appropriate procedures (including emergency procedures) in place to minimise damage to the Subcontractor Personnel's health, safety, security of life and property and general wellbeing during the provision of the Services.

7.3 The provision of information of any kind whatsoever by Sightsavers to the Subcontractor shall not in any respect relieve the Subcontractor for its obligations under this Clause 7. The



positive evaluation of the Subcontractor's proposal for the provision of the Services and the award of this Contract is not an endorsement by Sightsavers of any arrangements which the Subcontractor has made for the health, safety, security of life and property and wellbeing of the Subcontractor Personnel in relation to the provision of the Services.

- 7.4 The Subcontractor warrants that it shall be responsible for the health, safety and security of all Subcontractor Personnel engaged in the provision of the Services, including, but not limited to, arranging appropriate security arrangements and insurance (such insurance shall be sufficient in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses) and acknowledges that Sightsavers accepts no responsibility for the health, safety, security of life and property and general wellbeing of the Subcontractor Personnel with regard to the Subcontractor Personnel carrying out the Services under this Agreement.
- 7.5 The Subcontractor will ensure that such insurance arrangements as are made to cover the Subcontractor Personnel, or any person employed or otherwise engaged by the Subcontractor, and pursuant to the Subcontractor's duty of care as referred to in this Clause 7, are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.
- 7.6 The Subcontractor agrees that it shall not appoint any Third Party Subcontractor who is not an Approved Subcontractor with respect to all or any part of the Services without obtaining Sightsavers' prior consent (who shall in turn request consent from DFID as needed) and subject to the procedure for the appointment of new Approved Subcontractors set out in Clause 7 of Section 2 (*General Conditions of the Contract*) of the DFID Contract being complied with;
- 7.7 This includes, but is not limited to ensuring that the terms of all Subcontractor agreements entered into between the Subcontractor and that approved Third Party subcontractor include the provisions required in clause 7.7 of Section 2 (*General Conditions of Contract*) of the DFID Contract.

## 8. **SUBCONTRACTOR PHYSICAL SECURITY REQUIREMENTS**

- 8.1 The Subcontractor shall, at its own expense, have in place a physical security policy (the "**Physical Security Policy**") that is reasonably satisfactory to Sightsavers and shall take all necessary steps to ensure that its Physical Security Policy complies with any physical security requirements notified to it by Sightsavers;
- 8.2 Without prejudice to Clauses 15.13, 15.26 and 15.27 of this Agreement, the Subcontractor undertakes that it shall immediately report to the Programme Security Manager and the Programme Director by (i) email; and (ii) follow-up phone call, any Serious Incident.
- 8.3 During the Inception Phase or (in the case of a Subcontractor for which there has been no Inception Phase, then, promptly following the Commencement Date) The Subcontractor shall undertake a physical security risk assessment addressing its geographic working area. Where a risk is identified, the Subcontractor shall provide to Sightsavers, in a form reasonably acceptable to Sightsavers, a mitigation proposal, including how to mitigate the risk, how this mitigation will be implemented and how it will continue to be managed.

- 8.4 Sightsavers shall identify and inform the Subcontractor of any trigger warnings for the suspension and/or hibernation of the Programme, including (but not limited to) significant changes to the threat environment such as potentially disruptive elections, serious security incidents, outbreak of conflict or natural disaster.
- 8.5 The Subcontractor shall suspend all activities in connection with the Programme if instructed to do so by the Programme Director. The Subcontractor may only suspend activities in connection with the Programme after consultation with and approval from the Programme Director.
- 8.6 The Subcontractor shall provide up to date risk assessments to the Programme Security Manager and the Programme Director, which are updated weekly/monthly, as has been determined by the Programme Security Manager and in the form set out at **Appendix 3 (Reports)**.
- 8.7 The Subcontractor shall provide adequate training, appropriate to their working environment, on a continuing basis for all Subcontractor Personnel in compliance with their Physical Security Policy.

## 9. **PERFORMANCE LEVELS**

- 9.1 The Subcontractor shall carry out the Services in a professional manner in every respect to the standards expected of an expert(s) experienced in the provision of the Services, and in accordance with the scope of work and specifications set out in **Appendix 1**.
- 9.2 Where the Subcontractor fails to perform the Services in accordance with the terms of this Agreement, the Subcontractor shall:
- 9.2.1 notify Sightsavers of such failure and the steps that the Subcontractor will take (or has already taken) to remedy the failure and prevent the failure from re-occurring;
- 9.2.2 if Sightsavers so requests, meet with Sightsavers to discuss any risks or other issues such failure may present, and any appropriate mitigating or correcting action required; and
- 9.2.3 correct the failure at no additional cost to Sightsavers.

## 10. **PROCUREMENT**

### Requirements applicable to all procurement

- 10.1 The Subcontractor shall:
- 10.1.1 subject to Clause 10.3, advertise on Contracts Finder all subcontract opportunities arising during the Term from or in connection with the provision of the Services where the consideration being paid by the subcontractor is above £25,000;
- 10.1.2 within 90 days of awarding a Sub-Contract to a Third-Party sub-contractor, update the notice on Contracts Finder with details of the successful Third-Party sub-contractor;
- 10.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;

- 10.1.4 provide reports on the information at clause 10.1.3 to Sightsavers and Sightsavers may choose to specify any reasonable format and frequency of such reports; and
- 10.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 10.2 Each advert referred to at Clause 10.1 above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Subcontractor.
- 10.3 The obligation at Clause 10.1 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.
- 10.4 Notwithstanding Clause 10.1 Sightsavers may by giving its approval (which may be subject to Sightsavers obtaining the prior written consent of DFID) in writing, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.

*Requirements relating only to procurement, use of and responsibility for Equipment, Medical Supplies, and Medical Equipment*

*Procurement, use of and responsibility for Equipment, Medical Supplies and Medical Equipment*

- 10.4.1 The Subcontractor shall ensure:
  - (a) the timely procurement of these items; and
  - (b) that procurement shall:
    - (i) be undertaken in accordance with best practice principles of openness, fairness and transparency;
    - (ii) achieve “Value for Money” defined as the optimum combination of whole-life cost and quality to meet requirements in a fully transparent manner
    - (iii) be subject to audit on terms reasonably specified by Sightsavers; and
    - (iv) be carried out using strict due diligence processes that ensure the protection of Sightsavers’ interests and reputation, with particular emphasis on anti-terrorism, anti-corruption and fraud throughout the delivery chain.
    - (v) undertake any procedures that may be required of the Subcontractor by national legislation/regulation or as instructed by Sightsavers; and
    - (vi) obtain relevant permits and clearances, and collaborate with the appropriate organisations (including, but not limited to, the British Embassy or High Commission and other government service providers) to effectively co-ordinate timely delivery.
- 10.5 Equipment, Medical Supplies and Medical Equipment may only be used in providing the Services and shall be kept safe and properly maintained at all times. For the avoidance of

doubt, The Subcontractor shall not, and shall procure that the Subcontractor Personnel do not, use these items for personal use or other use, other than for the provision of the Services.

- 10.6 The Subcontractor shall obtain the consent of Sightsavers for all Equipment to be procured pursuant to this Agreement. In cases where Equipment shall be procured by Sightsavers, the Subcontractor shall provide Sightsavers with sufficient details for the satisfactory procurement and delivery of Equipment.
- 10.7 The Subcontractor shall maintain a quarterly inventory of the Equipment, its condition and location and make such inventory available to Sightsavers annually, and immediately on request.
- 10.8 Subject to Clause 10.3 the Subcontractor shall be responsible for all loss or damage to Equipment other than that caused by fair wear and tear, and all loss or damage to Medical Supplies and Medical Equipment. The Subcontractor shall notify Sightsavers immediately as it becomes aware of any such loss of or damage.
- 10.9 The Subcontractor shall obtain Sightsavers' instructions on the disposal of Equipment, Medical Supplies and Medical Equipment and shall comply with such instructions.

*Requirements relating only to procurement of Equipment*

- 10.10 The Subcontractor shall ensure that procurement of Equipment shall be on the basis that the ownership of Equipment shall vest in DFID and shall be so marked, so long as it has been deemed appropriate to do so.
- 10.11 Except as required by law or circumstance, the Subcontractor is not required by Sightsavers to insure Equipment. DFID shall bear the risk in respect of loss or damage provided such loss or damage was not due to the Subcontractor's negligence or deliberate wrongdoing, and provided the Subcontractor obtains and pays to DFID (or Sightsavers on its behalf) such proper compensation as may properly be recovered from any third party in respect of such loss or damage to the Equipment.

*Requirements relating only to procurement of Medical Supplies*

- 10.12 The Subcontractor shall provide Sightsavers with all necessary and desirable support, resources and/or information as indicated by Sightsavers (within such timeframe(s) specified by Sightsavers from time to time) to enable Sightsavers to comply with its obligations relating to the procurement of Medical Supplies (including all applicable Regulations), including but not limited to:
  - 10.12.1 completion and return to Sightsavers of the Good Distribution Practice Checklist immediately upon the signing of this Agreement;
  - 10.12.2 shall support the submission by Sightsavers of high quality and timely requests for donated drugs applicable to the Services, in line with WHO processes; and
  - 10.12.3 must maintain authorisations or entitlements to receive Medical Supplies for wholesale distribution or supply to the public in accordance with the applicable legal and administrative provisions of the country concerned.

- 10.12.4 Where relevant, the Sub-contractor shall ensure that any drugs required for the provision of the Services (whether donated or procured) are available at the point of delivery when needed, to enable the Project's activities (with respect to the Services) to take place on time;
- 10.12.5 holding a wholesale distribution authorisation approved by the UK's Medicine and Healthcare Products Regulatory Agency;
- 10.12.6 compliance with the requirements of the UK Human Medicines Regulations 2012:
- 10.12.7 compliance with the relevant UK legislation, the EU Guidelines on Good Distribution Practice of Medicinal Products for Human Use (2013/C 343/01) (the "**EU GDP Guidelines**") and any other legal and administrative provisions regarding the distribution of human medicines of the country concerned; and
- 10.12.8 compliance with Sightsavers' Financial Management Guidelines of the programme, as provided and as may be amended from time to time.

## 11. **ENVIRONMENTAL REQUIREMENTS**

- 11.1 The Subcontractor shall, at its own expense, have in place an environmental policy (the "**Environmental Policy**") that is reasonably satisfactory to Sightsavers and shall take all necessary steps to ensure that its Environmental Policy complies with applicable national and international laws, including those of the country or countries in which the Services or goods & equipment are to be provided, and DFID's environmental operations policy, which is to conserve energy, water and other resources, reduce waste, phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 11.2 The Subcontractor shall work with Sightsavers and the populations that are potentially affected by its operations under the Agreement regarding any environmental issues that could affect the sustainable development provisions of the International Development Act (2002), and carry out any reasonable additional request to ensure the protection of the environment, society and the economy throughout the Term, the cost to be borne by The Subcontractor.
- 11.3 The Subcontractor shall ensure it has the requisite expertise and controls to identify and mitigate all factors that may affect compliance with the conditions outlined in Clauses 11.1 and 11.2 as a result of its own operations or those of subcontractors working on its behalf.
- 11.4 The Subcontractor shall promptly notify the Programme Security Manager and the Programme Director by (i) email; and (ii) follow-up phone call, of any potentially adverse material changes to the effect of its activities on the environment arising from its operations under the Agreement and of the occurrence of any unanticipated incident or accident related to the Programme that has or is likely to have a significant adverse effect on the environment, any incident that is in material breach of the Environmental Policy.
- 11.5 Nothing in Clauses 11.1 to 11.4 shall relieve the obligations of the Subcontractor to comply with its statutory duties and Good Industry Practice.

## 12. REPORTING

- 12.1 On a monthly basis (or as otherwise required by Sightsavers), the Parties (including the Sightsavers Contract Officer and the Subcontractor Contract Officer) will meet and review the Services and other issues relevant to this Agreement, including reviewing progress towards delivery of outputs, payment milestones, the budget forecast and actual expenditure, results achieved and risk mitigation.
- 12.2 The Subcontractor shall attend other meetings reasonably requested by Sightsavers and Sightsavers shall only pay travel expenses for attendance at any meeting to the extent that they fall within the Sightsavers-approved budget for the period in question.
- 12.3 The Subcontractor shall prepare, deliver and make available to Sightsavers the Reports.
- 12.4 The Subcontractor agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete information requested by Sightsavers from time to time to enable Sightsavers to comply with its obligations under:
- 12.4.1 Section 4 (Special Conditions) of the DFID Contract, including but not limited to Clause 15 (*Management Charges and Information*), Clause 16 (*Supply Chain Analysis*) and Clause 17 (*Assets*) therein; and
- 12.4.2 Section 2 (General Conditions of Contract) of the DFID Contract, including but not limited to Clause 14 (Progress & Financial Reports) and Clause 41 (Financial Distress) including (but not limited to) providing any information required for the purposes of monitoring the financial standing of the Subcontractor throughout the Term pursuant to the financial monitoring plan agreed between Sightsavers and DFID pursuant to Clause 41 (*Financial Distress*) of the same, and the Subcontractor shall provide any other information required by Sightsavers in order for Sightsavers to comply with its reporting obligations under the DFID Contract.
- 12.5 The Subcontractor shall prepare and maintain complete and accurate books, records, data and information relating to the Services, including the basis upon which invoices to Sightsavers have been calculated, as required for the proper conduct and monitoring, inspection, interview and audit of the Services and compliance with this Agreement (“**Records**”). The Subcontractor shall retain all Records during the Term and thereafter for a period of 7 years after the Term, save to the extent Sightsavers requires destruction or return of any DFID Data or Sightsavers Data earlier, and shall take any other actions requested by Sightsavers to enable Sightsavers to comply with its obligations under Clause 15 (Open Book Accounting and Audit) of Section 2 (General Conditions of Contract) of the DFID Contract.

## 13. REGULATIONS

- 13.1 The Subcontractor shall maintain such authorisations and all other approvals, permits and authorities required by any relevant Regulatory Authority from time to time to perform its obligations in accordance with this Agreement.
- 13.2 The Subcontractor shall notify Sightsavers immediately if it becomes aware or has reasonable cause to suspect that any act, matter or thing has arisen or occurred or may arise or occur which constitutes or may give rise to any breach of any Regulations.
- 13.3 The Subcontractor shall co-operate with and assist upon request Sightsavers:

- 13.3.1 with any and all dealings with any relevant Regulatory Authority; and
- 13.3.2 to enable Sightsavers to comply with Regulations, including providing any requested information in any reasonable timescales.

#### 14. **PAYMENTS**

- 14.1 Sightsavers shall make the Payment to the Subcontractor as full consideration for the performance by the Subcontractor of its duties under this Agreement, in accordance with the provisions of this Clause 14 and the remainder of this Agreement.
- 14.2 The Subcontractor warrants that the Payment is a true and accurate reflection of the costs and the Projected Profit Margin and that the Subcontractor does not have any other internal financial model in relation to the Services inconsistent with this.
- 14.3 Save as otherwise expressly set out in this Agreement:
  - 14.3.1 Sightsavers will not make any payments to the Subcontractor, in excess of the Payment, and no virements between any of the components in Section 5 of the DFID Contract, or between items shown in **Appendix 2** of this Agreement are permitted, without the prior written consent of Sightsavers;
  - 14.3.2 the Payment is the only sum payable by Sightsavers for the Subcontractor's performance of its obligations under this Agreement;
  - 14.3.3 unless there is any dispute in relation to any payment under this Clause 14, Sightsavers shall pay any portion of the Payment which is due from it to the Subcontractor promptly and in any event not later than 30 days from receipt of a valid invoice (subject to the terms of this Agreement including, for the avoidance of doubt, Clause 14.3.4); and
  - 14.3.4 For the avoidance of doubt, Sightsavers shall not be liable under any circumstances whatsoever to pay the Payment or part of the Payment to the Subcontractor if Sightsavers does not receive the relevant payment under the DFID Contract (provided that (i) Sightsavers has taken all reasonable steps to procure payment or enforce its right to payment under the DFID Contract and/or (ii) that payment is not withheld under the DFID Contract because of Sightsavers' default, unless such default is caused by a default of the Subcontractor or other subcontractor of Sightsavers). Sightsavers agrees to put in place a communication mechanism to provide a regular update to the Subcontractor on the status of such payments from DFID if a delay from DFID is causing a delay in payment to the Subcontractor
- 14.4 All amounts expressed in this Agreement as payable by Sightsavers are expressed exclusive of any VAT which may be chargeable on them. If VAT is applicable then, upon receipt of funds, the sub-contractor is required to submit to Sightsavers a VAT invoice for the full amount of the funds received, inclusive of VAT.
- 14.5 Sightsavers shall pay all report expenditure submitted in accordance with Clause 14.4 by direct credit through the UK Bank Clearing Systems in pounds sterling. All invoices must contain details of the bank account to which payments are to be made.
- 14.6 The Subcontractor shall, together with any applicable reports as described in **Appendix 3 "Reports"**, submit **quarterly and/or monthly invoices**. Such invoice shall:

- 14.6.1 show any Retained Payments to be deducted
- 14.6.2 be on the Subcontractor's letterhead
- 14.6.3 detail the purchase order number (if any)
- 14.6.4 include an original signature
- 14.6.5 be numbered sequentially and dated
- 14.6.6 state the period the Services were provided using "**from**" and "**to**", and if it is the final invoice presented in connection with this Agreement shall be endorsed "**Final Invoice**".
- 14.7 Sightsavers may request proof of payment in respect of any disbursement in an invoice and shall be entitled to refuse payment of the invoice, until this is received.
- 14.8 Any invoice not presented in accordance with the provisions set out in this Clause 14 may be rejected and in any event shall be liable to query and delay in payment. Sightsavers reserves the right not to pay any amount due in respect of an invoice received by Sightsavers [more than 30 days] after the day that the Subcontractor becomes entitled to invoice for the payment to which it relates.
- 14.9 The Subcontractor shall promptly repay to Sightsavers any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) where either an incorrect sum of money has been paid or where any part of the Payment has been paid in error before all conditions attaching to such part of the Payment have been complied with by the Subcontractor.
  - 14.9.1 Exchange rate gains or losses should be reported in the same way as any other factor in budget against expenditure variance analysis.
  - 14.9.2 Where partners have made exchange rate gains, they should discuss with Sightsavers in advance how these gains should be re-programmed or repatriated to Sightsavers.
  - 14.9.3 Where partners have incurred exchange rate losses, they should discuss with Sightsavers as to whether additional funds are available to compensate these losses or if they will need to make adjustments to the scope of work.
- 14.10 The parties acknowledge and agree that DFID shall be entitled publish Sightsavers' compliance with its obligation to pay undisputed invoices to the Subcontractor within the specified payment period.
- 14.11 If for any reason Sightsavers and/or DFID are dissatisfied with the Subcontractors' performance of any of its obligations under this Agreement, an appropriate sum may be withheld from any payment otherwise due. In such event Sightsavers and/or 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.
- 14.12 If Sightsavers and/or DFID determine after paying for a particular Service that the Service has not been completed satisfactorily, Sightsavers 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.

**15. DATA PROTECTION**

15.1 Sightsavers is an independent Controller of Personal Data shared between the Parties or otherwise processed in the context of this Agreement, and a processor of some DFID Data. The Subcontractor is either an independent Controller or a Processor of Personal Data shared between the Parties or otherwise processed in the context of this Agreement, depending on the type of activity it is carrying out and as described in the following schedule:

<b>Personal Data processing activities in respect of which the Subcontractor is an independent controller (“Controller Activities”)</b>	<b>Personal Data processing activities in respect of which the Subcontractor is a processor (“Processor Activities”)</b>
Personal Data used in delivering treatment to individual beneficiaries	Processing Personal Data in respect of which DFID is the Controller
	Producing progress monitoring reports on behalf of Sightsavers

15.2 Where the Subcontractor carries out Controller Activities, the Data Sharing Clauses below shall apply. Where the Subcontractor carries out Processor Activities, the Data Processing Clauses below shall apply.

15.3 The Parties agree that the schedule in Clause 15.1 is not conclusive. Where circumstances are such that a Personal Data processing activity is described above as a Controller Activity but is in fact a Processor Activity, the Data Processing Clauses shall apply as between the Parties instead of the Data Sharing Clauses (and vice versa).

15.4 The Parties agree that the schedule in Clause 15.1 is not exhaustive. Where other types of Personal Data processing activities are carried in relation to data shared by the Parties, the Parties will comply with the Data Sharing Clauses or the Data Processing Clauses, as applicable.

15.5 Regardless of whether it is acting as an independent Controller or a Processor, the Subcontractor shall not destroy or disclose to a third party any DFID Data and/or Sightsavers Data save as otherwise authorised by Sightsavers in this Agreement or in writing by Sightsavers. The Subcontractor shall, promptly upon request by Sightsavers, deliver up or provide access to any part of, or all, DFID Data or Sightsavers Data to:

15.5.1 DFID;

15.5.2 Sightsavers;

15.5.3 those authorised by DFID and/or Sightsavers (including external and internal auditors); and/or

- 15.5.4 any relevant Regulatory Authority as lawfully required by the Regulatory Authority having jurisdiction over such DFID Data or Sightsavers Data from time to time (as applicable). In these circumstances, the Subcontractor shall give Sightsavers prompt advance written notice of the disclosure (where lawful and practical to do so).
- 15.6 The Subcontractor shall notify [compliance@sightsavers.org](mailto:compliance@sightsavers.org) without undue delay after it becomes aware that any Personal Data Breach occurs or may have occurred and, in any event, no later than 12 (twelve) hours after becoming aware, and shall include in that notification a full description of:
- 15.6.1 the nature of the Personal Data Breach including details of the Personal Data and categories and approximate numbers of Data Subjects affected;
- 15.6.2 categories and approximate numbers of records containing Personal Data affected;
- 15.6.3 the likely consequences of the Personal Data Breach;
- 15.6.4 risks to affected Data Subjects and
- 15.6.5 the measures taken or proposed to be taken by the Subcontractor to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.
- 15.7 For the purposes of these Data Sharing Clauses, the Parties agree that they are independent controllers of Personal Data shared or otherwise processed in the context of this Agreement.
- 15.8 When processing Personal Data in the context of this Agreement, the Subcontractor shall comply with its applicable obligations under the Data Protection Regulations.
- 15.9 The Subcontractor shall not take any action, or omit to take any action, which could result in Sightsavers being in breach of the Data Protection Regulations.
- 15.10 Where the transfer of Personal Data from Sightsavers to the Subcontractor involves transferring Personal Data outside of the EEA, unless the Subcontractor is based in a jurisdiction considered by the EC to offer an equivalent standard of protection to individuals' rights to data privacy as under the GDPR, the Parties shall enter into, and be bound by, the EC model Clauses for the transfer of Personal Data between Controllers which can be found here:
- <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004D0915&from=EN>
- 15.11 The Parties shall take reasonable steps to provide evidence of their compliance with the Data Protection Regulations on receipt of reasonable notice from the other.
- 15.12 Where, pursuant to the Data Protection Regulations, Sightsavers becomes obliged to respond to and/or comply with a request or complaint from a Data Subject (for example in relation to Data Subjects' rights contained in Articles 15-22 GDPR), the Subcontractor shall cooperate in good faith where reasonably required by Sightsavers to ensure that such a request or complaint is responded to and/or complied with within a period stipulated by the Data Protection Regulations or, if there is no such period stipulated by the Data Protection Regulations, within a reasonable period.

- 15.13 Where a Personal Data Breach occurs, the Subcontractor shall cooperate in good faith with Sightsavers where reasonably required to ensure that the Personal Data Breach is adequately dealt with and/or the ICO or relevant data protection authority and/or the affected Data Subjects and/or any other relevant authority is/are notified within a period stipulated by the Data Protection Regulations (or other applicable law). Where no such period is stipulated by the Data Protection Regulations (or other applicable law), within a reasonable period. In particular, the Subcontractor will respond promptly to any reasonable request from Sightsavers for further information about a Personal Data Breach or suspected Personal Data Breach.
- 15.14 In the event that any enforcement action is brought by the ICO or any other data protection authority, or in the event of a claim being brought by a Data Subject against either or both of the Parties, in both instances relating to the processing of Personal Data, the Parties will promptly inform each other about any such enforcement action or claim, and will co-operate in good faith with a view to resolving it in a timely fashion (without prejudice to Clause 18 of this Agreement).
- 15.15 For the purposes of these Data Processing Clauses, the Parties hereby agree that Sightsavers is a controller and the Subcontractor is a processor of Personal Data shared or otherwise processed in the context of this Agreement.
- 15.16 The details of the specific processing are as follows:
- 15.16.1 The subject matter of this processing is the carrying out of the Processor Activities (subject to Clauses 15.3 and 15.4 of this Agreement) by the Subcontractor on behalf of Sightsavers.
- 15.16.2 The duration of this processing is as set out in Clause 2 of this Agreement.
- 15.16.3 The nature and purpose of this processing is so that the Subcontractor can deliver those Services which require the processing of Personal Data, and in particular information relating to neglected tropical diseases and visual impairment of individuals and their treatment, together with any Personal Data about those close to such individuals where that is necessary for the treatment of those individuals.
- 15.17 The categories of Data Subjects whose Personal Data is processed in furtherance of this Agreement are beneficiaries of the Services and those who are close to them where their details are needed to assist in the delivery of the Services; individuals working in delivering the Services; and third parties whose details are needed to assist in the delivery of the Services.
- 15.18 The Subcontractor warrants that all individuals who it authorises to process Personal Data on behalf of Sightsavers, including employees, are bound by obligations to protect the confidentiality of such Personal Data.
- 15.19 The Subcontractor warrants that, in respect of the Personal Data processed under these Data Processing Clauses, it, and its employees and agents, will comply at all times with the Data Protection Regulations and shall not process the Personal Data in such a way as to cause Sightsavers to breach any of its obligations under the Data Protection Regulations.
- 15.20 Where the Subcontractor processes Personal Data (whether stored in the form of physical or electronic records) on behalf of Sightsavers it shall:

- 15.20.1 process Personal Data only to the extent, and in such a manner, as is necessary in order to comply with its obligations under the Agreement;
- 15.20.2 to the extent not already covered by the information security requirements set out in Clause 16 below, implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure in compliance with obligations set out in the Data Protection Regulations, including, where appropriate:
- (a) the pseudonymisation and encryption of Personal Data;
  - (b) ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - (c) promptly restoring the availability and access to Personal Data in the event of a physical or technical incident; and
  - (d) regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring security of the processing;
- 15.20.3 if so requested by Sightsavers, within a reasonable timeframe supply details of the technical and organisational measures in place to safeguard the Personal Data, and otherwise make available to Sightsavers all information necessary to demonstrate compliance with the obligations set out in these Data Processing Clauses and/or the Data Protection Regulations;
- 15.20.4 on reasonable prior notice, permit persons authorised by Sightsavers to enter any premises on which Personal Data is processed on behalf of Sightsavers and to inspect the Subcontractor's systems to ensure that sufficient security measures are in place (noting that, without prejudice to the Agreement, these Data Processing Clauses or, where relevant, any other agreement entered into by the Parties, this Clause will survive the termination of the Agreement or any such other agreement);
- 15.20.5 not process or transfer Personal Data outside the EEA without the prior written consent of Sightsavers and, where Sightsavers consents to any such transfer, the Subcontractor shall ensure that there are in place measures to ensure the Personal Data remains adequately protected as required under the Data Protection Regulations. For the avoidance of doubt the Subcontractor is authorised to process the Personal Data in the countries in which it is delivering the Services in accordance with the Agreement (in particular but not limited to 16.2 below); and
- 15.20.6 not transfer or disclose any Personal Data to any third party or sub-contract any processing function without verifying that the sub-processor can provide sufficient guarantees to protect the Personal Data and without the prior written consent of Sightsavers (and for the avoidance of doubt, not to add or replace any sub-processor without Sightsavers' consent) and ensure that any third party to which it sub-contracts any processing has entered into a written contract with the Subcontractor which contains all the obligations that are contained in these Data Processing Clauses; permits both the Subcontractor and Sightsavers to enforce those obligations; is governed by UK law and automatically terminates upon termination of this Agreement.

- 15.21 For the avoidance of doubt, the Subcontractor remains fully liable to Sightsavers for the performance of the obligations of any sub-processor appointed by the Subcontractor to assist with the performance of the Processor Activities.
- 15.22 The Subcontractor shall ensure that it protects the rights of Data Subjects under the Data Protection Regulations and in particular, but without limitation, shall:
- 15.22.1 promptly notify Sightsavers in writing (within no more than two working days) if it receives:
- (a) a request from a Data Subject to have access to his or her Personal Data or to exercise any of his or her rights under Articles 15-22 GDPR; or
  - (b) a complaint or request relating to Sightsavers' obligations as a Controller or the Subcontractor's obligations as a Processor under the Data Protection Regulations; and
- 15.22.2 provide Sightsavers with full co-operation and assistance in relation to any such complaint or request made, including by:
- (a) promptly providing Sightsavers with full details of any complaint or request and any additional information requested by Sightsavers;
  - (b) taking all steps necessary to enable Sightsavers to comply with a request from a Data Subject within the relevant timescale set out in the Data Protection Regulations and in accordance with Sightsavers' reasonable instructions;
  - (c) providing Sightsavers with any Personal Data the Subcontractor holds in relation to a Data Subject (within the timescales required by Sightsavers);
  - (d) using appropriate technical and organisational measures, as far as this is possible, to assist Sightsavers to respond to requests from Data Subjects to exercise their rights; and
  - (e) ensuring that (other than as set out above) no reply or other communication is made in response to such complaint or request unless approved by Sightsavers.
- 15.23 In the event of a Personal Data Breach arising in relation to Personal Data:
- 15.23.1 the Subcontractor shall provide all assistance to Sightsavers as reasonably required;
- 15.23.2 the Subcontractor shall promptly initiate a full investigation into the circumstances surrounding the Personal Data Breach;
- 15.23.3 after investigating the causes of the Personal Data Breach, the Subcontractor shall take such actions as may be necessary or reasonably expected by Sightsavers to minimise the effects of the Personal Data Breach. The Subcontractor shall notify Sightsavers about such actions in writing in advance of taking them and shall not proceed without Sightsavers' written approval;
- 15.23.4 the Subcontractor shall take all actions as may be required by the Data Protection Regulations. The Subcontractor shall notify Sightsavers about such proposed actions in writing in advance of taking them and shall not proceed without Sightsavers' written approval;

- 15.23.5 where requested by Sightsavers, the Subcontractor shall provide notifications to affected Data Subjects, affected entities or the ICO or any other data protection authority or applicable regulator (where such notifications must be approved by Sightsavers before dissemination), in such form and in accordance with such timetable as Sightsavers reasonably requests;
- 15.23.6 the Subcontractor shall maintain records of all information relating to the Personal Data Breach, including the results of its own investigations and the ICO or any other regulators' or authorities' investigations as well as remedial actions taken; and
- 15.23.7 the Subcontractor shall take all reasonable measures necessary to prevent a future Personal Data Breach from occurring again.
- 15.24 The Subcontractor shall make any information referred to in Clause 15.27 available to Sightsavers on request.
- 15.25 Except to the extent that a Personal Data Breach is caused by Sightsavers, the Subcontractor shall be responsible for paying for, or reimbursing Sightsavers for, the necessary and verifiable costs of:
- 15.25.1 providing notice of any Personal Data Breach to the ICO or any other data protection authority as required under the Data Protection Regulations;
- 15.25.2 providing notice of any Personal Data Breach to affected Data Subjects; and
- 15.25.3 providing notice of any Personal Data Breach to affected entities.
- 15.26 The Subcontractor shall provide reasonable assistance to Sightsavers with any data protection impact assessments and prior consultations with the ICO which Sightsavers reasonably considers to be required by the Data Protection Regulations, in each case solely in relation to Personal Data processed under these Data Processing Clauses and taking into account the nature of the relevant Processing Activity and information available to the Subcontractor.
- 15.27 The Subcontractor shall process the Personal Data as required under this Agreement, or, where relevant, under any other agreement which may be entered into by the Parties until the sooner of:
- 15.27.1 this Agreement being terminated in accordance with Clauses 27 or 28 of this Agreement;
- 15.27.2 the expiry of any and all agreements between the Parties where such expiry causes the Parties to stop sharing Personal Data (unless Sightsavers provides written notice instructing the Subcontractor to continue processing Personal Data on its behalf, in which case processing will expire upon Sightsavers providing written notice to the Subcontractor instructing it to stop processing Personal Data on its behalf); or
- 15.27.3 Sightsavers reasonably requesting (orally or in writing) that Subcontractor stops processing Personal Data on its behalf.
- 15.28 Where any of the eventualities in Clause 15.27 occurs, these Data Processing Clauses will cease to have effect with the exception that to the extent that Subcontractor has any

obligations remaining pursuant to Clauses 15.25-15.30 of these Data Processing Clauses, it will remain responsible for the performance of such obligations.

- 15.29 The Subcontractor agrees that, on termination or expiration of these Data Processing Clauses or in the event that it is notified by Sightsavers that it is not required or permitted to process any further Personal Data, it shall:
  - 15.29.1 Promptly transfer a copy of all Personal Data held by it in relation to these Data Processing Clauses to Sightsavers in a format reasonably requested by Sightsavers; and/or
  - 15.29.2 at Sightsavers' request, and unless legally required to retain the information, destroy all such Personal Data (including back-ups and copies) using a secure method which ensures that it cannot be accessed by any third party and shall provide Sightsavers with written confirmation of secure disposal.
- 15.30 The Subcontractor agrees that the termination of these Data Processing Clauses at any time, in any circumstances and for whatever reasons does not exempt it from any obligations and/or conditions under these Data Processing Clauses as regards the processing of Personal Data, and that this Clause 15.30 shall survive the termination of these Data Processing Clauses for any reason.

## 16. **INFORMATION SECURITY**

- 16.1 The Subcontractor shall have in place (at its own expense) and shall procure that any Third-Party Subcontractors have in place (at their own expense), an information security policy that fully complies with the Security Policy and which is reasonably satisfactory to Sightsavers.
- 16.2 The Subcontractor shall ensure that it keeps up to date with the latest version of the Security Policy and shall periodically review its own security policy and update it from time to time to comply with any updated requirements of the Security Policy, and shall promptly following such update supply to Sightsavers the updated Security Policy, clearly identifying any changes since the previous version supplied to Sightsavers.

## 17. **FREEDOM OF INFORMATION**

- 17.1 The Subcontractor shall at the Subcontractor's expense assist and co-operate with Sightsavers and any Regulatory Authority to enable Sightsavers or DFID to comply with its Information disclosure requirements.
- 17.2 The Subcontractor shall:
  - 17.2.1 forward to Sightsavers any Requests for Information that it receives as soon as practicable and in any event within one Working Day of receipt of the Request for Information; and
  - 17.2.2 provide Sightsavers with a copy of all Information in its possession, or power in the form that Sightsavers requires within three Working Days (or such other reasonable period as Sightsavers may specify) of Sightsavers' request;
  - 17.2.3 provide all necessary assistance as reasonably requested by Sightsavers to enable Sightsavers to meet its obligations under a request from DFID in accordance with Clause 32 (*Freedom of Information*) of the DFID Contract.

- 17.3 The Subcontractor acknowledges that DFID shall be responsible for determining at its absolute discretion whether any Information, including any Confidential Information:
- 17.3.1 is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations;
- 17.3.2 is to be disclosed in response to a Request for Information.
- 17.4 In no event shall the Subcontractor respond directly to a request for information under FOIA unless expressly authorised to do so by Sightsavers.
- 17.5 The Subcontractor acknowledges that DFID may, acting in accordance with any code of practice issued pursuant to Section 45 of FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Subcontractor or the Services:
- 17.5.1 In certain circumstances without consulting with the Subcontractor and/or Sightsavers, or
- 17.5.2 following consultation with the Subcontractor and/or Sightsavers and having taken their views into account.
- 17.6 The Subcontractor shall, during the Term of this Agreement and for a period of at least 7 years following the expiry or termination of this Agreement, retain and maintain all Information (wherever practical in hard copy form):
- 17.6.1 in accordance with Good Industry Practice and Law;
- 17.6.2 in chronological order;
- 17.6.3 in a form that is capable of industry standard audit; and
- 17.6.4 at its own expense;

and shall permit Sightsavers, DFID and/or the Regulatory Authority to inspect such records and shall provide any copies as maybe requested from time to time and at the expense of the Sightsavers, DFID and/or the Regulatory Authority.

## 18. **CONFIDENTIALITY**

- 18.1 Each Party ("**Recipient**") undertakes to treat as confidential all Confidential Information of the other Party ("**Disclosing Party**") and shall not disclose it to third parties, save as provided in Clause 18.2.
- 18.2 The Recipient may only use the Confidential Information for the purposes of this Agreement and may provide the Subcontractor Personnel ("**Permitted Users**") with access to the Confidential Information only to the extent and as required for the performance of this Agreement or the Services. The Recipient shall ensure that each of its Permitted Users is bound to hold all Confidential Information in confidence to the standard required under this Agreement and complies with such obligations of confidence.
- 18.3 This Clause 18 shall not apply to any information which:



- 18.3.1 enters the public domain other than as a result of a breach of this Clause 18;
- 18.3.2 is received from a third party which is not known (and ought not to be known) to the Recipient to be under a confidentiality obligation in respect of that information (except for DFID Data and/or Sightsavers Data received directly or indirectly from any third party);
- 18.3.3 is independently developed by the Recipient without use of the Disclosing Party's Confidential Information (except for DFID Data and/or Sightsavers Data received directly or indirectly from any third party); or
- 18.3.4 was lawfully in the possession of the Recipient prior to disclosure (as evidenced by the records of the Recipient).
- 18.4 The Recipient may disclose Confidential Information where required to do so by any Regulations. Subject to Clause 18.5, in these circumstances, the Recipient shall give the Disclosing Party prompt advance written notice of the disclosure (where lawful and practical to do so) so that the Disclosing Party has sufficient opportunity (where possible) to prevent or control the manner of disclosure by appropriate legal means.
- 18.5 The Subcontractor accepts that Confidential Information may be disclosed to Government Bodies.
- 18.6 The Subcontractor shall, and shall procure that the Subcontractor Personnel, comply with the Official Secrets Acts 1911 to 1989.
- 18.7 Save as required by Regulations, the Subcontractor shall not make any public announcement concerning this Agreement or the activities in connection with this Agreement or refer to DFID or Sightsavers in any publicity or advertisement, except with the prior written approval of Sightsavers. Such approval may be conditional upon complying with any branding or publicity requirements specified by DFID or Sightsavers.
- 18.8 This Clause 18 will remain in force notwithstanding termination of this Agreement.

## 19. **INTELLECTUAL PROPERTY**

- 19.1 Nothing in this Agreement shall affect the ownership of Intellectual Property Rights existing prior to this Agreement.
- 19.2 The Subcontractor grants Sightsavers and DFID a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence in all media to use such Intellectual Property Rights existing prior to this Agreement, in so far as is required to effect the rights under this Clause 19 and for all purposes relating to the Programme.
- 19.3 The Subcontractor hereby assigns to Sightsavers all existing and future Intellectual Property Rights with full title guarantee arising from the provision of the Services and all materials embodying these rights to the fullest extent permitted by law and the Subcontractor hereby waives any moral rights or any other rights in them whatsoever which it may have. The Subcontractor will, at the expense of Sightsavers, take or join in taking such steps to vest such rights in Sightsavers. To the extent that such rights do not vest automatically by operation of law or under this Agreement, the Subcontractor holds legal title in these rights and inventions on trust for Sightsavers.

- 19.4 The Sub-Contractor warrants to Sightsavers that it has obtained from all Sub-Contractor Personnel a written and valid assignment of all existing and future Intellectual Property Rights with full title guarantee arising from the provision of the Services and all materials embodying these rights and a written irrevocable waiver of all the Sub-Contractor Personnel's statutory moral rights or any other rights in them whatsoever which they may have, to the fullest extent permissible by law, and that the Sub-Contractor Personnel has agreed to hold on trust for the Sub-Contractor any such rights in which the legal title has not passed (or will not pass) to the Sub-Contractor. The Sub-Contractor agrees to provide to Sightsavers a copy of this assignment on or before the date of the Agreement.
- 19.5 Sightsavers grants the Subcontractor a non-exclusive, revocable, non-transferable and non-assignable licence to use such Intellectual Property Rights as are necessary for the purposes of the Services for the duration of this Agreement and for use only in accordance with the Sightsavers' instructions.
- 19.6 The Subcontractor acknowledges that Sightsavers owns all rights in any Intellectual Property Rights that it may permit the Subcontractor to use and the Subcontractor does not or shall not acquire any rights relating to those Intellectual Property Rights other than as expressly provided for under this Agreement.
- 19.7 Use by the Subcontractor of any Intellectual Property Rights shall not operate to transfer to the Subcontractor any right in respect of those Intellectual Property Rights and the Subcontractor acknowledges that all rights in such Intellectual Property Rights including any goodwill belong to and shall remain vested in Sightsavers.
- 19.8 The Subcontractor warrants to Sightsavers that:
- 19.8.1 use of the Intellectual Property Rights existing prior to this Agreement does not, so far as it is aware, infringe the rights of any third party;
- 19.8.2 no third party has threatened or, so far as it is aware, is currently threatening proceedings in respect of such infringement, and none of the Intellectual Property Rights existing prior to this Agreement is the subject of any actual or, so far as it is aware, threatened challenge, opposition or revocation proceedings; and
- 19.8.3 it will use all reasonable endeavours (including, without limitation, by conducting searches of all relevant public registers) to ensure that all existing and future Intellectual Property Rights arising from the provision of the Services and all materials embodying these rights will not infringe the rights of any third party.
- 19.9 The obligations contained in this Clause 19 shall remain in force notwithstanding termination of this Agreement for any reason whatever.

## 20. **LIMIT OF LIABILITY**

- 20.1 Nothing in this Agreement shall limit or exclude the liability of either Party for:
- 20.1.1 death or personal injury caused by its negligence, or that if its employees, agents or subcontractors (as applicable);
- 20.1.2 fraud or fraudulent misrepresentation by it or its employees;

- 20.1.3 contravention of the Data Protection Regulations;
- 20.1.4 breach of any obligation as to its title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 20.1.5 any liability to the extent it cannot be limited or excluded by Law.
- 20.2 Subject to Clause 20.1, the Subcontractor's total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) incurred by Sightsavers under or in connection with the Agreement as a result of Defaults by the Subcontractor shall not exceed the aggregate Payment under this Agreement or, if higher, the sum for which the Subcontractor is insured for a claim or claims arising out of such liability.
- 20.3 Subject to Clauses 20.1 and 20.2, Sightsavers' total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) shall not exceed the Payment under this Agreement or, if higher, the sum for which Sightsavers is insured for a claim or claims arising out of such liability.
- 20.4 Subject to Clause 20.1, neither Party shall be liable to the other for any:
  - 20.4.1 loss of profits, turnover, savings business opportunities, revenue or damage to goodwill (in each case whether direct or indirect); and/or
  - 20.4.2 indirect, special or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the Party has been advised of the possibility of such loss occurring.
- 20.5 Subject to Clause 20.2, and notwithstanding Clause 20.4, the Subcontractor acknowledges that Sightsavers may, amongst other things, recover from the Subcontractor the following losses incurred by Sightsavers to the extent that they arise as a result of a Default by the Subcontractor:
  - 20.5.1 any additional operational and/or administrative costs and expenses incurred by Sightsavers, including costs relating to time spent by or on behalf of Sightsavers in dealing with the consequences of the Default;
  - 20.5.2 any wasted expenditure or charges;
  - 20.5.3 the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Agreement;
  - 20.5.4 any compensation or interest paid to a third party by Sightsavers;
  - 20.5.5 any direct, indirect or consequential loss resulting from damage to Sightsavers' relationship with DFID;
  - 20.5.6 any fine, penalty or costs incurred by Sightsavers pursuant to Law.

## 21. INDEMNITY

- 21.1 Subject to Clauses 21.1 to 21.5 (inclusive), the Subcontractor shall indemnify Sightsavers and/or DFID in respect of any Losses howsoever arising out of or in consequence of negligent acts or omissions by the Subcontractor or Subcontractor Personnel or any claims made against Sightsavers and/or DFID by third parties in respect thereof and in relation to this Agreement.
- 21.2 The Subcontractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of Sightsavers and/or DFID or Sightsavers' and/or DFID's employees, or by breach by Sightsavers and/or DFID of its obligations under the Agreement.
- 21.3 Sightsavers shall not be responsible to the Subcontractor for any failure to perform any obligations, or to pursue any rights, under the DFID Contract, except in the circumstances set out in Clause 14.43.
- 21.4 Where the Sub-Contractor or the Sub-Contractor Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under the Agreement, the Sub-Contractor shall:
- 21.4.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- 21.4.2 subject to Clauses **Error! Reference source not found.** to **Error! Reference source not found.** (inclusive), indemnify Sightsavers and/or DFID against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Sub-Contractor or any Sub-Contractor Personnel.
- 21.5 Subject to Clauses **Error! Reference source not found.** to **Error! Reference source not found.** (inclusive), the Sub-Contractor shall indemnify Sightsavers and/or DFID against all liability, assessment or claim arising from any Sub-Contractor Personnel having at any time claimed, or being held or deemed, to have been an employee or worker of Sightsavers and/or DFID or to have been otherwise engaged directly by Sightsavers and/or DFID, including without limitation against any liability arising from or in connection with any claim for wrongful or unfair dismissal or for a redundancy payment.

## 22. INSURANCE

- 22.1 With effect from the Effective Date and at the Subcontractor's expense, the Subcontractor shall hold and maintain during the Term a policy or policies of insurance providing cover in respect of liability which may be incurred by the Subcontractor to DFID and Sightsavers or any third party arising out of or in connection with this Agreement and to provide reasonable cover for all risks that may arise, including but not limited to the insurances specified in clause 10 of Section 4 (Special Conditions) of the DFID Contract.
- 22.2 Such policies shall be provided by an insurer(s) of good reputation and financial standing and on terms that are reasonably acceptable to Sightsavers. The Subcontractor shall, on request,

but in any event at least every 12 months throughout the Term, provide Sightsavers with written evidence of the Subcontractor's compliance with its obligations under this Clause including copies of relevant policy certificates. The terms of any insurance or the amount of cover shall not relieve the Subcontractor of any liabilities arising under this Agreement.

## 23. **SUSPENSION**

23.1 If DFID suspends all or part of the DFID Contract, Sightsavers may, in its sole discretion, suspend all or part of the equivalent part(s) of this Agreement by written notice to the Subcontractor, in each case for such period as Sightsavers may specify to the Subcontractor (having reference to the period of suspension that DFID has applied in relation to the DFID Contract).

23.2 Furthermore, where Sightsavers has the right to terminate this Agreement, Sightsavers shall be entitled to suspend all or part of this Agreement provided always that, if Sightsavers elects to suspend this Agreement in part, the parts of this Agreement not suspended can, in Sightsavers' reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Agreement.

## 24. **MATERIAL VARIATIONS**

24.1 Either Party may request a material variation to this Agreement (**a "Material Variation"**) pursuant to the process set out in this Clause 24.

24.2 A Party may request a Material Variation at any time by sending the request in writing to the Sightsavers Contract Officer or the Subcontract Contract Officer, as relevant. The request shall contain sufficient information setting out:

24.2.1 the extent of the proposed Material Variation and any additional cost that may be incurred; and

24.2.2 a formal, technical and commercial justification.

24.3 In the event that the Parties are unable to agree to a Material Variation Sightsavers may:

24.3.1 continue to perform its obligations under this Agreement without the Material Variation; or

24.3.2 in the event that it requested the Material Variation, terminate this Agreement with immediate effect, in accordance with this Agreement or where the Subcontractor can show evidence of substantial work having been carried out to provide the Services under this Agreement, the Parties shall treat this as a dispute in accordance with the Dispute Resolution Procedure in Clause 34.

24.4 If the Parties agree the Material Variation, the Material Variation shall be effected upon both Parties signing a contract amendment letter, in such form as may be reasonably specified by Sightsavers (the **"Contract Amendment Letter"**) and the Subcontractor shall implement such Material Variation and be bound by the same provisions so far as it is applicable, as though such Material Variation was stated in this Agreement. Sightsavers will not pay for any extra-contractual action, activity or expenditure otherwise undertaken by the Supplier where the Parties have not agreed it in writing in an executed Contract Amendment Letter in accordance with this Clause 24 for such costs to be incurred or for the additional activity to

be undertaken. The Subcontractor shall promptly return on request by Sightsavers, any monies which Sightsavers may have paid the Subcontractor in respect of activities or payments which have not been authorised by Sightsavers in accordance with this Clause 24.

## 25. REMEDIES FOR DEFAULT

25.1 Without prejudice to any other right or remedy of Sightsavers howsoever arising if the Subcontractor commits any Default of this Agreement then Sightsavers may (whether or not any part of the Services have been provided) do any of the following:

25.1.1 at Sightsavers' option, give the Subcontractor the opportunity (at the Subcontractor's expense) to remedy the Default together with any damage resulting from such Default (where such Default and damages are capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Agreement are fulfilled, in accordance with the Sightsavers' instructions;

25.1.2 carry out, at the Subcontractor's expense, any work necessary to make the provision of the Services comply with this Agreement;

25.1.3 if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):

(a) instruct the Subcontractor to comply with the Rectification Plan Process;

(b) suspend this Agreement (whereupon the relevant provisions of Clause 23 (*Suspension*) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;

(c) without terminating or suspending the whole of this Agreement, terminate or suspend this Agreement in respect of part of the provision of the Services only (in relation to which the relevant provisions of Clause 23 (*Suspension*) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services.

25.2 Where Sightsavers exercises any of its step-in rights under Clauses 25.1.3(b) or 25.1.3(c), Sightsavers shall have the right to charge the Subcontractor for and the Subcontractor shall on demand pay any costs reasonably incurred by Sightsavers (including any reasonable administration costs) in respect of the supply of any part of the Services by Sightsavers or a third party provided that Sightsavers uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

## 26. RECTIFICATION PLAN PROCESS

26.1 Where Sightsavers has instructed the Subcontractor to comply with the Rectification Plan Process pursuant to Clause 25.1.3(a):

26.1.1 the Subcontractor shall submit a draft Rectification Plan to Sightsavers for it to review as soon as possible and in any event within 10 (ten) Working Days (or such other period as may be agreed between the Parties) from the date of Sightsavers' instructions. The Subcontractor

shall submit a draft Rectification Plan even if the Subcontractor disputes that it is responsible for the Default giving rise to Sightsavers' request for a draft Rectification Plan.

- 26.2 The draft Rectification Plan shall set out:
  - 26.2.1 full details of the Default that has occurred, including a root cause analysis;
  - 26.2.2 the actual or anticipated effect of the Default; and
  - 26.2.3 the steps which the Subcontractor proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- 26.3 The Subcontractor shall promptly provide to Sightsavers any further documentation that Sightsavers reasonably requires to assess the Subcontractor's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined in accordance with the Dispute Resolution Procedure.
- 26.4 Sightsavers may reject the draft Rectification Plan by notice to the Subcontractor if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
  - 26.4.1 is insufficiently detailed to be capable of proper evaluation;
  - 26.4.2 will take too long to complete;
  - 26.4.3 will not prevent reoccurrence of the Default; and/or
  - 26.4.4 will rectify the Default but in a manner, which is unacceptable to Sightsavers.
- 26.5 Sightsavers shall notify the Subcontractor whether it consents to the draft Rectification Plan as soon as reasonably practicable. If Sightsavers rejects the draft Rectification Plan, Sightsavers shall give reasons for its decision and the Subcontractor shall take the reasons into account in the preparation of a revised Rectification Plan. The Subcontractor shall submit the revised draft of the Rectification Plan to Sightsavers for review within five (5) Working Days (or such other period as agreed between the Parties) of Sightsavers' notice rejecting the first draft.
- 26.6 If Sightsavers consents to the Rectification Plan, the Subcontractor shall immediately start work on the actions set out in the Rectification Plan. If Sightsavers does not consent to the Rectification Plan, Sightsavers shall give reasons and the Subcontractor shall be given an opportunity to modify it. If Sightsavers then rejects the Rectification Plan, Sightsavers shall be entitled to exercise its termination right pursuant to Clause 28 (*Termination with default of the Subcontractor*).

## 27. **TERMINATION WITHOUT DEFAULT OF THE SUBCONTRACTOR**

- 27.1 Sightsavers may, at its sole discretion, terminate this Agreement, at any time by issuing a Termination Notice to the Subcontractor giving at least [21] Working Days written notice.

28. **TERMINATION WITH DEFAULT OF THE SUBCONTRACTOR**

28.1 Sightsavers may terminate this Agreement for material Default by issuing a Termination Notice to the Subcontractor where:

28.1.1 any representation or warranty given by the Subcontractor pursuant to Clause 4 (*Representations and Warranties*) is materially untrue or misleading, and the Subcontractor fails to provide details of proposed mitigating factors which in the reasonable opinion of Sightsavers are acceptable; and/or

28.1.2 the Subcontractor commits a Default, including a material Default, which in the opinion of Sightsavers is remediable but has not remedied such Default to the satisfaction of Sightsavers in accordance with the Rectification Plan Process.

28.2 For the purpose of Clause 28.1 a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

28.3 Sightsavers may, without prejudice to its other rights, including but not limited to the right to claim for Losses incurred, issue a Termination Notice where:

28.3.1 the Subcontractor or any Subcontractor Personnel, either directly or through their servants or agents or subcontractors' breaches any of their obligations under this Agreement; or

28.3.2 the Subcontractor, Subcontractor Personnel, servants, agents or subcontractors, or any person acting on their behalf has committed an offence under the Bribery Act 2010 or the Terrorism Act 2000 in breach of Clauses 35 (*Prevention of fraud and bribery*) and Clause 36 (*Anti-terrorism regulations*) of this Agreement; or

28.3.3 the Subcontractor is an individual or a partnership and at any time:

- (a) becomes bankrupt; or
- (b) is the subject of a receiving order or administration order; or
- (c) makes or intends to make any composition or arrangement with or for the benefit of the Subcontractor's creditors; or
- (d) makes any conveyance or assignment for the benefit of the Subcontractor's creditors; or
- (e) the Subcontractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Subcontractor, are acceptable; or

28.3.4 the Subcontractor is a company and:

- (a) an order is made, or a resolution is passed for the winding up of the Subcontractor; or
- (b) a receiver or administrator is appointed in respect of the whole or any part of the undertaking of the Subcontractor; or



- 28.3.5 the Subcontractor is a partnership or a company and there is a Change of Control; or
- 28.3.6 there is an occurrence of any of the statutory provisos contained in Regulation 73(1) (a)-(c) of the Public Contracts Regulations 2015.
- 28.3.7 Where this Agreement is terminated in accordance with this Clause 28, the Subcontractor shall without prejudice to Sightsavers' other remedies, take any steps necessary to terminate the provision of the Services in a timely and orderly manner but shall not be entitled to any further payment in relation to this Agreement.

## 29. **FORCE MAJEURE**

- 29.1 If the Subcontractor is prevented from or delayed in performing any of its obligations under this Agreement by a Force Majeure Event, then:
- 29.1.1 as soon as possible after the start of the Force Majeure Event, the Subcontractor shall notify Sightsavers of the nature of the Force Majeure Event, the time at which the Force Majeure Event started and the likely effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;
- 29.1.2 on receipt of the notice by Sightsavers under Clause 29.1.1, Sightsavers may in its sole discretion either suspend the relevant obligations under this Agreement for up to 6 months ("**Suspension Period**"), but only to the extent that the Subcontractor is prevented or delayed from performing those obligations, or terminate this Agreement (immediately or during the Suspension Period) with immediate effect by written notice to the Subcontractor;
- 29.1.3 where Sightsavers suspends the Subcontractor's obligations under Clause 29.1.2, the Subcontractor shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement and as soon as possible after the end of the Force Majeure Event, the Subcontractor shall notify Sightsavers that the Force Majeure Event has ended, and shall resume performance of its obligations under this Agreement. If at the end of the Suspension Period, the Force Majeure Event continues and the Parties have not agreed a further period of suspension or reinstatement of the Agreement, this Agreement shall terminate automatically.
- 29.2 The Payment may be reduced at Sightsavers' discretion acting fairly and equitably and following reasonable consultation with the Subcontractor to reflect the extent to which the Services are not provided, or which the provision of the Services is impaired or degraded, as a result of a Force Majeure Event. Services provided prior to the Force Majeure Event are not subject to this provision.

## 30. **TUPE**

- 30.1 The Subcontractor undertakes to Sightsavers that it shall take all reasonable steps to ensure no employees of: (a) the Subcontractor; (b) the Subcontractor' affiliates; and (c) any supplier (direct or indirect) to the Subcontractor or the Subcontractor's affiliates, including any subcontractor, each a ("**Subcontractor Party**") are or will be eligible to transfer to the employment of Sightsavers under the Transfer Regulations (or that any liability in connection with such employees will so transfer) in connection with the termination of the whole or part of the Services (each a "**Relevant Transfer**").

- 30.2 The Subcontractor shall indemnify Sightsavers against all costs and losses (including reasonable legal expenses and any awards payable to the employee(s) resulting from any subsequent termination of his or her employment by Sightsavers provided such termination is made within 9 months of the individual(s) becoming an employee(s) of Sightsavers) arising in connection with the operation of the Transfer Regulations or any right, assertion or claim by an employee of any Subcontractor Party or any employee representative that Sightsavers has obligations, duties to or is otherwise liable to him or her under the Transfer Regulations, in so far as they apply to the Services provided under this Agreement.
- 30.3 For the avoidance of doubt, to the extent that a Relevant Transfer does occur, the Sub-Contract shall ensure that it complies with all applicable requirements of the "Principles of Good Employment Practice" (and all ancillary and related guidance) in relation to that Relevant Transfer, including but not limited to those set out in Section 2 (General Conditions of Contract) of the DFID Contract.

## 31. SAFEGUARDING

- 31.1 The Subcontractor shall (and the Subcontractor shall procure that its Subcontractor Personnel does) at all times comply with the [Sightsavers' Safeguarding Policy](#), receipt of a copy of which the Subcontractor hereby acknowledges. If and to the extent that the Subcontractor's own safeguarding policy is confirmed in writing by Sightsavers to comply with the Sightsavers Safeguarding Policy, the Subcontractor shall (and the Subcontractor shall procure that its Subcontractor Personnel does) comply with the Subcontractor's own safeguarding policy.
- 31.2 For the purposes of this Clause 31, "**Reasonable Measures**" shall mean:
- 31.3 all reasonable endeavours expected to be taken by a professional and prudent supplier in the Subcontractor's industry to eliminate or minimise risk of actual, attempted or threatened exploitation, abuse and harassment (including Sexual Abuse, Sexual Exploitation and Sexual Harassment) whether or not such conduct could amount to a criminal offence in the United Kingdom or an offence under the laws of the territory in which it takes place (together "**Serious Misconduct**") as is reasonable and proportionate under the circumstances. Such endeavours may include (but shall not be limited to):
- (a) clear and detailed policies and guidance for Subcontractor Personnel and where appropriate, beneficiaries;
  - (b) developing, implementing and, throughout the Term maintaining, a safeguarding plan (including monitoring);
  - (c) provision of regular training to Subcontractor Personnel and where appropriate, beneficiaries;
  - (d) clear reporting lines and whistleblowing policies in place for the Subcontractor Personnel, Subcontractor providers and beneficiaries;
  - (e) maintaining detailed records of any allegations of Serious Misconduct and regular reporting to Sightsavers and the Appropriate Authorities (where relevant) of any such incidents

- (f) any other Good Industry Practice measures in relation to safeguarding (including any innovative solutions),
- 31.4 The Subcontractor shall take all Reasonable Measures to prevent Serious Misconduct by the Subcontractor Personnel and shall have in place at all times robust procedures which enable the reporting, by Subcontractor Personnel and beneficiaries, of any such Serious Misconduct, illegal acts and/or failures by the Subcontractor or Subcontractor Personnel to investigate such reports.
- 31.5 The Subcontractor shall take all Reasonable Measures to ensure that the Subcontractor Personnel do not engage in Sexual Abuse and shall ensure that the Subcontractor Personnel do not engage in 'transactional sex' which shall include but not be limited to the exchange of money, employment, goods, or services for sex and such reference to sex shall include sexual favours or any form of humiliating, degrading or exploitative behaviour on the part of the Subcontractor Personnel. For the avoidance of doubt, such 'transactional sex' shall be deemed to be Serious Misconduct in accordance with Clause 31.3.
- 31.6 The Subcontractor shall promptly report in writing any complaints, concerns and incidents regarding Serious Misconduct or any attempted or threatened Serious Misconduct by the Subcontractor Personnel to Sightsavers, who in turn shall (where appropriate) report to DFID (including DFID's Counter Fraud Section at [reportingconcerns@dfid.gov.uk](mailto:reportingconcerns@dfid.gov.uk) or +44 (0) 1355 843747), and where necessary, the Appropriate Authorities.
- 31.7 The Subcontractor shall fully investigate and document all cases or potential cases of Serious Misconduct and shall take appropriate corrective action to reduce the risk and/or eliminate Serious Misconduct being committed by the Subcontractor Personnel (which may include disciplinary action, termination of contracts etc.), such investigations and actions to be reported to Sightsavers as soon as is reasonably practicable (during, as well as at the end of such investigations/actions).
- 31.8 The Subcontractor shall not engage as Subcontractor Personnel for the purposes of the Services any person whose previous record or conduct known to the Subcontractor (or reasonably ought to be known by a diligent supplier which undertakes the appropriate checks) indicates that they are likely to be unsuitable to perform the Services and/or where they represent an increased and unacceptable risk of committing Serious Misconduct.
- 31.9 The Subcontractor shall comply with all applicable laws, legislation, codes of practice and government guidance in the UK and additionally, in the territories where the Services are being performed, relevant to safeguarding and protection of children and adults at risk, which the Subcontractor acknowledges may include vetting of the Subcontractor Personnel by the UK Disclosure and Barring Service in respect of any regulated activity performed by the Subcontractor Personnel (as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended)) and/or vetting by a local equivalent service. Where Sightsavers and/or DFID reasonably believe that there is an increased risk to safeguarding in the performance of the Services, the Subcontractor shall comply with any reasonable request by Sightsavers and/or DFID for additional vetting to be undertaken.
- 31.10 Failure by the Subcontractor to:
- (a) put in place preventative measures to eliminate and/or reduce the risk of Serious Misconduct; or

- (b) fully investigate allegations of Serious Misconduct; or
  - (c) report any complaints to Sightsavers and where appropriate, the relevant authorities (including law enforcement)
- 31.11 shall be a material Default of this Agreement and shall entitle Sightsavers to terminate this Agreement with immediate effect.

## 32. **DISCRIMINATION**

- 32.1 The Subcontractor shall not unlawfully discriminate either directly or indirectly against protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Subcontractor shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010, the International Development (Gender Equality) Act 2014 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Subcontractor shall ensure that in its delivery of the Services, it has due regard for the advancement of equal opportunity and promotes good relations between people who share a protected characteristic and those who do not, as required by the equality legislation.
- 32.2 The Subcontractor shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission. The Subcontractor shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all suppliers, employees and agents of the Subcontractor and all suppliers and subcontractors employed in the execution of this Agreement.
- 32.3 The Subcontractor will comply with any request by Sightsavers and/or DFID to assist Sightsavers and/or DFID in meeting its obligations under the Equality Act 2010 and to allow Sightsavers to assess the Subcontractor's compliance with its obligations under the Equality Act 2010.
- 32.4 Where any investigation is concluded or proceedings are brought under the Equality Act 2010 which arise directly or indirectly out of any act or omission of the Subcontractor, its agents or Subcontractors, or Subcontractor Personnel, and where there is a finding against the Subcontractor in such investigation or proceedings, the Subcontractor will indemnify Sightsavers with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment Sightsavers may have been ordered or required to pay to a third party.

## 33. **CONFLICT OF INTEREST**

- 33.1 Neither the Subcontractor nor any of the Subcontractor Personnel shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Agreement.
- 33.2 The Subcontractor and the Subcontractor Personnel shall notify Sightsavers immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.

- 33.3 The Subcontractor shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for Sightsavers and any of its other activities (including under any other service providing agreements). The Subcontractor shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against Sightsavers, including conflicts of interest which are likely to prejudice their independence and objectivity in performing the Agreement, howsoever arising.
- 33.4 The Subcontractor shall notify Sightsavers immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with any aspect of the Services and shall advise Sightsavers of how they intend to avoid such a conflict arising or remedy such situation. The Subcontractor shall, subject to any obligations of confidentiality it may have to third parties, provide all information and assistance reasonably necessary (at the Subcontractor's cost) that Sightsavers may request of the Subcontractor in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with Sightsavers with the aim of avoiding a conflict or remedying a conflict.
- 33.5 Pursuant to Clause 33.4, Sightsavers shall have the right to require that the Subcontractor puts in place Ethical Walls.
- 33.6 In the event of a failure to maintain the Ethical Walls as described above arising during the course of this Agreement, Sightsavers reserves the right to immediately terminate the Contract on giving written notice to the Subcontractor.

#### 34. **DISPUTE RESOLUTION**

- 34.1 If any dispute arises out of or in connection with this Agreement or the Services ("**Dispute**"), Sightsavers' Contract Officer or the Subcontractor's Contract Officer may serve a notice on the other party's Contract Officer notifying it of the Dispute providing sufficient information. If the Sightsavers Contract Officer and the Subcontractor's Contract Officer are unable to resolve the Dispute within seven Working Days, the Dispute shall promptly be referred by the Sightsavers Contract Officer and the Subcontractor's Contract Officer to the respective managing directors (or equivalent) of both parties who shall meet as soon as reasonably practicable to seek to resolve the Dispute.
- 34.2 If the managing directors of both Parties are unable to resolve the Dispute within 14 Working Days, the parties will make all reasonable effort to promptly settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing to the other party. A copy of the request should be sent to CEDR.

#### 35. **PREVENTION OF FRAUD AND BRIBERY**

- 35.1 The Subcontractor represents and warrants that neither it, nor to the best of its knowledge any Subcontractor Personnel, any person acting on their behalf, have at any time prior to the Effective Date:
- 35.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

- 35.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 35.2 The Subcontractor, Subcontractor Personnel, or any person acting on their behalf shall not during the Term:
  - 35.2.1 commit a Prohibited Act; and/or
  - 35.2.2 do or suffer anything to be done which could cause Sightsavers and/or DFID or any of Sightsavers and/or DFID's employees, consultants, suppliers, subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 35.3 The Subcontractor shall during the Term:
  - 35.3.1 establish, maintain and enforce, and require that its Subcontractor Personnel establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 35.3.2 keep appropriate records of its compliance with its obligations under Clause 35.3.1 and make such records available to Sightsavers and/or DFID on request.
- 35.4 The Subcontractor shall immediately notify Sightsavers in writing if it becomes aware of any breach of Clause 35.1 and/or Clause 35.2, or has reason to believe that it has or any Subcontractor Personnel, servants, agents or subcontractors, or any person acting on their behalf have:
  - 35.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 35.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or disbarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 35.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 35.5 The Subcontractor warrants and represents to Sightsavers that to the best of its knowledge, that neither the Subcontractor, Subcontractor Personnel, servants, agents or subcontractors, or any person acting on their behalf:
  - 35.5.1 has given, offered or agreed to give or accepted, any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or forborne to do any act in relation to the obtaining or execution of any contract or for showing or forbearing to show favour or disfavour to any person or entity in relation to any contract; or
  - 35.5.2 has entered into any contract in connection with which commission has been paid or agreed to be paid by or to the Subcontractor or Subcontractor 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 Sightsavers, whose written consent was subsequently given to such payment.

- 35.6 Neither the Subcontractor or the Subcontractor Personnel or any person acting on their behalf shall accept for their own benefit or pass on for the benefit of partner government, recipient or end user, any trade commission, discount, voucher scheme, re-sale or similar payment or benefit in connection with this Agreement.
- 35.7 Where the Subcontractor or Subcontractor Personnel, or any person acting on their behalf, does any of the acts mentioned in Clause 35.5 or commits any offence under the Bribery Act 2010, with or without the knowledge of the Subcontractor, in relation to this Agreement or any contract with the Crown, Sightsavers shall be entitled:
- 35.7.1 to terminate the Agreement with immediate effect by written notice to the Subcontractor and recover from the Subcontractor the amount of any Losses resulting from the termination;
- 35.7.2 to recover from the Subcontractor the amount or value of any such gift, consideration or commission;
- 35.7.3 to recover from the Subcontractor any other Losses sustained as a result of any breach of this Clause 35, whether or not the Agreement is terminated.
- 35.8 Sightsavers, the Subcontractor and the Subcontractor Personnel shall immediately and without undue delay inform each other of any event that interferes or threatens to materially interfere with the successful delivery of the Services, whether financed in full or in part by DFID, including credible suspicion of/or actual fraud, bribery, corruption or any other financial irregularity or impropriety.

## 36. **ANTI-TERRORISM REGULATIONS**

- 36.1 In accordance to the Terrorism Act 2000 and all subsequent regulations pursuant to this Act, the Subcontractor will assure itself to the best of its knowledge that any payment received under, or relating to this Agreement, including financial assets or economic resources is not made available, either directly or indirectly to, or for the benefit of persons, groups or entities listed in accordance with European Council Regulation EC/2580/2001 (as amended) and/or the Terrorism (United Nations Measures) Orders 2009 of the United Kingdom, or contravene the provisions of those and any subsequent applicable terrorism legislation.
- 36.2 The Subcontractor represents and warrants that neither it, nor to the best of its knowledge any Subcontractor Personnel, servants, agents or subcontractors, or any person acting on their behalf, have at any time prior to the Effective Date and/or during the Term appeared on the Home Office Proscribed Terrorist Organisations List.
- 36.3 The Subcontractor shall immediately notify Sightsavers in writing if it becomes aware of any breach of Clause 36.1 and/or Clause 36.2, or has reason to believe that it has or any Subcontractor Personnel, servants, agents or subcontractors, or any person acting on their behalfs have:
- 36.3.1 been subject to an investigation or prosecution which relates to an alleged infringement of Clause 36.1 and/or Clause 36.2;

36.3.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts.

36.4 Where the Subcontractor or any of his employees, servants, agents or subcontractors, or any person acting on their behalf, breaches any of the acts mentioned in Clause 36.1 and/or Clause 36.2 commits any offence under the Terrorism Act 2000, with or without the knowledge of the Subcontractor, in relation to this Agreement or any contract with the Crown, Sightsavers shall be entitled:

36.4.1 to terminate the Agreement with immediate effect by written notice to the Subcontractor and recover from the Subcontractor the amount of any loss resulting from the termination;

36.4.2 to recover from the Subcontractor any other loss sustained as a result of any breach of this Clause 36, whether or not the Agreement has been terminated.

## 37. **EXIT MANAGEMENT**

37.1 In the event that DFID initiates any exit management process in relation to the Programme that impacts the Subcontractor, in each case in accordance with clause 16 of Section 2 (General Conditions of Contract) of the DFID Contract, Sightsavers shall notify the Subcontractor promptly upon becoming aware of the same.

37.2 The Subcontractor shall provide Sightsavers with all the information and/or other support requested by Sightsavers in order to Sightsavers to comply with its obligations under the DFID Contract in relation to exit management, including but not limited to such support needed for Sightsavers to prepare and deliver an "Exit Plan" in the manner contemplated by the DFID Contract.

37.3 For the avoidance of doubt, the obligations in this Clause 37 shall survive the termination of this Agreement until any exit management process contemplated by the DFID Contract has been fully completed.

## 38. **GENERAL**

38.1 The Parties agree that no term of this Agreement shall be enforceable by any third party (other than DFID) pursuant to the Contracts (Rights of Third Parties) Act 1999.

38.2 Nothing in this Agreement shall create or evidence a partnership, agency or joint venture between the Parties and no Party shall have any authority to bind any other Party in any way.

38.3 No delay, single or partial exercise or omission of any Party in exercising any right under this Agreement shall operate to impair or waive any such right.

38.4 No variation to this Agreement shall be effective unless it is agreed in writing and signed by or on behalf of each of the Parties.

38.5 Neither Party may assign or transfer or subcontract any of its rights, benefits or obligations under this Agreement without the prior written consent of the other Party.

38.6 The invalidity, illegality or unenforceability of any provision of this Agreement, or a provision in any other agreement which is identical to one in this Agreement, shall not affect the other



provisions and the Agreement shall be given effect as if the invalid, illegal or unenforceable provision had been deleted and replaced with a provision with a similar economic effect to that intended by the Parties if this can be achieved by another Clause.

- 38.7 The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Services, and this Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral.
- 38.8 Any notice to be given by a Party to another under this Agreement may be personally delivered, or sent by courier or post to the address of the other Party as otherwise notified in writing, or by transmission, with due transmission receipt, to the applicable email address set out in the signature blocks to this Agreement (or any other email address which has been notified in writing for the purpose). Any personally delivered or e-mailed notice (where there is no bounce-back indicating non-receipt) shall be deemed received on the day it was delivered or sent, if it was delivered or sent on a Working Day before 5.00pm and otherwise on the next Working Day. Any notice sent by courier or post shall be deemed received two Working Days' following the date of despatch of the notice by courier or post.
- 38.9 This Agreement may be executed in counterparts, which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by (a) fax or (b) e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the Agreement thus made, each Party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.
- 38.10 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 38.11 Each Party irrevocably submits to the exclusive jurisdiction of the English and Welsh courts.
- 38.12 In the event of any conflict or inconsistency between the terms of the English language text of this Agreement and any translation, the English text shall prevail.

## APPENDIX 1 - SERVICES

### 1. Territories

The services will be delivered in the following territories:

[List of countries in which the sub-contractor will be delivering the services].

### 2. Deliverables

Key deliverables are as follows:

[Will be summarised from District template detailing location, activity and disease relating to the partner concerned]

### 3. Approach

The approach for each country is set out in the following country proposal documents. It is understood that some of these documents relate to more than one partner.

[Narrative country proposals to be attached or linked].

### 4. Other

- 4.1 Any changes to this scope of work will be formalised as set out in section 24 of the main subcontract.
- 4.2 The services will be delivered in accordance with the Leave no one Behind Strategy, respecting the Exit Strategy and Health Systems Strengthening actions.

## APPENDIX 2 - PAYMENT

[to follow]

## APPENDIX 3 – Reports

### A. Technical and performance reports

	Frequency	Deadline	Reporting Format
Outputs Report	Quarterly	End of month following end of quarter	MyCLAIMS
Monthly Narrative Report	Monthly	25 <sup>th</sup> of each month	Narrative report file
Monthly Workplan Update	Monthly	25 <sup>th</sup> of each month	Workplan
Quarterly Narrative Report	Quarterly	End of month following end of quarter	Narrative report file

### B. Financial reports

	Frequency	Deadline	Reporting Format
Fees Report	Monthly	8 <sup>th</sup> working day	MyCLAIMS and Fee rates tracking report
Expenses Report	Monthly	8 <sup>th</sup> working day	MyCLAIMS
Milestone Deliverables	Monthly	8 <sup>th</sup> working day	Milestone Tracker
Milestone Actuals	Quarterly	End of month following end of quarter	MyCLAIMS
Forecasting	Monthly	25 <sup>th</sup> (with a focus on the next 3 months)	MyCLAIMS (tbc)

Quarterly Risk, Delivery Chain and Assets Reports	Quarterly	End of month following end of quarter	Defined reporting formats
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**C. Physical security risk assessment reports**

	<b>Frequency</b>	<b>Deadline</b>	<b>Reporting Format</b>
Physical Security Risk Assessment Report	Weekly	COB Monday	TBD

## Appendix 4 - Partner Compliance Declaration



ASCEND Partner  
Compliance Declaratic

**Appendix 5 - Compliance Declaration Supporting Documents**



2. ASCEND Partner  
Compliance Required

## Appendix 6 - Good Distribution Practice Checklist



Good Distribution  
Practice (GDP) Check



## Appendix 7 – Sightsavers' Safeguarding Policy



Sightsavers-Safeguarding-Policy-Aug-2018

## Appendix 8 – DFID Contract



DFID ASCEND  
Contract excl. Bid Dc

**SIGNATURES - SUBCONTRACTOR SERVICES AGREEMENT**

**SIGHTSAVERS**

**SIGHTSAVERS (ROYAL COMMONWEALTH SOCIETY FOR THE BLIND)**

By: [redacted] [*Insert signature*]

Title: [redacted] [•]

Address: [redacted] [•]

Phone number: [redacted] [•]

Email address: [redacted] [•]

Attention: [redacted] [•]

**SUBCONTRACTOR**

**[PARTNER NAME]**

By: [redacted] [*Insert signature*]

Title: [redacted] [•]

Address: [redacted] [•]

Phone number: [redacted] [•]

Email address: [redacted] [•]

Attention: [redacted] [•]