

# REQUEST FOR QUOTE

<b>Project:</b>	<b>Malawi Power Sector Reform Project endline performance evaluation</b>
<b>Phase:</b>	Endline
<b>Funder:</b>	Millennium Challenge Corporation
<b>RFQ Release Date:</b>	Tuesday January 29
<b>Deadline for Questions:</b>	Thursday January 31, 2019
<b>Answers to Questions:</b>	Monday February 4, 2019
<b>Deadline for Proposals:</b>	Monday February 11, 2019
<b>Contact:</b>	Corinna Bordewieck: <a href="mailto:cbordewieck@socialimpact.com">cbordewieck@socialimpact.com</a> Julia Kresky: <a href="mailto:jkresky@socialimpact.com">jkresky@socialimpact.com</a>
<b>Annexes</b>	N/A

## 1. Summary

Social Impact (SI) is soliciting quotes for English language transcription services of individual and group interviews to take place as part of an evaluation of the Millennium Challenge Corporation's (MCC) Malawi Power Sector Reform Project.

Interviews will take place in Malawi between March 11 – March 29, 2019. Quotes should be provided as a cost per hour of interview recording for up to 63 hours of interviews. Interviews will be both one-on-one interviews and group interviews.

## 2. Background

Social Impact has been contracted by the Millennium Challenge Corporation (MCC) to design and implement an evaluation of the Power Sector Reform Project (PSRP) in Malawi. The PSRP's objective is to expand the power sector by strengthening sector institutions, enhancing regulation and governance of the sector, rebuilding ESCOM into a financially sustainable and operationally well-managed utility, and developing a regulatory environment that enables public and private investment in power infrastructure, particularly in new generation.

Evaluation activities include extensive qualitative research through individual and group interviews addressing topics of finance, corporate governance, electricity operations, tariff reform, and the creation of an enabling environment for private sector investment.

## 3. Scope of Work

### Tasks

The SI evaluation team will lead data collection activities, and the Offeror will be responsible for providing rapid transcription services. The data collection Offeror should:

- (1) Provide complete and accurate transcripts of recorded interviews.
- (2) Conduct quality assurance of transcriptions
- (3) Undertake necessary preparation, reporting, and delivery of transcripts and audio files.

The evaluation team is expected to undertake 42 interviews between March 11 – March 29, 2019 that will last between 1 hour and 1.5 hours. This will result in a maximum volume of recordings of 63 hours. We are unable to offer an exact estimate as recording is voluntary and some interviewees might not wish to be recorded. Specifically, the Offeror is expected to undertake the following tasks:

**Transcription services:** Once having received audio recordings of individual and group interviews through SI's secure Sharepoint platform (a web-based system to which SI will provide access), the Offeror will be responsible for producing transcripts of recorded interviews within a five-business-day timeframe.

**Quality assurance:** The Offeror should review all transcripts for accuracy. This review should include at a minimum:

- Transcription specialists should be responsible for the transcriptions.
- After transcriptions are completed, the transcriber should listen to the interview from start to finish to ensure an accurate transcription. This should be done with 100% of transcripts.
- 100% of transcriptions should be spot-checked by a supervisor, meaning that a supervisor should identify at least four points in each recording and listen to the recording for approximately five minutes at each point. Minor points should be flagged for correction. If more than small typos are identified, then someone other than the original transcriber should review the entire interview audio recording and transcript.
- The Offeror should provide evidence to SI that these measures were carried out. SI has the right to refuse deliverables and return them for revisions or re-transcription if quality is considered to be inadequate.

**Track progress:** In order to be useful, the transcriptions must be completed rapidly. Recordings will be provided on a rolling basis to a secure Sharepoint platform, and the Offeror is expected to complete transcription and quality assurance for each interview within five business days from the date of upload. The Offeror should maintain a tracker, noting date of upload and date of delivery.

### Transcription guidance

- All transcriptions should be provided in Microsoft Word, all in same font/size (Calibri size 11 preferred). Files should have a .doc or .docx extension.
- Interviews will be conducted in English and transcribed in English.
- In general, transcription should be literal rather than "cleaned up". This can include grammatical errors, long or incomplete sentences. All effort should be taken to transcribe nuanced or idiomatic responses literally. Transcriber notes may be used to explain intended meaning of the words/phrases.
  - "Thinking" words (hm, uh, mm) do not need to be transcribed.
  - Interviewers should note long pauses among the respondents, if applicable, indicating respondent hesitation or difficulty answering, etc.

- Time stamps should be included through the transcription at key points to facilitate quality control and transcription use.
- Non-verbal cues or background noises do not need to be transcribed unless they result in difficulties hearing the recording (and can be mentioned in the text as a note), or unless the facilitator/interviewer feels that they relate directly to the question being asked (i.e. signs of discomfort)
- Initial questions should be transcribed exactly as they were asked, in **bold text**, starting with the initials of the facilitator (e.g. “**DS**” for Daniel Sabet), with respondent/participant answers marked in regular text with “**R**” (for respondent) or the respondents initials (e.g. “**EB**” for Ernest Banda). In group interviews, the transcriber should identify the voices as “R1,” “R2,” “R3,” etc.
- Example
  - DS:** **How would you evaluate the work of the consultant?**
  - EB:** Excellent. She was probably one of the more successful consultancies.
- For focus groups, individual participants do not need to be identified. For multiple responses to the same question, responses will be marked with separate numbers (but numbers in this case do not need to be assigned to any specific respondent, they only correspond to responses per question), for example:
  - DS:** **Is sole source contracting common?**
  - R1:** Yes, this is relied on too frequently and against the policies.
  - R2:** Yes, but it has declined in recent years.
- If there are parts of the audio recording that are inaudible/unintelligible, transcriber should note this portion with the text in square brackets: [inaudible]. If the ESA facilitator recalls what was said, it can be paraphrased in italic text, as in the following example:
  - DS:** There might be a sole source contract issues every week [inaudible *on average*].
- If long portions are inaudible or unintelligible, interviewer should mark this in brackets and include time stamps at the beginning and end.
- If individuals are speaking at the same time and it is not possible to distinguish what each person is saying, the transcriber shall place the phrase [cross talk] in square brackets immediately after the last identifiable speaker’s text and pick up with the next audible speaker.
- If there is an interruption, for example, someone enters the office or the participant picks up their cell phone, the transcription will read [Interruption] then the transcription will resume once the participant is engaged with the facilitator/interviewer.
- Clearly mark the end of the interview with “**End of Interview**”

### Ethics, Respondent Protection, and Data Security

The Offeror should adhere to ethical research practices and provide quality services and deliverables. Specifically, the Offeror is expected to adhere to the following standards:

**Staffing:** The Offeror should hire well-qualified transcribers with relevant transcription experience. Field personnel are expected to adhere to the highest standard of ethical behavior.

**Confidentiality:** Some interview content may be sensitive. In accordance with SI’s commitment to ethical best practices, the Offeror should ensure confidentiality of the information provided in audio files and transcripts. The Offeror will be required to abide by Social Impact’s respondent protection and data security protocols (to be provided upon award). The following is a list of major measures that will be required of Subcontractors, in order that they comply with SI’s respondent protection and data security protocols:

- (1) Ensuring that all transcribers are thoroughly trained in ethical and professional standards

- (2) Ensuring that all transcribers sign a non-disclosure agreement and privacy protection promise (to be provided upon award) demonstrating their understanding that respondent information shared with them during an interview is considered confidential and should not be shared,
- (3) Ensuring that swift corrective action is taken when any data collection staff are found to be behaving in ways that are not ethical or professional, and
- (4) Abiding by data security measures agreed upon with Social Impact, including the physical security of any hard-copy materials and the secure storage, transfer, destruction, and access of digital materials.

## 4. Deliverables

The Offeror will provide the following deliverables:

- (1) **Transcripts:** Qualitative data should be provided in a consistent reporting format with all relevant accompanying metadata (location, date, interview participants) included. Attendance sheets will be provided for this purpose. Transcripts and notes should be provided in Word following the guidance below. Consistent formats and file naming procedures should be used, as with the interim datasets, in the delivery of all final files.
- (2) **Data quality report:** The Offeror should deliver a data quality report with the final transcripts. This should include information about quality assurance measures, problems identified, solutions adopted, and any data quality issues. These should not be general but reference specific files/interviews.
- (3) **Tracking document:** This should note all interviews transcribed, files names, and delivery dates.

The Offeror will deliver these according to the timeline below and in accordance with the quality and ethical standards outlined above.

## 5. Deliverable submission and penalty for delays

Each transcription should be transcribed, undergo quality control, and delivered within five days of audio upload and the tracking file should be updated. For example, the first audio will be uploaded by Monday, March 11th and should be transcribed, undergo quality control, and be uploaded to the secure SharePoint platform within five business days by Monday, March 18. All files, the final tracking file, and a data quality report should be uploaded/delivered within five business days of the last file upload. Late files will cause an **8% reduction in payment for that file**. The value will continue to decrease by an additional 8% every three days the file is late.

## 6. Payment schedule

Payments will be made in two tranches. The Offeror may submit a first invoice when approximately half of the work is completed and a second invoice at the conclusion of the work. Invoices will be processed once deliverables and the invoice is approved. Please note that from the date of approval, SI may take up to 30 days to issue payment.

## 7. Submission instructions

A full proposal is not required. The Offeror should provide:

- 1 A per hour-of-recording rate for transcriptions.

- 2 A statement confirming compliance to the criteria included in this RFQ, including confirmation of capacity to submit final transcripts within five days of receiving recordings.
- 3 A description of the teaming for the assignment with CVs of proposed team members.
- 4 A summary of three past performance reports, including contact information for references. SI reserves the right to contact references provided in these past performance reports.

**Submission:** Please use subject line “Malawi PSRP Transcription Quote Submission.” Please send to both email addresses in the “Contact” field on page 1 by the deadline for proposals.

Award will be based on cost, inclusion of the above, and satisfactory personnel and past performance. SI reserves the right to divide the work among more than one Offeror.

## Annex A: Commercial Terms

**1) Sub-tier Contracting.** The Subcontractor shall not award any sub-tier agreements under this Subcontract or any Task Order issued hereunder without the written approval of the Contractual Representative. Such costs shall be unallowable unless authorized in writing.

**2) Independent Contractors.** The Contractor and the Subcontractor shall act as independent contractors in all matters pertaining to this effort; nothing in this Subcontract Agreement shall be construed to create a partnership, joint venture or agency relationship, express or implied, between the parties. Further, the employees or agents of one shall not be deemed to be employees or agents of the other for any purposes under the Federal or State Unemployment Insurance Law, the Internal Revenue Laws or War Tax Legislation, Industrial law or otherwise. Each party shall be solely responsible for payment of all compensation owed to its employee, as well as employment related taxes, and the Subcontractor agrees to indemnify, hold harmless and defend the Contractor from any and all claims, liabilities, damages, taxes, fines or penalties sought or recovered by any governmental entity, including but not limited to the Internal Revenue Service or any state or foreign taxing authority, arising out of the alleged failure of the Subcontractor, or of any personnel provided by the Subcontractor, to pay federal, state, local and/or foreign taxes during the term of this Subcontract. Each party will maintain appropriate worker's compensation for its employees as well as general liability insurance.

**3) Contacts with the Government.** The orderly progress of this Subcontract Agreement may require direct technical communications between personnel furnished by the Subcontractor and Government or host country counterpart personnel. By virtue of this communication, however, and except as specifically authorized otherwise by the Contractor, neither the Subcontractor nor any Subcontractor personnel are authorized to initiate any oral or written communication, or to accept any contractual direction, to conduct negotiations, or to enter into any agreement(s), whether written or otherwise, that could change any provision of the Prime Contract, of any task order issued thereunder, or of this Subcontract Agreement or any Task Orders issued hereunder.

**4) Communications with Third Parties.** The Subcontractor shall not publicly disclose information concerning the project supported under this Subcontract to any third party other than those associated with the work under this subcontract, unless such disclosure is approved in advance by SOCIAL IMPACT's Project Manager. No news releases, public announcement, denial or confirmation of any specific technical or management information pertaining to this Subcontract, to any Task Order, or any phase of any program hereunder shall be made without prior written consent of the Contractor. The Subcontractor can without the Contractor's permission refer to the type of work performed in resumes, qualification statements, or company past performance summaries, and may release same to a third party. The restrictions of this paragraph shall continue in effect upon completion or termination of this Subcontract for a period of three years. Failure to comply with the requirements of this clause may be cause for termination of this Subcontract or any Task Order issued hereunder. Other than as expressly permitted in this Section 4, neither party shall use the other party's name, trademarks or logos in the public domain, including, without limitation, in advertising, marketing or promotional materials, press releases or press conferences without the prior written consent of the other party

**5) Stop Work Orders.** The Contractor's Contractual Representative may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this Subcontract for a period of 90 days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified

as a stop-work order issued under this Article. Upon receipt of the Contractor's notice, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop-work order issued under this provision is canceled by the Contractor or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The Contractor shall make an equitable adjustment in the delivery schedule and/or the ceiling price, and in any other terms of this Subcontract and/or any Task Order(s) that may be affected, and the Subcontract and Task Order(s) shall be modified in writing accordingly, if (1) the stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this Subcontract or any Task Order issued hereunder, and (2) the Subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience, the Contractor shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement with the Subcontractor, and, if applicable, to the extent agreed to in the Contractor's termination settlement under its Prime Contract. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contractor shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order, to the extent agreed to in the Contractor's termination settlement, if applicable, under its Prime Contract.

**6) Gratuities.** The Contractor may, by written notice to the Subcontractor, terminate this Subcontract for default, if the Contractor has reasonable cause to believe that gratuities (in the form of entertainment, gifts, or otherwise), were offered to be given by the Subcontractor, or any of its agents or representatives, to any officer or employee of the Contractor, the Government, or to any host country counterpart, with a view toward securing this Subcontract or securing favorable treatment, with respect to awarding or amending or the making of any determination with respect to the performance of this Subcontract. The rights and remedies of the Contractor provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Subcontract.

**7) Changes.** The Contractor may, at any time, by a written or verbal order and without notice to the sureties, if any, make changes within the general scope of this Subcontract or of any Task Order issued hereunder. If any change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Subcontract, an equitable adjustment shall be made in the Subcontract price or delivery schedule, or both, and the Subcontract and/or Task Order(s) will be modified accordingly. Any claim by the Subcontractor for adjustment under this clause must be asserted within fifteen (15) calendar days from the date of notification by Contractor of such changes. The Subcontractor's failure to submit its claim within the time specified shall constitute a waiver thereof unless, prior to that time, the Subcontractor requests in writing, and is subsequently granted, a written time extension. No order, statement or conduct of Government or host country counterpart personnel who in any manner communicates with the Subcontractor during the performance of this Subcontract shall constitute a change under the Changes clause of this Subcontract, of any Task Order(s) issued hereunder, or under the Contractor's Prime Contract or any Task Order(s) issued thereunder. Any direction received by the Subcontractor from Government or host country counterpart personnel will be conveyed to the Contractor's Technical Representative for appropriate action. The Subcontractor is not authorized to accept, negotiate, or make any change to the work to be performed without the verbal or written instruction of the Contractor's Technical Representative. The Subcontractor is responsible for ensuring that all of the Subcontractor's personnel are knowledgeable and cognizant of this Subcontract provision. Costs for changes to the Subcontract or Task Order effort, including changes to the scope(s) of work, accepted and performed by the Subcontractor's

personnel outside of this Subcontract or any Task Order, without the specific approval of the Contractor, shall be the sole responsibility of the Subcontractor. Nothing in this clause shall relieve the Subcontractor from proceeding without delay in the performance of this Subcontract or any Task Order as changed.

**8) Warranty of Services.** The parties acknowledge that the Contractor, in accepting the services required under this Subcontract and in Task Orders to be issued hereunder, is relying upon the Subcontractor's particular skill and expertise. Accordingly, the Subcontractor warrants that the services provided herein and in Task Orders meet or exceed the prevailing practices and standards of the trade from which the services are provided. The Subcontractor warrants that they will provide staff that meet or exceed the labor category descriptions and qualifications, to include the education and experience levels as detailed in Sections B. 3(a)(1) and B. 3(a)(2), at the most competitive rates possible when delivery order opportunities arise. As requested by SOCIAL IMPACT, the Subcontractor shall submit for SOCIAL IMPACT's approval an Employee Biographical Data Sheet (EBD) and Curriculum Vitae (CV) for personnel proposed to provide services under a task order.

**9) Correction of Deficiencies in Performance.** To the extent that the Contractor is held financially responsible under the Prime Contract for deficiencies in services performed, and to the extent such deficiencies were caused by the Subcontractor and the Subcontractor has received payment for the deficient work, the Subcontractor agrees to cure such deficiencies at the Subcontractor's own cost.

**10) Notices.** All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when communicated to the other party by hand delivery, by registered or certified post, or by any other means which confirms receipt of the notice by the receiving party. All such notices shall be addressed to the addresses listed above unless notified otherwise.

**11) Notice of Delays.** In the event the Subcontractor encounters difficulty in meeting performance requirements, or when the Subcontractor anticipates difficulty in complying with the Subcontract or Task Order performance schedule, or whenever the Subcontractor has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Subcontract or of any Task Order, the Subcontractor shall immediately notify the SOCIAL IMPACT's Contractual Representative in writing giving pertinent details.

**12) Insurance.** The Subcontractor agrees to procure and maintain throughout the duration of this Subcontract, insurance of the types and amounts as required by Section D of this Subcontract. The Subcontractor agrees that the Subcontractor, its insurer(s), and anyone claiming by, through, under, or in its behalf shall have no claim, right of action or right of subrogation against the Contractor based on any loss or liability insured against under any such insurance required under this provision unless such loss or liability was due to the negligence of the Contractor. The Subcontractor shall notify the Contractor in writing at least ten (10) calendar days prior to the cancellation of, or any material change in, the insurance policies required under this provision.

**13) Force Majeure.** Neither the Contractor nor the Subcontractor shall be liable for any default or delay on their part in performing any obligation under this Subcontract or under any Task Order if such default or delay is due to acts of God, acts of government, wars, riots, strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of such party and which could not have been reasonably foreseen or prevented; additionally, the Subcontractor

shall not be liable for any default or delay caused in whole or in part by (a) the failure or delay of the Contractor in providing the Subcontractor with instructions or materials required for the performance of the Subcontractor's services or (b) any other act or omission of Contractor, Contractor's Client or USAID or any of their respective personnel or agents (any of the foregoing events, "Force Majeure Event"). The affected party(ies) shall promptly and within a reasonable time after interference by such an event, notify the other party(ies) in writing and describe how each or both will overcome all difficulties resulting from such an event. Each party shall use its best efforts to resume work as soon as reasonably possible. However, in the event that either party is prevented by such an occurrence or circumstance for a period of more than 90 days from fulfilling its obligations under this Subcontract or under any Task Order, the other party may terminate this Subcontract or any affected Task Order(s) upon thirty days written notice.

In the event that a Force Majeure Event will, or is reasonably expected to, cause material changes to the Subcontractor's budgeted costs to perform the services described in this Subcontract, the Subcontractor shall notify the Contractor of such changes. Promptly after receipt of such notification, the Contractor and Subcontractor shall meet to discuss either an equitable adjustment to the Subcontract price or revisions to the study design and/or scope of services to be delivered in exchange for the Subcontract price. In the event that the Contractor and Subcontractor are not able to agree on such changes, either party shall have the right to terminate this Subcontract in accordance with "Termination for Convenience" as set forth in Section B.4 above.

**14) Remedies.** The rights and remedies of the Contractor provided herein shall be cumulative, and in addition to any other rights the Contractor may have at in law or equity.

**15) Waiver and Severability.** The failure of the Contractor to insist upon strict performance of any of the terms and conditions in this Subcontract or in any Task Order, or to exercise any rights or remedies, shall not be construed as a waiver of its rights to assert any of the same or to rely on any such terms or conditions at any time thereafter. The invalidity in whole or in part of any term or condition of this Subcontract or of any Task Order shall not affect the validity of other parts hereof.

**16) Termination.** The Contractor, by providing five (5) days advance written notice, may terminate this Subcontract, and/or any task orders issued hereunder, in whole or in part, upon the occurrence of any of the following events:

1. Termination of the Prime Contract, or any portion thereof related to this Subcontract, for any reason whatsoever.
2. Termination of funding for the Prime Contract, or any portion related to this Subcontract, for any reason whatsoever.
3. Failure by the Subcontractor to cure a default of this Subcontract or of any task order within ten (10) calendar days after written notice of default from the Contractor. Grounds for default include, but shall not be limited to, (a) breach of the warranty described in Article 9; (b) failure by the Subcontractor to strictly adhere to the delivery schedule; or (c) any other material violation of this Subcontract or of any task order. The Subcontractor shall be liable for all excess re-procurement costs resulting from the Subcontractor's default.
4. In the event the Subcontractor should become bankrupt, insolvent, or make an assignment or arrangement for the benefit of creditors, refuses or neglects to perform the work properly and diligently, or fails to perform any of the provisions of this Subcontract or of any task order, the

Contractor, after seventy-two (72) hours written notice to the Subcontractor, may at its option, declare the Subcontractor in default, terminate the Subcontractor's right to proceed with all or part of the work and finish such terminated work by such means as the Contractor sees fit.

5. SOCIAL IMPACT further reserves the right to terminate in whole or in part this Subcontract and/or any task order issued hereunder for its own convenience. In such an event, the parties shall attempt to reach a mutually acceptable settlement, taking into consideration all costs incurred by the Subcontractor as of the termination date.

6. If this Subcontract or any task order is terminated for any reason whatsoever, the Subcontractor agrees to promptly return all data, materials, equipment and supplies, that are in its possession that are the property of the Contractor or of the Government and shall preserve, protect, assign and deliver to the Contractor all data, or a suitable duplication thereof, developed by the Subcontractor in the course of its work on this Subcontract and/or any task orders issued hereunder that, in the opinion of the Contractor, is necessary to complete any outstanding requirements of the Prime Contract and/or any task order issued thereunder.

The provisions of this Article are intended to be in addition to and not a substitution for the FAR Termination clause included in the Prime Contract and incorporated by reference elsewhere herein.

## **17) Proprietary Data**

A. The Contractor and the Subcontractor, to the extent of each party's contractual and lawful right to do so, shall exchange such appropriate proprietary information, such data to include, but not be limited to, technical data, plans, financial and cost data, etc., (hereinafter referred to as "proprietary data") as is reasonably required for each to perform its obligations hereunder. The acceptable standard of care required of either the Contractor or the Subcontractor receiving proprietary data hereunder, to prevent disclosure thereof, will be the same standard normally used by the Contractor or the Subcontractor in protecting its own proprietary data against disclosure or a reasonable standard of care, whichever is greater. Notwithstanding the foregoing, neither the Contractor nor the Subcontractor shall be liable for disclosure or use of any such data if the same:

1. Is in the public domain at the time of disclosure, or is subsequently made available to the general public without restriction by the disclosing party; or
2. Is known to the receiving party at the time of disclosure without restrictions on its use or is independently developed by the receiving party, and there is adequate documentation to demonstrate either condition; or
3. Is used or disclosed after three (3) years from the completion date of this Subcontract Agreement; or
4. Is expressly disclosed by one party on a non-restricted basis to the other; or
5. Is disclosed without restriction to the receiving party from a source other than the disclosing party, and there is adequate documentation to demonstrate that it was lawfully developed or obtained by the disclosing party; or
6. Disclosure is required by an authorized representative of the United States Government;  
or

7. Is disclosed without authority by the United States Government.

B. If any portion of a party's proprietary information falls within any one of the above exceptions, the remainder shall continue to be subject to the foregoing prohibitions and restrictions.

C. Proprietary information shall be clearly identified by the disclosing party at the time such information is provided to the receiving party.

D. The Contractor and the Subcontractor shall retain all rights with respect to any such proprietary data that either may have possessed prior to this Subcontract Agreement. Both the Contractor and the Subcontractor will individually retain exclusive rights to designs developed by them in their respective areas of responsibility. In areas of joint effort, the Contractor and the Subcontractor shall hold rights jointly based upon the participation of each party in the development of such proprietary data.

E. This Article shall survive the cancellation, expiration, or termination of this Subcontract.

## **18) Conflicts of Interest and Confidentiality**

A. Organizational Conflicts of Interest.

1. Without limiting the rights of the Contractor as set forth in the Article of this Subcontract entitled "Termination," this Subcontract may be terminated immediately by the Contractor if required by the Government or at the sole discretion of the Contractor if it is determined that the Subcontractor is in actual or potential violation of the USAID Organizational Conflicts of Interest clause which elsewhere in this Subcontract is incorporated into and made a material part of this Subcontract.

2. In the event this Subcontract is terminated by the Contractor in consequence of any conflict of interest situation, such a termination shall be considered a default of this Subcontract by the Subcontractor and any monies paid to the Subcontractor in accordance herewith may be subject to refund to the Contractor by the Subcontractor, as required by the Government. The refund of any monies paid to the Subcontractor by the Contractor as set forth above shall not be construed to be the sole and exclusive remedy of the Government through the Contractor in the event of such termination.

B. Individual Conflicts of Interest

The Subcontractor further agrees to require that other than work performed under the project, its employees and consultants shall not engage, directly or indirectly, either in their own name or in the name or through the agency of another person, in any business or profession or occupation in the country of assignment, nor shall they, receive, agree to receive, or solicit any compensation for any of their services or activities rendered under the project. Further, to avoid any appearance of conflict of interest, Subcontractor's employees and consultants on USAID sponsored projects shall not make loans or investments to or in any business, profession or occupation in the country of assignment.

## **19) Copyrights and Confidentiality**

A. Any materials resulting from the work described in SOCIAL IMPACT's Prime Contract, in this Subcontract Agreement or in any Task Order issued hereunder are the property of USAID and/or

such Cooperating Country entities which USAID may identify, and that such materials may include sensitive proprietary information. The Subcontractor acknowledges its understanding of the confidential nature of such information and agrees that neither it, nor its employees, agents or representatives shall make any use, for themselves or for any other person or commercial entity, or disclose to any other person or commercial entity, any proprietary information obtained during the term of SOCIAL IMPACT's Prime Contract. The Subcontractor agrees to require its employees, agents or representatives to agree not to use, publish, divulge, disclose or make known in any manner or to any extent any such confidential information except to USAID, such Cooperating Country entities which USAID may identify, or SOCIAL IMPACT or as contemplated herein for the performance of this Agreement or unless it first obtains the prior written consent of USAID and SOCIAL IMPACT. "Proprietary information" is defined as any information that is (a) given by USAID or the Cooperating Country to the prime contractor; (b) when provided in written form is labeled "Confidential" or "Proprietary" by USAID or the Cooperating Country, or (c) when communicated orally, has been accompanied by a statement that such information is considered confidential or proprietary; and (d) concerning which the Prime Contractor has entered into a confidential undertaking with the Cooperating Country for a defined period of time. Confidential or proprietary information shall not include information which is (a) independently developed by or rightfully already known to or obtained from third parties without restriction by SOCIAL IMPACT; (b) released without restriction by USAID; (c) publicly available without breach of obligations of this paragraph by SOCIAL IMPACT; or (d) required to be disclosed by applicable law.

B. Notwithstanding the foregoing and anything to the contrary contained herein, the Subcontractor shall retain the exclusive ownership of the following: (i) the Subcontractor's trademarks, logos, copyrights and other intellectual property rights; (ii) the Subcontractor's know how, technologies, and proprietary methodologies, including, without limitation, processes, products, tools, formulae, algorithms, lesson learned presentations, models, databases, computer programs and software used, created or developed by the Subcontractor in connection with the Subcontractor's performance of services under this agreement, including without limitation, any derivatives, modifications or enhancements thereto; and (iii) all questions and questionnaires, except to the extent that the Contractor or USAID has provided such material (collectively, "Subcontractor IP"). The Contractor acknowledges and agrees that all Subcontractor IP shall remain the sole and exclusive property of the Subcontractor and, Contractor will not reverse-engineer, decompile or disassemble any Subcontractor IP. The Subcontractor hereby grants to Contractor an irrevocable, non-exclusive, worldwide, royalty-free license to use any Subcontractor IP that is incorporated into the deliverables to the extent necessary for Contractor to use, view or access the deliverables for Contractor's business purposes.

**20) Laws and Regulations.** The Contractor and the Subcontractor agree to comply with all applicable Federal, State, foreign, provincial, and local laws, ordinances and regulations, and all applicable orders and regulations of the Executive Branch, other departments, agencies, and instrumentalities of the United States Government. The Contractor and the Subcontractor agree to indemnify one another against any loss, cost, damage, or liability, including reasonable costs and attorney's fees by reasons of the other party's actual or alleged violation of this Article.

**21) Indemnification.**

The Subcontractor hereby agrees to indemnify, defend and hold SOCIAL IMPACT, its affiliates and their respective officers, directors, employees and agents harmless from and against any and all liabilities, damages, injuries, claims, suits, judgments, causes of action and expenses (including reasonable attorneys' fees, court costs and out-of-pocket expenses), initiated by or on behalf of third parties that are not affiliated with or related to SOCIAL IMPACT or the foregoing persons to the extent suffered or incurred by SOCIAL IMPACT or any of the foregoing persons

that arise from or may be attributable to: (i) a breach of any obligation, representation or warranty of subcontractor hereunder or (ii) errors, omissions or fault of subcontractor, its employees, agents or subcontractors in the performance or services pursuant to the Subcontract. Subcontractor's obligation under this paragraph will survive cancellation, expiration or termination of this Subcontract by either party for any reason.

SOCIAL IMPACT hereby agrees to indemnify, defend and hold subcontractor, its affiliates and their respective officers, directors, employees and agents harmless from and against any and all liabilities, damages, injuries, claims, suits, judgments, causes of action and expenses (including reasonable attorneys' fees, court costs and out-of-pocket expenses), initiated by or on behalf of third parties that are not affiliated with or related to SOCIAL IMPACT or the foregoing persons to the extent suffered or incurred by subcontractor or any of the foregoing persons in connection with the performance of the Subcontract to the extent arising out of (i) a breach of any obligation, representation or warranty of subcontractor hereunder or (ii) their use or their reliance upon any information, documents, representations, reports or data furnished or prepared by SOCIAL IMPACT for their use in connection with the performance of services pursuant to the Subcontract. SOCIAL IMPACT's obligation under this paragraph will survive cancellation, expiration or termination of this Subcontract by either party for any reason.

## **22) Litigation, Claims, Suspension and Debarment**

The Subcontractor shall give the Contractor immediate notice, in writing, regarding the following:

1. Any action, including any proceedings before a federal, state or local governmental or civilian agency, filed against the Subcontractor arising out of the performance of this subcontract; or
2. Any claim by a third party against the Subcontractor, the cost and expense of which is, or may be allowable under this subcontract; or
3. The Subcontractor's suspension, debarment, or other declaration of ineligibility by any Agency or Department of the US Government during the performance of this Subcontract or any Task Order hereunder.

In the event of any of the above, the Subcontractor shall immediately furnish to the Contractor copies of all pertinent papers and documents received by the Subcontractor with respect to such action or claim.

## **23) Arbitration and Disputes**

Any dispute concerning questions of fact or law arising out of this Subcontract Agreement shall first be decided by the authorized representative of the Contractor who shall either:

- A. Agree in writing to proceed with a claim and appeal under the disputes clause of the Prime Contract with the United States on behalf of the Subcontractor, or
- B. Render a decision on the issue in dispute, reduce this decision to writing, and mail a copy thereof to the Subcontractor. The decision of the Contractor's representative shall be final unless, within thirty (30) days of receipt of such copy, the Subcontractor files a written demand for arbitration with the American Arbitration Association. The dispute shall be arbitrated pursuant to the Commercial Mediation Rules of the American Arbitration Association. The award rendered by the mutually agreed upon arbitrator shall be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.

C. If the Contractor agrees in writing to proceed with a claim and appeal under the disputes clause of the Prime Contract with the United States on behalf of the Subcontractor, the Subcontractor agrees that any such claim, as defined under FAR 33.201 or any subsequent provision, which may arise under the Prime Contract and which may properly be submitted for a decision of the Government Contracting Officer (the "Contracting Officer") under the "Disputes" clause of the Prime Contract, shall be submitted to the Contractor and the Contractor shall submit such claim to the Contracting Officer for decision if the Contractor can certify such Subcontractor's claim to the extent and manner required by the Contract Disputes Act of 1978, Public Law 95-563, 41 U.S.C. 601 et. seq., (the "Contract Disputes Act") provided, however, nothing herein, or hereby referenced, shall be construed as giving the Subcontractor the direct right to appeal a decision of the Contracting Officer under the "Disputes" clause incorporated in the Prime Contract. The Contractor shall give the Subcontractor prompt notice of any decision of the Contracting Officer under the Prime Contract that relates to this Subcontract Agreement which decision shall be final and conclusive and binding upon the Subcontractor.

Provided, however, upon written request by the Subcontractor to appeal such decision received by the Contractor not less than twenty (20) days before expiration of the period of appeal under the "Disputes" clause of the Prime Contract, the Contractor shall appeal from such decision on behalf of the Subcontractor, if the Contractor has the right of such appeal under the Prime Contract.

D. The decision of the cognizant government agency Board of Contract Appeals (or other board or agency) or U.S. Claims Court having cognizance over the appeal brought pursuant to Paragraph A hereof, shall be conclusive and final, and binding upon the Contractor and the Subcontractor.

E. The Subcontractor agrees that with regard to any claim or dispute arising under the terms of the Prime Contract, subject to the "Disputes" clause of the Prime Contract, the right of appeal is limited to the procedures set forth in Paragraph C, D and E above. In the event an appeal is not otherwise available under this clause pursuant to the terms of the "Disputes" clause of the Prime Contract, or any claim, controversy, or dispute is not cognizable under said "Disputes" clause, or if the Contractor cannot certify such claim of the Subcontractor to the extent and manner required by said "Disputes" clause, the remedies, rights, and liabilities of the parties hereto shall be those as determined by a court of competent jurisdiction.

F. If as a result of any decision or judgment which is binding upon the Subcontractor and the Contractor, as above provided, the Contractor is unable to obtain reimbursement from the Government under the Prime Contract, or if required to refund or credit to the Government, any amount with respect to any item of price or cost which the Contractor has paid the Subcontractor, the Subcontractor shall, on demand, promptly repay such amount to the Contractor.

G. Pending any final decision in a dispute hereunder or a judgment by any court of competent jurisdiction, the Subcontractor shall proceed diligently with the performance of the Subcontract Agreement and in accordance with the written direction of the Contracting Officer.

H. Any reference to a Disputes clause elsewhere in this Subcontract shall mean this clause and not the Disputes clause of the Prime Contract.

I. The rights and obligations described herein shall survive the termination, rescission, expiration, completion, or final payment under this Subcontract.

## **24) Governing Law and Jurisdiction**

A. This Subcontract Agreement, and all matters arising out of or relating to this Subcontract Agreement, shall be governed by the laws of the State of Virginia, United States of America.

B. Any legal action or proceeding relating to this Subcontract Agreement shall be instituted in a state or federal court in the State of Virginia, United States of America. The Subcontractor and the Contractor agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

## **25) Security**

The Subcontractor agrees to ensure compliance with all security requirements contained in the Prime Contract or in any Task Order issued thereunder; these requirements are specifically incorporated herein and in Task Orders issued hereunder by reference.

## **26) Limitation on Liability**

Neither party shall be liable to the other party for any indirect, incidental, punitive, special or consequential damages, including without limitation, loss of profits, arising out of, or in connection with, this Agreement whether or not such party was advised of the possibility of such damage and whether based in breach of contract, tort, or any other theory at law or in equity.

The total aggregate liability of the Subcontractor for any and all claims made by the Contractor under or in connection with this subcontract shall not exceed the amount of fees paid by Contractor under this subcontract.

Notwithstanding the foregoing, the exclusion and limitations on liability set forth in subsections A and B above shall not apply with respect to any claims covered under each party's indemnification obligations set forth in Section 20 above.

## **27) Order of Precedence**

In the event of an inconsistency or conflict between or among the provisions of this Subcontract, the inconsistency shall be resolved by giving precedence in the following order:

1. Specific Terms and Conditions of this Section K to Subcontract.
2. Specific Terms and conditions of Section B through I of this Subcontract.
3. Terms and Conditions of any Task Order issued under this Subcontract.
4. Terms and Conditions of the Prime Contract.
5. Task Order Statements of Work\

