

Dated 6th December 2018

Grant Agreement

between

SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

and

OVERSEAS DEVELOPMENT INSTITUTE

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THIS AGREEMENT is made on 6th December 2018

BETWEEN:

SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE (acting as part of the Crown) of 39 Victoria Street, London, SW1H 0EU (the "Authority"); and

OVEASEAS DEVELOPMENT INSTITUTE, a company registered in England and Wales under registered number 00661818 whose principal address is at 203 Blackfriars Road, London, SE1 8NJ ("Grant Recipient")

1. INTRODUCTION

1.1. The following standard terms and conditions apply to Grant Recipients receiving financial assistance from the Authority. These conditions should be read in conjunction with Grant Offer Letter issued by the Authority. The terms and conditions set out in this document, together with the accompanying Annexes together comprise the "Agreement" pursuant to which financial assistance (in the form of the Grant) is given by the Authority to the Grant Recipient.

1.2. The Grant Recipient should note that:

1.2.1. the Authority has the discretion under section 1(1) of the International Development Act 2002 to provide a person or body with development assistance if it is satisfied that the provision of the assistance is likely to contribute to a reduction in poverty.

1.2.2. in line with UK Government financial regulations and as detailed in clause 4.3, the Authority is not permitted to pay Grants in advance of need, but quarterly payments in advance will be made in order to allow the Grant Recipient to commence the Funded Activities.

1.2.3. no VAT is payable on Grants; and

1.2.4. failure to comply with the conditions of the Agreement may result in the Grant payments being suspended, reduced, reclaimed or withheld, and/or the Grant being withdrawn, without prejudice to any other civil or criminal sanctions which may be appropriate.

2. DEFINITIONS AND INTERPRETATION

2.1. In this Agreement the following terms will have the following meanings:

"Annex/es" means the annexes attached to this Agreement;

"Asset" means any assets that are to be purchased or developed using the Grant, including equipment or any other assets which may be a Fixed Asset as appropriate in the relevant context;

"Breach" means a failure to comply (by act or omission) with any of the Terms and Conditions of the Agreement;

“Bribery Act” means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning this legislation;

“Central Government Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

“Commencement Date” means the 1 November 2018;

“Comptroller and Auditor General” means the leader of the National Audit Office in the United Kingdom;

“Confidential information” means any information (however conveyed, recorded or preserved) disclosed by a Party or its personnel to another Party (and/or that Party’s personnel) whether before or after the date of this Agreement, including but not limited to:

- (a) any information that ought reasonably to be considered as confidential (whether or not it is so marked) relating to:
 - (i) the business, affairs, customers, clients, suppliers or plans of the disclosing Party; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party; and
- (b) any information developed by the Parties in the course of delivering the Funded Activities;
- (c) the Authority’s Personal Data;
- (d) any information derived from any of the above, and

Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of clause 28);
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information;

“Controller” has the meaning given to it in the Information Acts;

“Delivery Chain Map” means a plan that identifies all of the Downstream Partners;

“Delivery Chain Risk Map” means the plan that builds on the Delivery Chain Map to capture and manage the risk to the successful delivery of the Funded Activities in relation to the Downstream Partners. The Delivery Chain Risk Map shall detail the formal relationships in place, the flow of funds from the initial source and the potential risks to the end beneficiaries. The Delivery Chain Risk Map shall be updated regularly by the Grant Recipient and when there are material changes to the project risk assessment and / or to the Downstream Partners;

“Disposal” means the disposal, sale, transfer of the Grant or any interest in any Asset and includes any contract for disposal;

“Downstream Partners” means the Grant Recipient’s partners, consultants and sub-contractors involved in the delivery of the Funded Activities

“DPA” means the Data Protection Act 2018 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning this legislation;

“EIR” means the Environmental Information Regulations 2014;

“Eligible Expenditure” means expenditure in relation to the Funded Activities that complies in all respects with the eligibility rules set out in Annex 4 (Eligible Expenditure);

“Exit Plan” means the plan required allowing for the cessation or transfer of the Funded Activities as set out at clause 17;

“Financial Year” means from 1 April to 31 March;

“Fixed Assets” means any Asset which consists of land, buildings, plant and equipment acquired, developed, enhanced, constructed or owned by the Grant Recipient in connection with the Funded Activities;

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning this legislation;

“Funded Activities” means the activities set out in Annex 2 (Funded Activities) and Annex 1 (Grant Offer Letter);

“Funding Period” means the period for which the Grant is awarded starting on the Commencement Date and ending on **31 March 2023**;

“GDPR” means Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

“Grant” means the sum or sums of money in GBP to be provided to the Grant Recipient in accordance with this Agreement;

“Grant Manager” means the individual who has been nominated by the Authority to be the single point of contact for the Grant Recipient in relation to the Grant;

“Grant Offer Letter” means the grant offer letter issued by the Authority to the Recipient set out in Annex 1 (Grant Offer Letter);

“HRA” means the Human Rights Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning this legislation;

“Ineligible Expenditure” means expenditure which is not Eligible Expenditure;

"Information Acts" means the DPA, GDPR, FOIA and the EIR, as amended from time to time;

"Intellectual Property Rights" or **"IPRs"** means copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions semiconductor topography rights, trade and service 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 and any modifications, amendments, updates and new releases of the same and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Instalment Period" means the period referred to in Annex 3 (Payment Schedule);

"KPIs" means the key performance indicators set out in Annex 5 (Agreed Outputs);

"Law" mean any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, rule of common law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or 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;

"Losses" means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise;

"Material Breach" means a breach of the Agreement (including an anticipatory breach) which is not minimal or trivial in its consequences;

"Maximum Sum" means the maximum amount of the Grant to be provided by the Authority to the Grant Recipient for the Funded Activities;

"The Open Government Licence or "OGL" means the set of terms and conditions under which information providers in the public sector can license the use and re-use of their information;

"Party" means the Authority or Grant Recipient;

"Personal Data" has the meaning given to it in the Information Acts;

"Programme" means the Fleming Fund

"Pre-existing IPR" means all Intellectual Property Rights vested in or licensed to the Parties prior to the Commencement Date and/or created by the Parties independently of the Funded Activities;

"Procurement Regulations" means the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Utilities Contracts Regulations 2016 and Defence and Security Public Contracts Regulations 2011;

"Prohibited Act" means:

- (a) directly or indirectly offering, giving or agreeing to give to any servant of the Authority or the Crown any gift or consideration of any kind as an inducement or reward for:

- (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement; or
- (ii) showing or not showing favour or disfavour to any person in relation to this Agreement;
- (b) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement; or
- (c) defrauding or attempting to defraud or conspiring to defraud the Authority or the Crown;

"Public Accounts Committee" the select committee of the British House of Commons which is responsible for overseeing government expenditures;

"Representatives" means any of the Parties' duly authorised directors, employees, officers, agents, professional advisors and consultants;

"Remedial Action Plan" means the agreed remedial plan of action developed by the Grant Recipient and agreed by the Authority to remedy a KPI failure, as set out in clause 13.2.2;

"State Aid" has the meaning given in Article 107(1) Treaty for the Functioning of the European Union;

"Terms and Conditions" means the terms and conditions set out in this Agreement and upon which the Grant is payable;

"Unspent Monies" means any monies:

- (a) paid to the Grant Recipient which remain unspent and uncommitted at the end of an Instalment Period; or
- (b) remain unspent and uncommitted at the end of the Financial Year in which the Instalment Period occurs;

"VAT" mean value added tax chargeable in the United Kingdom;

"Working Day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday in England.

2.2. In this Agreement, unless the context otherwise requires:

2.2.1. the singular includes the plural and vice versa;

2.2.2. reference to a gender includes the other gender and the neuter;

2.2.3. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;

2.2.4. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

- 2.2.5. the words "including", "other", "in particular", "for example" and similar words will not limit the generality of the preceding words and will be construed as if they were immediately followed by the words "without limitation";
- 2.2.6. references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing will be construed accordingly;
- 2.2.7. references to "representations" will be construed as references to present facts, to "warranties" as references to present and future facts and to "undertakings" as references to obligations under this Agreement;
- 2.2.8. references to "Clauses" and "Annexes" are, unless otherwise provided, references to the clauses and annexes of this Agreement and references in any Annex to parts, paragraphs and tables are, unless otherwise provided, references to the parts, paragraphs and tables of the Annex in which these references appear; and
- 2.2.9. the headings in this Agreement are for ease of reference only and will not affect the interpretation or construction of this Agreement.

3. PURPOSE AND SCOPE OF GRANT

- 3.1. The Parties acknowledge and agree that nothing in this Agreement or the provision of the Grant gives or is intended to give rise to contractual relations.
- 3.2. The Grant Recipient shall use the Grant solely for the delivery of the Funded Activities and must not, without the prior written consent of the Authority, make any material changes to the Funded Activities.
- 3.3. The Authority may at its entire discretion vary the Grant as a result of changes to the Funded Activities or for any other reason and shall make reasonable efforts to discuss this with the Grant Recipient in advance. Any variation made under this clause 3.3 will not take effect until notified by the Authority to the Grant Recipient in writing
- 3.4. The Grant must not be used to support activity which influences or attempts to influence Parliament, Government or political parties, to propagate a religion or belief, or to influence the awarding or renewal of contracts or grants, or to influence legislative or regulatory action.
- 3.5. The Grant must be used to promote the agreed project objectives with Official Development Assistance (ODA) eligible countries as outlined in the Organisation for Economic Co-operation and Development (OECD) Development Co-Operation Directorate list.
- 3.6. The Grant Recipient must provide prior notification to the Authority of any contact they may make directly with missions and or representatives of governments in relation to the promotion of the agreed objectives under this Grant through monthly meetings and quarterly reports.
- 3.7. The Authority makes no commitment to renewing or continuing funding after the term of this Agreement and will not be liable for any additional cost incurred by the Grant Recipient either during or after the Funding Period.

- 3.8. Where the Grant Recipient intends to apply to a third party for additional funding for the Funded Activity, the Grant Recipient will notify the Authority in advance of its intention to do so and, where such funding is obtained, it will provide the Authority with details of the amount and purpose of that funding.
- 3.9. Where, before or during the Funding Period, the Grant Recipient receives any funding from any other source or person towards the Funded Activities that was not already committed to the Grant Recipient and disclosed to the Authority, the Authority may, where that funding duplicates funding of the Grant, require repayment of the Grant (up to the amount of duplicate funding received) in accordance with clause 7.
- 3.10. The Grant Recipient agrees and accepts that it will not apply for duplicate funding in respect of any part of the Grant for the Funded Activities or any related administration costs that the Authority has provided under this Agreement and that it may be prosecuted for fraud should it dishonestly and intentionally make such an application to the Authority.
- 3.11. Unless terminated in accordance with clause 13, the terms of this Agreement shall apply from the Commencement Date until the end of the Funding Period or for so long as any Grant remains unspent by the Grant Recipient, whichever is longer.

4. PAYMENT OF GRANT

- 4.1. Subject to clause 4.2, 4.14 and 13, the Authority shall pay the Grant to the Grant Recipient in accordance with Annex 3 (Payment Schedule).
- 4.2. The Grant will be paid only in respect of Eligible Expenditure incurred by the Grant Recipient to deliver the Funded Activities and represents the Maximum Sum the Authority will pay to the Grant Recipient under this Agreement with the actual amount paid to the Grant Recipient in accordance with Annex 3 (Payment Schedule).
- 4.3. In line with UK Government financial regulations, the Authority will not make payments in advance of need, but payments will be made quarterly in advance on receipt of a valid invoice from the Grant Recipient in order to allow the Grant Recipient to commence Funded Activities. Subsequent payments will be released on receipt of confirmation that the Grant already disbursed has been spent and provided the Funded Activities have been delivered during the previous period.
- 4.4. Should any interest be earned on DHSC contributions, the Grant Recipient will channel this back into the programme and off-set against future payment requests to the Authority. The Authority is providing the Grant with no expectation of a direct service being supplied in return and therefore considers payments made in pursuit of the Initiative to be outside the scope of VAT.
- 4.5. The amount of the Grant shall not be increased in the event of any overspend by the Grant Recipient in its delivery of the Funded Activities.
- 4.6. The Grant Recipient shall submit a valid Grant claim by the 15th Working Day of the month prior to the beginning of the Instalment Period for which the Grant claim is made. The Grant claim shall be submitted together with a copy of Annex 4 (Eligible Expenditure) and any other documentation as prescribed by the Authority.

- 4.7. Time for payment of the Grant claim will not be of the essence. The Authority will have no liability to the Grant Recipient for any Losses caused by a delay in the payment of a Grant claim howsoever arising.
- 4.8. The Authority reserves the right not to pay any Grant claims which are not submitted within the period set out in clause 4.6. Incomplete and/or incorrect Grant claims, which include Grant claims without the full supporting documentation, will be returned unpaid.
- 4.9. The Grant Recipient shall notify the Authority promptly if at any time it becomes aware that it is unable to make a Grant claim in accordance with clause 4.6.
- 4.10. The Grant Recipient shall promptly notify and repay to the Authority any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where the Grant has been paid in error before the Grant Recipient has complied with all conditions attaching to the Grant.
- 4.11. In the event of the Grant Recipient spending more money on the Funded Activities than originally anticipated under this Agreement, the Authority will not be obliged to increase the Grant amount.
- 4.12. Where the Grant Recipient enters into a contract with a third party in connection with the Funded Activities the Grant Recipient will remain responsible for settling payment in respect of those invoices. Third party invoices must not be submitted to the Authority for payment.
- 4.13. Onward payment of the Grant and the use of sub-contractors (subject to the Authority's prior written approval), shall not relieve the Grant Recipient of any of its obligations under this Agreement, including any obligation to repay the Grant.
- 4.14. The Authority will not make the first payment of the Grant and/or any subsequent payment of the Grant unless, or until the Authority is satisfied that:
 - 4.14.1. such Grant payment will be used for Eligible Expenditure; and
 - 4.14.2. any previous Grant payments have been used for the Funded Activities or, where there are Unspent Monies, have been repaid to the Authority in accordance with clause 7.2.

5. DISPOSAL OF ASSETS, CHANGE OF USE AND ASSIGNMENT

- 5.1. The Grant Recipient must not sell any Assets that have been totally or partly bought, restored, conserved (maintained or protected from damage) or improved with the Grant unless:
 - 5.1.1. the Asset can be sold for its full current market value; and
 - 5.1.2. prior permission has been obtained from the Authority in writing.
- 5.2. The Grant Recipient must not sell any Asset below market value without prior written permission from the Authority.
- 5.3. Any proceeds from the Disposal of any Asset will be surrendered to the Authority in full, unless otherwise agreed in writing by the Authority.
- 5.4. The Grant Recipient will establish and maintain an inventory of all Assets and provide it the Authority within 5 Working Days of being requested to do so.

6. SPENDING CONTROLS – MARKETING, ADVERTISING, COMMUNICATIONS AND CONSULTANCY

- 6.1. As part of the government's efficiency and reform programme, public funding for marketing, advertising, communications and consultancy is closely controlled. The Grant Recipient must seek permission from the Authority prior to any proposed expenditure in these areas, either in connection with, or using the Grant, under this Agreement. A complete list of the controlled activities can be found at <https://www.gov.uk/government/publications/cabinet-office-controls>.
- 6.2. The Grant Recipient should provide evidence that any marketing, advertising, communications and consultancy expenditure carried out in connection with, or using the Grant will deliver measurable outcomes that meet government objectives and can secure value for money.

7. WITHHOLDING, SUSPENDING OR REPAYMENT OF GRANT

- 7.1. Without prejudice to the Authority's other rights and remedies, the Authority may withhold or suspend payment of the Grant and/or require the Grant Recipient to repay any Unspent Monies if any of the events set out in clause 13 arise.
- 7.2. The Grant Recipient agrees and accepts that it may become ineligible for grant support and be required to repay any Grant if it engages in tax evasion or aggressive tax avoidance, in the opinion of HMRC.
- 7.3. The Grant Recipient may not retain any portion of the Grant that has not been used by the end of the Financial Year in the Funding Period unless agreed in advance by the Authority.
- 7.4. Unspent Monies, as calculated by the Authority, must be repaid to the Authority within 20 Working Days of a request for repayment and must not be carried forward for use in the following Financial Year unless agreed in advance by the Authority.
- 7.5. Wherever under this Agreement any sum of money is recoverable from or payable by the Grant Recipient (including any sum that the Grant Recipient is liable to pay to the Authority in respect of a Breach of this Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Grant Recipient under this Agreement or under any other agreement or contract with the Authority.

8. LOSSES, GIFTS AND SPECIAL PAYMENTS

- 8.1. In connection with this Agreement, the Grant Recipient must obtain prior written consent from the Authority before:
- 8.1.1. writing off any debts or liabilities;
 - 8.1.2. offering to make any special payments; and
 - 8.1.3. giving any gifts.
- 8.2. The Grant Recipient will keep a record of all gifts, both given and received, in connection with the Grant or any Funded Activity.

9. BORROWING

- 9.1. The Grant Recipient must obtain prior written consent from the Authority before:

- 9.1.1. borrowing or lending money from any source;
- 9.1.2. charging or agreeing any security over any Asset; and/or
- 9.1.3. giving any guarantee, indemnities or letters of comfort,

that relate to any of the conditions of the Agreement, or have any impact on the Grant Recipient's ability to deliver the Funded Activities set out in the Agreement.

10. CHANGES TO THE AUTHORITY'S REQUIREMENTS

- 10.1. The Authority will notify the Grant Recipient of any changes to its activities which are supported by the Grant.
- 10.2. The Grant Recipient will endeavour to accommodate any changes to the Authority's needs and requirements under this Agreement.

11. ACKNOWLEDGEMENT AND PUBLIC STATEMENTS

- 11.1. The Grant Recipient will acknowledge the Grant in its annual report and accounts; including an acknowledgement of the Authority as the source of the Grant and will show the Grant Recipient's related expenditure as a restricted fund under the Funded Activities in the Grant Recipient's annual accounts.
- 11.2. The Grant Recipient will not publish any official documents referring to the Funded Activities or the Authority without the prior written agreement of the Authority, except for those referred to in clause 27.4.
- 11.3. The Grant Recipient will acknowledge the support of the Authority in any materials that refer to the Fund Activities and in any written or spoken public presentations about the Funded Activities. Such acknowledgements will include a name and logo agreed by the Authority, using the templates provided by the Authority.
- 11.4. Subject to clause 11.2 any international facing publicity material for the Funded Activities must refer to the programme under which the Grant was awarded and UK aid.
- 11.5. Subject to clause 11.2 any publicity material for domestic use for the Fund Activities must refer to the programme under which the Grant was awarded and the Authority.
- 11.6. In using the Authority's and the programme's name and logo, the Grant Recipient will comply with all reasonable branding guidelines issued by the Authority from time to time. If a third party wishes to use the Authority's or the programme's logo, the Grant Recipient must first seek permissions from the Authority.
- 11.7. The Grant Recipient will comply with all reasonable requests from the Authority to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Authority in its promotional and fundraising activities relating to the Funded Activities.

12. ENVIRONMENTAL REQUIREMENTS

- 12.1. The Grant Recipient shall perform the Funded Activities in a way so as to conserve energy, water, wood, paper and other resources, reduce waste and 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.
- 12.2. The Grant Recipient shall pay due regard to the use of recycled products, so long as they are not detrimental to the provision of the Funded Activities or the environment, to include the use of all packaging, which should be capable of recovery for re-use or recycling.
- 12.3. The Grant Recipient shall take all possible precautions to ensure that any equipment and materials used in the provision of the Funded Activities do not contain chlorofluorocarbons, halons or any other damaging substances, unless unavoidable, in which case the Authority shall be notified in advance of their use. The Grant Recipient shall endeavour to reduce fuel emissions wherever possible.

13. TERMINATION

- 13.1. Either Party may terminate this Agreement at any time by giving at least 3 months' written notice to the other Party.
- 13.2. The Authority may by written notice to the Grant Recipient terminate this Agreement with immediate effect if any of the following events occur:
 - 13.2.1. The Grant Recipient intends to use, has used in the past, or uses the Grant for purposes other than those for which they have been awarded;
 - 13.2.2. The Grant Recipient fails to comply with the KPI targets of this Agreement as updated from time to time and set out in Annex 5 (Agreed Outputs) for more than three (3) consecutive months, or three (3) consecutive months in any six (6) month rolling period and:
 - a) following the implementation of a Remedial Action Plan the Authority considers that the KPI failure persists; or
 - b) the KPI failure has not been remedied to the satisfaction of the Authority; or
 - c) the KPI failure reoccurs within a subsequent 6 month period from the date of approval of the Remedial Action Plan;
 - 13.2.3. the Grant Recipient is, in the reasonable opinion of the Authority, delivering the Funded Activities in a negligent manner;
 - 13.2.4. the Grant Recipient obtains duplicate funding from a third party for the Funded Activities;
 - 13.2.5. the Grant Recipient obtains funding from a third party which, in the reasonable opinion of the Authority, undertakes activities that are likely to bring the reputation of the Funded Activities or the Authority into disrepute;
 - 13.2.6. the Grant Recipient provides the Authority with any materially misleading or inaccurate information;
 - 13.2.7. the Grant Recipient commits or committed a Prohibited Act;
 - 13.2.8. the Authority determines (acting reasonably) that any director or employee of the Grant Recipient has:
 - a) acted dishonestly or negligently at any time during the term of this Agreement and to the detriment of the Authority; or
 - b) taken any actions which unfairly bring or are likely to unfairly bring the Authority's name or reputation and/or the Authority into disrepute;

- 13.2.9. the Grant Recipient transfers, assigns or novates to any third party, or encumbers in any way, the Grant without the Authority's consent;
- 13.2.10. the Grant Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- 13.2.11. the Grant Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;
- 13.2.12. the Grant is found to be unlawful State Aid;
- 13.2.13. the Grant Recipient commits a Material Breach of the Agreement.

13.3. In the event of a Breach (other than a Material Breach), the Authority may serve a notice on the Grant Recipient requiring remedial action to be taken within a period as specified by the Authority (such period not more than 20 Working Days). If the Breach is not remedied within the period specified by the Authority, the failure to remedy the Breach will amount to a Material Breach.

13.4. In the event a change of government or in policy direction, this Agreement may be terminated by the Authority with immediate effect by notice in writing (such notice period as the Authority determines will be reasonable in all the circumstances).

14. AMENDMENT OR VARIATION OF THE AGREEMENT

14.1. No amendment or variation to this Agreement will be effective unless it is in writing, agreed and signed by the Representatives on behalf of each of the Parties.

15. CONSEQUENCES OF TERMINATION AND SUPPORT FOR TRANSFER OF RESPONSIBILITY

15.1. Nothing in this Agreement will affect any provision of this Grant which is expressly or by implication intended to apply or continue to apply following termination of this Agreement, for any reason.

15.2. If the Authority terminates this Agreement in accordance with clause 13.1 the Authority may pay the Grant Recipient's reasonable costs in respect of the delivery of the Funded Activities performed up to the termination date. Reasonable costs will be identified by the Grant Recipient and will be subject to the Grant Recipient demonstrating that they have taken adequate steps to mitigate their costs. For the avoidance of doubt, the amount of reasonable costs payable or whether they are even payable altogether will be determined solely by the Authority.

15.3. The Authority will not be liable to pay any of the Grant Recipient's costs or those of any contractor/supplier of the Grant Recipient related to any transfer or termination of the employment of any employees engaged in the provision of the Funded Activities prior to the date of termination.

15.4. Upon receiving notice of termination from the Authority, the Grant Recipient will review, amend and implement the agreed Exit Plan or equivalent with the Authority.

15.5. The Grant Recipient will repay any unspent or outstanding Grant to the Authority within 10 Working Days of the termination or expiry of this Agreement.

- 15.6. Save as otherwise expressly provided in the Agreement, termination or expiry of the Agreement shall be without prejudice to any rights, remedies or obligations accrued under the Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either party to recover any amount outstanding at such termination or expiry.

16. DISPUTE RESOLUTION

- 16.1. The Parties will use all reasonable endeavours to negotiate in good faith, and settle amicably, any dispute that arises during the continuance of the Agreement.
- 16.2. All disputes and complaints (except for those which relate to the Authority's right to withhold funds or terminate this Agreement) shall be referred in the first instance to the Parties Representatives.
- 16.3. If the dispute cannot be resolved between the authorised points of contact within a maximum of 60 days, then the matter will be escalated to formal meeting between the Grant Manager and the Grant Recipient's chief executive (or equivalent).
- 16.4. Without prejudice to any other rights or remedies that the Authority may have, the Authority reserves the right to seek injunctive or other appropriate relief for sufficiently serious, time-critical, actual or anticipated Breach.

17. EXIT PLAN

- 17.1. The Grant Recipient will prepare an Exit Plan within the first three months of the signing of the Grant Offer Letter or within a timescale proportionate to the Funding Period, whichever is shorter, to allow the cessation or seamless transfer of the Funded Activities.
- 17.2. As part of the Exit Plan, the Authority will jointly agree a plan for communicating with all partners and employees during the exit period, in a way that avoids any detrimental impact on the respective parties' businesses resulting from the closure or transfer of the Grant, and shares responsibilities between the respective parties.

18. ANNUAL GRANT REVIEW

- 18.1. The Grant will be reviewed annually in March each year and will take into account the Grant Recipient's delivery (during the Funding Period) of the Funded Activities against the KPIs and/or agreed outputs set out in Annex 5 (Agreed Outputs). As part of the annual review the Authority will have regard to the reports produced by the Grant Recipient in accordance with clause 20.1.
- 18.2. Each annual review may result in the Authority making a recommendation that:
- 18.2.1. the Funded Activities and Agreement continue in line with existing plans;
 - 18.2.2. there should be an increase or decrease in the Grant for the subsequent financial year;
 - 18.2.3. the KPIs should be re-defined and agreed;
 - 18.2.4. the Authority should recover unspent or surplus Grant;
 - 18.2.5. the Agreement should be terminated.
- 18.3. The Grant Recipient may make representations to the Authority regarding any recommendations made in accordance with clause 18.2. The Authority is not however obliged

to take such representations into account when making its recommendation and any recommendation will be final and at the Authority's absolute discretion.

18.4. The Grant Recipient is required to provide the following after the Authority's financial year has ended (31 March) for any year (1 April - 31 March) in which they receive grant funding:

18.4.1. an unaudited / not independently examined statement of income and expenditure by 30th April;

18.4.2. a signed declaration from the grant recipient Finance Director or equivalent that all expenditure was eligible in line with Annex 4 by 30th April; and

18.4.3. a grant report for which sets out activity achieved against the projects' aims by 31st May.

19. MONITORING AND REPORTING

19.1. The Grant Recipient shall closely monitor the delivery and success of the Funded Activity throughout the Funding Period to ensure that the aims and objectives of the Funded Activity are met and that the Terms and Conditions of this Agreement are being adhered to.

19.2. The Grant Recipient must provide the Authority with all reasonable assistance and co-operation in relation to any ad-hoc information requests made by the Authority in relation to the Funded Activities. Without prejudice to these obligations, the Grant Recipient must also provide to the Authority within two weeks of the anniversary of this Agreement an annual report on:

19.2.1. the progress made towards achieving the agreed KPIs/outputs and the defined longer term outcomes set out in Annex 4 (Eligible Expenditure) and where possible will quantify what has been achieved by reference to the Funded Activities' targets; and

19.2.2. details of any Assets either acquired or improved using the Grant.

19.3. Where the Grant Recipient has obtained funding from a third party for its delivery of part of the Funded Activities, the Grant Recipient will include the amount of such funding in its financial reports together with details of what that funding has been used for.

19.4. The Grant Recipient will permit any person authorised by the Authority such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Grant Recipient's fulfilment of the conditions of this Agreement and will, if so required, provide appropriate oral or written explanations from such employees or agents as required during the Funding Period and for so long as any portion of the Grant remains unspent.

19.5. The Grant Recipient will notify the Authority as soon as reasonably practicable of:

19.5.1. any financial, administrative, managerial difficulties that may hinder or prevent the Grant Recipient from fulfilling its obligations under the Agreement;

19.5.2. any actual or potential Material Breach;

19.5.3. actual or potential material variations to the Eligible Expenditure agreed in accordance with the Grant Offer Letter or Annex 4 (Eligible Expenditure); and

19.5.4. any change in the information on costs (whether actual or estimated) of carrying out the Funded Activities or any event which materially affects the continued accuracy of such information.

- 19.6. The Grant Recipient will represent and undertake (and repeat such representations on delivery) that the reports and information it gives pursuant to this clause 19 are accurate and that it has diligently made full and proper enquiry of the matter pertaining to the reports and information given.
- 19.7. The Grant will be reviewed quarterly through quarterly reports produced by the Grant Recipient. This report will take into account the Grant Recipient's delivery (during the Funding Period) of the Funded Activities against the KPIs and/or agreed outputs set out in Annex 5 (Agreed Outputs). As part of the quarterly review the Authority will have regard to the reports produced by the Grant Recipient in accordance with clause 20.1.

20. ACCOUNTS AND RECORDS

- 20.1. The Grant Recipient agrees that the Authority shall be entitled to audit the delivery and performance of the Funded Activity and/or request access to, or a report from, the Grant Recipient's auditors on its audited accounts. Any such reports must be capable of being relied upon by the Authority, either by having the Authority as an express addressee, or by express statements of the fact therein. The Authority shall also be entitled to full access to the Grant Recipient's records on an open-book basis during the Funding Period or such other period as the Authority may require.
- 20.2. The Grant Recipient will comply with (and facilitate the Authority's compliance with) all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Authority.
- 20.3. The Grant Recipient will permit (and comply with) any surveys of management controls and systems, including internal audit reviews, as may be required by the Authority.
- 20.4. The Grant Recipient must present Annex 3 (Payment Schedule) and Annex 4 (Eligible Expenditure) to their external auditors/accountants for certification. The external auditors/accountants' report should state whether, in their opinion, the grant paid to the Grant Recipient, was applied in accordance with the Agreement.
- 20.5. The Grant Recipient's chief executive (or equivalent) should ensure that the systems governing the Grant are subject to independent review.
- 20.6. The systems in place to govern the Grant should be appropriate to the size of Grant Recipient organisation, the level of Grant, risk to the public funds provided and cost of the review. These arrangements may be reviewed by the Authority in line with HM Treasury's Public Sector Internal Audit Standards.
- 20.7. The Grant Recipient (and any person acting on behalf of the same) will at the request of the Authority permit (a) the Comptroller and Auditor General or appointed representatives; and (b) the Authority or its Representatives access at all reasonable times to all documents (including computerised documents and data) and other information as are connected to the Grant payable under this Agreement for the purpose of the Funded Activities.
- 20.8. The documents, data and information referred to in clause 20.7 are such which any internal auditors, external auditors, the Authority or the Comptroller and Auditor General or any department or other public body may reasonably require for the purposes of audit or for carrying out examinations into the economy, efficiency and effectiveness with which the Grant Recipient has used the Grant. In particular, the Grant Recipient will retain such information as

would be necessary to provide assurance that the Grant Recipient delivered the minimum requirements of the Funded Activities.

- 20.9. Clauses 20.7 and 20.8 do not constitute a requirement for the examination, certification or inspection of the accounts of the Grant Recipient or its partners by the Comptroller and Auditor General under section 6(3) of the National Audit Act 1983. The Comptroller and Auditor General will seek access in a measured manner to minimise any burden on the Grant Recipient and will avoid duplication of effort by seeking and sharing information with the Audit Commission, Wales Audit Office or Audit Scotland as appropriate.
- 20.10. Where this Agreement is for a term longer than one Financial Year, the Grant Recipient must provide the following details to the Authority before the end of each Financial Year:
 - 20.10.1. a schedule of the Funded Activities and estimates of income and expenditure for the next Financial Year, together with forecast outturns for the current year;
 - 20.10.2. a statement setting out the total Grant agreed for the year;
 - 20.10.3. details of any additional funding for delivery of the Funded Activities, other than the Grant, with full details of how it is to be spent;
 - 20.10.4. the level of balances held by the Grant Recipient at the end of the Financial Year.
- 20.11. The Grant Recipient will provide revised forecasts of income and expenditure:
 - 20.11.1. when these forecasts increase or decrease by more than 15% of the original expenditure forecasts; and/or
 - 20.11.2. at the request of the Authority.
- 20.12. The Grant Recipient will keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant received from the Authority and any income generated from the Funded Activities.
- 20.13. The Grant will be shown in the Grant Recipient's separate account as a restricted fund and will not be included or mixed with the Grant Recipient's general funds or other monies.
- 20.14. The Grant Recipient will keep all original accounting records relating to the Funded Activities, including invoices, receipts, VAT records, accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six years following receipt of any portion of the Grant to which they relate.
- 20.15. Where the Grant allows for capital spend, the Grant Recipient must keep a register of fixed assets, including all land and building acquired or improved with the Grant.
- 20.16. The Grant Recipient will within 5 Working Days of a request by the Authority, unless otherwise agreed by the Authority, provide further information, explanations and documents as the Authority may reasonably require, in order for the Authority to establish that the Grant has been used properly in accordance with this Agreement.
- 20.17. Where the Grant Recipient is a company registered at Companies House, the Grant Recipient must file their annual return and accounts by the dates specified by Companies House.
- 20.18. Where the Grant Recipient is a registered charity, the Grant Recipient must file their charity annual return by the date specified by the Charity Commissioner.

- 20.19. The Grant Recipient must provide the Authority with copies of their annual return, accounts and charity annual return (as applicable) within five days of filing them at Companies House and/or the Charity Commissioner. Without prejudice to the Authority's other rights, if the Grant Recipient fails to comply with clauses 20.17 and/or 20.18 the Authority suspend payment of the Grant at the Authority's discretion.

21. FINANCIAL MANAGEMENT

- 21.1. The Grant Recipient must have a sound administration and audit process, including internal financial controls to safeguard against fraud, theft or any other impropriety or mismanagement in connection with the administration of the Grant, and will require that the internal/external auditors report on the adequacy or otherwise of that system. All cases of fraud, theft, impropriety or mismanagement (whether proven or suspected) relating to the Funded Activities must be notified to the Authority as soon as they are identified. The Authority may then request their referral (which the Grant Recipient is obliged to carry out)
- 21.2. The Grant Recipient must be able to demonstrate that the systems of financial and manpower control, management and organisation will enable the Grant Recipient to meet the Funded Activities and objectives of this Agreement.
- 21.3. The Grant Recipient must comply with the recommendations of the Public Accounts Committee and any other expenditure controls specified by Government.
- 21.4. The Grant Recipient will not transfer, assign, novate or otherwise dispose of the whole or any part of the Grant or this Agreement or any rights under it, to another organisation or individual, unless the Grant Recipient has first entered into an agreement, authorised by the Authority, requiring the Grant Recipient to work with another organisation in delivering the Funded Activities.

22. GRANT RECIPIENT PERSONNEL AND FLEMING FELLOWS

- 22.1. The Grant Recipient will inform the Authority prior to creating or replacing staff in posts including Fleming Fellows where they are responsible for delivery of the Funded Activity. The Grant Recipient will appoint replacement staff or Fleming Fellows with appropriate qualifications and experience.
- 22.2. The Grant Recipient will ensure safeguarding policies and procedures, including appropriate vetting of its employees, are carried out in accordance with good industry practice and following any reasonable instructions from the Authority.

23. INTELLECTUAL PROPERTY RIGHTS

- 23.1. Save as expressly granted elsewhere in this Agreement the Grant Recipient will retain:

- 23.1.1. its Pre-existing IPR; and
- 23.1.2. IPR created by it during the period of the Grant.

- 23.2. The Authority will retain:

- 23.2.1. its Pre-existing IPR; and
- 23.2.2. IPR in all reports, materials and other documents produced in whole or in part using the Grant provided under this Agreement.

- 23.3. Other than as expressly set out in this Agreement, neither Party will have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 23.4. The Grant Recipient shall at all times make all IPR referred to in clause 23.1.2 above publically available without restriction using an appropriate licence agreed with the Authority (which may be, without limitation, the Open Government Licence or an appropriate Creative Commons Licence).
- 23.5. The Grant Recipient grants to the Authority a non-exclusive, royalty-free, sub-licensable license to use the IPR referred to in clause 23.1.2 above
- 23.6. The Authority may freely share any information, know-how, system or process developed during the period of the grant Funded Activities to support similar projects.
- 23.7. Ownership of third party software or other IPR necessary to deliver Funded Activities will remain with the relevant third party.
- 23.8. The Grant Recipient must ensure that they have obtained the relevant agreement from the third party proprietor before any additions or variations are made to the standard 'off-the-shelf' versions of any third party software and other IPR. The Grant Recipient will obtain and maintain all appropriate licences to use the third party software.

24. INSURANCE

- 24.1. The Grant Recipient will during the term of the Agreement and for 6 years after termination or expiry of this Agreement, ensure that it has and maintains, at all times adequate insurance with an insurer of good repute to cover claims under this Agreement or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Agreement.
- 24.2. The Grant Recipient will upon request produce to the Authority its policy or policies of insurance or where this is not possible, a certificate of insurance issued by the Grant Recipient's insurance brokers confirming the insurances are in full force and effect together with confirmation that the relevant premiums have been paid.
- 24.3. Where the Grant Recipient receives more than 25 per cent of the Grant Recipient's total income from public funds, the Grant Recipient will notify the Authority. The Authority will review the nature of the control of Grant Recipient's organisation to determine any resulting requirement for reclassification which may in turn change the insurance requirements under the Agreement.
- 24.4. The Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Grant Recipient running the Funded Activities, the use of the Grant or from withdrawal of the Grant. The Grant Recipient shall indemnify and hold harmless the Authority, its employees, agents, officers or sub-contractors with respect to all direct Losses arising from or incurred by reason of the actions and/or omissions of the Grant Recipient in relation to the Funded Activities, the non-fulfilment of obligations of the Grant Recipient under this Agreement or its obligations to third parties. The Grant Recipient's indemnity shall be limited to the maximum amount claimable under any of its insurance policies.

24.5. Subject to clause 24.4, the Authority's liability under this Agreement is limited to the amount of the Grant.

25. CONFLICTS OF INTEREST AND FINANCIAL OR OTHER IRREGULARITIES

25.1. The Grant Recipient must have and will keep in place formal procedures that require the Grant Recipient and its Representatives to declare any personal or financial interest in any matter concerning the Funded Activities and if a conflict of interest is identified the individual is to be excluded from any discussion or decision-making relating to the matter concerned.

25.2. The Grant Recipient must inform the Authority immediately if there are any grounds for suspecting financial irregularity in the use of the Grant, explain what steps are being taken to investigate the irregularity and keep the Authority informed about the progress of the investigation. For these purposes "financial irregularity" includes (but is not limited to) potential fraud or other impropriety, mismanagement, and the use of grant for any purpose other than those stipulated in this Agreement.

25.3. Each Party will immediately and without undue delay inform the other Party of any event which interferes or threatens to materially interfere with the successful implementation of the projects, programmes and activities, including credible suspicion of or actual fraud, corruption, money-laundering or any other financial irregularity or impropriety ("Financial Impropriety").

25.4. The Parties have a zero tolerance approach towards Financial Impropriety that may lead to the misuse of funds and agree in principle to recover such funds. The Grant Recipient will take timely and appropriate the Authority of the steps being taken to investigate the suspicion, and keep the Authority informed about the progress of the investigation. Each Party will fully co-operate with investigations into such events, whether led by the Grant Recipient or the Authority.

25.5. Allegations of Financial Impropriety should be reported to the Authority's Anti-Fraud Unit at

25.6. In the event of any credible indications that UK funds may have been subject to fraud or financial impropriety, the Parties, may, at any time during the period of this arrangement and up to five years after the end of the programme, arrange for additional investigations, on-the-spot checks and/or inspections to be carried out. These may be carried out by the Parties, or any of its duly authorised representatives.

25.7. Where information is requested by the Authority as part of an investigation into fraud or financial impropriety the Grant Recipient cannot request any remuneration or benefits for any labour associated with fulfilling that request unless agreed in writing between the Parties.

25.8. The Parties reserve the ability to recover funds that have been subject to proven fraud and will work together to do so. Where Financial Impropriety is alleged, the Authority reserves the ability to suspend or terminate funding with immediate effect, in preference to the standard notice period and irrespective of any contractual requirements, and to seek civil or criminal sanctions where appropriate.

26. TERRORISM

26.1. Consistent with numerous United Nations Security Council resolutions including S/RES/1269 (1999), S/RES/1368 (2001) and S/RES/1373 (2001), both the Authority and the Grant Recipient are firmly committed to the international fight against terrorism, and in particular, against the

financing of terrorism. It is the policy of the Parties to seek to ensure that none of its funds are used, directly or indirectly, to provide support to individuals or entities associated with terrorism. In accordance with this policy, the Grant Recipient undertakes to use best efforts to ensure that none of the Grant provided under this Agreement are used to provide support to individuals or entities associated with terrorism.

27. TRANSPARENCY

- 27.1. The Authority and the Grant Recipient acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Information Acts, the content of this Agreement is not Confidential Information.
- 27.2. The Authority will be responsible for determining whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Grant Recipient agrees that the Authority may make any redactions of this Agreement the Authority considers appropriate when disclosing this Agreement.
- 27.3. Subject to clause 27.1, the Authority may publish the Agreement in its entirety (including any agreed changes or redactions) to the general public.
- 27.4. The Grant Recipient will publish to the International Aid Transparency Initiative (IATI) standard on all its Authority funding within six months of the start of this Agreement. The Authority expects the Grant Recipient to publish to the IATI standard on all its non-Authority funding and for its Downstream Partners to publish to the IATI standard on their funding. The intention of this commitment is to allow traceability throughout the delivery chain. For more details on IATI standards see: <http://www.aidtransparency.net/>
- 27.5. The Grant Recipient gives consent for this Agreement (and any subsequent amendments) and associated funding information to be published on the Authority's website.

28. DELIVERY CHAIN AND RISK MAPPING

- 28.1. Every 180 days of the Commencement Date the Grant Recipient shall produce and then for the remainder of the Funding Period maintain an up to date and accurate Delivery Chain Map and shall provide the Authority with the Delivery Chain Map within 5 Working Days of a request.
- 28.2. Every 180 days of the Commencement Date the Grant Recipient shall produce and then for the remainder of the Funding Period maintain an up to date and accurate Delivery Chain Risk Map and shall provide the Authority with the Delivery Chain Risk Map within 5 Working Days of a request.

29. PREVENTION OF BRIBERY

- 29.1. The Grant Recipient:
 - 29.1.1. shall not, and shall procure that its staff, agents, consultants and sub-contractors shall not, in connection with this Agreement, commit a Prohibited Act;
 - 29.1.2. shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct has been carried out in the UK;

- 29.1.3. shall comply with the Authority's anti-bribery policies, as updated from time to time and notified to the Grant Recipient;
 - 29.1.4. shall have and shall maintain throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with clauses 29.1.1, 29.1.2 and 29.1.3;
 - 29.1.5. shall promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Grant Recipient in connection with the Funded Activity;
 - 29.1.6. shall immediately notify the Authority in writing if a foreign public official becomes an officer or employee of the Grant Recipient or acquires a direct or indirect interest in the Grant Recipient, and the Grant Recipient warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement;
 - 29.1.7. shall, if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - 29.1.8. within one (1) month of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Grant Recipient) compliance with this clause 28 by the Grant Recipient and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Grant Recipient shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 29.2. For the purpose of this clause 28, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this clause 28, a person associated with the Grant Recipient includes any agent, delegate or subcontractor of the Agent.

30. CONFIDENTIALITY

- 30.1. For the purposes of this clause 30, the term "Disclosing Party" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "Recipient" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 30.2. Except to the extent set out in this clause 30 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
 - 30.2.1. treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
 - 30.2.2. not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;

- 30.2.3. not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - 30.2.4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 30.3. The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 30.3.1. the Recipient is required to disclose the Confidential Information by any Law, provided that clause 27 shall apply to disclosures required under the Information Acts;
 - 30.3.2. the need for such disclosure arises out of or in connection with:
 - a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - b) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any of the Funded Activities provided under this Agreement; or
 - c) the conduct of a Central Government Body review in respect of this Agreement; or
 - 30.3.3. the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 30.4. If the Recipient is required by any Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 30.5. Subject to paragraph 30.2, the Grant Recipient may only disclose the Confidential Information of the Authority on a confidential basis to:
- 30.5.1. Grant Recipient staff who are directly involved in the delivery of the Funded Activities and need to know the Confidential Information to enable performance of the Grant Recipient's obligations under this Agreement; and
 - 30.5.2. its professional advisers for the purposes of obtaining advice in relation to this Agreement.
- 30.6. Where the Grant Recipient discloses Confidential Information of the Authority pursuant to clause 30.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.
- 30.7. The Authority may disclose the Confidential Information of the Grant Recipient:
- 30.7.1. to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
 - 30.7.2. to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
 - 30.7.3. to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

- 30.7.4. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 30.7.1 for any purpose relating to or connected with this Agreement;
- 30.7.5. on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
- 30.7.6. to a proposed transferee, assignee or novatee of, or successor in title to the Authority,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under clause 28.

- 30.8. Nothing in clause 28 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 30.9. Failure by the Grant Recipient to comply with clauses 30.2 to 30.5 shall constitute a Material Breach.

31. FREEDOM OF INFORMATION, DATA PROTECTION AND HUMAN RIGHTS

- 31.1. The Grant Recipient must observe its obligations under Information Acts and HRA, and under the common law duty of confidentiality and shall comply with all applicable Laws (and shall notify the Authority immediately of any significant departure from such Laws).
- 31.2. The Grant Recipient hereby acknowledges that the Authority is subject to requirements under the Information Acts. Where requested by the Authority, the Grant Recipient will provide reasonable assistance and cooperation to the Authority to assist the Authority's compliance with its information disclosure obligations.
- 31.3. On request from the Authority, the Grant Recipient will provide the Authority with all such relevant documents and information relating to the Grant Recipient's data protection policies and procedures as the Authority may reasonably require.
- 31.4. The Grant Recipient acknowledges that the Authority, acting in accordance with the codes of practice issued and revised from time to time under the Information Acts, may disclose information concerning the Grant Recipient and this Agreement without consulting with the Grant Recipient.
- 31.5. The Authority will take reasonable steps to notify the Grant Recipient of a request for information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority will be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.
- 31.6. The Grant Recipient agrees that it is the Controller of any Personal Data processed by it pursuant to the Funded Activities.
- 31.7. The Grant Recipient agrees that the Authority, its employees and contractors may use Personal Data which the Grant Recipient provides about its staff, partners and participants involved in the Funded Activities to administer and evaluate the Grants programme, and to exercise the Authority's rights under this Agreement.

31.8. The Grant Recipient agrees that the Authority may share details of the Grant, the name of the Grant Recipient's organisation and any personal data obtained from it with the UK Government and that such details may appear on the Government Grants Information System database which is available for search by other funders.

31.9. The Grant Recipient will notify the Authority of any change to its constitution, legal form, membership structure (if applicable) or ownership, and of any complaint or investigation by any regulatory body or the police into its activities or those of its staff or officers or volunteers.

32. PROCUREMENT LAW, STATE AID AND VALUE FOR MONEY

32.1. The Grant Recipient shall adopt such policies and procedures that are required in order to ensure that value for money has been obtained in any procurement of goods or services funded by the Grant.

32.2. Where the Grant Recipient is a "contracting authority" within the meaning of the Procurement Regulations the Grant Recipient warrants that it will comply, as necessary, with the applicable Procurement Regulations when procuring goods and services.

32.3. Where the Grant Recipient reasonably considers that there is an objective justification for not complying with Procurement Regulations and seeks to rely on such a justification, it will seek prior written approval from the Authority, setting out the reasons for non-compliance in a structured business case.

32.4. The Grant Recipient will take all reasonable steps to ensure that where any awards are made from the Funded Activities those awards are compatible with State Aid law including requesting such documentation from the award recipients as is necessary to ensure compliance with State Aid law.

32.5. Where the Authority determines that a Grant to the Grant Recipient would constitute State Aid, the Authority and the Grant Recipient acknowledge that any such Grant will only be payable if:

32.5.1. it is paid under the 'de minimis' exemption; and

32.5.2. the Grant Recipient has not received funding from a public body in the three years prior to the date of the Grant that would aggregate with the Grant to exceed the permitted threshold.

32.6. The Grant Recipient shall inform the Authority immediately if it receives or intends to receive any public funding within three years from the date of the final payment of this Grant which will or may constitute further State Aid.

32.7. Notwithstanding the other provisions in this Agreement, the Grant Recipient shall immediately repay any funding which, in the Authority's absolute discretion, may constitute unlawful State Aid.

33. NO PARTNERSHIP OR AGENCY

33.1. This Agreement shall not create any partnership or joint venture between the Authority and the Grant Recipient, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

34. JOINT AND SEVERAL LIABILITY

- 34.1. Where the Grant Recipient is neither a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Grant Recipient shall be jointly and severally liable for the Grant Recipient's obligations and liabilities arising under this Agreement.

35. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 35.1. This Agreement does not and is not intended to create contractual relations between the Parties.
- 35.2. This Agreement does not and is not intended to confer any contractual benefit on any other person not Party to it pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

36. RESEARCH SURVEYS, QUESTIONNAIRES

- 36.1. The Authority may occasionally conduct research exercises, including by way of surveys, or questionnaires, or requests for feedback, into your experience of the Grant, and on your business needs, and other related matters. Participation in any such exercise would be confidential and voluntary, and the results will be handled in such a way that they do not identify individual respondents, unless consent is obtained or, for instance, you agree to be contacted as a case study.
- 36.2. For the purposes of analysing the outcome of any research, your input may be combined with other information which we have, but we will do so in a way that does not affect the anonymity of the Individual participants. The Authority will share any reports and findings of any such exercise on an anonymised basis with any or all of the Related Parties from time to time.
- 36.3. Any information about yourself and/or your business which is disclosed to Authority in the course of any such exercise shall be added to, and become part of, the Data, and the Terms and Conditions of this Agreement shall apply to it.

37. NOTICES

- 37.1. All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and if mailed all such communications shall be deemed to have been given and received on the second Working Day following such mailing.

38. GOVERNING LAW

- 38.1. This Agreement will be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

39. HEALTH, SAFETY AND SECURITY

- 39.1. The Grant Recipient is responsible for all security arrangements in relation to this Arrangement including the health, safety and security of any person employed or otherwise engaged as part of this Arrangement, including those employed or engaged by any Downstream Partners.
- 39.2. DHSC funds can only be used to fund any project specific insurance premiums for Fleming Fellows and intended to cover medical expenses, injury or disablement, and death and shall be approved by DHSC in writing in advance.


40. SAFEGUARDING: PREVENTING SEXUAL EXPLOITATION, ABUSE AND HARASSMENT

- 40.1 The Grant recipient will take all reasonable steps to prevent the sexual exploitation, abuse and harassment of any person linked to the delivery of this Arrangement by both its employees and any Downstream Partner.
- 40.2 The Authority and the Grant Recipient have a zero tolerance approach towards sexual exploitation, abuse and harassment. The Grant Recipient will immediately contact DFID's Counter Fraud Section at [REDACTED] or [REDACTED] to report any credible suspicions of, or actual incidents of sexual exploitation, abuse or harassment related to this Arrangement. The Grant Recipient should assess credibility based on the source of the allegation, the content, and the level of detail or evidence provided. All sexual activity with children (persons under the age of 18) is prohibited, regardless of the age of the majority, or age of consent locally.
- 40.3 The Grant Recipient should report any credible suspicions of, or actual incidents that are not directly related to this Arrangement but would be of significant impact to their partnership with DHSC or the reputation of DFID or UK Aid. For example, events that affect the governance or culture of the Grant Recipient, such as those related to senior management must be reported.
- 40.4 Both Participants will fully co-operate with investigations into such events, whether led by DFID or any of its duly authorised representatives or agents or the Grant Recipient.

SIGNED by:



Signature

 **Director of Health
Protection and Emergency
Preparedness for and on behalf
of the Authority**

.....
Title:


6-12-18

.....
Date

SIGNED by



.....
Signature

 **Acting Executive
Director for and on behalf of the
Grant Recipient**

.....
Title:

5-12-18

.....
Date

ANNEX 1 – Grant Offer Letter

The Department of Health and Social Care

Dear [REDACTED], Acting Executive Director,

The Department of Health and Social Care is pleased to inform you that a grant to the Overseas Development Institute (ODI) has been approved to establish the ODI Fleming Fellowships scheme, in the amount of £1,518,087.20, subject to the terms and conditions set out below.

This grant will enable ODI to support the objectives of the Global Health Security Fleming Fund in addressing Antimicrobial Resistance (AMR) for the benefit of Official Development Assistance (ODA) eligible low- and middle-income countries (LMICs). This contribution, for the period of 1st November 2018- 31st March 2023, will take forward the following objectives;

- 1 Increase national capacity in Fleming Fund countries through the international secondment of a cadre of skilled health economists (ODI Fleming Fellows) to low and middle income countries, One Health Ministries (Health, Agriculture and Environment), using ODI's proven demand-led model,
- 2 Increase economic analysis of relevant data (including AMR and AMU surveillance data)
- 3 Increase economic appraisal of policy options, including cost/benefit analyses
- 4 Research capacity in the review of regulations, incentives and opportunities that shape AMU
- 5 Gap analysis of public health data to provide a coherent demand side perspective on what data is required (and in what format) to support economic analysis and policy development

We look forward to working with you and for your contribution to increasing the national capacity in Fleming Fund countries through ODI Fleming Fellows in ODA eligible developing countries, contributing to a world safe and secure from infectious disease threats.

Yours Sincerely,

[REDACTED]
Director of Health Protection and Emergency Response

ANNEX 2 -The Funded Activities

1. Background/purpose of the Grant

1.1. Background

The Fleming Fund is a £265 million government commitment of ODI funds to support countries in the collection and sharing of high quality data relevant to antimicrobial resistance (AMR). By supporting the collection on AMR surveillance data and other relevant data, the fund aims to enhance the collective understanding of the scale and scope of AMR as a first step in an international partnership to tackle the issue of resistance.

The Fleming Fund will do this by supporting a diverse range of projects including supporting the secondment of a cadre of Health economists to LMIC agencies One Health Ministries (Health, Agriculture and Environment).

Whilst the placement of Fellows should, where possible, be guided by country priorities and key informants (including AMRCCs, DHSC, DFID) it is likely that in the first instance ODI will seek to agree Fellowship placements within 'One Health' Ministries or governmental institutions that have a defined role in addressing AMR as per the National Action Plan for AMR. Possible Ministries or quasi-governmental institutions that might host an ODI Fleming Fellow include, but are not limited to:

- Ministries of Finance
- Ministries of Health
- Ministries of Agriculture
- Ministries with responsibility for the Environment
- Institutions with responsibility for Public Health
- Institutions with responsibility for Veterinary Medicine

The above list is not prescriptive but is intended to guide the placement of Fellows.

These secondment, will be via the ODI Fellowship model and ODI will be responsible for recruiting Fellows, agreeing posting with partner governments and agencies, management, monitoring and evaluation of the postings.

1.2. Aims and objectives of the Funded Activity

The purpose of the ODI Fleming Fellowship Programme is to uplift and build the capacity of Fleming Fund partner countries in a number of core economics competencies that underpin the development of evidence based policy relevant to addressing AMR.

The project will aim to build capacity in:

- Economic analysis of relevant data (including AMR and AMU surveillance data)
- Economic appraisal of policy options, including cost/benefit analyses
- Research capacity in the review of regulations, incentives and opportunities that shape AMU

- **Gap analysis of public health data to provide a coherent demand side perspective on what data is required (and in what format) to support economic analysis and policy development**

The project will achieve this by building national capacity through the international secondment of a cadre of skilled health economists (Fellows) to LMIC One Health Ministries (Health, Agriculture, Environment), using ODI's proven demand-led model.

2. Funded Activities

Placement of 10 skilled health economists in LMIC agencies spread over the 15 targeted countries

It is proposed that the 1st cohort will consist of 3 Fellows and that they will take up their 2-year placements in Sept/Oct 2019 and they will have the opportunity to extend for a 3rd year. The 2nd cohort will take up their posting in Sept/Oct 2020. The activity will end in late 2022. Should the agreement be extended then the 2nd cohort may have the opportunity to extend for a 3rd year.

The ToR's for the ODI Fleming Fellowships identifies three broad objectives:

1. **Generalised support to host institutions, in the capacity of a (health) economist – with task management at the discretion of the host institution**
2. **Active participation in the development and strengthening of national AMR communities of practice**
3. **AMR focussed support and activities through the delivery of a fellowship project.**



ANNEX 3 -Payment Schedule

INSTALMENT / INSTALMENT PERIOD	GRANT SUM PAYABLE	PAYMENT DATE / MILESTONE (month and year)
Year 1 – 2018/19		
1 st	£10,000.00	Jan 19
2 nd		
3 rd		
4 th		
Total for Year 1	£10,000.00	
Year 2 – 2019/20		
1 st	£28,255.50	April 19
2 nd	£28,255.50	July 19
3 rd	£28,255.50	Oct 19
4 th	£28,255.50	Jan 20
Total for Year 2	£113,022.00	
Year 3 – 2020/21		
1 st	£110,835.90	April 20
2 nd	£110,835.90	July 20
3 rd	£110,835.90	Oct 20
4 th	£110,835.90	Jan 21
Total for Year 3	£443,343.60	
Year 4 – 2021/22		
1 st	£152,403.25	April 21
2 nd	£152,403.25	July 21
3 rd	£152,403.25	Oct 21
4 th	£152,403.25	Jan 22
Total for Year 4	£606,613.00	
Year 5 – 2022/23		
1 st	£171,054.50	April 22
2 nd	£171,054.50	July 22
3 rd		
4 th		
Total for Year 5	£342,109.00	
Funding retained from previous year(s)		
Total for Grant	£1,518,087.20	

ANNEX 4 - Eligible Expenditure schedule (breakdown of forecast grant expenditure)

FURTHER GUIDANCE REGARDING ELIGIBLE EXPENDITURE

All Eligible Expenditure must be claimed net of VAT recoverable from HM Revenue and Customs.

The following costs/payments will be classified as Eligible Expenditure if made for the purposes of the Funded Activity:

- i. fees charged or to be charged to the Grant Recipient by the external auditors/accountants for reporting/certifying that the grant paid was applied for its intended purposes;
- ii. giving evidence to Select Committees;
- iii. attending meetings with Ministers or officials to discuss the progress of a taxpayer funded grant scheme;
- iv. responding to public consultations, where the topic is relevant to the objectives of the grant scheme. This does not include spending government grant funds on lobbying other people to respond to the consultation;
- v. providing independent, evidence based policy recommendations to local government, departments or Ministers, where that is the objective of a taxpayer funded grant scheme, for example, 'What Works Centres'; and
- vi. providing independent evidence based advice to local or national government as part of the general policy debate, where that is in line with the objectives of the grant scheme.

A payment is defined as taking place at the moment when money passes out of Grant Recipient control. This may take place when:

- I. legal tender is passed to a supplier (or, for wages, to an employee);
- II. a letter is posted to a supplier or employee containing a cheque; or
- III. an electronic instruction is sent to a bank/building society to make a payment to a supplier or employee by direct credit or bank transfer.

The Grant Recipient must not deliberately incur liabilities for Eligible Expenditure in advance of need; nor pay for Eligible Expenditure sooner than the due date for payment.

INELIGIBLE EXPENDITURE

The following costs must be excluded from Eligible Expenditure:

- I. payment that supports for lobbying or activity intended to influence or attempt to influence Parliament, Government or political parties, or attempting to influence the awarding or renewal of contracts and grants, or attempting to influence legislative or regulatory action;
- II. using grant funds to directly enable one part of government to challenge another on topics unrelated to the agreed purpose of the Grant;
- III. using the Grant to petition for additional funding;
- IV. input VAT;
- V. payments for activities of a political or exclusively religious nature;
- VI. goods or services that the Grant Recipient has a statutory duty to provide;
- VII. payments reimbursed or to be reimbursed by other public or private sector grants
- VIII. contributions in kind (i.e. a contribution in goods or services, as opposed to money);
- IX. depreciation, amortisation or impairment of fixed assets owned by the Grant Recipient;
- X. the acquisition or improvement of fixed assets by the Grant Recipient (unless the grant is explicitly for capital use – this will be stipulated in the Grant Offer Letter);
- XI. Interest payments (including service charge payments for finance leases);
- XII. gifts;
- XIII. entertaining (entertaining for this purpose means anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations);
- XIV. statutory fines, criminal fines or penalties; or
- XV. liabilities incurred before the date of this Agreement unless agreed in writing by the Authority.
- XVI. Travel expenses must be in line with HMG travel policy which states that first/business class travel is an ineligible expenditure.

ANNEX 5 - Agreed Outputs/Long Term Outcomes and Key Performance Indicators

The Grant Recipient shall achieve the following milestones and key performance indicators:

Agreed Outputs:

1. Dialogue established with relevant line ministries and relevant postings for ODI Fleming Fellows along with ToR's are agreed.
2. Full cohort of ODI Fleming Fellows are recruited, trained and deployed.
3. ODI Fleming Fellows are supported to undertake a minimum of 2-year Fellowship placement fulfilling ToR's and Fellowship objectives.
4. ODI Fleming Fellows become integrated and valued member of the AMR communities of practice.
5. ODI Fleming Fellows identify and use relevant data and support the dissemination of best practice.

Key Performance Indicators / milestones

KPIs measured quarterly
Number of target countries visited by ODI
Number of posts (ToR's) agreed with host ministries
Number of host ministries making a contribution in terms of local salary
Number of offers made to Fellows
Number of Fellows who complete induction week and AMR Training
Number of Fellows deployed to post
Number of fellows successfully completing 2-year posting
Number of AMR projects proposal developed in agreement with the host organisations and DHSC
Number of AMR projects completed to satisfaction of the host and QA'd DHSC
Number of Fellows and countries and host institutions visited at post
Number of Fellowships undertaken for at least 18 months with AMR specific Fellowship projects completed with confirmation received from host institutions that reports have been submitted

KPIs measured annually
Number of Fellows reporting regular engagement with the national AMR coordination committees, UN tripartite and other national Fleming Fund Professionals funded under the wider Fleming Project.
Number of ODI Fleming Fellows reporting open access to and the use of AMR and AMU data from Fleming Fund supported surveillance infrastructure and WHO AMC studies where relevant.
Number of host organisation reporting positively on performance of the ODI Fleming Fellows