

## **Request for Proposal**

RFP Title: **TV live show**

RFP No: **P4767-2020-06**

Date of Issuance: **July 8, 2020**

Due Date for Questions: **July 15, 2020**

Response to Questions: **July 17, 2020**

Closing Date: **July 28, 2020**

Estimated Award Date: **July 31, 2020**

### **Request for Proposal (RFP) for producing TV live show**

#### **I. BACKGROUND**

Pact is an International NGO with offices throughout the world with a mission to enable systematic solutions that allow those who are poor and marginalized to earn a dignified living, be healthy and take part in the benefits that nature provides. Pact accomplishes this by strengthening local capacity, forging effective governance systems and transforming markets into a force for development.

This Request for Proposal (RFP) is a part of the Enhance Non-Governmental Actors and Grassroots Engagement Activity funded by USAID and implemented by Pact in Ukraine (USAID/ENGAGE). The purpose of USAID/ENGAGE is to increase citizen awareness of and engagement in civic activities at the national, subnational and local level.

The goal of this RFP is to procure a Ukrainian TV production studio to design and develop an edutainment TV live show, which will cover COVID-related programming, as well as critical sectors and reforms. The program is to be designed in 2020. The airing is expected to begin in 2021.

#### **II. SCOPE OF WORK**

##### **A. Place of Performance**

All services required under this solicitation will be performed in Ukraine

##### **B. Period of Performance**

All goods and services required under this solicitation will be delivered from July 29, 2020 and will conclude by October 30, 2020

##### **C. Scope of Work**

In response to COVID-19 outbreak and building on ENGAGE's own successful edutainment product for civic citizen engagement, Pact procures Ukrainian TV production studios to begin designing and developing of a new edutainment Pact's TV live show, which will cover COVID-related programming, edutainment on critical sectors and reforms. The program will be designed in FY20 and anticipated to begin airing in FY21. This activity is linked with ENGAGE's private sector engagement.

The show will be built on live interviews with Kyiv and regional taxi drivers who known to be fakes disseminators about political situation, economy, lifestyle, healthcare, education, all kind of stereotypes, gender and inclusion. The interviews will be done by Pact core partners who are working on different reforms and debunking fakes as well as by guest Ukrainian celebrities (vloggers, artists, musicians etc.). Pact will engage taxi firms from Kyiv and other cities for cooperation in live show production. The interviews will be done in the cab with real drivers.

The show production will have three stages: 1) further designing and developing of Pact's edutainment idea with live interview with taxi drivers; 2) pre-production and piloting one episode of the show; 3) airing the show on Ukrainian TV channel and online. The first and the second stage will be implemented by the end of FY20. Third stage – in the FY21.

Current request for proposal (RFP) is covering procurement of Ukrainian TV production studio/studios for first and second stages of show production. Under this procurement Pact seeks to contract Ukrainian TV production studio/studios to:

- Further develop the concept and design of Pact’s live show with taxi driver
- Pre-production of the show includes shooting of 10 min. mock episode and pilot it in focus-groups with customers of different demographics.
- Improve of the proposed screenplay based on feedbacks received during piloting.
- Provide Pact with ready to produce and air the TV-show screenplay.

Throughout the duration of contract, the selected Provider(s) is expected to provide services related to the production and marketing of the edutainment TV show covering critical sectors and reforms ENGAGE is working with.

Format:

The show will be built on short (10-15 min) live interviews on fakes about political situation, economy, lifestyle, healthcare, education, gender and inclusion etc. done in a very simple and engaging manner. The interviews will be conducted in a taxicab by a taxi driver.

Host:

The host of the show is a taxi driver who embodies the prevailing myths and stereotypes who will be asking guest passengers basic questions on civic literacy and the special topic (For example, ecology). Guest passengers will provide accurate information on the matter and explain how it should work to benefit each citizen.

Guests:

By guest passengers we understand Pact core partners who are working on different reforms and debunking fakes as well as Ukrainian celebrities (vloggers, artists, musicians etc.) having advocated for a specific social cause. The above list is not considered exhaustive.

D. Deliverables

<b>Reporting Requirements (Activities/Outputs)</b>	<b>Due Dates</b> (Due dates may change)	<b>Delivery Instructions</b>
Further develop the concept and design of Pact’s live show with taxi driver	August 15, 2020	First screenplay of the show is provided
Pre-production of the show includes shooting of 10 min. mock episode and pilot it in three focus-groups with customers of different demographics.	September 15, 2020	10 min mock episode of the show and pilot it in three focus-groups are made
Improve of the proposed screenplay based on feedbacks received during piloting.	September 20, 2020	Improved screenplay of the show is prepared
Provide Pact with ready to produce and air the TV-show screenplay and agreement with Ukrainian national TV channel/channels to broadcast the show	October 15, 2020	The final screenplay of the show and agreement with TV channel/channels are provided

**III. SUBMISSION INSTRUCTIONS**

A. Submission of Questions: All questions or clarifications regarding this RFP must be in writing and submitted to [tenders.engage@pactworld.org](mailto:tenders.engage@pactworld.org) no later than **23:59 hours on July 15, 2020** Questions and requests for clarification, and the responses thereto, will be circulated to all RFP recipients who have indicated an interest in this RFP.

B. Technical Proposal

The technical proposal in response to this solicitation must address how the offeror intends to carry out the statement of work contained in Section II. It should also contain a clear understanding of the work to be undertaken and the responsibilities of all parties involved. Please note that technical proposals will be evaluated based on the evaluation criteria set forth in Section IV. Offerors shall provide all documentation in English. Please note that technical and cost applications should be separate files.

1. **Proposal Cover Sheet.** The first page of the proposal must use the Proposal Cover sheet as per Attachment 1. This section does not count against the page limit above.
2. **Capability Statement:** Provide a short description of offeror's capabilities that qualify the organization to be chosen to conduct the scope of work. In an annex to the technical proposal, you should provide a copy of registration or incorporation in the public registry, or equivalent document from the government office where the offeror is registered, copy of company tax registration, or equivalent document (if available).
3. **Technical Approach:** The technical approach should state clearly the offeror's understanding of the requirements in Section II as well as the proposed approach to accomplish the contract objectives and achieve results. Offerors should keep in mind the geography of the place of performance and any travel that may be required to accomplish the work. Clarity, completeness, and directness are imperative. Elaborate formats are not desirable.
4. **Management and Staffing Plan.** Please describe how proposed staff will work collaboratively to achieve the offeror's proposed technical approach to the scope of work. The offeror should include a management and staffing plan including both key and non-key personnel for activities along with details on the roles and responsibilities of the staff. CVs for key personnel may be included in an annex to the technical proposal and will not count against the page limit.
5. **Detailed Work Plan.** Describe the key activities you will undertake under this contract. At a minimum you must include a description of the activity, expected outputs, and estimated completion date.

The detailed work plan should include up to 3 pages of the written description of the possible concept of the show including:

- portrait of the target audience.
  - description of the format (timing, roles of host and guest passengers, possible interactions with the audience etc).
  - list of possible hosts.
  - list of possible guests including celebrities.
  - recommended placement channels (TV, Internet, other options).
  - description of focus group methodology.
  - list of TV Channels vendor can reach to negotiate and secure placement of the produced show
6. **Past Performance.** Describe the organization's previous experience within the technical area for projects of the same or similar scope and size. Offerors must include details demonstrating their experience and technical ability, including those of proposed consortium members, in implementing the technical approach/ methodology and the detailed work plan.
  7. **References.** Offeror shall list at least three major contracts its company has held over the past five (5) years for the same or similar work. Provide the following information for each contract:
    - a. Customer's name, address, and telephone numbers of customer's lead contact and technical personnel.
    - b. Contract number and type;
    - c. Date of the contract, place(s) of performance, and delivery dates or period of performance;
    - d. Contract size and dollar value;
    - e. Brief description of the work, including responsibilities;
    - f. Comparability to the work required under this solicitation;
    - g. Brief discussion of any technical problems and their resolutions;

- h. Brief discussion of any terminations (partial or complete) and the type (convenience or default) as well as any show cause notices or cure notices (provide explanatory details).

C. Cost Proposal

Cost proposals will be evaluated separately from technical proposals. The cost proposal shall include a detailed budget that reflects clearly the costs necessary to implement the proposed contract and must include all taxes that are required to provide the services requested. Costs should be represented in **USD** (whichever is preferable to the vendor). The anticipated award will be an all-inclusive Firm Fixed Price. No profit, fees, taxes, or additional costs can be added after award. The cost proposal must be valid for at least 90 days.

1. **Proposal Cover Sheet.** The first page of the proposal must use the Proposal Cover sheet as per Attachment 1. This section does not count against the page limit above.
2. **Summary Budget.** The offeror should present a summary budget by line item.
3. **Detailed Budget.** In the detailed budget in Excel format only (template is here: <https://pactworld.box.com/s/egpfzw9zc6louhfezc6eqwjz7f8m575i>), the offeror should include a breakdown of line items that they believe are realistic and reasonable for the work in accordance with the technical requirements outlined in Section II. Offerors must provide a detailed budget showing major line items, e.g. salaries, fringe benefits, travel costs, other direct costs, indirect rates, etc., as well as individual line items, e.g. salaries or rates for individuals, rent, utilities, insurance, etc. Offerors must show unit prices, quantities, and total price. The offeror should clearly identify indirect rates (including fringe rates), the base to which each indirect rate is applied, and the cost base.
4. **Budget Notes:** The Budget Notes should thoroughly explain the estimating methodology used to calculate the budget and any assumptions that may be made by the offeror over and above the ones stated in this RFP that had a material effect on the resulting proposed cost. Offerors must clearly explain the basis of costs, meaning why and how Offerors are costing out certain figures for item or service, to establish reasonableness of costs. The notes should include a clear and thorough explanation for each budgeted line item, reflecting the rationale for the quantity required. If a proposed benefit (e.g., local fringe) is an all-inclusive rate, notes must specify what benefits are included in the proposed rates.
5. **Supporting Documentation:** Additional supporting budget documentation (as necessary), including travel quotations, historical cost information, profit/fee policy, etc. to substantiate all proposed costs. A copy of the latest NICRA or audited indirect costs must be included if the offeror has one.

Pact may require additional, more detailed budget information prior to issuing a subcontract.

D. Certifications: Offerors responding to this RFP must include the following disclosures and certifications as part of the proposal submission in an annex to the cost proposal.

1. Disclose any close, familial, or financial relationships with Pact or project staff. For example, if an offeror's cousin is employed by the project, the offeror must state this.
2. Disclose any family or financial relationship with other offerors submitting proposals. For example, if the offeror's father owns a company that is submitting another proposal, the offeror must state this.
3. Certify that the prices in the offer have been arrived at independently, without any consultation, communication, or agreement with any other offeror or competitor for the purpose of restricting competition.
4. Certify that all information in the proposal and all supporting documentation are authentic and accurate.

E. Submission of Proposals: The deadline for submission of proposals is **23:59 hours July 28, 2020**. Submissions must be forwarded in electronic format only (either PDF or Microsoft Word and Excel)

to [tenders.engage@pactworld.org](mailto:tenders.engage@pactworld.org). Offeror's proposals should not contain any unnecessary promotional material or elaborate presentation formats (black and white is preferred). Offerors must not submit zipped files. Those pages requiring original manual signatures should be scanned and sent in PDF format as an email attachment. The technical proposal and cost proposal must be kept separate from each other. Please reference the RFP Number and RFP Name in the e-mail subject line. Offerors are responsible for ensuring that their offers are received in accordance with the instructions stated herein. Late offers may be considered at the discretion of Pact. Pact cannot guarantee that late offers will be considered.

#### IV. EVALUATION CRITERIA

- A. Review Process. Pact will establish a selection committee that includes representatives from various company departments and external professionals if necessary. All technical reviewers will be subjected to a screening process to eliminate any conflict of interest. Evaluation will be based on the criteria set forth in Section B. Evaluation Criteria.
- B. Evaluation Criteria. The award will be decided on Best Overall Value for Money as determined by a Selection Committee based on the criteria set forth below, as demonstrated in the Offeror's proposal. Only proposals conforming to the solicitation requirements will be considered. Contract award shall be made to the Company with the offer, that has been evaluated and determined as:
- a) responsive/compliant/acceptable, and
  - b) having received the cumulative highest score out of a pre-determined set of weighted technical and financial criteria specific to the solicitation.
    - Technical Criteria weight: 70%
    - Financial Criteria weight: 30% (The maximum number of points assigned to the financial proposal is allocated to the lowest price proposal and will equal to 30. All other financial proposal will be scored on proportion principle.

The proposal obtaining the overall cumulatively highest score after adding the score of the technical proposal and the financial proposal will be considered as the most compliant offer and will be awarded a contract.

<b>Evaluation Criteria</b>	<b>Expectations</b>	<b>Score</b>
<b>Technical criteria</b>		
Samples of previously created video products	Does the Company have the demonstrated experience and technical ability within requested scope of work?	10
Technical proposal (detailed description of the workplan)	How does the proposed workplan outline the following requested items? <ul style="list-style-type: none"> <li>• portrait of the target audience.</li> <li>• description of the format (timing, roles of host and guest passengers, possible interactions with the audience etc).</li> <li>• list of possible hosts.</li> <li>• list of possible guests including celebrities.</li> <li>• recommended placement channels (TV, Internet, other options).</li> <li>• description of focus group methodology.</li> <li>• list of TV Channels vendor can reach to negotiate and secure placement of the produced show</li> </ul>	40
List of TV Channels for further negotiations on the placement of the	Are the proposed TV channels sufficient to achieve proposed workplan?	20

ready to air product		
<b>Financial criteria</b>		
Financial proposal	The cost of services to complete technical part of the assignment	30
<b>TOTAL AVAILABLE POINTS</b>		100

**V. TERMS AND CONDITIONS**

**A. Disclaimers**

- Pact reserves the right to modify by written notice the terms of this solicitation at any time in its sole discretion. Pact may cancel the solicitation at any time
- Pact may reject any or all proposals received.
- Issuance of solicitation does not constitute award commitment by Pact.
- Pact reserves the right to disqualify any application based on applicant’s failure to follow solicitation instructions.
- Pact will not compensate applicants for their response to the solicitation.
- Pact reserves the right to issue an award based on initial evaluation of applications without further discussion.
- Pact may choose to award only part of the scope of work in the solicitation or to issue multiple awards the scope of work.
- Pact reserves the right to waive minor proposal deficiencies that can be corrected prior to award determination to promote competition.
- Pact may contact offerors to confirm contact person, address, and that the proposal was submitted for this solicitation.
- Pact may contact listed past performance references without notice to the offeror. Pact also reserves the right to contact other past performance information sources that the offeror did not list in the proposal.
- By submitting a proposal, the offeror confirms they understand the terms and conditions.
- Information pertaining to and obtained from the Offeror as a result of participation in this solicitation is confidential. The offeror consents to the disclosure of the documents submitted by the offeror to the reviewers involved in the selection process. Please note that all reviewers are bound by non-disclosure agreements.

**B. Standard Provisions**

See Attachment 2 Pact General Terms and Conditions

**C. Attachments**

Attachment 1: Proposal Cover Sheet

Attachment 2: Pact General Terms and Conditions



## **Attachment 2: Pact General Terms and Conditions for Subcontracts**

### **1. Subcontract Type**

- (a) This is a TBD type contract. For the consideration set forth, the Subcontractor shall provide the services described and the level of effort described in the scope of work.
- (b) The costs allowable shall be limited to reasonable, allocable and allowable costs determined in accordance with Articles 3, 4 and 5 of this subcontract.

### **2. Estimated and Obligated Amount**

- (a) The total estimated cost for the performance of the work required hereunder for the subcontract and is set out in the budget.
- (b) The total obligated amount available for work under this subcontract is set out in the award. The Subcontractor is not authorized to make expenditures or incur obligations exceeding this amount unless advance approval is requested and received via written modification to this subcontract.
- (c) Pact is not obligated to reimburse the Subcontractor for costs incurred in excess of the estimated cost specified in the budget of this subcontract.

### **3. Allowable Costs**

Costs shall be incurred in accordance with and as detailed in the budget in Scope of work. The costs allowable under this subcontract will be limited to those reasonable and allocable to the project. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. A cost is allocable is incurred specifically for the furtherance of the work performed under the contract. Costs will be determined allowable in in by the Pact Agreement Officer in accordance with the terms of this subcontract.

### **4. Limitation of Cost**

- (a) The Subcontractor shall notify the Pact Agreement Officer in writing whenever it has reason to believe that (i) The costs the Subcontractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or (ii) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated. As part of the notification, the Subcontractor shall provide the Pact Agreement Officer a revised estimate of the total cost of performing this subcontract.
- (b) The Subcontractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the subcontract, until the Pact Agreement Officer issues a modification increasing the estimated cost of the subcontract in writing.
- (c) If the estimated cost specified in the subcontract is increased, any costs the Subcontractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Pact Agreement Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- (d) Nothing in this clause shall affect the right of Pact to terminate this contract. If this contract is terminated, Pact and the Subcontractor shall follow the procedures in applicable section.

### **5. Limitation of funds**

- (a) The Subcontractor shall notify the Pact Agreement Officer in writing whenever it has reason to believe that the costs it expects to incur under this subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total obligated amount so far allotted to the subcontract. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the subcontract.
- (b) Sixty days before the end of the period of performance specified in the subcontract, the Subcontractor shall notify the Pact Agreement Officer in writing of the estimated amount of additional obligated funds, if any, required to continue timely performance under the subcontract and when the funds will be required.
- (c) The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the amount then obligated to the subcontract.
- (d) When the amount obligated by Pact to the subcontract is increased, any costs the Subcontractor incurs before the increase that are in excess of the amount previously obligated shall be allowable to the same extent as if incurred afterward, unless the Pact Agreement Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- (e) If the amount obligated exceeds the estimated cost specified in the subcontract, the estimated cost shall be increased to that extent.
- (f) Nothing in this clause shall affect the right of Pact to terminate this contract. If this contract is terminated, Pact and the Subcontractor shall follow the procedures in applicable section.

### **6. Level of Effort**

- (a) The approved level of effort (LOE) for professional technical labor is set out in Scope of work.5 for the base subcontract. The Subcontractor should not exceed the LOE for the named positions in Scope of work.5 without the prior authorization of Pact. The level of effort includes person-days associated with key personnel and any subject matter advisors required as well as training design and delivery; monitoring, evaluation and learning; and senior grants management positions. . Other professional and non-professional effort including: administrative, financial support, procurement efforts are not included in the above.
- (b) The Subcontractor shall notify the Pact Agreement Officer in writing whenever it has reason to believe that the LOE it expects to incur under this subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total annual LOE for the subcontract. The notice shall state the estimated amount of LOE required to continue performance for the period specified in the subcontract.

**7. Marking and branding**

- (a) The Subcontractor must comply with the approved Branding Implementation and Marking Plan, incorporated as Section TBD of this contract or any successor branding policy.
- (b) Specific guidance on branding and marking requirements should be obtained prior to procurement of commodities to be shipped, and as early as possible for publications, activity construction sites and other activity locations. This guidance will be provided through the Pact Technical Monitor indicated in Section 1.1 of this subcontract.
- (c) Authority to waive marking requirements is vested with the Pact Technical Monitor and must be obtained in writing.

**8. Communications**

- (a) The Subcontractor will identify appropriate opportunities for publicizing the Project and notify Pact in a timely manner.
- (b) The Subcontractor must not make any media or other announcements or releases relating to this project or the subcontract either during or after the implementation of the project without the prior approval of Pact as to the form, content and manner of the announcement or release.
- (c) The Subcontractor shall adhere to the reasonable written instructions provided by Pact concerning:
  - The use of the project name and logo on Project materials;
  - How reference to the Project, and/or Pact in any reports, presentations and promotional material produced by the Subcontractor in connection with the Project.
  - Neither party, Pact or the Subcontractor, will use the other party's name, logos, trademarks, or other marks without that party's consent.
  - The Subcontractor will ensure that any personnel, lower tier subcontractors, or any person acting on their behalf shall agree changes in Pact's rights under this Clause.

**9. Place of Performance**

The place of performance of this contract will be as TBD of this subcontract.

**10. Period of Performance**

The period of performance for this subcontract is as specified in TBD.

**11. Performance Standards**

Pact will evaluate the subcontractor's performance in accordance with the subcontractor's adherence to the annual work plan, reporting against its Monitoring and Evaluation (M&E) Plan, and quality of reports described below. The Pact Agreement Officer and the Pact Technical Monitor will jointly conduct the evaluation of the Subcontractor's overall performance, utilizing at a minimum, the following factors:

- (a) Quality;
- (b) Schedule;
- (c) Cost control;
- (d) Management;
- (e) Utilization of Small Business (as applicable);
- (f) Regulatory Compliance;
- (g) Other Areas (as applicable) (e.g., late or nonpayment to lower tier subcontractors, trafficking violations, tax delinquency, failure to report in accordance with contract terms and conditions, defective cost or pricing data, terminations, suspension and debarments).

**12. Inspection and Acceptance**

- (a) Definition. "Services," as used in this clause, includes services performed (activities, trainings, workshops, etc.), workmanship, and materials furnished (including reports, data sets, published works, etc.) or used in performing services.
- (b) The Subcontractor shall provide and maintain an inspection system acceptable to Pact covering the services under this contract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to Pact during subcontract performance and for as long afterwards as the contract requires.
- (c) Pact has the right to inspect and test all services called for by the subcontract, to the extent practicable at all places and times during the term of the subcontract. Pact shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform to subcontract requirements, Pact may require the Subcontractor to perform the services again in conformity with subcontract requirements, for no additional cost or fee. When the defects in services cannot be corrected by performance, Pact may—
  - (1) Require the Subcontractor to take necessary action to ensure that future performance conforms to contract requirements; and
  - (2) Reduce any costs and fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Subcontractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, Pact may—
  - (1) By contract or otherwise, perform the services and reduce any costs or fee payable by an amount that is equitable under the circumstances; or
  - (2) Terminate the subcontract for default.

**13. Key Personnel**

The Key Personnel whom the Subcontractor shall furnish for the performance of the subcontract will be as specified in Scope of work.2. The Key Personnel identified in are considered to be essential to the work being performed by Subcontractor. The Subcontractor is responsible for providing the identified Key Personnel for the term required in subcontract. Unless failure to provide such Key Personnel is beyond the control of Subcontractor (e.g., non-acceptance or termination of employment by the individual, death or illness of the individual), failure to provide such key

personnel will be considered non-performance by Subcontractor. If the Subcontractor is unable to comply with these requirements, Subcontractor will immediately notify in writing the both the Pact Agreement Officer and Pact Technical Monitor reasonably in advance of the individual's departure or non-acceptance of employment and shall submit a written justification (including proposed substitutions and implications for subcontract total estimated cost) in sufficient detail to permit evaluation of the impact on the program. No replacement of key personnel shall be made by the Subcontractor without the written consent of Pact reflected as a written modification to the subcontract.

#### **14. Authorized Work Day/Week**

- (a) The length of the Subcontractor's workday shall be in accordance with the Subcontractor's established written policies and practices, but shall be no less than 8 hours per day.
- (b) The workweek for individuals providing services overseas shall be five days, unless approved in advance and in writing Pact Agreement Officer.
- (c) For the purposes of this subcontract, a workday shall include, in addition to direct time spent in providing/performing services, time actually spent in authorized travel necessary in connection with duties directly related to work under the subcontract. In no event, however, will payment be made for any travel time in excess of the time required for travel by the most direct and expeditious route.
- (d) The negotiated daily rate for a fractional part of a day shall be pro-rated, accordingly. Under no circumstances will overtime/premium pay be allowed.

#### **15. Technical Direction**

- (a) Technical Directions will come from the Pact Technical Monitor and include:
  - Written directions to the Subcontractor which fill in details, suggest possible lines of inquiry, or otherwise facilitate completion of work;
  - Provision of written information to the Subcontractor which assists in the interpretation of drawings, specifications, or technical portions of the work statement;
  - Review and, where required, provide written approval of technical reports, drawings, specifications, or technical information to be delivered. Technical directions must be in writing, and must be within the scope of the work as detailed in Scope of work.
  - Assure that the Subcontractor performs the technical requirements of the subcontract in accordance with the subcontract terms, conditions, and specifications.
  - Perform or cause to be performed, inspection and acceptance as necessary in connection with the Subcontract and require the Subcontractor to correct all deficiencies.
  - Maintain all liaison and direct communications with the Subcontractor.
  - Issue written interpretations of technical requirements of drawings, designs, and specifications.
  - Monitor the Subcontractor's production or performance progress and notify the Subcontractor in writing of deficiencies observed during surveillance, and direct appropriate action to effect correction. Record and report to the Pact Agreement Officer incidents of faulty or nonconforming work, delays or problems.
- (b) The Pact Technical Monitor will convene meetings with the Subcontractor concerning performance of items delivered under this subcontract and any other administration or technical issues.
- (c) LIMITATIONS: The Pact Technical Monitor is not empowered to agree to, or sign any subcontract or modifications thereto, or in any way to obligate the payment of money by Pact. The Pact Technical Monitor may not take any action, which may impact on the subcontract terms and conditions, funds, or scope. All contractual agreements, commitments, or modifications, which involve cost, obligations, level of effort, place of delivery, quantities, quality, and schedule shall be issued only by the Pact Agreement Officer and shall be signed by the Pact Authorized Representative.
- (d) Contractual Problems - Contractual problems, of any nature that may arise during the life of the subcontract must be handled in conformance with the terms and conditions of the subcontract, specific public laws and regulations (i.e. Federal Acquisition Regulation and Agency for International Development Acquisition Regulation). The Pact Agreement Officer is authorized to formally resolve such problems after discussions with the Subcontractor's Contracting Officer. The Pact Agreement Officer will be responsible for resolving legal issues, determining subcontract scope and interpreting contract terms and conditions. The Pact Agreement Officer is the sole authority authorized to issue Modification Orders that approve changes in any of the requirements under this subcontract. These changes are: scope of work, price, level of effort, quantity, technical specifications, delivery schedules, and contract terms and conditions.

#### **16. Pact Authorized Representatives**

The Pact Authorized Representatives are the following:

- (a) The Pact Technical Monitor is hereby designated as the person who is responsible for providing technical direction, as per Section TBD, to the Subcontractor. The Pact Technical Monitor is identified in Section 1 TBD of this subcontract.
- (b) All contractual matters relating to this Subcontract will be administered Pact Agreement Officer named in Section TBD of this subcontract.

#### **17. Modifications**

- (a) Any modification or variation of this subcontract shall be issued as a written modification signed by the authorized representatives of each party. Modifications include, but will not be limited to the following areas: scope of work, cost, obligation, options, reporting schedules, and subcontract terms and conditions. If the subcontractor effects any changes not covered by issuance of a modification from Pact, these changes shall be considered to be have been made without authority.

- (b) Notice. The primary purpose of this clause is to obtain prompt reporting of Pact conduct that the Subcontractor considers to constitute a modification to this subcontract. Except for modification identified as such in writing through an official modification and signed by the authorized representatives of each party, the Subcontractor shall notify the Pact Agreement Officer in writing promptly, within 20 calendar days from the date the Subcontractor regards as the date a modification to the contract terms and conditions (including actions, inactions, and written or oral communications) was ordered. In the communication to the Pact Agreement Officer, the Subcontractor will identify the following:
- (1) The date, nature, and circumstances of the conduct regarded as a modification;
  - (2) The name, function, and activity of each individual, official, or employee involved in or knowledgeable about such conduct;
  - (3) The identification of any documents and the substance of any oral communication involved in such conduct;
  - (4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
  - (5) The particular elements of contract performance for which the Subcontractor may seek an equitable adjustment under this clause, including—
    - (c) What budget line items and level of effort have been or may be affected by the alleged modification;
    - (d) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged modification;
    - (e) What adjustments to contract cost, obligation, scope of work, work plan, delivery schedule, and other provisions affected by the alleged modification are estimated; and
  - (1) The Subcontractor's estimate of the time by which Pact must respond to the notice to minimize cost, delay or disruption of performance.
  - (f) Continued performance. Following submission of the notice required by paragraph (b) of this clause, the Subcontractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions.
  - (g) Pact response. The Pact Agreement Officer shall promptly, within 20 calendar days after receipt of notice, respond to the notice in writing, either confirming the modification and providing a written modification, countermand any communication regarded as a modification, clarify that the conduct of which the Subcontractor gave notice does not constitute a modification, or request more information in order to make a decision.
  - (h) Equitable adjustments. If the Pact Agreement Officer confirms that there is a modification as alleged by the Subcontractor, and if any such modification causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract or otherwise affects any other terms and conditions of this contract, whether or not changed by a modification, then the Pact Agreement Officer shall make an equitable adjustment in the contract price, delivery schedule, and other terms and conditions as affected. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Subcontractor's failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.
  - (i) Failure by the subcontractor to report to the Pact Agreement Officer any action by Pact considered a modification under this section within 20 days waives the Subcontractor's right to any claims for equitable adjustment.

#### **18. Invoicing**

- (a) The Subcontractor shall submit proper invoices for reimbursable costs that the subcontractor has incurred in the performance authorized under this subcontract. Cost should be invoiced at least once per month, but no more than every two weeks. Invoices must be submitted on company letterhead and submitted to the people mentioned in Section TBD. The invoice format is provided in Section TBD.
- (b) The line item breakdown of each invoice should follow the order of the cost categories authorized in the budget. With each invoice, the subcontractor shall provide a breakdown of the number of person months during the invoice period and cumulatively. Other direct costs (ODCs) must be identified, e.g., travel, per diem, supplies, etc. The Subcontractor agrees to furnish support data upon request on costs invoiced under this subcontract. Pact reserves the right to verify invoiced costs and withhold payment until such time that the subcontractor submits any additional documentation requested by Pact to support of such costs.

A proper invoice must contain the following information:

- 1) Name and complete address of subcontractor;
- 2) Date of invoice;
- 3) Billing Period covered by Invoice;
- 4) Prime Contract Number and Subcontract Number;
- 5) Pact Project Number;
- 6) Description of services/products being billed, including:
- (c) Total Hours and Costs by Individual billed; Total Labor Costs; Total Other Direct Costs by Cost Category (travel, per diem, allowances, participant training, supplies, equipment, etc.);
- (d) Current and Cumulative Amounts for each Line Item being billed; and total amount due on the current invoice.
- (e) Name and complete address of subcontractor official/bank to send payment to (if payment is to be sent to a bank account, provide complete account number, routing number, SWIFT code and bank address);
- (f) Name, telephone, and complete address of subcontractor official to notify if the invoice is found to be defective; and
- (g) A certification signed by an authorized representative of the subcontractor, as follows:
- (h) "The undersigned hereby certifies to the best of my knowledge and belief that the fiscal report and any attachments have been prepared from the books and records of (the subcontractor's name) in accordance with the terms of this subcontract and are correct; the sum claimed under this subcontract is proper and due, and all the costs of subcontract performance have been paid, or to the extent allowed under the applicable payment clause, will be paid currently by (the

subcontractor's name) when due in the ordinary course of business; the work reflected by these costs have been performed, and the quantities and amounts involved are consistent with the requirements of this subcontract; all required Pact approvals have been obtained; and appropriate refund to Pact will be made promptly upon request in the event of disallowance of costs not reimbursable under the terms of this subcontract.”

- (i) Completion Invoices and Final Invoices. Within 60 days after the period of performance, the subcontractor shall submit a completion invoice reflecting all final costs incurred under this subcontract. This invoice should be marked “Final”. Failure by the Subcontractor to issue the final invoice within 60 days after the period of performance waives the Subcontractor's right to payment.
- (j) Upon payment of the final subcontract invoice, both parties shall jointly sign a release mutually discharging the other, its officers, employees, and agents from all liabilities, obligations, and claims arising out of or related to this subcontract, subject only to specified claims in stated amounts.

#### **19. Payment**

- (a) Payment shall be made in TBD by no later than thirty (30) calendar days after receipt and acceptance by Pact of the invoice with the subcontractor's charges.
- (b) Pact reserves the right to withhold payment of those costs that are either unauthorized or not properly and sufficiently documented. Pact shall notify the subcontractor of any improper or insufficiently documented costs. The notice shall specify the support documentation deficiencies related to any claims withheld from payment. Pact shall proceed with making payment for those costs that have been determined to be in order according to the cycle stated above. Payment by Pact of costs that have been withheld shall be made no later than thirty (30) calendar days after receipt and acceptance by Pact of the subcontractor's explanation for the costs that have been previously withheld.

#### **20. Record Retention**

The subcontractor shall maintain accounting records and all other pertinent evidence of costs incurred and paid under this subcontract. The subcontractor shall make such records available at all reasonable times during the performance period of this subcontract and for three (3) years from the date of final payment hereunder for inspection and/or audit by Pact. Any proposed audit by Pact may be performed by Pact or by an independent auditing firm, hired by and at the expense of Pact, and will be subject to a non-disclosure agreement to ensure protection of the subcontractor's proprietary data.

#### **21. Set-off**

In the event the subcontractor fails or refuses to pay or reimburse Pact for any expense, cost, claim, or damage for which the subcontractor is obligated to make payment under this subcontract, Pact shall have the right to set-off such expense, costs, claims, or damage against any sums otherwise due the subcontractor under this subcontract.

#### **22. Audit**

- (a) As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Subcontractor shall maintain and the Pact Agreement Officer, or an authorized representative of either party, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or parts of them, engaged in performing the contract.
- (c) Certified cost or pricing data. If the Subcontractor has been required to submit certified cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computations and projections, related to—
  - (1) The proposal for the subcontract, lower tier subcontract, or modification;
  - (2) The discussions conducted on the proposal(s), including those related to negotiating;
  - (3) Pricing of the contract, subcontract, or modification; or
  - (4) Performance of the subcontract, lower tier subcontract, or modification.
- (d) Access.—
  - (1) Pact shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.
  - (2) This paragraph may not be construed to require the Subcontractor to create or maintain any record that the Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Subcontractor is required to furnish cost, funding, or performance reports, the Pact Agreement Officer or an authorized representative of either party shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—
  - (1) The effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports; and
  - (2) The data reported.
- (f) Availability. The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor

Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

- (1) If this contract is completely or partially terminated, the Subcontractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
- (2) The Subcontractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- (g) The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—
  - (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
  - (2) For which certified cost or pricing data are required; or
  - (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- (h) The Subcontractor must make a copy available to Pact of its annual audit within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period.

### **23. Taxes**

Aside from taxes covered in TBD, the Subcontractor is responsible and liable for the payment of local sales, gross receipts, and valorem, property, excise or other taxes that may be applicable to the subcontract.

### **24. Procurement**

The Subcontractor's policies and practices used to procure goods and services under this subcontract shall conform to the requirements listed below:

- Contracts shall be awarded on a transparent and on a competitive basis to the largest extent possible.
- All solicitations must be clearly advertised to reach the largest amount of prospective bidders possible and prospective bidders shall be given a sufficient amount of time to respond.
- Solicitations shall provide all information necessary for a prospective bidder to prepare a bid including a clear, accurate description of the proposed terms and conditions of the final award.
- The conditions of participating in a contract bid shall be limited to those essential to determining the participant's capability to fulfill the advertised contract and compliance with domestic procurement laws.
- Contracts shall be awarded only to responsible contractors with the ability to successfully perform the contracts.
- Prices paid to obtain goods and services will be reasonable.
- The Subcontractor shall maintain records documenting in detail the receipt and use of goods and services acquired under the subcontract, the nature and extent of solicitations of prospective suppliers of goods and services, and the basis of award.

### **25. Title to Property**

- (a) Title to all non-expendable property purchased with subcontract funds under this subcontract, shall at all times be in the name of Pact. All such property shall be under the custody and control of Subcontractor until Pact directs otherwise, or completion of work under this contract or its termination, at which time custody and control shall be turned over to Pact or disposed of in accordance with its instructions. All performance guaranties and warranties obtained from suppliers shall be taken in the name of Pact. (Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of \$500 or more.
- (b) Subcontractor shall prepare and establish a program, to be approved by Pact, for the receipt, use, maintenance, protection, custody, and care of non-expendable property for which it has custodial responsibility, including the establishment of reasonable controls to enforce such program.

### **26. Inventory**

- (a) The Subcontractor shall submit an annual inventory report on all non-expendable property under its custody. Pact will provide a template for the report.
- (b) The Subcontractor shall, within 30 days after completion of this contract, or at such other date as may be fixed by the Pact Agreement Officer, submit an inventory report covering all items of non-expendable property under its custody, which have not been consumed in the performance of this contract. The Subcontractor shall also indicate what disposition, if any, has been made of such property.

### **27. Insurance**

- (a) Subcontractor shall, at its sole expense, keep in force insurance policies including Employer's Liability Insurance, General Liability Insurance, and Automobile Liability Insurance in the amounts as specified and as required by statute with carriers satisfactory to Pact. All policies shall be maintained with companies, in forms and with deductibles reasonably acceptable to Pact and will be written as primary policy coverage and not contributing with, or in excess of any coverage which Pact shall carry. The insurance will be obtained under valid and enforceable policies issued by insurers licensed in the countries in which this agreement is being carried out. Certificates of insurance evidencing all of the above coverages and conditions (types and amounts) shall be and remain in full force and effect during the term of this subcontract. Subcontractor shall provide Pact with such certificates of insurance upon request. In the event of non-renewal of policies, cancellation or material change in the coverage provided, thirty (30) days prior written notice will be furnished to Pact prior to the date of non-renewal, cancellation or change.
- (b) Contractors must provide MEDEVAC service coverage to all U.S. citizen, U.S. resident alien, and Third Country National employees and their authorized dependents (hereinafter "individual") while overseas. Pact will reimburse reasonable, allowable, and allocable costs for MEDEVAC service coverage incurred under the contract.

## **28. Indemnity**

- (a) The subcontractor is solely and exclusively liable to third parties for all costs incurred by the subcontractor and for all claims of damages against the subcontractor arising out of or based on its performance of this subcontract.
- (b) Each party will indemnify and hold harmless the other party against all liability or loss, demands, suits, damages and against all claims or actions, fines or judgments (including costs, attorney's and witnesses' fees and expenses incident thereto) based upon or arising out of property loss or damage and of personal injury or death which may be sustained by each party or by any of either party's employees, agents, consultants, or subcontractors as a result of performing the work required under this subcontract. Each party agrees to indemnify the other party against, and save from, any claims arising from any such property loss or damage, personal injury or death but only to the extent that such property loss or damage, personal injury or death, is not attributable to the negligent or intentional act or failure to act on the part of Pact.
- (c) The subcontractor further agrees to indemnify Pact and hold it harmless to the full extent of any price or cost reduction effected which may result from (a) the cost or pricing data submitted by the subcontractor, which is not accurate, current or complete as of the date submitted or certified by the subcontractor; (b) the failure of the subcontractor to disclose or consistently follow applicable cost accounting practices and standards or otherwise comply with pertinent sections cited regulations.
- (d) The subcontractor is responsible for obtaining and maintaining for the duration of this subcontract adequate liability, property damage insurance and other insurance in respect to any actions, suits, claims, demands, proceedings, liability referred to in this section.

## **29. Force Majeure**

The Subcontractor shall be liable for delays and nonperformance unless it is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, delays of common carriers, and severe economic events. The Subcontractor shall notify Pact in writing as soon as it is reasonably possible after the commencement of any excusable delay.

## **30. Disputes**

- (a) In case of a dispute arising from this subcontract, the parties shall use their best efforts to arrive at a mutually acceptable resolution. Any dispute that is not settled through best efforts shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration shall take place in Washington, D.C. The language of arbitration shall be English. Arbitrator(s) shall be appointed as provided in the American Arbitration Association Commercial Arbitration Rules. The arbitrator(s) may not award punitive or special damages. The parties in dispute shall each pay its own expenses in conjunction with the arbitration, but the compensation and expenses of the arbitrator(s) shall be borne in such manner as may be specified in the decision of the arbitrator(s). No news release, public announcement, denial or confirmation of any part of the subject matter of this Award shall be made without the prior written consent of Pact. The restrictions of this article shall continue in effect upon completion or termination of this subcontract for such period of time as may be mutually agreed upon in writing by the parties. In the absence of a written established period, no disclosure is authorized.
- (b) The Subcontractor shall proceed diligently with its performance of this subcontract pending the final resolution of any dispute arising or relating to this subcontract. Pact shall continue to reimburse the Subcontractor for its allowable costs in accordance with the allowable costs and payment provisions of this subcontract except for those costs related to the dispute.

## **31. Suspension and Termination**

- (a) Pact reserves the right to suspend project activities at any time the activities of the Subcontractor become inconsistent with Pact's scope of work, at the direction of the funder, or due to excusable delays. The suspension may be 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 clause. Upon receipt of the order, 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. Within a period of 90 days after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the Pact Agreement Officer shall either—
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Default, or Termination, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The Pact Agreement Officer shall make an equitable adjustment in the delivery schedule or Subcontract price, or both, and the subcontract 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 contract; and
  - (2) The Subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Pact Agreement Officer decides the facts justify the action.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of THE FUNDER, the Pact Agreement Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Pact Agreement Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

- (e) Pact may terminate this subcontract at any time, in whole or in part, upon written notice to the Subcontractor for any of the following reasons: a) whenever it is determined that the Subcontractor has materially failed to comply with the terms and conditions of this Award; b) in the event unforeseen circumstances outside of Pact's control, including funding availability, impact Pact's ability to perform; or c) by the request of THE FUNDER, or d) by mutual agreement 30 calendar days after receipt of written notification by the other party.
- (f) Subcontractor may terminate this subcontract upon sending written notification to Pact setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if Pact determines in the case of partial termination that the reduced or modified portion of the subcontract will not accomplish the purposes for which the subcontract was made, Pact may terminate the subcontract in its entirety.
- (g) Upon receipt of and in accordance with a termination notice, the Subcontractor shall take immediate action to minimize all expenditures and obligations financed by this subcontract and shall cancel such unliquidated obligations whenever possible. Except as provided below, the Subcontractor shall not incur costs after the effective date of termination.
- (h) The Subcontractor may submit to Pact, within 60 calendar days after the effective date of termination, a written claim covering any outstanding obligations. Pact shall determine the amount(s) to be paid to the Subcontractor under such claim in accordance with the applicable cost principles.

### **32. Assignment**

The subcontractor shall not assign this subcontract, or any interest herein, or any payment due or to become due, or any right to claim hereunder without the prior written consent of the Pact Agreement Officer. Any assignment not conforming to this requirement shall be ineffective and rendered null and void. All claims for monies due or to become due from Pact shall be subject to deduction by Pact for any set-off, recoupment, or counter claim, which arose before or after such assignment by the subcontractor. In no event shall the subcontractor, or its assignee, be given access to, provided with, confidential information.

### **33. Non-solicitation of employees**

During the term of this agreement, and for one year thereafter, neither party shall knowingly solicit for hire any technical or professional employee of the other party who has been directly involved with the work performed under this subcontract. However, this shall not be construed to restrict, limit or encumber an employee's rights granted by law. Each party shall also respect the established independent contractor relationships between the other party and its consultants.

### **34. Independent Contractor status**

In all matters, the subcontractor is an independent contractor. This subcontract does not (a) create the relationship of principal and agent, employer and employee, joint venture, or partnership between the subcontractor and Pact nor (b) establish any privity of contract between the funder and the subcontractor.

### **35. Confidentiality**

The Subcontractor must not disclose, duplicate, or make unauthorized use of any Confidential Information to any other person other than those individuals who need to have access to the Confidential Information to carry out the project and then only if those individuals are bound by a non-disclosure agreement or similar instrument. Confidential Information means all personal data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of either party, including all intellectual property rights, together with all information derived from any of the above, and any other information clearly being designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

### **36. Governing Law**

All questions, matters or disputes arising from this subcontract or any part thereof, including but not limited to questions of interpretation, construction, validity and performance, shall be governed by the laws of the District of Columbia.

### **37. Order of Precedence**

Any inconsistency in this subcontract shall be resolved by giving precedence in the following order:

- Modifications to this subcontract
- Sections 1, 2, 3 and 5 of this subcontract
- Section 4 of this subcontract, *Clauses Incorporated by Reference*.
- The subcontractor's best and final offer and other documents relating to this subcontract
- A determination by Pact in consultation with the funder

### **38. Special Conditions**

#### *Fraud Reporting*

The subcontractor is required to report on indications of fraud in host-country institutions or other matters that could reasonably be expected to be of foreign policy interest to the U.S. Government's development and stabilization efforts. Corruption, real or perceived, may critically impact the funder programming objectives as might other knowledge the subcontractor acquires in its normal course of business. This clause must not be construed to require the subcontractor to conduct investigation for such information outside of its normal business practices or to report on matters not directly or indirectly related to the funder programming or the proper use of U.S. Government funds. In the event awardee has special non-disclosure requirements or confidentiality requirements (such as prevalent in the legal and banking industries), or subcontractor determines such reporting would conflict with applicable laws, subcontractor must include a proposal to obtain any necessary waivers from the applicable host-country institution allowing such reporting to the maximum extent possible. Reports under this requirement must be submitted as a deliverable under the award.

### **39. Flow Down Clauses**

Pact is obligated to make the Subcontractor subject to the provisions of the following contract clauses, or changes thereto, unless a section specifically excludes a Subcontractor from coverage. References to the “Government” or “USAID” or “AO” shall be interpreted to mean to mean “Pact Award Officer”, “Contractor” to mean “Subcontractor”, and “subcontractor” or “subcontract” to mean lower tier subcontractors. Changes in the clauses below become effective once implemented by the federal awarding agency and automatically supersede the provisions set forth in this section.

[Appendix II to 2 CFR 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards](#)